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Bill 67

An Act to amend the Labour Relations Act, 1995

The Hon. L. Scott
Minister of Labour

Government Bill

1st Reading December 17, 2018

2nd Reading

3rd Reading

Royal Assent



EXPLANATORY NOTE

The Bill amends the *Labour Relations Act, 1995* to address the current labour dispute between Ontario Power Generation Inc. and the Power Workers' Union. It prohibits any strike or lock-out from occurring, requires the termination of any strike or lock-out that is underway and provides a mechanism for achieving a new collective agreement.

An Act to amend the Labour Relations Act, 1995

Preamble

The last collective agreement between Ontario Power Generation Inc. and the Power Workers' Union expired on March 31, 2018. The parties have been engaged in the collective bargaining process for many months, including conciliation with the assistance of the Ministry of Labour, but have been unable to resolve their dispute. On December 13, 2018, the Power Workers' Union's membership did not ratify Ontario Power Generation Inc.'s final offer. The parties appear deadlocked and on December 14, 2018, the Power Workers' Union gave notice of a strike.

The workers in Ontario's electricity generating stations are professional, skilled individuals responsible for the safe and secure ongoing operation and maintenance of complex, vital facilities.

Through these facilities, Ontario Power Generation Inc. produces approximately 50 per cent of Ontario's electricity that families, businesses and industry rely on every day. The Independent Electricity System Operator has advised that any prolonged outage caused by a labour disruption would jeopardize the electricity supply to Ontario's homes, industry and businesses, which could impair public safety and well-being and have a devastating impact and ripple effect on the province's economy.

Ontario cannot allow families and seniors to have to live in the dark or to go without heat, especially during winter months. This serious situation requires swift and decisive action. Protecting the public interest and the health and safety of the people of Ontario requires the continuation of operations at Ontario Power Generation Inc. and the resolution of the labour dispute through a fair process of dispute resolution.

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1 Section 169 of the *Labour Relations Act, 1995* is repealed and the following substituted:

ONTARIO POWER GENERATION INDUSTRY

Definitions

169 In this section and sections 170 to 189,

“bargaining agent” means the Power Workers' Union (PWU), Canadian Union of Public Employees, Local 1000 - CLC; (“agent négociateur”)

“employees” means the employees of the employer who are represented by the bargaining agent and included in the power workers bargaining unit; (“employés”)

“employer” means Ontario Power Generation Inc.; (“employeur”)

“new collective agreement”, when used with respect to the power workers bargaining unit, means a collective agreement that,

- (a) applies to the employees in the unit, and
- (b) is executed on or after the day the *Labour Relations Amendment Act (Protecting Ontario's Power Supply), 2018* receives Royal Assent or comes into force under subsection 189 (5); (“nouvelle convention collective”)

“parties”, when used in relation to a dispute, a dispute resolution proceeding dealing with the dispute or a new collective agreement, means the employer and the bargaining agent; (“parties”)

“power workers bargaining unit” means all regular, part-time and temporary employees, including technicians of the construction field forces and security employees but excluding,

- (a) employees represented by other bargaining agents,
- (b) persons above the rank of working supervisor,
- (c) persons who exercise managerial functions in accordance with this Act, and
- (d) persons employed in a confidential capacity in matters relating to labour relations in accordance with this Act,

as set out in Article 1.1 in the collective agreement between the employer and the bargaining agent effective from April 1, 2015 to March 31, 2018. (“unité de négociation des travailleurs du secteur énergétique”)

Application of ss. 169 to 189

170 (1) Sections 169 to 189 apply to the employer, the bargaining agent and the employees if the employer and the bargaining agent have not executed a collective agreement after March 31, 2018 and before the day the *Labour Relations Amendment Act (Protecting Ontario’s Power Supply)*, 2018 receives Royal Assent with respect to the power workers bargaining unit.

