

BILL 37 – SCHEDULE D

THE LABOUR RELATIONS AMENDMENT ACT

C.C.S.M. c. L10 amended

1 The Labour Relations Act is amended by this Act.

2 The following is added as subsections 39(4) and (5):

Interim certification

39(4) If a union has applied for certification and the board is satisfied that any dispute about the composition of the proposed unit cannot affect the union's right to certification, the board may certify the union as the bargaining agent for the unit on an interim basis pending its determination of the composition of the unit. Either party may then give notice to commence collective bargaining under section 60. Once the board determines the composition of the unit, it shall issue a final certificate to the union certifying it as the bargaining agent for the employees in the unit.

Time not to run until final certificate

39(5) Where the board certifies a union on an interim basis under subsection (4), the time period referred to in subsection 35(1) does not begin to run until the date of final certification.

3 Subsection 40(1) is amended by replacing clauses (a) and (b) with the following:

- (a) more than 50% of the employees in the unit wished to have the union represent them as their bargaining agent, the board shall certify the union as the bargaining agent for employees in the unit;
- (b) at least 40% but 50% or fewer of the employees in the unit wished to have the union represent them as their bargaining agent, the board shall conduct a vote by secret ballot of the employees in the unit in accordance with section 48;
- (c) fewer than 40% of the employees in the unit wished to have the union represent them as their bargaining agent, the board shall dismiss the application.

4 The following is added after subsection 89(2):

Essential services must be addressed

89(3) A union shall not declare or authorize a strike of employees, an employer shall not declare or cause a lockout of the employees, and employees in a unit shall not strike, unless

(a) the bargaining agent for the employees and the employer have made a determination referred to in subsection 94.3(1.1) that an essential services agreement under subsection 94.3(2) is not required and a copy of the determination has been filed with the board;

(b) the bargaining agent for the employees and the employer have entered into an essential services agreement under subsection 94.3(2) and a copy of the agreement has been filed with the board; or

(c) if the parties have not entered into an essential services agreement under subsection 94.3(2), the bargaining agent and the employer are subject to a determination made by

(i) the board under subsection 94.3(6), or

(ii) an arbitrator under subsection 94.3(10.2), and a copy of the determination has been filed with the board.

5 The following is added after section 93:

Notice of lockout re essential services

93.1(1) An employer who provides essential services shall not declare or cause a lockout of employees of the employer unless

(a) the employer has served the bargaining agent representing the employees written notice of the date that the employer intends to commence the lockout; and

(b) at least three days have elapsed after the date the written notice was served.

Notice of strike re essential services

93.1(2) A union which is the bargaining agent for a unit that provides essential services shall not declare or authorize a strike unless

(a) the union has served the employer written notice of the date that the unit intends to commence the strike; and

(b) at least three days have elapsed after the date the written notice was served.

New notice required

93.1(3) The notice given under subsection (1) or (2) expires on the intended day. If the lockout or strike does not commence on the day the notice expires, a new notice under this section must be given in respect of a lockout or strike that is intended to commence on another day.

Meaning of "essential services"

93.1(4) In this section, an employer and the employees in a unit are considered to provide essential services if the employer and the bargaining agent for the unit are party to an agreement entered into, or an order made under, section 94.3 (essential services) that requires one or more of the employees in the unit to continue to supply services, operate facilities or produce goods in the event of a lockout or strike.

6 The following is added as sections 94.1 to 94.6 as part of Part V:

REPLACEMENT WORKERS

Use of replacement workers prohibited

[94.1\(1\)](#) During a lockout or legal strike, the employer or a person acting on behalf of an employer shall not use the services of a person who is hired or engaged after the date on which notice to commence collective bargaining is given to perform

- (a) the work of an employee in the unit that is locked out or on strike; or
- (b) the work normally performed by a person who is performing the work of an employee in the unit that is locked out or on strike.

