



NATIONAL ASSEMBLY

FIRST SESSION

THIRTY-SEVENTH LEGISLATURE

Bill 142

(2005, chapter 43)

An Act respecting conditions of employment in the public sector

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Assented to 16 December 2005

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EXPLANATORY NOTES

The purpose of this bill is to ensure the continuity of public services and provide for the conditions of employment of employees of public sector bodies within the limits imposed by the state of public finances.

To that end, the bill provides for the general renewal of the latest collective agreements and specifies that they are binding on the parties until 31 March 2010. However, under the bill the conditions of employment stipulated in those collective agreements are modified, in particular to increase wage rates and scales and to ensure the implementation of agreements reached with associations of employees.

The bill also provides for the allocation of financial resources in order to improve the services provided to at-risk students, handicapped students and students with social maladjustments or learning disabilities and to offer training for beneficiary attendants employed by institutions.

Lastly, the bill contains administrative, civil and penal provisions relating to the continuity of public services.

LEGISLATION AMENDED BY THIS BILL:

- Education Act (R.S.Q., chapter I-13.3).

Bill 142

AN ACT RESPECTING CONDITIONS OF EMPLOYMENT IN THE PUBLIC SECTOR

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

DIVISION I

PURPOSE AND SCOPE

1. The purpose of this Act is to ensure the continuity of public services and provide for the conditions of employment of employees of public sector bodies within the limits imposed by the state of public finances.

2. For the purposes of this Act, public sector bodies include

(1) the Government, government departments and bodies whose personnel is appointed in accordance with the Public Service Act (R.S.Q., chapter F-3.1.1);

(2) school boards within the meaning of section 1 of the Act respecting the process of negotiation of the collective agreements in the public and parapublic sectors (R.S.Q., chapter R-8.2) and colleges within the meaning of the General and Vocational Colleges Act (R.S.Q., chapter C-29); and

(3) institutions within the meaning of section 4.

However, this Act does not apply to employees represented by the Syndicat professionnel des médecins du gouvernement du Québec (SPMGQ).

3. The National Assembly and persons appointed or designated by the National Assembly to an office under its authority, whose personnel is appointed in accordance with the Public Service Act, are considered to be public sector bodies referred to in paragraph 1 of section 2 for the purposes of this Act.

The same applies to the Lieutenant-Governor and to persons designated by the Government under an Act to an office determined in the Act and whose personnel is appointed in accordance with the Public Service Act.

However, this Act does not apply to employees included in a bargaining unit composed exclusively of employees of the National Assembly.

4. Unless the context indicates otherwise,

“collective agreement” means a collective agreement within the meaning of the Labour Code (R.S.Q., chapter C-27) or anything in lieu of such an agreement;

“employee” means an employee within the meaning of the Labour Code who, on 15 December 2005, is in the employ of a public sector body and is included in a bargaining unit for which an association of employees is or becomes certified; and

“institution” means an institution within the meaning of the fourth and fifth paragraphs of section 1 of the Act respecting the process of negotiation of the collective agreements in the public and parapublic sectors.

DIVISION II

CONDITIONS OF EMPLOYMENT

§1. — General provisions

5. The latest collective agreement between a public sector body and an association of employees representing employees in its employ which, on 16 December 2005, has expired, is renewed and, with the necessary modifications, is binding on the parties until 31 March 2010.

A collective agreement between a public sector body and an association of employees representing employees in its employ that expires on 31 December 2005 is renewed as of 1 January 2006 and, with the necessary modifications, is binding on the parties until 31 March 2010.

6. The agreement on the conditions of employment of Attorney General’s prosecutors entered into under section 12 of the Act respecting Attorney General’s prosecutors (R.S.Q., chapter S-35) is amended to give effect to the provisions of paragraphs 11 to 14 of Schedule 1 until 31 March 2007.

The agreement is renewed as of 1 April 2007 and, with the necessary modifications, is binding on the parties until 31 March 2010.

7. The latest agreement between the Minister of Health and Social Services and

(1) the association of employees representing residents in medicine, entered into under section 19.1 of the Health Insurance Act (R.S.Q., chapter A-29),

(2) the body representing pharmacists working in institutions and the body representing clinical biochemists, entered into under section 432 of the Act respecting health services and social services (R.S.Q., chapter S-4.2), and

(3) the body representing midwives entered into under section 432.1 of the Act respecting health services and social services,

is renewed and, with the necessary modifications, is binding on the parties until 31 March 2010.

8. For the purposes of section 9, Division IV and section 46, the agreements referred to in sections 6 and 7 are considered to be collective agreements and the persons covered by them are considered to be employees. For the purposes of the second paragraph of section 10, the same applies to the agreement referred to in section 6.

9. The conditions of employment stipulated in collective agreements renewed by sections 5 to 7 are modified to give effect to the provisions of Schedule 1.

The same applies to the conditions of employment of medical physicists stipulated in the Regulation respecting the terms of employment of medical physicists working for institutions operating a hospital centre, made by Ministerial Order 2003-002 dated 10 February 2003 (2003, G.O. 2, 964).

§2. — *Public service sector*

10. The conditions of employment stipulated in a collective agreement renewed by section 5 and affected by any of the following agreements are also modified to give effect until 31 March 2010 to such an agreement:

(1) the agreements reached between the Syndicat de la fonction publique du Québec and the Government, and signed on 13 December 2005, regarding the public servants' collective bargaining agreements and the workmen's collective bargaining agreement; however, the provisions in those agreements that relate to the payment of contributions to pension plans within the framework of departmental time management plans have effect until 30 March 2010; and

(2) the agreement reached between the Syndicat des professeurs de l'État du Québec and the Government on 15 December 2005.

The conditions of employment stipulated in any other collective agreement renewed by section 5 between a body referred to in subparagraph 1 of the first paragraph of section 2 and an association of employees representing employees in its employ are also modified to give effect to the provisions of Schedule 2. The same applies as of 1 April 2007 to the agreement referred to in section 6.

§3. — *Education sector*

11. The conditions of employment stipulated in a collective agreement renewed by section 5 and affected by either of the following agreements are also modified to give effect to that agreement until 31 March 2010:

(1) the agreement reached on 18 November 2005 between the Syndicat des professionnelles et professionnels du gouvernement du Québec (SPGQ) and the Comité patronal de négociation des collèges;

(2) the agreement in principle reached on 8 December 2005 between the Union indépendante des employés de soutien of the Lester B. Pearson School Board, the Independent Association of Western Quebec and the Eastern Shores Independent Association for Support Personnel on the one hand, and the Management Negotiating Committee for English-language School Boards on the other hand;

(3) the agreement reached on 14 December 2005 between the Fédération des employées et employés des services publics inc. (CSN) on behalf of college support staff unions (FEESP) and the Comité patronal de négociation des collèges;

(4) the agreement reached on 14 December 2005 between the Fédération du personnel professionnel des collèges (FPPC-CSQ) and the Comité patronal de négociation des collèges;

(5) the agreement reached on 15 December 2005 between the Quebec Provincial Association of Teachers (QPAT) and the Management Negotiating Committee for English-language School Boards;

(6) the agreement reached on 15 December 2005 between the Fédération des syndicats de l'enseignement (FSE-CSQ) and the Comité patronal de négociation pour les commissions scolaires francophones;

(7) the agreement reached on 15 December 2005 between the Fédération du personnel de soutien de l'enseignement supérieur on behalf of college support staff unions (FPSES-CSQ) and the Comité patronal de négociation des collèges;

(8) the agreement reached on 15 December 2005 between the Fédération autonome du collégial and the Fédération des enseignantes et enseignants (Cartel FAC-FEC), and the Comité patronal de négociation des collèges;

(9) the agreement reached on 15 December 2005 between the Fédération des employées et employés des services publics on behalf of support staff unions for French language school boards (FEESP-CSN) and the Comité patronal de négociation pour les commissions scolaires francophones;

(10) the agreement reached on 15 December 2005 between the Fédération des employées et employés des services publics on behalf of support staff unions for English language school boards (FEESP-CSN) and the Management Negotiating Committee for English-language School Boards;

(11) the agreement reached on 15 December 2005 between the Fédération indépendante des syndicats autonomes (FISA) and the Comité patronal de négociation pour les commissions scolaires francophones;

(12) the agreement reached on 15 December 2005 between the Centrale des syndicats du Québec (CSQ) represented by its bargaining agent, the Fédération du personnel de soutien scolaire (FPSS), and the Comité patronal de négociation pour les commissions scolaires francophones;

