



NATIONAL ASSEMBLY

FIRST SESSION

THIRTY-SEVENTH LEGISLATURE

Bill 31

(2003, chapter 26)

An Act to amend the Labour Code

Introduced 13 November 2003
Passage in principle 12 December 2003
Passage 17 December 2003
Assented to 18 December 2003

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EXPLANATORY NOTES

This bill amends the provisions of the Labour Code as regards the transmission of rights and obligations upon the transfer of part of the operation of an undertaking.

The bill thus provides that there will no longer be such a transmission of rights and obligations in cases where the transfer does not entail transferring to the transferee, in addition to functions or the right to operate, most of the elements that characterize the part of the undertaking involved, unless the main purpose of the transfer is to undermine an association of employees.

The bill also provides, subject to the same reservation, that a collective agreement transferred to the transferee's undertaking is deemed to expire on the day the transfer becomes effective and that the notice of negotiations to make a new collective agreement may be given within the following 30 days.

Lastly, the bill contains a number of transitional and concordance provisions.

Bill 31

AN ACT TO AMEND THE LABOUR CODE

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

1. Section 22 of the Labour Code (R.S.Q., chapter C-27) is amended by striking out the second paragraph.

2. Section 45 of the said Code is amended by adding the following paragraph at the end:

“The second paragraph does not apply in the case of the transfer of part of the operation of an undertaking where such transfer does not entail the transfer to the transferee, in addition to functions or the right to operate, of most of the elements that characterize the part of the undertaking involved.”

3. Section 45.1 of the said Code is repealed.

4. Section 45.2 of the said Code is amended

(1) by striking out “and notwithstanding section 45” in the first and second lines of the first paragraph;

(2) by replacing subparagraph 1 of the first paragraph by the following subparagraph:

“(1) for the purposes of labour relations between the new employer and the association of employees involved, a collective agreement referred to in the second paragraph of section 45 that has not expired on the effective date of the transfer is deemed to expire on the day the transfer becomes effective;”;

(3) by replacing “elect not to apply to the Commission to request the application of section 45” in the third and fourth lines of subparagraph 2 of the first paragraph by “waive the application of the second paragraph of section 45”.

5. Section 45.3 of the said Code is amended

(1) by inserting “by a certified union” after “made” in the first line of subparagraph 1 of the first paragraph;

(2) by inserting “the second paragraph of” after “agreement or, where” in the second line of subparagraph 2 of the first paragraph;

(3) by adding the following subparagraph after subparagraph 3 of the first paragraph:

“(4) the provisions of the third paragraph of section 45 or those of section 45.2, as the case may be, apply where the undertaking becomes subject to the legislative authority of Québec as a result of the transfer of part of the operation of the undertaking.”;

(4) by striking out the second and third paragraphs.

6. Section 46 of the said Code is amended by adding the following paragraph at the end:

“The Commission may also, on the motion of an interested party filed not later than the thirtieth day following the effective date of the transfer of the operation of part of an enterprise and where it considers that the transfer was carried out for the main purpose of hindering the formation of an association of employees or undermining the continued integrity of a certified association of employees:

(1) set aside the application of the third paragraph of section 45 and render any appropriate decision to facilitate the application of the second paragraph of the said section;

(2) set aside the application of subparagraph 1 of the first paragraph of section 45.2 and determine that the new employer remains bound by the collective agreement referred to in the second paragraph of section 45 until the date fixed for its expiration.”

7. Section 52 of the said Code is amended by adding the following paragraph at the end:

“In the case of a collective agreement referred to in subparagraph 1 of the first paragraph of section 45.2, the certified association or the employer may give such notice within 30 days following the deemed expiration of the agreement.”

8. Section 52.2 of the said Code is amended by adding “, except in the situation referred to in the fourth paragraph of the said section, where it is deemed to have been received on the thirtieth day following the deemed expiration of the agreement” at the end of the first paragraph.

9. Section 133 of the said Code, enacted by section 63 of chapter 26 of the statutes of 2001, is amended by replacing the second paragraph by the following paragraph:

“In the case of a motion concerning the applicability of sections 45 to 45.3 and referred to in the first paragraph of section 46, the Commission must render a decision within 90 days after the motion is filed with the Commission.”

10. The provisions of the Labour Code, as they read before the amendments made by this Act, continue to apply in the case of the transfer of the operation of part of an undertaking that became effective before 1 February 2004.

11. This Act comes into force on 1 February 2004.