Use of others prohibited

[94.1\(2\)](#) During a lockout or legal strike, the employer or a person acting on behalf of the employer shall not use the services of the following persons to perform the work described in clause (1)(a) or (b):

- (a) a person who ordinarily works at another workplace of the employer, other than a person who performs management functions primarily or who is employed in a confidential capacity in matters relating to labour relations;
- (b) a person who is transferred to the employer's workplace where the lockout or legal strike is occurring if the person was transferred after the date on which notice to commence collective bargaining is given;
- (c) a person who is employed, engaged or supplied to the employer by another person;
- (d) a person who is an employee at the employer's workplace where the lockout or legal strike is occurring, and who is in a unit that is not locked out or on legal strike.

Use of employees in the bargaining unit prohibited

94.1(2.1) During a lockout or legal strike that is intended to involve the cessation of work by all employees in the bargaining unit, no employer or person acting on behalf of the employer shall use the services of any employee in that unit for a purpose other than as permitted under section 94.2 (exception – threat, destruction or damage) or 94.4 (return to work).

Exception — continuing services

[94.1\(3\)](#) If, before the day on which notice to commence collective bargaining is given, the employer or a person acting on behalf of the employer was using the services of a person to perform work and that work was the same or substantially similar to the work of an employee in the unit that is locked out or on legal strike, they may continue to use those services throughout a lockout or legal strike involving the unit, so long as they do so in the same manner, to the same extent and in the same circumstances as they did before the notice was given.

Application

[94.1\(4\)](#) This section applies to work performed by a person whether the person is paid or unpaid for performing the work.

Use of prohibited replacement workers

[94.1\(5\)](#) Every employer and every person acting on behalf of an employer who fails to comply with any of subsections (1) to (3) commits an unfair labour practice.

Exception — threat, destruction or damage

[94.2\(1\)](#) An employer or a person acting on behalf of an employer who uses the services of a person referred to in any of subsections 94.1(1) to (3) to perform work does not contravene any of those provisions if

(a) the services are used solely in order to deal with a situation that presents or could reasonably be expected to present

- (i) a threat to the life, health or safety of any person,
- (ii) a threat of destruction of or serious damage to the employer's property or premises, or
- (iii) a threat of serious environmental damage; and

(b) the use of the services is necessary in order to deal with the situation because the employer is unable to do so by any other means.

Limitation on exception

[94.2\(2\)](#) For certainty, the employer or a person acting on behalf of the employer may rely on subsection (1) only for the purposes referred to in clause (1)(a) and not for the purpose of continuing the supply of services, operation of facilities or production of goods in a manner contrary to subsection 94.1(1), (2) or (3).

ESSENTIAL SERVICES

Maintenance of essential services

[94.3\(1\)](#) During a lockout or legal strike, the employer, the bargaining agent for the unit of employees and the employees in the unit must continue the supply of services, operation of facilities or production of goods to the extent necessary to

- (a) prevent a threat to the health, safety or welfare of residents of Manitoba;
- (b) maintain the administration of justice; or
- (c) prevent a threat of serious environmental damage.

Determining if essential services agreement is required

94.3(1.1) The parties to a collective agreement must, no later than 180 days before the expiry of that agreement,

- (a) determine whether it is necessary, in the event of a lockout or legal strike, to continue the supply of services, operation of facilities or production of goods to comply with subsection (1);
- (b) set out the determination in writing;
- (c) file a copy of the determination with the board; and
- (d) provide a copy of the determination to the minister if requested to do so by the minister.

The filed copy of the determination has the same effect as an order of the board.

Guidelines

94.3(1.2) For certainty, the board may issue a guideline to assist parties in determining whether an essential services agreement is required.

Parties unable to make determination

94.3(1.3) If the parties

- (a) fail to file their determination by the time prescribed in subsection (1.1); or
- (b) determine that no continuation of the supply of services, operation of facilities or production of goods is necessary to comply with subsection (1) in the event of a lockout or legal strike, and the minister is not in agreement with that determination;

then either party or the minister may make an application to the board.

Order

94.3(1.4) If on an application made under subsection (1.3), the board is of the opinion that a lockout or legal strike could result in a failure to comply with subsection (1), the board may, by order,

- (a) designate the supply of services, operation of facilities and production of goods that it considers necessary to ensure compliance with subsection (1); and
- (b) impose any measure that it considers appropriate for carrying out the requirements of this section.