(13) the agreement reached on 15 December 2005 between the Centrale des syndicats du Québec (CSQ) represented by its bargaining agent, the Fédération du personnel de soutien scolaire (FPSS), and the Management Negotiating Committee for English-language School Boards;

(14) the agreement reached on 15 December 2005 between the Canadian Union of Public Employees (CUPE-FTQ) on behalf of college support staff unions and the Comité patronal de négociation des collèges;

(15) the agreement reached on 15 December 2005 between the Fédération nationale des enseignantes et enseignants du Québec (FNÉE-Q-CSN) and the Comité patronal de négociation des collèges;

(16) the agreement reached on 15 December 2005 between the Syndicat des employées et employés professionnels-les et de bureau (SEPB), local 57, affiliated with the Fédération des travailleurs et travailleuses du Québec (FTQ) on behalf of unions representing support staff, and the Comité de négociation pour les commissions scolaires francophones;

(17) the agreement reached on 15 December 2005 between the Syndicat des employées et employés professionnels-les et de bureau (SEPB), local 57, affiliated with the Fédération des travailleurs et travailleuses du Québec (FTQ), and the Management Negotiating Committee for English-language School Boards; and

(18) the agreement reached on 15 December 2005 between the Service Employees Union, local 800, affiliated with the Fédération des travailleurs et travailleuses du Québec (FTQ), and the Management Negotiating Committee for English-language School Boards.

The conditions of employment stipulated in any other collective agreement renewed by section 5 between a school board or college and an association of employees representing employees in its employ are also modified to give effect to the provisions of Schedule 3.

§4. — *Health and social services sector*

12. In the health and social services sector, the collective agreements renewed by section 5 include all collective agreements applicable under section 89 of the Act respecting bargaining units in the social affairs sector (R.S.Q., chapter U-0.1).

13. The conditions of employment stipulated in a collective agreement renewed by section 5 and affected by either of the following agreements are also modified to give effect to that agreement until 31 March 2010:

(1) the sector-based agreement reached on 8 November 2005 by the Fédération des infirmières et infirmiers du Québec (FIIQ) and the management negotiating committee known as the Comité patronal de négociation du secteur de la santé et des services sociaux (CPNSSS);

(2) the sector-based agreement reached on 13 December 2005 by the Fédération des travailleurs et travailleuses du Québec (FTQ) for the Canadian Union of Public Employees (CUPE) and the management negotiating committee known as the Comité patronal de négociation du secteur de la santé et des services sociaux (CPNSSS);

(3) the sector-based agreement reached on 13 December 2005 by the Fédération des travailleurs et travailleuses du Québec (FTQ) for the Syndicat québécois des employées et employés de service, local 298 and the management negotiating committee known as the Comité patronal de négociation du secteur de la santé et des services sociaux (CPNSSS);

(4) the sector-based agreement reached on 13 December 2005 by the Fédération des travailleurs et travailleuses du Québec (FTQ) for the Syndicat des employées et employés professionnels-les et de bureau, local 57 and the management negotiating committee known as the Comité patronal de négociation du secteur de la santé et des services sociaux (CPNSSS);

(5) the sector-based agreement reached on 13 December 2005 by the Syndicat des professionnelles et professionnels du gouvernement du Québec (SPGQ) and the management negotiating committee known as the Comité patronal de négociation du secteur de la santé et des services sociaux (CPNSSS);

(6) the sector-based agreement reached on 13 December 2005 by the Fédération des travailleurs et travailleuses du Québec (FTQ) for the Syndicat des employé(e)s d'hôpitaux d'Arthabaska Inc. and the management negotiating committee known as the Comité patronal de négociation du secteur de la santé et des services sociaux (CPNSSS);

(7) the sector-based agreement reached on 13 December 2005 by the Fédération des travailleurs et travailleuses du Québec (FTQ) for the Syndicat des professionnel(le)s de la régie régionale de Montréal-Centre and the management negotiating committee known as the Comité patronal de négociation du secteur de la santé et des services sociaux (CPNSSS);

(8) the sector-based agreement reached on 14 December 2005 by the Alliance du personnel professionnel et technique de la santé et des services sociaux (APTS) and the management negotiating committee known as the Comité patronal de négociation du secteur de la santé et des services sociaux (CPNSSS);

(9) the sector-based agreement reached on 14 December 2005 by the Centrale des syndicats démocratiques (CSD) and the management negotiating committee known as the Comité patronal de négociation du secteur de la santé et des services sociaux (CPNSSS);

(10) the sector-based agreement reached on 14 December 2005 by the Fédération des professionnelles (FP-CSN) and the management negotiating committee known as the Comité patronal de négociation du secteur de la santé et des services sociaux (CPNSSS);

(11) the sector-based agreement reached on 15 December 2005 by the Centrale des syndicats du Québec (CSQ) for the Fédération du personnel de la santé et des services sociaux (FPSSS) and the management negotiating committee known as the Comité patronal de négociation du secteur de la santé et des services sociaux (CPNSSS);

(12) the sector-based agreement reached on 15 December 2005 by the Centrale des syndicats du Québec (CSQ) for the Fédération des syndicats de professionnelles/s de la santé et des services sociaux (FSPPSSS) and the management negotiating committee known as the Comité patronal de négociation du secteur de la santé et des services sociaux (CPNSSS); and

(13) the sector-based agreement reached on 15 December 2005 by the Centrale des syndicats du Québec (CSQ) for the Union québécoise des infirmières et infirmiers (UQII) and the management negotiating committee known as the Comité patronal de négociation du secteur de la santé et des services sociaux (CPNSSS).

The provisions of the agreement referred to in subparagraph 1 of the first paragraph under which new job titles are created take effect on the date determined under section 15.

14. The conditions of employment stipulated in a collective agreement renewed by section 5 between an institution and an association of employees are also modified to give effect to the provisions of Schedule 4.

The provisions of Schedule 4 do not apply to a collective agreement amended by an agreement mentioned in section 13 unless they expressly so provide.

15. The job titles and corresponding job descriptions as well as the working hours, and the wage rates or scales attached to the job titles stipulated in a collective agreement renewed by section 5 between an institution and an association of employees representing employees in its employ are replaced by the provisions of the document entitled “List of job titles, descriptions, and salary rates and scales in the health and social services network” tabled in the National Assembly on 15 December 2005 by the Minister of Health and Social Services as Sessional Paper No. 2575-20051215.

The list has effect as of 16 December 2005. However, as regards the job titles it specifies, the list takes effect on 21 November 2006.

16. The management negotiating committee known as the Comité patronal de négociation du secteur de la santé et des services sociaux (CPNSSS) and

the bargaining agents must continue discussions with a view to reaching an agreement on new clauses that establish a new sector-based mechanism for amending the list of job titles, descriptions and wage rates and scales in the health and social services network to replace the negotiating committees with regard to jobs not included in the list.

If, after 31 March 2006, disagreement persists between the management negotiating committee and a bargaining agent on the clauses relating to the mechanism for amending the list, the Minister of Health and Social Services may, with the authorization of the Conseil du trésor and after giving a 10-day notice to the management negotiating committee and the bargaining agent, file the clauses of the collective agreement relating to that mechanism at an office of the Commission des relations du travail.

17. The management negotiating committee must submit to each bargaining agent of an association of employees certified to represent employees of institutions who are included in a bargaining unit, a consolidated text containing the clauses of the collective agreement applicable to those employees as renewed and modified in accordance with this Act.

The proposed text must also take into account the effect of section 58 of the Act respecting the process of negotiation of the collective agreements in the public and parapublic sectors and Schedule A.1 to that Act with regard to the matters henceforth defined as being the subject of clauses negotiated and agreed at the local or regional level, as well as any agreement reached between the Minister of Health and Social Services and the bargaining agent on a formulation excluding conditions of employment related to the matters so defined. If no such agreement has been reached with a bargaining agent, the proposed text must be prepared on the basis of the interpretation of the provisions of Schedule A.1 to that Act that led to agreements with other bargaining agents on the formulation of conditions of employment.

Moreover, the proposed text must aim to integrate and harmonize the conditions of employment that are the subject of clauses negotiated and agreed at the national level for all employees represented by associations of employees forming part of the same employee-associations group. It must also take into account all the missions within the scope of which the employees may be called upon to carry on their activities for the institutions concerned.

18. The management negotiating committee and the bargaining agents must continue discussions on the proposed text referred to in section 17 with a view to reaching an agreement on the formulation of the clauses setting out the conditions of employment applicable to the employees.

