



NATIONAL ASSEMBLY

FIRST SESSION

FORTY-FIRST LEGISLATURE

Bill 110

(2016, chapter 24)

An Act respecting the process of negotiation of collective agreements and the settlement of disputes in the municipal sector

Introduced 10 June 2016

Passed in principle 22 September 2016

Passed 2 November 2016

Assented to 2 November 2016

EXPLANATORY NOTES

This Act amends certain rules applicable to the negotiation of collective agreements and the settlement of disputes in the municipal sector to ensure that account is taken of the collective expectations of municipal sector employees and of the requirements of sound management.

It specifies the guiding principles to be used by any person involved in determining the conditions of employment of the employees concerned.

It provides for a dispute settlement procedure applicable to police officers and firefighters. The procedure includes mediation and the establishment of a three-person dispute settlement board to which disputes are referred in the event mediation fails.

The rules applicable to other employees in the municipal sector are determined. In addition to resorting to mediation and arbitration, the parties may call on a special mandatary entrusted with helping the parties settle their dispute and appointed by the Minister if, in the opinion of the Minister, exceptional circumstances so warrant.

Moreover, collective agreements entered into or decisions rendered in the municipal sector must have a specified period of at least five years.

Lastly, the Act contains transitional measures.

LEGISLATION AMENDED BY THIS ACT:

- Labour Code (chapter C-27);
- Act respecting municipal territorial organization (chapter O-9).

REGULATION AMENDED BY THIS ACT:

- Regulation respecting the remuneration of arbitrators (chapter C-27, r. 6).

Bill 110

AN ACT RESPECTING THE PROCESS OF NEGOTIATION OF COLLECTIVE AGREEMENTS AND THE SETTLEMENT OF DISPUTES IN THE MUNICIPAL SECTOR

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

CHAPTER I

OBJECT OF THE ACT AND GUIDING PRINCIPLES

I. The purpose of this Act is to ensure, in determining the conditions of employment of employees in the municipal sector, that account is taken of the collective expectations of those employees and of the requirements of an effective and efficient management of financial resources intended for the provision of public services.

To that end, the determination of conditions of employment in that sector must at all times be guided by the following principles:

(1) as a democratic institution, a municipality is accountable to its ratepayers for the use of proceeds from the taxes and tariffs it collects to provide the public services incumbent on it or on another municipal employer whose expenses it assumes in whole or in part, each municipal employer having as its primary mission the provision of quality services to the residents of every territory served;

(2) the attraction and retention of qualified personnel require conditions of employment that are fair and reasonable in light of the qualifications required, the work performed and the nature of the services rendered;

(3) equity among personnel members requires that appropriate relationships be maintained as regards the conditions pertaining to the various categories or classes of employment, in particular, with respect to the wages, wage increases and benefits that may be granted; and

(4) it is the employer's responsibility to hire qualified personnel and manage its workforce so as to satisfy its operational needs.

These principles must be interpreted so as not to limit the right of the parties to negotiate a collective agreement or the right to refer any matter relating to the conditions of employment of employees to a dispute settlement board or an arbitrator for arbitration.

2. In this Act, “municipal sector” means

(1) any municipality, except the Kativik Regional Government, the northern and Cree villages and the Naskapi village;

(2) any metropolitan community;

(3) any intermunicipal board;

(4) any public transit authority;

(5) any body declared by law to be the mandatary or agent of the municipality, any body whose board of directors is composed in the majority of members of the council of a municipality and whose budget is adopted by the council, and any body whose board of directors is composed in the majority of elected municipal officers;

(6) the Société municipale d’habitation Champlain and any other body established under section 59 of Schedule C to the Charter of Ville de Québec (chapter C-11.5); or

(7) the Société d’habitation et de développement de Montréal and any other body constituted under section 218 of Schedule C to the Charter of Ville de Montréal (chapter C-11.4).