Time limit

94.3(1.5) The board must determine the matter, make any order and send a copy of its decision and any order to the parties, no later than 30 days after the day on which it received the application.

Late order or decision not invalid

94.3(1.6) Failure of the board to comply with the time limit does not affect the jurisdiction of the board to continue with and determine the application, and any decision or order made by the board after the time limit is not for that reason invalid.

Time limit to enter essential services agreement

94.3(2) If

(a) the parties to a collective agreement determine under subsection (1.1) that it is necessary to continue the supply of services, operation of facilities or production of goods to comply with subsection (1); or

(b) the board makes an order under subsection (1.4) designating the supply of services, operation of facilities or production of goods to comply with subsection (1);

then the parties to the collective agreement must, no later than 90 days before the expiry of the term of the collective agreement, enter into an essential services agreement.

Content of essential services agreement

94.3(2.1) The essential services agreement must set out the manner and extent to which the employer, the bargaining agent and the employees in the unit must continue the supply of services, operation of facilities or production of goods, including the number of those employees that, in the opinion of the employer and the bargaining agent, would be required to comply with subsection (1).

Filing with board

[94.3\(4\)](#) Immediately after entering into the essential services agreement, the employer and the bargaining agent must file a copy of the agreement with the board. When the agreement is filed, it has the same effect as an order of the board.

Filing with minister on request

[94.3\(5\)](#) The minister may request an employer or a bargaining agent to provide the minister a copy of an essential services agreement they have filed with the board. A party who receives such a request must provide the minister a copy of their agreement as soon as reasonably practicable, in the form and manner specified by the minister.

If no agreement entered into

[94.3\(6\)](#) If the employer and the bargaining agent do not enter into an essential services agreement within the period referred to in subsection (2), the board must, on application made by either of them, determine any question with respect to the application of such an agreement.

Minister may refer

[94.3\(7\)](#) The minister may refer to the board any question with respect to whether an agreement entered into by the employer and the bargaining agent is sufficient to ensure that subsection (1) is complied with.

Board order

[94.3\(8\)](#) If, in determining an application made under subsection (6) or a referral made under subsection (7), the board is of the opinion that a lockout or legal strike could result in a failure to comply with subsection (1), the board may, by order,

- (a) subject to subsection (10.1), specify the manner and extent to which the employer, the bargaining agent and the employees in the unit must continue to supply services, operate facilities and produce goods; and
- (b) impose any measure that it considers appropriate for carrying out the requirements of this section.

Time limit

[94.3\(9\)](#) The board must determine an application made under subsection (6) or a referral made under subsection (7), make any order under subsection (8) and send a copy of its decision and any order to the parties no later than 30 days after the day on which it received the application or referral.

Late order or decision not invalid

[94.3\(10\)](#) Failure of the board to comply with the time limit in subsection (9) does not affect the jurisdiction of the board to continue with and determine the application or referral, and any decision or order made by the board after the time limit is not for that reason invalid.

Parties may agree to proceed by arbitration

94.3(10.1) Within two days after an application is made to the board under subsection (6), the employer and the bargaining agent may serve notice on the board of

- (a) the agreement of the employer and the bargaining agent to settle by arbitration, the manner and extent to which the employer, the bargaining agent and the employees in the unit must continue to supply services, operate facilities and produce goods in the event of a lockout or legal strike; and
- (b) the name of the person who has agreed to act as an arbitrator.

Arbitrator to settle terms of essential services agreement

94.3(10.2) If the parties have served a notice that complies with subsection (10.1), the arbitrator named in the notice must, within 30 days after the notice is served on the board,

- (a) determine the manner and extent to which the employer, the bargaining agent and the employees in the unit must continue to supply services, operate facilities and produce goods in the event of a lockout or legal strike; and
- (b) file the determination with the board.

When the determination is filed, it has the same effect as an order of the board.

Arbitrator to settled disputes re. essential services agreement

94.3(10.3) The arbitrator who makes a determination under subsection (10.2) must, on application of either party during a lockout or legal strike, settle any matter in dispute between the parties respecting the arbitrator's determination within 2 days after the application being made.