If, after 31 March 2006, disagreement persists between the management negotiating committee and a bargaining agent on the text of the clauses applicable to the employees that the bargaining agent represents, the Minister of Health and Social Services may, with the authorization of the Conseil du trésor and after giving a 10-day notice to the management negotiating committee

and the bargaining agent, file the text containing the clauses of the collective agreement applicable to those employees in the matters not defined as being the subject of clauses negotiated and agreed at the local or regional level at an office of the Commission des relations du travail. The text must take into account any agreement on the formulation of the clauses between the management negotiating committee and a bargaining agent.

19. The provisions of the documents tabled by the Minister under sections 16 and 18 replace, as of the dates they specify, the clauses of the collective agreements renewed and modified in accordance with this Act as regards matters other than those defined as being the subject of clauses negotiated and agreed at the local or regional level.

Those provisions have the same effect as the new clauses negotiated and agreed at the national level for the purposes of the fourth paragraph of section 89 of the Act respecting bargaining units in the social affairs sector.

An association of employees newly certified following the carrying out of the Act respecting bargaining units in the social affairs sector must, at the employer's request, inform the employer of the employee-associations group to which it belongs, if applicable. If the association of employees fails or refuses to so inform the employer or if it indicates that it is an association of employees or forms part of an employee-associations group for which no text determining conditions of employment is applicable under section 18, it is bound by the clauses, if any, that replace those of the association of employees or the employee-associations group it was formerly part of that are identified by the employees by a secret ballot held by the Commission des relations du travail at the employer's request, according to rules and on the date set by the Commission.

DIVISION III

ALLOCATION OF FINANCIAL RESOURCES

20. In order to improve the services provided to at-risk students, handicapped students and students with social maladjustments or learning disabilities, the annual amount of the grants allocated to school boards for those students by the Minister of Education, Recreation and Sports under section 472 of the Education Act (R.S.Q., chapter I-13.3) is increased

- (1) by an amount of \$30,000,000 for the year 2006-2007;
- (2) by an additional amount of \$30,000,000 for the year 2007-2008; and
- (3) by an additional amount of \$30,000,000 for the year 2008-2009.

In addition, an amount of \$10,000,000 is allocated for all of the years 2006-2007 to 2008-2009 for the purpose of offering professional development to teachers, particularly in special education.

21. An amount of \$14,000,000 is allocated by the Minister of Health and Social Services, on the conditions the Minister determines, to offer training for employees in the employ of institutions under the “beneficiary attendant” job title.

DIVISION IV

OBLIGATIONS REGARDING THE CONTINUITY OF PUBLIC SERVICES

§1. — Delivery of normal services

22. Employees must, as of 00:01 a.m. on 16 December 2005, report for work according to their regular work schedule and other applicable conditions of employment.

The first paragraph does not apply to employees not reporting for work because they have tendered their resignation, unless they have done so as part of concerted action, or because they have been fired or suspended or have exercised their right to retire.

23. Employees must, as of 00:01 a.m. on 16 December 2005, perform all the duties attached to their respective functions, according to the applicable conditions of employment, without any stoppage, slowdown, reduction or degradation of their normal activities.

24. A public sector body, its executives and its representatives must, as of 00:01 a.m. on 16 December 2005, take the appropriate measures to ensure that normal services are provided.

25. No association of employees may call or continue a strike or participate in concerted action if the strike or concerted action involves a contravention of section 22 or 23 by employees.

Similarly, no public sector body may declare a lock-out if the lock-out involves such a contravention.

26. An association of employees must take the appropriate measures to induce the employees it represents to comply with sections 22 and 23 and not to contravene sections 28 and 29.

27. An employee-associations group must take the appropriate measures to induce an association of employees that is a member of, belongs to, is affiliated with or is bound by contract to the group to comply with sections 25 and 26.

28. No person may, by omission or otherwise, in any manner prevent or impede the resumption or maintenance of the normal services of a public

sector body or the performance of work related to such services by employees, or directly or indirectly contribute to slowing down, degrading or delaying the performance of such work.

29. No person may hinder a person's access to a place to which that person has a right of access to exercise functions for or obtain services from a public sector body.

§2. — *Administrative measures if obligations not fulfilled*

30. On noting that its employees are not complying with section 22 or 23 in sufficient number to ensure that normal services are provided, a public sector body must suspend withholding any union assessment or dues or amount in lieu thereof from the wages paid to the employees represented by an association of employees.

The suspension is effective for a period equal to 12 weeks per day or part of a day during which it is noted by the public sector body that the employees are not complying with section 22 or 23 in sufficient number to ensure that normal services are provided.

31. Despite any clause of a collective agreement or of an agreement, employees represented by an association referred to in section 30 are not required to pay an assessment or dues, a contribution or an amount in lieu thereof to the association or to a third party for the benefit of the association for the duration of the suspension under section 30.

32. No employee who contravenes section 22 or 23 may receive remuneration for the contravention period.

In addition, if the contravention consists in absence from work or participation in a work stoppage, the salary to be paid to the employee under the applicable collective agreement for work performed after the absence or work stoppage is reduced by an amount equal to the salary the employee would have received for each period of absence or work stoppage.

A public sector body must make the deductions resulting from the second paragraph up to 20% of the salary per pay period, and pay the sums deducted to a registered charity within the meaning of the Taxation Act (R.S.Q., chapter I-3) designated by order of the Government.

The employee is entitled to the reimbursement of the amount deducted only on showing that he or she complied with section 22 or 23, as applicable, or that he or she was unable to comply despite having taken every reasonable means to do so and that the failure to comply was not part of concerted action.

Any person to whom a decision by a public sector body under this section is referred for arbitration may only confirm or quash the decision, and may do so only on the basis of the fourth paragraph.

33. No employee released to carry on union activities for an association on a day or part of a day during which the association contravenes section 25 may receive remuneration from the public sector body for that day or part of day.

In addition, the salary to be paid to the employee after the association's contravention, according to the applicable conditions of employment, is reduced by an amount equal to the amount that would have been paid to the employee had the contravention not occurred.

On noting that an offence referred to in the first paragraph has been committed, a public sector body must make the deductions resulting from the second paragraph up to 20% of the salary per pay period, and pay the sums deducted to a registered charity within the meaning of the Taxation Act designated by order of the Government.

An employee who did not participate in the activities of the association that are related to the contravention is entitled to a reimbursement of the deductions made under the second paragraph.

Any person to whom a decision by a public sector body under this section is referred for arbitration may only confirm or quash the decision, and may do so only on the basis of the fourth paragraph.

34. On noting that an association has called or continued a strike or participated in concerted action in contravention of section 25, a public sector body must, after giving notice to the association, suspend paying, for the period determined under the third paragraph, to any employee released during that period to carry on union activities for the association any wages for the time during which the employee is released.

The first paragraph also applies if it is noted by the public sector body that the employees are not complying with section 22 or 23 in sufficient number to ensure that normal services are provided.

The suspension prescribed by this section is effective for a period equal to 12 weeks per day or part of a day during which the circumstances described in the first or second paragraph are noted by the public sector body.

35. The highest authority within a public sector body must take the necessary measures to ensure that the sanctions under sections 30, 32, 33 and 34 are applied not later than the third pay period after the pay period during which the contraventions occurred.

The application of those measures may not be deferred, cancelled or reduced by agreement.

36. If the employees of a public sector body do not comply with section 22 or 23 in sufficient number to ensure that normal services are provided, the Government may, by order, from the date, for the period and on the conditions

it specifies and exclusively for the purpose of ensuring the provision of services by the body, replace, amend or strike out any clause of the collective agreement between that body and the association representing the employees in order to determine how the body is to fill a position, hire new employees and handle any matter related to work organization.

§3. — *Civil liability*

37. An association is liable for any damage caused during a contravention of section 22 or 23 by employees it represents unless it shows that the damage is not a result of the contravention or that the contravention is not part of concerted action.

The same applies to a group of which the association of employees is a member, to which it belongs, with which it is affiliated or to which it is bound by contract, if the group has not complied with section 27.

38. Any person who suffers damage by reason of an act in contravention of section 22 or 23 may apply to the competent court to obtain compensation.

Despite article 1003 of the Code of Civil Procedure (R.S.Q., chapter C-25), if a person brings a class action under Book IX of that Code by way of a motion under the second paragraph of article 1002 of that Code, the court authorizes the class action if it is of the opinion that the person to whom the court intends to ascribe the status of representative is in a position to adequately represent the members of the group described in the motion.