CHAPTER II

PROVISIONS APPLICABLE TO POLICE OFFICERS AND FIREFIGHTERS

DIVISION I

APPLICATION

3. This chapter applies to the settlement of disputes between an association of employees certified within the meaning of the Labour Code (chapter C-27) to represent police officers or firefighters and a municipality or an intermunicipal board.

DIVISION II

MEDIATION

4. If no collective agreement has been reached by the parties within the first 240 days of the stage of negotiation between the parties, the employer must notify the minister responsible for the administration of the Labour Code and send a copy of the notice to the certified association. Despite section 53 of the Labour Code, the stage of negotiation begins 90 days before the day of expiry of the current agreement or, in the case of the negotiation of an agreement by a newly certified association, on the day of the certification.

The employer may defer sending the notice if an agreement in principle is being examined by the employees. If the agreement is rejected, the employer must send the notice within seven days of the rejection.

If the employer fails to send the notice within the prescribed time, the certified association may do so itself.

5. On receiving the notice provided for in section 4, the minister responsible for the administration of the Labour Code must appoint a mediator to help the parties settle their dispute. The Minister may act on the Minister's own initiative if no notice has been received on the 15th day after the day of expiry of either of the time limits provided for in that section, as applicable.

Despite the first paragraph, at all times, the Minister must appoint a mediator on the joint application of the parties.

6. The mediator has 60 days following the mediator's appointment to bring the parties to an agreement. The minister responsible for the administration of the Labour Code may, only once and at the joint request of the parties or at the request of the mediator, extend the period of mediation by not more than 60 days.

The parties are required to attend all meetings to which the mediator convenes them.

7. If there is no agreement at the expiry of the period of mediation, the mediator must give the parties a report specifying the matters on which there has been agreement and the matters which are still in dispute.

8. At the same time, the mediator must give a copy of the report with comments to the Minister and to the minister responsible for the administration of the Labour Code.

DIVISION III

DISPUTE SETTLEMENT BOARD

9. On receiving a mediator's report, the Minister must refer the dispute to a dispute settlement board and notify the parties.

10. The dispute settlement board consists of three members appointed by the Government, on the recommendation of the Minister. The member who chairs the sittings must be an advocate.

11. The members of the board are selected from among the persons recognized as qualified for appointment to the board, by decision of the Government. Together, the selected members must possess recognized experience in all the fields of competence referred to in the fourth paragraph.

For the purposes of the first paragraph, the Government must recognize at least six persons. Those persons must be recommended by a selection committee formed and acting in accordance with the conditions determined by the Government.

To be recognized as and remain qualified, those persons must

(1) not be, nor have been in the year preceding the recognition, employees, officers or other representatives of an employer in the municipal sector, of an association representing employees in that sector or of a grouping of such employers or associations; and

(2) undertake in writing not to act as arbitrator with respect to a grievance that relates to the interpretation or implementation of a decision rendered in accordance with this chapter.

The selection committee must, when identifying the persons it intends to recommend, give preference to those possessing recognized experience in labour relations, in the municipal field or in the field of economy.

The recognition by the Government of the persons qualified to be members of the board is valid for a period of five years.

12. A member of the board cannot have any pecuniary interest in the dispute submitted to the board or have acted in the dispute as a business agent, attorney, adviser or representative of any of the parties.

13. The Minister must send the mediator's report to the board.

14. Only matters not having been the subject of an agreement evidenced in the mediator's report may be submitted for decision to the board.

The board has exclusive jurisdiction to determine such matters on the basis of the mediator's report or, as the case may be, on the basis of the mediator's own observation of the matters on which no agreement was reached during the mediation.

