



NATIONAL ASSEMBLY

FIRST SESSION

THIRTY-SEVENTH LEGISLATURE

Bill 135

(2005, chapter 42)

An Act to amend the Act respecting labour relations, vocational training and manpower management in the construction industry

Introduced 15 November 2005

Passage in principle 23 November 2005

Passage 8 December 2005

Assented to 13 December 2005

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EXPLANATORY NOTES

This bill amends various provisions of the Act respecting labour relations, vocational training and manpower management in the construction industry that relate to the exercise of freedom of association. More specifically, it broadens prohibitions against intimidation and discrimination, and prohibits associations from acting in an arbitrary or discriminatory manner when making employment references with respect to employees they represent.

Also, the bill provides that any interested person may file a complaint with the Commission des relations du travail about an infringement on freedom of association and that the Commission de la construction du Québec is to contribute to the fund of the Commission des relations du travail toward the processing of referred complaints.

In another vein, the bill tightens certain other rules concerning the position of job-site steward and employees' eligibility for that position. The bill affirms the binding nature of decisions made as part of the jurisdictional conflict resolution process in place in the construction industry.

In addition, the bill excludes from the scope of the Act work on tailings facilities and construction work on greenhouses to be used for agricultural production. It adds psychological harassment to the list of grounds on which a grievance may be filed and modifies the regulatory power of the Government as regards the remuneration of arbitrators of grievances. It also requires that the Commission de la construction du Québec conduct an inquiry into all written complaints that bring an infringement of the Act to its attention.

The bill recognizes the Conseil provincial du Québec des métiers de la construction (International) and the Fédération des travailleurs et travailleuses du Québec (FTQ-Construction) as representative associations in the construction industry, in replacement of their former joint council.

Lastly, the bill amends certain penal provisions and contains consequential, technical and transitional provisions.

LEGISLATION AMENDED BY THIS BILL:

- Labour Code (R.S.Q., chapter C-27);
- Act respecting labour relations, vocational training and manpower management in the construction industry (R.S.Q., chapter R-20).

Bill 135

AN ACT TO AMEND THE ACT RESPECTING LABOUR RELATIONS, VOCATIONAL TRAINING AND MANPOWER MANAGEMENT IN THE CONSTRUCTION INDUSTRY

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

1. The Act respecting labour relations, vocational training and manpower management in the construction industry (R.S.Q., chapter R-20) is amended by inserting the following section after section 8:

“8.1. The Commission de la construction du Québec shall contribute to the fund of the Commission des relations du travail, established by section 137.62 of the Labour Code (chapter C-27), to cover the expenses incurred by the latter commission in investigating complaints submitted to it under section 105 of this Act.

The amount of the contribution from the Commission de la construction du Québec and the manner in which it is to be paid are determined by the Government.”

2. Section 19 of the Act is amended

(1) by inserting “or construction work on a greenhouse to be used for agricultural production done by the regular employees of the greenhouse operator, of the greenhouse manufacturer, of the greenhouse manufacturer’s successor or of a person whose main activity is to do such work and to whom the manufacturer or the manufacturer’s successor entrusts such work on an exclusive basis” at the end of subparagraph 1 of the first paragraph;

(2) by inserting “, or work on tailings facilities” at the end of subparagraph 4 of the first paragraph.

3. Section 22 of the Act is amended by adding the following paragraph at the end:

“If the decision aims to settle a jurisdictional conflict relating to the practice of a trade or occupation, it also binds the associations of employees that are party to the conflict for the purposes of the future assignment of similar work on other job sites.”

4. Section 28 of the Act is amended by replacing “the Conseil conjoint de la Fédération des travailleurs du Québec (FTQ-Construction) et du Conseil

provincial du Québec des métiers de la construction (International)” in the third, fourth and fifth lines by “the Conseil provincial du Québec des métiers de la construction (International), the Fédération des travailleurs et travailleuses du Québec (FTQ-Construction)”.

5. The Act is amended by inserting the following section after section 53:

“53.1. If a collective agreement provides for the creation of jurisdictional conflict resolution committees, every person or association affected by a work assignment decision rendered by such a committee must comply with it without delay until such time as the construction industry commissioner, if called upon to render a decision on the jurisdictional conflict, does so.”

6. Section 61.2 of the Act is amended by inserting the following paragraph after paragraph 4:

“(4.1) limit the freedom of an employee to choose how he will offer his services to an employer;”.

7. Section 62 of the Act is amended by replacing “or the notice board” in the third line by “, the notice board or psychological harassment”.