§4. — *Penal proceedings*

39. A person that contravenes any provision of section 22, 23, 24, 27, 28 or 29 is guilty of an offence and is liable, for each day or part of a day during which the offence continues, to a fine of

(1) \$100 to \$500 if the person is an employee or a natural person other than a person referred to in paragraph 2;

(2) \$7,000 to \$35,000 if the person is an executive, employee or representative of an association or group, or if the person is an executive or representative of a body; and

(3) \$25,000 to \$125,000 if the person is an association, group or body.

40. An association of employees that contravenes the first paragraph of section 25 is guilty of an offence and is liable to the fine prescribed by paragraph 3 of section 39 for each day or part of day during which the offence continues. The same applies to a public sector body that contravenes the second paragraph of section 25.

41. An association of employees that contravenes section 26 is guilty of an offence and is liable to the fine prescribed by paragraph 3 of section 39 for each day or part of day during which the offence under section 22 or 23 continues.

42. Every person who helps or, by encouragement, advice, consent, authorization or command, induces another person to commit an offence under any provision of this Division is guilty of an offence.

A person convicted under this section is liable to the same penalty as that prescribed for the offence committed by the other person.

DIVISION V

AMENDING AND FINAL PROVISIONS

43. The Education Act (R.S.Q., chapter I-13.3) is amended by inserting the following section after section 187:

“187.1. Each year, the school board shall inform the advisory committee on services for handicapped students and students with social maladjustments or learning disabilities of the amount of the financial resources available for services intended for those students and of the allocation of those resources in light of the policies defined by the Minister.

The school board shall report each year to the committee and the Minister on requests for reconsideration made under section 9 relating to services for handicapped students and students with social maladjustments or learning disabilities.”

44. The first paragraphs of sections 10, 11 and 13 have effect as of 1 February 2006.

If, before that date, an association of employees or an employee-associations group that made an agreement under one of those paragraphs gives notice to the Chair of the Conseil du trésor that the agreement has not been ratified, the conditions of employment of the employees covered by the agreement are modified to give effect to Schedule 2, 3 or 4, as applicable. The first paragraphs of sections 10, 11 and 13 have no effect as regards those employees.

45. A collective agreement resulting from this Act or a collective agreement entered into by the parties that replaces such a collective agreement until not later than 31 March 2010 applies, as regards its term, despite any provision of the Labour Code limiting the term of a collective agreement in the public and parapublic sectors.

The reference to paragraph *d* of section 22 of the Labour Code in section 111.3 of that Code must therefore be read as a reference to paragraph *e* of that section 22.

46. The provisions of this Act or of an order under this Act relating to a collective agreement are deemed to be part of the collective agreement. They prevail over any conflicting provisions of the collective agreement.

The renewal of a collective agreement by sections 5 to 7 is not to be interpreted as reviving a lapsed provision of the collective agreement.

47. The chair of the Conseil du trésor is responsible for the administration of this Act.

48. Division II does not operate to restrict the application of the Pay Equity Act (R.S.Q., chapter E-12.001).

49. Division IV ceases to have effect on 1 April 2010 or on any earlier date set by the Government.

The taking of an administrative measure or bringing of penal proceedings under a provision of sections 30 to 42 against a person or body referred to in the provision excludes the taking of a measure or bringing of proceedings under a similar provision of the Labour Code and of the Act to ensure that essential services are maintained in the health and social services sector (R.S.Q., chapter M-1.1) against the person or body on the same grounds.

50. This Act comes into force on 16 December 2005.

SCHEDULE 1

*(section 9)***Conditions of employment of employees covered by any collective agreement with a public sector body**Salary

- 1.** Salary rates and scales applicable to the employees are increased by 2% on 1 April of each of the years 2006, 2007, 2008 and 2009, subject to paragraphs 2 to 4.
- 2.** For school board teachers, the increase is effective on the 141st day of each of the 2005-2006, 2006-2007, 2007-2008 and 2008-2009 school years.
- 3.** For college teachers represented by an association of employees whose bargaining agent is the Fédération nationale des enseignantes et des enseignants du Québec or the Fédération autonome du collégial, the increase is effective on 1 December of each of the years 2006, 2007, 2008 and 2009.

However, for college teaching assistants represented by an association of employees whose bargaining agent is the Fédération nationale des enseignantes et des enseignants du Québec or the Fédération autonome du collégial, and for aeronautics teachers represented by an association of employees whose bargaining agent is the Fédération nationale des enseignantes et des enseignants du Québec, the increase is effective on 1 October of each of the years 2006, 2007, 2008 and 2009.

- 4.** For college teachers represented by an association of employees whose bargaining agent is the Fédération des enseignantes et enseignants de Cégep, the increase is effective on 15 August of each of the years 2006, 2007, 2008 and 2009.

However, for college teaching assistants represented by an association of employees whose bargaining agent is the Fédération des enseignantes et enseignants de Cégep, the increase is effective on 15 June of each of the years 2006, 2007, 2008 and 2009.

- 5.** The salary rates and scales set out in the collective agreements renewed by sections 5 to 7 that do not include the salary adjustments determined and paid under Chapter IX of the Pay Equity Act are adjusted to take those adjustments into account.
- 6.** The salary rates and scales of employees in the employ of an institution, except for employees referred to in section 7 or the second paragraph of section 9, are set out in the “List of job titles, descriptions, and salary rates and scales in the health and social services network” referred to in section 15. Those salary rates and scales include the increases provided for in paragraph 1 and the adjustments provided for in paragraph 5.

7. The increase in salary rates and scales is calculated on the basis of the hourly rate or, in the case of professionals, teachers and peace officers, on the basis of the annual rate of pay or, in the case of court bailiffs, on the basis of the daily rate of pay.

8. The dates on which the increases in the salary rates and scales of college teachers are taken into account, for the purposes of retirement plans, are those set out in paragraphs 3 and 4.

Bonuses and allowances

9. Bonuses and allowances are increased by 2% on 1 April of each of the years 2006, 2007, 2008 and 2009 or, for employees referred to in paragraphs 2 to 4, on the dates specified in those paragraphs, except for

(1) bonuses and allowances expressed as a percentage of salary; and

(2) bonuses and allowances that were not increased when the latest clauses were negotiated and agreed at the national level.

The salary supplements provided for in the list referred to in section 15 include the increases provided for in the first paragraph.

Civil union

10. Unless the context indicates otherwise, provisions referring to the concepts of marriage, nullity and dissolution of a marriage and divorce are to be read as referring also to the concepts of civil union and nullity and dissolution of a civil union.

Parental rights

11. When an employee is receiving benefits under the Act respecting parental insurance (R.S.Q., chapter A-29.011) or would receive such benefits if he or she applied for them, any indemnity provided for in a collective agreement and paid by an employer because of maternity or adoption leave is paid as a supplement to those benefits.

The duration of maternity leave is 21 weeks in the case of an employee who is receiving maternity or parental benefits under the Act respecting parental insurance during that period or would receive such benefits if she applied for them. For each of those weeks, the employee receives the indemnity provided for in the collective agreement.

12. The period during which an indemnity provided for in a collective agreement is paid because of maternity or adoption leave is not extended because of the payment of benefits under the Act respecting parental insurance.

The maternity or adoption leave is concurrent with the period during which benefits are paid under the Act respecting parental insurance. The leave must begin not later than the week after the payment of benefits under the Act respecting parental insurance begins.

The combined duration of adoption leave and of leave without pay to extend adoption leave may not exceed 114 weeks.

An employee the payment of whose benefits under the Act respecting parental insurance is suspended and who does not return to work is considered to be on leave without pay.

13. In the case of an employee who is not entitled to receive benefits under the Act respecting parental insurance but is entitled to receive similar benefits under the Employment Insurance Act (Statutes of Canada, 1996, chapter 23), the indemnity paid under a collective agreement because of maternity or adoption leave is paid, subject to the provisions of the Employment Insurance Act, as a supplement to the benefits granted under that Act.

14. Paragraphs 11 to 13 come into force on 1 January 2006.

Letters of agreement or schedules

15. Any letter of agreement or schedule providing for further work, negotiations between the parties or the determination of salary adjustments regarding pay equity, pay relativity or the determination of the value of jobs for remuneration purposes on which no final agreement between the parties has been reached on 16 December 2005 or in respect of which adjustments have not been determined on that date, is cancelled.