15. The board is required to render its decision according to equity and good conscience.

16. The board must render its decision on the basis of the evidence collected at the inquiry.

17. Subject to section 16, the board must, in rendering its decision, take into account

(1) the financial and fiscal situation of the municipality concerned or of the municipalities which are party to the agreement creating the intermunicipal

board concerned and the impact of the decision on that municipality or those municipalities and their ratepayers;

(2) the conditions of employment applicable to the employees concerned;

(3) the conditions of employment applicable to the other employees of the municipality concerned or of the municipalities which are party to the agreement creating the intermunicipal board concerned;

(4) the policy on remuneration and the latest increases granted by the Government to employees in the public and parapublic sectors;

(5) the conditions of employment applicable in similar municipalities and intermunicipal boards;

(6) requirements relating to the sound management of public finances;

(7) prevailing local economic conditions; and

(8) prevailing and anticipated wage and economic conditions in Québec.

The board may also take into account any other evidence referred to in section 16.

18. The board must hear the dispute with diligence and according to the procedure and the method of proof it considers appropriate.

19. Sittings of the board are public, but the board of its own motion or upon application by either party may order private sittings.

20. The board has all the powers of a judge of the Superior Court for the conduct of its sittings; but it cannot order imprisonment.

21. Upon application by the parties or on the initiative of the board, witnesses are summoned by means of a written order signed by the chair of the board. The chair may administer the oath.

22. A person duly summoned to appear under section 21 who refuses to attend or to testify may be compelled to do so as if the person had been summoned according to the Code of Civil Procedure (chapter C-25.01).

23. A person summoned to testify under section 21 is entitled to the same indemnity as witnesses before the Superior Court and to the reimbursement of travelling and living expenses.

Such amount is payable by the party who proposed the summons, but a person who receives a salary during such a period is entitled only to the reimbursement of travelling and living expenses.

If a person is duly summoned on the initiative of the board, the amount is payable in equal shares by the parties.

24. The board may communicate or otherwise notify any order, document or proceeding issued by it or the parties involved.

25. The decisions of the board are made by a majority of its members. The decisions must give reasons, be in writing and be signed by the members who endorsed them. A member may express dissent in a written document separate from the decision.

26. Where, being unable to act, a member of the board is unable to continue with the hearing of a dispute, the two remaining members, provided one of them is an advocate, may validly continue with the hearing of the dispute and render a unanimous decision.

Where the board continues with the hearing of a dispute in accordance with the first paragraph and opinions are divided for the purpose of rendering the decision, the Government must appoint, after being notified by the board, a third member. That member may, for the purpose of rendering the decision and with the consent of the parties, rely on the evidence already filed.

Where the board cannot continue with the hearing of a dispute in accordance with the first paragraph, the advocate member who was chairing it must be replaced. The advocate member who is appointed as a replacement may also, with the consent of the parties, rely on the evidence already filed at the time of that member's appointment.

27. At any time before rendering its final decision, the board may render any interim decision it deems fair and useful.

28. The board must render its decision within six months of its establishment.

If the Minister considers that the circumstances and the interest of the parties so warrant, the Minister may grant the board an extension. The Minister may, on the same conditions, grant an additional extension.

29. The board must record in its decision the stipulations relating to the matters that were the subject of an agreement evidenced in the mediator's report.

The parties may, at any time, come to an agreement on a matter that is the subject of the dispute and the corresponding stipulations must also be recorded in the decision by the board, which may not amend them except for the purpose of making such adaptations as are necessary to make the stipulations consistent with a clause of the decision.

30. The decision is binding on the parties for a specified period of five years from the expiry of the collective agreement or, in the case of a first collective agreement, from the date of certification. The parties may, however, agree to amend the content, in whole or in part.

31. The board must forward the original of the decision to the minister responsible for the administration of the Labour Code and send, at the same time, a copy to the Minister and to each party.

32. The board may at any time correct a decision containing an error in writing or calculation or any other clerical error.

33. The decision has the effect of a collective agreement signed by the parties in accordance with the Labour Code.

It may be executed under the authority of a court of competent jurisdiction at the suit of a party who is not obliged to implead the person for whose benefit the party is acting.