Board may act if dispute not settled by arbitration

94.3(10.4) For certainty, in respect of a matter determined by an arbitrator, a party may proceed under subsection (12) only if the arbitrator is unable or unwilling to act and the parties are unable to agree on another person to act in the place of the arbitrator.

Jurisdiction retained

94.3(10.5) The failure of an arbitrator to issue a determination within the period of time prescribed in subsection (10.2) or (10.3) does not affect the jurisdiction of the arbitrator to continue with and complete the arbitration proceedings and to issue a final determination.

Application of provisions respecting arbitrator

94.3(10.6) The provisions of the Act respecting arbitration apply, with necessary modifications, to an arbitrator acting under this section.

Filing of agreement before decision

[94.3\(11\)](#) An employer and the bargaining agent may enter into an agreement referred to in subsection (2) and file it in accordance with subsection (4) at any time before the board has determined an application made under subsection (6). If the employer and the bargaining agent do so, at the time of the filing of the agreement, the board ceases to be seized of the application.

Review of order

[94.3\(12\)](#) On application by the employer or the bargaining agent, or on referral by the minister, during a lockout or legal strike, the board may, if in the board's opinion the circumstances warrant, review and confirm, amend or cancel an agreement entered into, or a determination or order made, under this section and make any order that it considers appropriate in the circumstances.

Return to work

[94.4\(1\)](#) An employer or employee affected by an order made under section 94.3 must comply with the order.

Application

[94.4\(2\)](#) If an order is made under section 94.3, and despite the collective agreement between the employer and the bargaining agent having expired or been terminated, the collective agreement continues while the order is in effect, except to the extent that the agreement is amended by the board to implement the order.

Compliance

[94.4\(3\)](#) An employer, union or other person shall not impede or prevent or attempt to impede or prevent an employee who is required to work in accordance with an order made under section 94.3 from complying with the order.

Failure to comply with order

[94.4\(4\)](#) Every employer, union or other person who fails to comply with subsection (1) or (3) commits an unfair labour practice.

Substantial interference with collective bargaining

[94.5\(1\)](#) An employer or a bargaining agent affected by an order made under section 94.3 may apply to the board for a finding that the order substantially interferes with meaningful collective bargaining.

Order

[94.5\(2\)](#) If the board finds that the manner and extent to which the employer or the employees in the unit must continue the supply of services, the operation of facilities or the production of goods, as ordered, has the effect of substantially interfering with meaningful collective bargaining, the board may order that all matters remaining in dispute between the parties be settled.

Application

[94.5\(3\)](#) If the board makes an order under subsection (2),

(a) clauses 87.3(1)(a) to (c) apply the day after the order is made; and

(b) subsections 87.3(2) to (7) apply, with necessary changes, for the purpose of settling the matters in dispute.

Exclusion

[94.6](#) Sections 94.3 to 94.5 do not apply to employees in a unit who are prohibited from striking and to the employer and bargaining agent of those employees.

Z The following is added after clause 142(5)(o):

(o.1) an employer is using the services of a person described in subsections 94.1(1) to (3) to perform

(i) the work of an employee in a unit that is locked out or on legal strike, or

(ii) the work normally performed by a person who is performing the work of an employee in the unit that is locked out or on legal strike; or

Consequential repeals

8(1) The following Acts are repealed:

*(a) **The Essential Services Act (Government and Child and Family Services)**, S.M. 1996, c. 23;*

*(b) **The Essential Services Act (Health Care)**, S.M. 2011, c. 22.*

Transitional

*8(2) Despite the repeal of an Act listed in subsection (1), an essential services agreement entered into under either Act continues in force in accordance with its terms, and if a party to such an agreement files it with the board before the agreement expires, it is considered to be an agreement filed with the board under subsection 94.3(4) of **The Labour Relations Act**, as enacted by section 6 of this Act.*

Transitional – time periods

8(3) *If, on the coming into force of this section a time period for applying to the board in respect of an essential services agreement under section 94.3 of **The Labour Relations Act**, as enacted by section 6 of this Act, has already expired, a party to a collective agreement may proceed immediately to make an application to the board.*

Coming into force

9 This Act comes into force on the day it receives royal assent.

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