Same, for greater certainty

(2) For greater certainty, sections 169 to 189 apply in accordance with subsection (1) even if the parties were otherwise in a lawful strike or lock-out position under this Act immediately before the *Labour Relations Amendment Act (Protecting Ontario’s Power Supply)*, 2018 receives Royal Assent.

Conflict

(3) In the event of a conflict between a provision in sections 169 to 189 and a provision in sections 1 to 125, the provision in sections 169 to 189 prevails.

Prohibition re strike

171 (1) Subject to section 175, no employee shall strike and no person or trade union shall call or authorize, or threaten to call or authorize, a strike by any employees.

Same

(2) Subject to section 175, no officer, official or agent of a trade union shall counsel, procure, support, encourage or threaten a strike by any employees.

Prohibition re lock-out

172 (1) Subject to section 175, the employer shall not lock out, authorize a lock-out or threaten to lock out any employees.

Same

(2) Subject to section 175, no officer, official or agent of the employer shall counsel, procure, support, encourage or threaten a lock-out of any employees.

Duties of employer and bargaining agent

Application of section

173 (1) This section applies if a strike or lock-out involving the employees is in effect immediately before the *Labour Relations Amendment Act (Protecting Ontario’s Power Supply)*, 2018 receives Royal Assent.

Operation of undertakings

(2) As soon as the *Labour Relations Amendment Act (Protecting Ontario’s Power Supply)*, 2018 receives Royal Assent, the employer shall use all reasonable efforts to operate and continue to operate its undertakings, including any operations interrupted during any lock-out or strike that is in effect immediately before the *Labour Relations Amendment Act (Protecting Ontario’s Power Supply)*, 2018 receives Royal Assent.

Termination of lock-out

(3) As soon as the *Labour Relations Amendment Act (Protecting Ontario’s Power Supply)*, 2018 receives Royal Assent, the employer shall terminate any lock-out of employees that is in effect immediately before the *Labour Relations Amendment Act (Protecting Ontario’s Power Supply)*, 2018 receives Royal Assent.

Termination of strike

(4) As soon as the *Labour Relations Amendment Act (Protecting Ontario’s Power Supply)*, 2018 receives Royal Assent, the bargaining agent shall terminate any strike by employees that is in effect immediately before the *Labour Relations Amendment Act (Protecting Ontario’s Power Supply)*, 2018 receives Royal Assent.

Same

(5) As soon as the *Labour Relations Amendment Act (Protecting Ontario’s Power Supply)*, 2018 receives Royal Assent, each employee shall terminate any strike that is in effect immediately before the *Labour Relations Amendment Act (Protecting Ontario’s Power Supply)*, 2018 receives Royal Assent and shall, without delay, resume the performance of the duties of his or her employment or shall continue performing them, as the case may be.

Exception

(6) Subsection (5) does not preclude an employee from not reporting to work and performing his or her duties for reasons of health or by mutual consent of the employee and the employer.

Non-application of s. 109

174 Section 109 does not apply in respect of a prosecution for a contravention of sections 171, 172 or 173.

Strike or lock-out after new collective agreement

175 After a new collective agreement with respect to the power workers bargaining unit is executed by the parties or comes into force under subsection 189 (5), sections 170 to 173 cease to apply and the right of the employees in the unit to strike and the right of the employer to lock out those employees is otherwise governed by this Act.

Deeming provision: unlawful strike or lock-out

176 A strike or lock-out in contravention of section 171, 172 or 173 is deemed to be an unlawful strike or lock-out for the purposes of this Act.

Terms of employment

177 Until a new collective agreement with respect to the power workers bargaining unit is executed by the parties or comes into force under subsection 189 (5), the terms and conditions of employment that applied with respect to the employees on the day before the first day on which it became lawful for any of the employees to strike continue to apply, unless the parties agree otherwise.