16. After completion of a pay equity plan in accordance with the Pay Equity Act, the parties must begin talks to agree on solutions regarding internal pay relativities.

To establish internal pay relativities, the parties are to use the method used in establishing the pay equity plan.

If upward salary adjustments are to be applied, the parties must agree on spreading them over time. If downward salary adjustments are to be applied, the parties must agree on salary protection mechanisms to ensure the differences are eliminated progressively within a reasonable time.

SCHEDULE 2
(Section 10)

Conditions of employment of employees covered by a collective agreement in the public service sector

Release for union activities

1. With regard to any employee released for union activities on a full-time or part-time basis whose salary is reimbursed by the union, the union must also reimburse the employee's employment benefits for the period of release.

For the purposes of this paragraph, the reimbursement of employment benefits is equal to 15% of the employee's gross salary.

In addition, the time an employee spends attending meetings of a joint committee or doing work judged necessary by the committee cannot be claimed as overtime.

Employee placed on reserve in another class of positions

2. During the period of employment stability, an employee placed on reserve may be assigned or transferred to a vacant position or a position occupied by an employee without job security, in the employee's class of positions or in a class of positions accessible through reclassification, if the employee meets the conditions of admission to that class and is qualified for the position.

Temporary use of the services of an employee placed on reserve

3. The services of an employee placed on reserve can be used temporarily outside the public service.

Salary insurance

4. A period of disability during which an employee refuses or neglects the treatment or care prescribed by his or her physician is not recognized as a period of disability.

Reimbursement of physician's fees

5. An employee who fails to undergo a required medical examination must reimburse to the employer the fees charged by the physician designated by the Deputy Minister or, if the physician was chosen by mutual agreement between the parties, that part of the fees that was paid by the employer.

Vacation leave during a gradual return to work

6. During a period of rehabilitation, an employee receives his or her salary only for the time worked.

However, during that period the employee may, with the authorization of the Deputy Minister, be absent from work for a maximum period of five consecutive working days. The days are deducted from the employee's vacation reserve.

The rehabilitation period, including, if applicable, vacation days used under the second paragraph, cannot operate to prolong the period of disability beyond 104 weeks.

Parking

7. Until 31 March 2006, the monthly rate payable by an employee to lease a subsidized parking space is 130% of the average cost, on 1 January 2005, of the monthly public transit pass of the Réseau de transport de la Capitale (RTC) and the Société de transport de Montréal (STM).

As of 1 April 2006 and as of 1 April of each subsequent year, the monthly rate is that of the preceding year plus the difference between the market rate for the current year and the monthly rate on 1 April of the preceding year, divided by the number of years remaining before 1 April 2010.

As of 1 April 2009, the monthly rate is the market rate and no subsidy is granted.

Direct deposit

8. As of 30 March 2010, the employer may pay employees exclusively by direct deposit into a single account at the Québec financial institution of the employee's choice.

Thus, no later than 45 days prior to that date, each employee must have completed a direct deposit form and sent it to the Deputy Minister.

Recovery of overpayments

9. In the absence of an agreement on how overpayments received by an employee are to be repaid, the Deputy Minister makes deductions from salary for a period equal to that during which the overpayment was made. However, a deduction must not exceed 30% of the employee's gross salary per pay period.

Letters of agreement

10. The provisions of the letters of agreement relating to the payment of contributions to the pension plans within the framework of a departmental time management program that comprises reductions of work time and salary for a specific period are renewed until 30 March 2010.

11. The letters of agreement concerning the employer's administration of the basic health insurance plan and supplementary insurance plans are renewed until 31 March 2010.

12. In a letter of agreement, any provision regarding the administration of reserved competitions or candidates' eligibility to participate in them, or regarding the transitional measures that are applicable until the lists of candidates declared qualified are issued or until employees who are not eligible or are not declared qualified following the issue of those lists are laid off, is struck out.

13. The following letters of agreement are cancelled:

(1) "Lettre d'entente numéro 4 concernant la révision de certaines dispositions spécifiques au régime d'assurance traitement" applicable to peace officers in correctional services;

(2) "Lettre d'entente numéro 8 concernant l'intégration des employés dans l'échelle de traitement applicable au 1^{er} janvier 2001 et l'octroi de montants forfaitaires" applicable to peace officers in correctional services; and

(3) "Lettre d'entente concernant les frais remboursables lors d'un déplacement et autres frais inhérents".

SCHEDULE 3
(Section 11)

Conditions of employment of employees covered by a collective agreement in the education sector

Section 1. Provisions applicable to all employees covered by a collective agreement

Arbitration expenses

1. The fees and expenses of a grievance arbitrator are paid by the party that filed the grievance if it is rejected, by the party against whom or which the grievance was filed if it is upheld or by the party that withdraws the grievance.

If the grievance is partially upheld, the arbitrator determines the proportion of the arbitrator's fees and expenses to be paid by each party.

If the grievance is resolved, the arbitrator's fees and expenses are shared equally, unless the parties agree otherwise.

In all cases, the party that requests a postponement of a hearing pays the resulting fees and expenses; in the case of a joint request, the parties share the resulting fees and expenses equally.

However, in the case of a grievance the hearing of which began before 16 December 2005, the arbitrator's fees and expenses are paid according to the rules applicable before that date.

Section 2. Provisions applicable to employees covered by a collective agreement with a French-language or English-language school board

§1. — *Teachers*

Reassignment and retraining of staff on availability

2. A teacher who is on availability must participate in any training or retraining program that is recommended by the school board and that is in keeping with the needs to be filled and the training and experience of the person concerned.

Failure by a teacher who is on availability to fulfil that obligation entails the same consequences for him or her as the failure to fulfil any other obligation concerning job security under the collective agreement.

Student activities

3. “Student activities” means

(1) educational, cultural, tourist, sports, social and extracurricular activities (e.g. excellence award days, Christmas parties, proms, national sports days, shows, thematic conferences, plays, concerts, industrial visits, museum visits, organized tours, winter sports activities, rural discovery activities); and

(2) committees or meetings related to the student activities.

4. Student activities are an integral part of a teacher's workload.

5. As student activities are fundamental in a student's personal and social development, the participation of teachers in the organization and delivery of these activities is essential.

6. The very nature of student activities and their detailed organization and delivery may require certain changes or increases in the workload (e.g. daily span, regular workweek, work schedule, workday, meal period).

7. After consulting with the teacher concerned, the administration determines the student activities that can be assigned to a teacher, taking into account in particular and wherever possible, the teacher's preferences and other duties and responsibilities.

8. The teacher's consent is required for any student activity held over two or more consecutive days for which the workload parameters must be modified or adjusted.

9. The administration sees to it that the extra hours are compensated during other weeks in the year.

10. The Centrale des syndicats du Québec (CSQ), the Fédération des syndicats de l'enseignement (FSE), the Quebec Provincial Association of Teachers (QPAT) and the union as well as their representatives and leaders cannot order, encourage or support any work slowdown, including one that affects student activities.

11. A teacher cannot participate in any concerted action that results or is likely to result in the teacher evading his or her obligations.

Students with handicaps, social maladjustments or learning disabilities

12. A student with a handicap, social maladjustment or learning disability means a student whom the school board identifies as such. At-risk students are not included in that definition.

13. It is the responsibility of the board to identify or not to identify a student as a student with a handicap, social maladjustment or learning disability.

14. The appendix to the collective agreement entitled “Students with handicaps, social maladjustments or learning disabilities” is not an integral part of the collective agreement. It is intended to serve as a guide or reference to help those involved in intervention efforts and may be modified by the Ministère.

15. Those involved in intervention efforts must work with students in the area of prevention and early intervention so as to create an environment conducive to learning and success for all students. In this context,

(1) particular attention must be devoted to meeting the needs of at-risk students and to detecting students who have handicaps, social maladjustments or learning disabilities in the early stages of their schooling;

(2) being in the first line of response in working with students, a teacher must be attentive to a student’s situation and, for this reason, must record and share information or observations with fellow staff members concerning students, especially those pertaining to the interventions carried out by the teacher;

(3) as soon as a teacher detects in a student signs of potential difficulties or recognizes the first manifestations of problems, he or she must carry out the appropriate interventions, especially as regards the adaptation of his or her teaching practices;

(4) an individualized education plan must be developed for every handicapped student or student with a social maladjustment or a learning disability and may be developed for an at-risk student depending on his or her needs; the teacher must be involved in the development of an individualized education plan.