34. The costs of the board, including the fees of its members, are borne equally by the parties.

Those costs are determined by government regulation. The Minister may set up a financial assistance program intended for the parties.

35. A member of the board cannot be prosecuted for acts performed in good faith in the exercise of the functions of office.

36. Except on a question of jurisdiction, no application for judicial review under the Code of Civil Procedure may be presented nor any injunction granted against members of the board acting in their official capacity.

CHAPTER III

PROVISIONS APPLICABLE TO OTHER EMPLOYEES

DIVISION I

APPLICATION

37. This chapter applies to the settlement of disputes between a certified association, within the meaning of the Labour Code, representing employees other than police officers or firefighters, and a municipal sector employer.

DIVISION II

MEDIATION

38. If no collective agreement has been reached by the parties on the 150th day after the day the right to strike or to a lock-out is acquired, the

employer must notify the minister responsible for the administration of the Labour Code and send a copy of the notice to the certified association.

The parties may jointly inform the minister responsible for the administration of the Labour Code that they are extending the period provided for in the first paragraph to the 180th day.

The employer may defer sending the notice if an agreement in principle is being examined by the employees. If the agreement is rejected, the employer must send the notice within seven days of the rejection.

If the employer fails to send the notice within the prescribed time, the certified association may do so itself.

39. On receiving the notice provided for in section 38, the minister responsible for the administration of the Labour Code must appoint a mediator to help the parties settle their dispute. The Minister may act on the Minister's own initiative if no notice has been received on the 15th day after the day of expiry of either of the time limits provided for in that section, as applicable.

Despite the first paragraph, at all times, the Minister must appoint a mediator on the joint application of the parties.

Sections 6 to 8 concerning mediation apply, with the necessary modifications.

The mediator's report provided for in section 7 must be given to the arbitrator appointed under section 44.

DIVISION III

SPECIAL MANDATARY

40. If exceptional circumstances so warrant, a party may, after submission of the mediator's report under Division II, apply to the Minister, in writing and giving reasons, for the appointment of a special mandatary to foster settlement of the dispute.

41. The Minister must appoint a special mandatary if the Minister is of the opinion, after consultation with the minister responsible for the administration of the Labour Code, that all means of settling the dispute have been exhausted and that, in light of the exceptional circumstances described by the applying party, the continuation of the dispute may seriously jeopardize the provision of public services.

42. The special mandatary must possess, in addition to recognized experience in labour relations, experience in the municipal field or in the field of economy.

The instrument of appointment of the special mandatary specifies the term of the special mandatary and any other condition to which the special mandatary is subject.

The term of the special mandatary may, at the special mandatary's request, be extended by the Minister for a maximum period of 30 days.

43. At the end of the special mandatary's term or as soon as the special mandatary considers that it is unlikely that the parties may come to an agreement, the special mandatary must submit an activity report to the parties and the Minister.

The parties are required to provide the special mandatary with all the relevant information needed to perform the special mandatary's mandate.

The report contains the recommendations the special mandatary considers appropriate for the settlement of the dispute. Such recommendations must take into account the criteria provided for in section 17 for the sake of fairness to the parties. Despite section 9 of the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1), no person has a right of access to the report.

DIVISION IV

ARBITRATION

44. After an unsuccessful mediation conducted in accordance with Division II, the parties may jointly apply to have their dispute submitted to a single arbitrator.

However, an application for the appointment of a special mandatary under Division III suspends the right to arbitration until the Minister or the Government decides not to grant the application or until the report provided for in section 43 has been submitted.

45. On receiving an application in conformity with section 44, the Minister must appoint an arbitrator and notify the parties.

46. The arbitrator is selected from among the persons recognized as qualified for appointment as arbitrators by decision of the Government.

Those persons must be recommended by a selection committee formed and acting in accordance with the conditions determined by the Government.