Deemed referral to mediator-arbitrator

178 If sections 169 to 189 apply to the employer and the bargaining agent in respect of the power workers bargaining unit, the parties are deemed to have referred to a mediator-arbitrator, on the day the *Labour Relations Amendment Act (Protecting Ontario's Power Supply), 2018* receives Royal Assent, all matters remaining in dispute between them with respect to the terms and conditions of employment of the employees.

Appointment of mediator-arbitrator

179 (1) On or before the fifth day after the *Labour Relations Amendment Act (Protecting Ontario's Power Supply), 2018* receives Royal Assent, the parties shall jointly appoint the mediator-arbitrator referred to in section 178 and shall forthwith notify the Minister of the name and address of the person appointed.

Same

(2) If the parties fail to notify the Minister as subsection (1) requires, the Minister shall forthwith appoint the mediator-arbitrator and notify the parties of the name and address of the person appointed.

Replacement

(3) If the parties notify the Minister that they agree that the mediator-arbitrator is unable or unwilling to perform his or her duties so as to make an award, the parties shall, on or before the fifth day after the notification, jointly appoint a new mediator-arbitrator and shall forthwith notify the Minister of the name and address of the person appointed.

Same

(4) If the Minister notifies the parties that in the Minister's opinion the mediator-arbitrator is unable or unwilling to perform his or her duties so as to make an award, the parties shall, on or before the fifth day after the notification, jointly appoint a new mediator-arbitrator and shall forthwith notify the Minister of the name and address of the person appointed.

Same

(5) If the parties fail to notify the Minister as subsection (3) or (4) requires, the Minister shall forthwith appoint a new mediator-arbitrator and notify the parties of the name and address of the person appointed.

Same

(6) The dispute resolution process shall begin anew on the appointment of a new mediator-arbitrator under subsection (3), (4) or (5).

Minister's power

(7) The Minister may appoint as a mediator-arbitrator a person who is, in the opinion of the Minister, qualified to act.

Delegation

(8) The Minister may delegate in writing to any person the Minister's power to make an appointment under this section.

Proof of appointment, etc.

(9) An appointment made under this section that purports to be signed by or on behalf of the Minister shall be received in evidence in any proceeding as proof, in the absence of evidence to the contrary, of the facts stated in it without proof of the signature or the position of the person appearing to have signed it.

Selection of method of dispute resolution

180 (1) The mediator-arbitrator shall select the method of dispute resolution and shall notify the parties of the selection.

Same

(2) The mediator-arbitrator shall consider all methods of dispute resolution and in his or her sole discretion shall select the method that he or she believes is the most appropriate method having regard to the nature of the dispute.

Appointment and proceedings of mediator-arbitrator not subject to review

181 It is conclusively presumed that the appointment of a mediator-arbitrator made under section 179 is properly made, and no application shall be made to question the appointment or to prohibit or restrain any of the mediator-arbitrator's proceedings, including the selection of a method of dispute resolution made under section 180.

Jurisdiction of mediator-arbitrator

182 (1) The mediator-arbitrator has exclusive jurisdiction to determine all matters that he or she considers necessary to conclude a new collective agreement.

Time period

(2) The mediator-arbitrator remains seized of and may deal with all matters within his or her jurisdiction until the new collective agreement is executed by the parties or comes into force under subsection 189 (5).

Mediation

(3) The mediator-arbitrator may try to assist the parties to settle any matter that he or she considers necessary to conclude the new collective agreement.

Notice, matters agreed on

(4) As soon as possible after a mediator-arbitrator is appointed, but in any event no later than seven days after the appointment, the parties shall give the mediator-arbitrator written notice of the matters on which they reached agreement before the appointment.

Same

(5) The parties may at any time give the mediator-arbitrator written notice of matters on which they reach agreement after the appointment of a mediator-arbitrator.

Time limits

183 (1) The mediator-arbitrator shall begin the dispute resolution proceeding within 30 days after being appointed and shall make all awards under sections 169 to 189 within 90 days after being appointed, unless the proceeding is terminated under subsection 188 (2).