16. The school administration must, in keeping with the individualized education plan, periodically review the situation of a student with a handicap, social maladjustment or learning disability. The identification of a student as a student with a handicap, social maladjustment or learning disability may be reviewed by the school board.

17. Students with handicaps, social maladjustments or learning disabilities who, on 16 December 2005, are totally or partially integrated so remain until such time as their situation is reviewed in accordance with paragraph 16.

18. The integration support services provided for in the school board’s policy on the organization of educational services for students with handicaps, social maladjustments or learning disabilities are designed to support both the student and the teacher and, for this reason, are interrelated.

19. When students with handicaps, social maladjustments or learning disabilities are integrated into regular groups, the school board is responsible for determining the support services required.

20. Only in the case where students integrated into regular groups are identified by the school board as students with behavioural difficulties or students with severe behavioural difficulties linked to psychosocial disturbances, the students are weighted according to the provisions of the appendix to the collective agreement pertaining to the “Establishment of the maximum number of students in a group into which handicapped students or students with social maladjustments or learning disabilities are integrated”.

21. Unless the school board and the union agree otherwise, when a teacher detects, in his or her class, a student who, in his or her opinion, demonstrates a social maladjustment or a learning disability or manifests signs of a mild motor impairment, an organic impairment or a language disorder, or signs of a moderate to profound intellectual handicap, or demonstrates a severe developmental disorder or a severe physical handicap, the following process applies:

(1) the teacher carries out the appropriate interventions, including adaptation of teaching methods;

(2) if the teacher finds that the student’s situation shows no sign of improvement, despite the interventions carried out, he or she prepares and submits a written report to the school administration, using the form designed by the school board;

(3) solely in the case where the teacher’s report concerns a student who, in the teacher’s opinion, should be identified as being a student with a handicap or as having behavioural difficulties or severe behavioural difficulties linked to psychosocial disturbances, the teacher may request that the ad hoc committee prescribed in the collective agreement be set up;

(4) if, in the teacher’s opinion, the student referred to in subparagraph 3 should be identified as having behavioural difficulties, the request to set up an ad hoc committee can only be made after having observed the student’s behaviour for a period of at least two months;

(5) the school administration normally sets up an ad hoc committee within 15 days of receiving the request;

(6) after receiving the teacher’s report, the school administration meets with the teacher, if necessary;

(7) when, as part of its mandate, the ad hoc committee requests pertinent evaluations from the competent personnel, the committee studies the evaluations as soon as possible after having received them;

(8) the competent authority makes the appropriate decisions, with dispatch, given the circumstances, based on the teacher’s report or the ad hoc committee’s findings. The measures come into effect, whenever possible, within 15 days of the decision.

Amendments at the school level

22. The administration and the teachers of a school, a vocational training centre or an adult education centre may modify certain provisions of the collective agreement in accordance with the following:

(1) the amendment must be designed to modify or replace the following provisions of the collective agreement:

- (a) the provisions concerning the organization of the workload;
- (b) the provisions concerning the rules respecting the formation of pupil groups; or
- (c) the provisions concerning oversize class compensation;

(2) the proposed amendment must be forwarded to the participating body of teachers of the school or centre;

(3) the proposed amendment must receive the consent of 80% of the teachers, unless the school board and the union agree on a different percentage;

(4) the provisions of Chapter 8-0.00 of the collective agreement have precedence over any other amendment agreed to under this paragraph and are deemed to remain in force for the purposes of article 5-3.00 of the agreement with respect to the security of employment system, especially as regards the determination of staffing needs and surpluses. The same applies to the corresponding provisions of Chapters 11-0.00 and 13-0.00 of the collective agreement;

(5) an amendment agreed to under this paragraph is null and void, in whole or in part, insofar as it determines conditions of employment that would generate costs in excess of those resulting from the application of the provisions of Chapter 8-0.00 or the application of the corresponding provisions of Chapters 11-0.00 and 13-0.00 of the collective agreement;

(6) such an amendment is also null and void, in whole or in part, insofar as it would result in increasing or reducing the staffing level in a school or centre of the school board.

23. The school or centre administration must submit the amendment to the school board and to the union for validation. If it is consistent with the elements contained in paragraph 22, the amendment is approved. If it is not, the reasons underlying the decision must be provided in writing. The school board and the union must make a decision no later than 15 days after receiving the proposed amendment, failing which it is deemed approved.

24. An amendment approved under paragraphs 22 and 23 applies for a maximum one-year period and cannot establish a precedent.

Staffing levels

25. In the adult education sector, for the duration of the agreement, as defined in the collective agreement, the school board is to maintain the number of regular positions existing on 30 June 1998, except where this would result in placing a teacher on availability.

However, the number of regular positions existing on 30 June 2003 is to be reduced by the number of permanent departures in specialties where there has been a decrease in clientele which the school board considers significant for three consecutive years.

26. In the vocational training sector, for the duration of the agreement, as defined in the collective agreement, the school board is to maintain the number of regular positions existing on 30 June 1998, except where this would result in placing a teacher on availability.

However, the number of regular positions existing on 30 June 2003 is to be reduced by the number of permanent departures in specialties where there has been a decrease in clientele which the school board considers significant for four consecutive years.

27. It is up to the school board to determine in what specialties or sub-specialties regular positions referred to in paragraphs 25 and 26 are to be maintained and, following a permanent departure, the union may make the representations it considers appropriate to the school board.

§2. — *Support staff*

28. As regards the appendices entitled “Classification of certain employees” and “Special leaves plan of the Commission scolaire de Montréal (CSDM)”, the dates of 30 June 2002, 30 June 1998, 1 July 1998, 1 July 2000 and the expression “1995-1998 agreement” are replaced by 31 March 2010, 30 June 2003, 1 July 2003, 1 July 2006 and “2000-2002 agreement”, respectively.

Special education

29. In the special education sector, any position that is newly created or that becomes vacant after the first day of class may be filled temporarily until the end of the school year as regards a collective agreement that does not provide such an option.

30. A position in the special education sector described in paragraph 29 must, where applicable, be temporarily filled by an employee on availability or, failing that, by a person registered on a priority hiring list; the same applies to special education technicians and attendants for handicapped students as regards a collective agreement that does not contain specific provisions concerning a special education sector.

31. A temporarily vacant position or an increase in work of an anticipated duration of at least one month in the special education sector must, where applicable, be filled or staffed according to the same process.

32. The school board may, during the year, add hours to an employee's regular work schedule. The addition of hours is temporary and does not change the employee's status and position. This modification applies to a collective agreement that does not provide such an option.

Day care services

33. In day care service sector, the school board may reduce the number of hours or carry out a temporary layoff between May 15 and September 15 as regards a collective agreement that does not provide such an option.

Section 3. Provisions applicable to employees covered by a collective agreement binding a college

§1. — *Teachers*

Coordination resources

34. Notwithstanding the provisions of the collective agreement concerning the allocation of resources to component 2 of the workload, the resources distributed or reserved for department coordination are assigned to department and program coordination.

Job security

— *Terms and conditions*

35. A teacher on availability in a core discipline in a closed program is required to accept an available position in his or her discipline in a college in the same zone, in another college in the same sector or in a college in another zone, as soon as he or she is placed on availability.

36. A teacher who has been on availability for at least three years must participate in any employability measure recommended by the college and the Placement Bureau.

However, a teacher on availability must participate in such a measure in a single location or in a core discipline in a closed program as soon as he or she is placed on availability.

Despite retraining provisions intended for a reserved position, the parity committee must, as a priority, grant the retraining requests mentioned in the first and second subparagraphs.

Failure by a teacher placed on availability to fulfill the obligations imposed under this paragraph has the same consequences for the teacher as a refusal to accept an annual full-time replacement workload or position that meets the conditions prescribed in the collective agreement concerning job security.

— *Order of employment priority for available positions*

37. A teacher placed on availability has absolute priority for an available position in his or her discipline.

Subject to the employment priorities for a position of any teacher placed on availability in the college, the following priorities apply to a teacher placed on availability from another college for a position in his or her discipline:

- (1) a teacher placed on availability in a core discipline in a closed program;
- (2) a teacher placed on availability from another college in the same zone if he or she has indicated such a choice;
- (3) a teacher placed on availability from a college in another zone if he or she has indicated such a choice;
- (4) a teacher placed on availability from another college in the same zone; and
- (5) a teacher placed on availability from another college in the same sector who has been on availability for the greatest number of years from among those who have been on availability for at least three years after having received their notice of placement on availability.