8. Section 86 of the Act is amended

(1) by replacing the first and second paragraphs by the following paragraph:

“86. For the purposes of this section, “union” means any union or association of employees affiliated with a representative association, or any representative association that does not include such affiliated unions or associations.”;

(2) by replacing “job-site employees who are members of the union for the same employer entitles the employees” in the first and second lines of the third paragraph of paragraph 1 by “employees who are members of the union for the same employer entitles the employees”;

(3) by adding the following paragraph at the end of paragraph 1:

“For the purposes of the Commission’s functions, the person elected must give his union a declaration, in the form determined by the Commission, that his election as job-site steward does not contravene section 26. The union must immediately forward the declaration to the Commission, in the manner determined by it.”;

(4) by replacing “appointed as the representative of the group of employees who are members of the union concerned after he has been notified of the election in writing by such union” in the first, second and third lines of paragraph 2 by “elected as the representative of the group of employees who are members of the union concerned once the union has notified the employer

of the job-site steward's election in writing and forwarded the declaration required by the fourth paragraph of paragraph 1 to the Commission”;

(5) by inserting “*and remuneration*” after “*Functions*” in the heading of paragraph 3;

(6) by adding the following subparagraphs at the end of paragraph 3:

“(e) Except in the case of a prolonged absence accounted for as required by subparagraph *d*, the job-site steward is not entitled to wages for union activities beyond the agreed time.

“(f) On the job site, the job-site steward must limit himself to doing his work for the employer and carrying out the functions of job-site steward determined by law.”;

(7) by replacing paragraph 4 by the following paragraph:

“4. — *Preference of employment*

The job-site steward shall be given preference of employment on his job site over all employees if

(a) seven or more employees who are members of his union are still employed by the employer on the job site; and

(b) there is work to be done in his trade, specialty or occupation.”

9. Section 88 of the Act is amended by replacing “no union” in the first line of paragraph *b* by “no association or person acting on behalf of an association”.

10. Section 91 of the Act is amended

(1) by replacing “member of the union” in the third line of the first paragraph by “employee, by any association, by the Commission”;

(2) by inserting “the Commission or” after “when” in the first line of the second paragraph.

11. Section 101 of the Act is replaced by the following section:

“**101.** No person may intimidate, threaten or coerce a person or discriminate or take reprisals against a person with the aim or effect of infringing on the person's freedom of association, penalizing the person for choosing a union affiliation or becoming a member of a union, compelling the person to become, abstain from becoming or cease being a member or officer of an association, penalizing the person for having exercised a right under this Act or inciting the person to forfeit such a right.

Any person who, for the purposes or reasons stated in the first paragraph, does any of the following contravenes that paragraph:

(a) refuses to employ, dismisses or threatens to dismiss a person;

(b) imposes a disciplinary penalty on an employee, reduces his workload, demotes him, denies him a promotion he would normally be entitled to, or shows favouritism toward him when transferring employees or assigning work.

An association that acts in an arbitrary or discriminatory manner when making employment references with respect to employees it represents also contravenes the first paragraph.

As well, a person intimidates another person when the person pressures a third party in any way to do any of the actions prohibited by the first paragraph.”

12. Section 102 of the Act is amended by striking out “belongs to another association or” in the second and third lines.

13. Sections 105 to 107 of the Act are replaced by the following sections:

“**105.** An interested person may file a complaint with the Commission des relations du travail about the application of the provisions of this chapter within 15 days after the date on which the act complained about took place or on which he became aware of it.

“**106.** If the complainant establishes to the satisfaction of the Commission des relations du travail that he is exercising a right under this chapter, it is up to the person or association complained against to prove that there was good and sufficient reason for the act complained about.

“**107.** The provisions of the Labour Code (chapter C-27) applicable to a recourse relating to the exercise by an employee of a right under that Code apply, with the necessary modifications, to a complaint submitted to the Commission des relations du travail under section 105 of this Act.

An order under paragraph *a* of section 15 of the Labour Code to pay an employee an indemnity may apply to a person or association besides the employer. The Commission des relations du travail may also order persons or associations that contravened a provision of this chapter to pay punitive damages, order a representative association or association of employees to reinstate an employee in its ranks with the advantages he was illegally deprived of, or issue any other order it considers appropriate.”

14. Section 110 of the Act is amended by adding the following paragraph at the end:

“The same applies to complaints filed under section 105.”