Extensions

(2) The parties and the mediator-arbitrator may, by written agreement, extend a time period specified in subsection (1) either before or after it expires.

Procedure

184 (1) The mediator-arbitrator shall determine the procedure for the selected method of dispute resolution but shall permit the parties to present evidence and make submissions.

Application of s. 48 (12) (a) to (i)

(2) Clauses 48 (12) (a) to (i) apply, with necessary modifications, to proceedings before the mediator-arbitrator and to his or her decisions.

Exclusions

(3) The *Arbitration Act, 1991* and the *Statutory Powers Procedure Act* do not apply to mediation-arbitration proceedings under sections 169 to 189.

Award of mediator-arbitrator

185 (1) An award by the mediator-arbitrator under sections 169 to 189 shall address all the matters to be dealt with in the new collective agreement with respect to the parties and the power workers bargaining unit.

Criteria

(2) In making an award, the mediator-arbitrator shall take into consideration all factors that he or she considers relevant, including the following criteria:

1. The employer's ability to pay in light of its fiscal situation.
2. The economic situation in Ontario.
3. A comparison, as between the employees and comparable employees in the public and private sectors, of the nature of the work performed and of the terms and conditions of employment.

4. The employer's ability to attract and retain qualified employees.
5. The purposes of the *Public Sector Dispute Resolution Act, 1997*.

Restriction — discipline and discharge

(3) The mediator-arbitrator shall not include a provision in an award that prohibits the employer from discharging or disciplining an employee for just cause in respect of any activity that took place during the period that begins on the date on which a strike or lock-out in respect of the power workers bargaining unit became lawful and ends on the date on which a new collective agreement is executed by the parties or comes into force under subsection 189 (5).

Same

(4) Any dispute between the parties concerning discharge or discipline in respect of activities that took place during the period described in subsection (3) shall be determined through the grievance procedure and arbitration procedure established in the new collective agreement.

Retroactive alteration of terms of employment

(5) The award may provide for the retroactive alteration of one or more terms and conditions of employment, to one or more dates after March 31, 2018, and may do so despite section 177.

Effect of award

186 The award of a mediator-arbitrator under sections 169 to 189 is final and binding on the parties and on the employees.

Costs

187 Each party shall pay one-half of the fees and expenses of the mediator-arbitrator.

Continued negotiation

188 (1) Until an award is made, nothing in sections 178 to 187 prohibits the parties from continuing to negotiate with a view to making a new collective agreement and they are encouraged to do so.

New collective agreement concluded by parties

(2) If the parties execute a new collective agreement before an award is made, they shall notify the mediator-arbitrator of the fact and the mediation-arbitration proceeding is thereby terminated.

Execution of new collective agreement

189 (1) Within seven days after the mediator-arbitrator makes an award, the parties shall prepare and execute documents giving effect to the award.

Same

(2) The documents required by subsection (1) constitute the new collective agreement between the parties.

Extension

(3) The mediator-arbitrator may extend the period referred to in subsection (1), but the extended period shall end no later than 30 days after the mediator-arbitrator made the award.

Preparation by mediator-arbitrator

(4) If the parties do not prepare and execute the documents as required under subsections (1) and (3), the mediator-arbitrator shall prepare the necessary documents and give them to the parties for execution.

Failure to execute

(5) If either party fails to execute the documents prepared by the mediator-arbitrator within seven days after receiving them, the documents come into force as though they had been executed by the parties and those documents constitute the new collective agreement between the parties.

2 Sections 169 to 189 of the Act are repealed.

COMMENCEMENT AND SHORT TITLE

Commencement

3 (1) Subject to subsection (2), this Act comes into force on the day it receives Royal Assent.

(2) Section 2 comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

4 The short title of this Act is the *Labour Relations Amendment Act (Protecting Ontario's Power Supply), 2018*.