Provisional program authorizations

38. The allocation of resources to the core disciplines in a program subject to a provisional authorization issued by the Minister of Education, Recreation and Sports are not to be taken into account in determining the number of positions. Any position that could have resulted from the allocations is, for this reason, deemed to be a full-time teaching load.

However, if the program authorization becomes permanent, the teacher who had such a full-time teaching load is deemed to have held a position.

§2. — *Professionals*

Abolishment of position

39. A college may abolish a position that has become vacant following an incumbent's transfer as regards a collective agreement that does not provide such an option.

SCHEDULE 4*(Section 14)***Conditions of employment of employees covered by a collective agreement in the health and social services sector**Arbitration expenses

1. The fees and expenses of a grievance arbitrator are paid by the party that filed the grievance if it is rejected, by the party against whom or which the grievance was filed if it is upheld or by the party that withdraws the grievance.

If the grievance is partially upheld, the arbitrator determines the proportion of the arbitrator's fees and expenses to be paid by each party.

If the grievance is resolved, the arbitrator's fees and expenses are shared equally.

In the case of a dispute, other than a grievance, submitted to a third party for a decision, the fees and expenses of the decision maker are shared equally by the employer and the union.

In all cases, the party that requests a postponement of a hearing pays the resulting fees and expenses; in the case of a joint request, the parties share the resulting fees and expenses equally.

However, in the case of a grievance the hearing of which began before 16 December 2005, the arbitrator's fees and expenses are paid according to the rules applicable before that date.

Part-time employees

2. An employee with part-time status in the nursing and cardio-respiratory care personnel category holds a position comprising a minimum of 8 shifts per 28-day period. The following conditions apply to this measure:

- (1) The employer determines the number of part-time employees needed.
- (2) All job titles are covered, except the titles of nursing and respiratory therapy extern and candidate to the nursing profession.
- (3) The modification is effective as of the date agreed upon by the parties, following negotiation of provisions negotiated and agreed to at the local level, but no later than six months following the effective date of provisions negotiated and agreed to at the local or regional level.
- (4) An employee who refuses to bid on a position is deemed to have resigned.

(5) An employee who has bid on a position and was not granted that position at the end of the local bidding period is laid off, has his or her name entered on the list of the Regional Manpower Service (RMS) and benefits from the provisions pertaining to priority of employment. The Regional Parity Committee on job security is informed about each of these entries at the end of every fiscal period.

(6) An employee covered by a special measure under the collective agreement who refuses to choose a position or refuses a transfer is deemed to have resigned.

(7) An employee without job security who was not granted a position following the application of a special measure is laid off, has his or her name entered on the list of the Regional Manpower Service (RMS) and benefits from the provisions pertaining to priority of employment.

(8) An employee with job security who refuses a job offer or refuses retraining is deemed to have resigned.

(9) The notion of available position, for the purposes of the job security system, is modified to take into account that part-time employees hold a position comprising a minimum of 8 shifts per 28-day period.

Remuneration for statutory holidays

3. Work performed on Christmas Day and New Year's Day is paid at a rate of time and a half of the regular salary rate, and the rules concerning compensatory time-off are unchanged.

Union leave

4. The provisions referring to paid union leave granted to employees for internal union activities are subject to the following maximum number of days:

Number of existing employees in the unit on January 1st of each year	Number of paid union leave days per year
50-99	26
100-299	52
300-749	104
750-1549	156
1550 or more	208

If there are less than 50 members in the bargaining unit, a local union representative may be granted paid leave, upon authorization from the employer or the employer's representative.

5. The provisions referring to paid union leave granted to employees for union activities other than those referred to in paragraph 4 are subject to the following maximum number of days:

Number of existing employees in the unit on January 1st of each year	Number of paid union leave days per year
1-50	20
51-100	25
101-200	30
201-300	40
301-400	50
401-500	60
501-600	70
601-700	75
701-800	80
801-900	85
901-1000	90
1001-1200	95
1201-1500	100
1501 or more	110

6. Paid union leave requested for the purposes of meetings with an external union representative or meetings with an employee to discuss a grievance or inquire into working conditions is subject to five days' notice.

7. The provisions relating to paid union leave required to participate in a joint committee made up of management representatives and union representatives are maintained and the number of union leave days used for that purpose are not to be subtracted from the union leave credits provided for in paragraphs 4 and 5.

The provisions relating to union leave for an employee for the purposes of a meeting between an employer representative and a union representative, whether the meeting was initiated by one party or the other, are maintained, and the number of union leave days used for that purpose and for the purpose of paragraph 9 are not to be subtracted from the union leave credits provided for in paragraph 4.

8. The provisions relating to union leave for a local union representative, an interested employee or a witness in an arbitration case are maintained and the number of used union leave days are not to be subtracted from the union leave credits provided for in paragraph 4.

9. The provisions relating to paid union leave for the purposes of local or regional negotiations, or local arrangements, are modified in order for the employer to grant paid union leave to employees as designated by the union to attend sessions of local arrangements and local or regional negotiations.

The number of employees granted union leave will be as follows:

Number of existing employees in the unit on January 1st of each year	Number of employees on union leave
1 to 250	2
251 to 1000	3
1001 or more	4

The parties may, by local arrangement, agree on union leave for employees for the purpose of preparing the local arrangement and local or regional negotiation sessions provided for in this paragraph.

10. Any paid or unpaid union leave for an employee is granted provided the employer can ensure continuity of services in the department and provided also no additional costs are involved for the employer.

Salary insurance

11. A disability period means any continuous disability period or a series of successive disability periods interrupted by a period of full-time actual work or availability for work, unless the employee establishes to the satisfaction of the employer or the employer's representative that a subsequent period is attributable to an illness or accident completely unrelated to the cause of the previous disability.

The period of full-time actual work or availability for work is

- (1) less than 22 days for disability lasting less than 26 weeks; and
- (2) less than 60 days for disability lasting 26 weeks or more.

12. For part-time employees, the amount of salary insurance benefits is pro-rated based on time worked during the 52 calendar weeks preceding disability, compared with the amount of benefits payable based on full time, taking into account the periods of time excluded from calculation under the collective agreement. However, the calculation must include a minimum of 12 weeks. If not, the employer must consider the weeks preceding the 52-week period, until calculation can be made over 12 weeks.

If the calculation cannot include a minimum of 12 weeks because the period between the last hiring date of the employee and the disability date does not allow it, the calculation is made based on this last period.

13. A rehabilitation period is available to any employee, whether or not he or she is holding a position, as provided for in the collective agreement.

14. The employer may, upon recommendation from the employer's designated physician, initiate, extend or terminate a rehabilitation period. In the event of a disagreement with the employee's attending physician, the dispute shall be dealt with according to the disability dispute settlement procedure provided for in paragraph 15.

15. An employee may contest the employer's decision to not recognize or no longer recognize the existence of a disability, or the employer's decision to impose or extend a rehabilitation period, according to the procedure provided for in paragraphs 16 to 20.

16. The employer must give a written notice to the employee and to the union about his decision to not recognize or no longer recognize the disability or to impose or extend the rehabilitation period. Notice to the employee shall include copies of report(s) and expertise directly related to the disability that the employer will forward to the physician-arbitrator, and which will be used in the arbitration procedure provided for in paragraph 18 or paragraph 19.

17. If the employee fails to return to work on the date indicated in the notice provided in paragraph 16, he or she is deemed to have contested the employer's decision through the grievance procedure on that date. In the case of a part-time employee whose name is on the availability or recall list but has not been assigned, the grievance is deemed to have been filed on the day the union received a notice from the employer indicating that the employee did not report to work on an assignment that was offered to him or her, or, at the latest, seven days following the receipt of the notice provided for in paragraph 16.

18. If the disability is within the area of competence of a psychiatrist, a psychiatrist or an orthopedist, the following medical arbitration procedure applies:

(1) The parties have 10 days following the date the grievance is filed to agree on the choice of a physician-arbitrator. Failing an agreement within the first five days on which medical specialty is relevant, it shall be determined within the following two days by the general physician designated by the Minister of Health and Social Services or the Minister's representative, based on the reports and expertise provided by the attending physician and the first physician designated by the employer. In this case, the parties have the days remaining from the initial 10-day period to agree on the designation of the physician-arbitrator. Failing an agreement on the choice of a physician-arbitrator, the person appointed for that purpose by the Minister designates one from the list agreed by the parties or, failing that, determined by the Minister, in rotation and according to the three relevant specialties and the two geographic sectors identified in subparagraph 8.