15. The Act is amended by inserting the following section after section 115:

“**115.1.** The following is guilty of an offence and is liable to a fine of not less than \$200 and not more than \$400 in the case of an individual, and not less than \$800 and not more than \$1,600 in the case of an association, for each day or part of a day during which the offence lasts:

(1) any person who makes a false declaration when making the declaration required by the fourth paragraph of paragraph 1 of section 86;

(2) any association that notifies the employer under paragraph 2 of section 86 without first having forwarded the declaration required by the fourth paragraph of paragraph 1 of section 86 to the Commission; and

(3) any job-site steward who contravenes subparagraph *f* of paragraph 3 of section 86.”

16. Section 119 of the Act is replaced by the following section:

“**119.** Any person who contravenes any of sections 101 to 103 is guilty of an offence and is liable to a fine of not less than \$700 and not more than \$13,975.

Furthermore, if the offence has been committed by an employer’s representative, a union representative, a business agent or a job-site steward, the Court must declare such person disqualified to represent, in any capacity whatsoever, an employer or an association of employees for five years from the day sentence is rendered.”

17. Section 121 of the Act is amended by replacing “Subject to section 105, the Minister” in the first line by “The Commission” and “his” in the second line by “its”.

18. Section 123 of the Act is amended by replacing subparagraph 8.5 of the first paragraph by the following subparagraph:

“(8.5) determine, after consultation with the Conseil consultatif du travail et de la main-d’œuvre, the remuneration, allowances and expenses of the arbitrators of grievances appointed by the Commission, one or more methods for determining the remuneration, allowances and expenses of the arbitrators of grievances chosen by the parties, and the situations in which the regulation does not apply. The regulation may also determine who is to assume the payment of the remuneration, allowances and expenses and, where applicable, in which cases and in what proportion;”.

19. Section 137.62 of the Labour Code (R.S.Q., chapter C-27) is amended by inserting the following subparagraph after subparagraph 2 of the second paragraph:

“(2.1) the sums paid by the Commission de la construction du Québec under section 8.1 of the Act respecting labour relations, vocational training and manpower management in the construction industry (chapter R-20);”.

20. Schedule I to the Code is amended by striking out “the fourth paragraph of” in the third line of paragraph 18.

TRANSITIONAL AND FINAL PROVISIONS

21. For the purposes of the Act respecting labour relations, vocational training and manpower management in the construction industry (R.S.Q., chapter R-20), the Commission de la construction du Québec issues certificates to the Conseil provincial du Québec des métiers de la construction (International) and the Fédération des travailleurs et travailleuses du Québec (FTQ-Construction) establishing their representativeness based on the union representation vote held in June 2003.

The certificates are valid until the next certificates issued under section 34 of that Act take effect.

For the purposes of that Act, a reference to the Conseil conjoint de la Fédération des travailleurs du Québec (FTQ-Construction) et du Conseil provincial du Québec des métiers de la construction (International) in a document referred to in section 36 of that Act is deemed to be a reference to the Conseil provincial du Québec des métiers de la construction (International) or the Fédération des travailleurs et travailleuses du Québec (FTQ-Construction), depending on the affiliation, on the date of the union representation vote in June 2003, of the employees' association to which the employee belongs.

22. In any collective agreement within the meaning of the Act respecting labour relations, vocational training and manpower management in the construction industry (R.S.Q., chapter R-20) expiring on 30 April 2007, a reference to the Conseil conjoint de la Fédération des travailleurs du Québec (FTQ-Construction) et du Conseil provincial du Québec des métiers de la construction (International) under that name, an abbreviated name or another name is deemed to be a reference to the Conseil provincial du Québec des métiers de la construction (International) and the Fédération des travailleurs et travailleuses du Québec (FTQ-Construction), with the necessary modifications.

The same applies to any regulation made under that Act.

For the purposes of the first two paragraphs, in any provision of a collective agreement or a regulation that provides for the creation of a committee on which there are one or more representatives of the Conseil conjoint de la Fédération des travailleurs du Québec (FTQ-Construction) et du Conseil provincial du Québec des métiers de la construction (International), the number of representatives from the Conseil provincial du Québec des métiers de la construction (International) and from the Fédération des travailleurs et

travailleuses du Québec (FTQ-Construction) must be equal, except if the total is an odd number, in which case the association with the greater representativeness according to the certificate issued under the first paragraph of section 21 designates one more representative.

23. This Act comes into force on 13 December 2005, except sections 8, 13, 15 and 20, which come into force on 1 March 2006.