(2) To be designated, the physician-arbitrator must be able to render a decision within the prescribed time.

(3) Within 15 days following determination of the relevant specialty, the employee or the union representative and the employer send the physician-arbitrator the files and expertise directly related to the disability, as produced by their respective physicians.

(4) The physician-arbitrator meets with and, if necessary, examines the employee. The meeting must take place within 30 days following determination of the relevant specialty.

(5) Reasonable travelling expenses incurred by the employee are reimbursed by the employer according to the provisions of the collective agreement. If the employee's health condition does not allow him or her to travel, the employee is not required to.

(6) If he or she comes to the conclusion that the employee is or remains disabled, the physician-arbitrator may also decide on the ability of the employee to go through a rehabilitation period.

(7) The physician-arbitrator renders a decision based on the documents provided in accordance with subparagraph 3 and the meeting provided for in subparagraph 4. The decision must be rendered within 45 days from the date the grievance was filed. The decision is final and binding.

(8) The two geographic sectors are as follows:

(a) East Sector, which includes the following regions: Bas-Saint-Laurent, Saguenay–Lac-Saint-Jean, Québec, Chaudière-Appalaches, Côte-Nord, and Gaspésie–Îles-de-la-Madeleine;

(b) West Sector, which includes the following regions: Mauricie, Estrie, Montréal-Centre, Outaouais, Abitibi-Témiscamingue, Northern Québec, Laval, Lanaudière, Laurentides, Montérégie, Centre du Québec, Nunavik and James-Bay Cree Territory.

19. If the disability is not within the area of competence of a physiatrist, a psychiatrist or an orthopedist, the medical arbitration procedure provided for in the collective agreement applies.

20. To contest the termination of an employee's disability, the employer must advise the employee and the union in writing. The employee has 30 days following the employer's decision to file a grievance. Paragraphs 18 and 19 apply in this case.

21. The employer cannot force an employee to return to work before the date indicated on the medical certificate or as long as the physician-arbitrator has not decided otherwise.

22. An employee cannot contest his or her ability to return to work under the provisions of the collective agreement if a competent court or authority

established under an Act, such as the Automobile Insurance Act, the Act respecting industrial accidents and occupational diseases or the Crime Victims Compensation Act, has already ruled on his or her ability to return to work with regard to the same disability and the same diagnosis.

Framework for the bumping procedure to be negotiated at the local or regional level

23. The bumping and layoff procedure agreed to at the local or regional level must take the seniority of employees into account, provided they meet the job requirements. It cannot result in the layoff of an employee with job security, as long as an employee without job security could be laid off.

Acquired benefits or privileges

24. The provisions of the collective agreements that pertain to acquired benefits, privileges or rights are replaced by the provisions of paragraphs 25 to 31.

25. Subject to paragraphs 30 and 31, the benefits or privileges related to a matter defined as being the subject of clauses negotiated and agreed at the national level within the meaning of the Act respecting the process of negotiation of the collective agreements in the public and parapublic sectors, acquired by an employee before the effective date of the 2000-2002 or, as the case may be, the 2000-2003 collective agreement applicable to the employee that are superior to the conditions of employment determined under this Act are maintained for the sole benefit of that employee.

26. The benefits or privileges related to a matter defined as being the subject of clauses negotiated and agreed at the national level within the meaning of the Act respecting the process of negotiation of the collective agreements in the public and parapublic sectors, acquired by an employee between the effective date of the 2000-2002 or, as the case may be, the 2000-2003 collective agreement applicable to him or her and 16 December 2005 that are superior to the conditions of employment determined under this Act are null and void.

27. The benefits or privileges related to one of the matters provided in Schedule A.1 of the Act respecting the process of negotiation of the collective agreements in the public and parapublic sectors, acquired by an employee that are superior to the clauses of the 2000-2002 or, as the case may be, 2000-2003 collective agreement applicable to him or her are not extended and it is up to the parties to dispose of them at the local level.

28. The benefits or privileges conferred by the 2000-2002 or, as the case may be, the 2000-2003 collective agreements, and those conferred by collective agreements prior to 2000-2002 or 2000-2003, that are superior to the conditions of employment determined under this Act cannot be invoked as acquired benefits or privileges.

List of job titles, descriptions and salary scales and rates

29. Any derogation to the list of job titles, descriptions and salary scales and rates made by an institution is null and without effect.

30. Despite any provision of the collective agreement, no derogation to the list of job titles, descriptions and salary scales and rates by an institution may constitute an acquired benefit or privilege or be invoked as such by an employee.

31. In the case of such a derogation, the employer, within 60 days after 16 December 2005, must reclassify an employee whose job title is not consistent with the list as an employee with the appropriate job title in the same class of personnel within the meaning of the Act respecting bargaining units in the social affairs sector.

The reclassified employee is integrated into the salary scale of the new job title. In the case of a red-circled employee, the rules set out in paragraph 34 concerning red-circled employees apply.

The reclassified employee is deemed to meet the normal requirements of his or her position or assignment at the time of reclassification.

If the main duties of an employee do not fall under any job title in the list, the employer must make a request, using the mechanism to be established, for the creation of a new job title. The employer maintains the employee's job title and salary scale or rate until a decision is rendered through that mechanism.

32. The negotiating committees with regard to jobs not included in the list are abolished as of 16 December 2005. All the files pending before those committees are referred to arbitration according to the regular procedure provided for in the collective agreement. Subsequent applications are subject to the mechanism referred to in the fourth subparagraph of paragraph 31.

Remuneration of red-circled employees

33. The provisions of collective agreements setting out the rules applicable to the remuneration of red-circled employees are replaced by the provisions of paragraph 34 for the persons to whom paragraph 31 applies.

34. If an employee is reclassified according to paragraph 24, the employee's salary is reduced to arrive at the uniform salary rate or the maximum of the salary scale of his or her new job title, or is maintained, if his or her salary is already at the same uniform rate as that of his or her new job title or within the limits of the salary rate of his or her new job title.

In the latter case, the employee is integrated into the salary scale of the new job title at the hourly salary rate that is equal to, or the next higher than, the hourly salary rate the employee had.

If the employee's salary is reduced,

(1) during the first three years after the reclassification, the entire difference between the salary the employee had before being reclassified and the new salary to which the employee is entitled is paid to the employee in lump sums;

(2) during the fourth year, two thirds of the difference between the salary the employee had before being reclassified and the new salary to which the employee is entitled for the fourth year is paid to the employee in the same manner; and

(3) during the fifth year, one third of the difference between the salary the employee had before being reclassified and the new salary to which the employee is entitled for the fifth year is paid to the employee in the same manner.

Special provisions

35. Nothing in the list of job titles, the job descriptions or the salary scales or rates prevents an employee from carrying out the activities which membership in a professional order authorizes him or her to carry out.

36. Any provision of a collective agreement whose purpose is to grant a guaranteed salary or a non-reduction in salaries to an employee must be interpreted and enforced as granting a guaranteed hourly salary or a non-reduction in hourly salary, except in the case of the bumping procedure where the guaranteed salary or the non-reduction in salary is weekly; in the latter case, the status of the employee is taken into account.

37. Despite paragraphs 11 to 22, the provisions of a collective agreement renewed by section 5 which provide for the maintenance of salary insurance benefits during the application of the disability dispute settlement procedure until the employee returns to work or until a decision is rendered by the physician-arbitrator or the arbitrator are maintained.

38. As of 21 November 2006, the supplement paid to an outpost nurse or dispensary nurse is abolished and the provisions relating to salary progression for dispensary nurses are the same as those applicable to clinical nurses.

Final provisions

39. Paragraph 9 does not apply to employees represented by a certified association of employees that belongs to an employee-associations group whose bargaining agent has agreed, before 16 December 2005 with the Comité patronal de négociation du secteur de la santé et des services sociaux (CPNSSS) to a memorandum of agreement establishing a particular system of union leave for the purpose of defining the provisions negotiated and agreed at the local or regional level under sections 35 to 51 of the Act respecting bargaining

units in the social affairs sector or the definition of the first provisions negotiated and agreed at the local or regional level under sections 88 to 92 of that Act.

40. Subject to paragraph 39, paragraphs 9, 23 and 28 to 36 apply to employees represented by an association of employees bound by an agreement referred to in section 13.

41. Paragraphs 3 to 23 come into force on the date set in the text filed under section 18.

The same applies to the provisions of an agreement referred to in section 13 unless otherwise provided by the agreement.