To be recognized as and remain qualified, those persons must

(1) be members of the Barreau du Québec and have recognized experience in labour relations or in the municipal field;

(2) not be, nor have been in the year preceding the recognition, employees, officers or other representatives of an employer in the municipal sector, of an association representing employees of that sector or of a grouping of such employers or associations; and

(3) undertake in writing not to act as arbitrator with respect to a grievance that relates to the interpretation or implementation of a decision rendered in accordance with this chapter.

The recognition by the Government of the persons qualified for appointment as arbitrators is valid for a period of five years.

47. Sections 13 to 25 and 27 to 36 apply to arbitration conducted under this division, with the necessary modifications.

CHAPTER IV

OTHER PROVISIONS

48. Sections 54 to 57 and Divisions I and I.1 of Chapter IV of the Labour Code do not apply to a dispute to which this Act applies.

The other provisions of that Code apply in the municipal sector, to the extent that they are not inconsistent with this Act.

49. An application for arbitration made under Chapter III terminates any strike or lock-out in progress.

50. Despite section 65 of the Labour Code, a collective agreement binding a certified association and a municipal sector employer, including a first collective agreement, must have a specified period of a least five years.

CHAPTER V

AMENDING, TRANSITIONAL AND FINAL PROVISIONS

DIVISION I

AMENDING PROVISIONS

LABOUR CODE

51. Division II of Chapter IV of the Labour Code (chapter C-27), comprising sections 94 to 99.11, is repealed.

ACT RESPECTING MUNICIPAL TERRITORIAL ORGANIZATION

52. Section 176.22 of the Act respecting municipal territorial organization (chapter O-9) is amended by replacing the second, third and fourth paragraphs by the following paragraph:

“The settlement of such a dispute is governed by sections 4 to 15 and 18 to 33 of the Act respecting the process of negotiation of collective agreements and the settlement of disputes in the municipal sector (2016, chapter 24), and

by the fourth paragraph of section 176.19 and sections 176.20 to 176.21 of this Act. However, despite section 4 of the Act respecting the process of negotiation of collective agreements and the settlement of disputes in the municipal sector, the notice must be given jointly by the parties within the time they determine, which time may not exceed twice the time provided for in the first paragraph of that section.”

REGULATION RESPECTING THE REMUNERATION OF ARBITRATORS

53. Section 19 of the Regulation respecting the remuneration of arbitrators (chapter C-27, r. 6) is amended by replacing “sections 93.3 and 97” in the third paragraph by “section 93.3”.

DIVISION II

TRANSITIONAL AND FINAL PROVISIONS

54. For collective agreements expired before 1 January 2014 for which no new collective agreements have been reached by the parties before 2 November 2016, the notice provided for in section 4 or 38 must be given by the employer on the 75th day after 2 November 2016.

For collective agreements expired in 2014 for which no new collective agreements have been reached by the parties before 2 November 2016, the notice provided for in section 4 or 38 must be given by the employer on the 105th day after 2 November 2016.

For collective agreements expired in 2015 for which no new collective agreements have been reached by the parties before 2 November 2016, the notice provided for in section 4 or 38 must be given by the employer on the 135th day after 2 November 2016.

For collective agreements expired between 1 January 2016 and the 90th day before 2 November 2016 for which no new collective agreements have been reached by the parties before 2 November 2016, the notice provided for in section 4 or 38 must be given by the employer on the 150th day after 2 November 2016.

The parties may jointly send the notice provided for in sections 4 and 38 before the expiry of the time limits provided for in the preceding paragraphs.

The stage of negotiation provided for in section 4 is deemed to begin on 2 November 2016 when

(1) a collective agreement expiring within 90 days before or after that date is being renewed; or

(2) a first collective agreement involving an association that has been certified less than 90 days before that date is being negotiated.

The second and third paragraphs of sections 4 and 38 apply with the necessary modifications.

The Minister may act on the Minister's own initiative if no notice has been received on the 15th day after the day of expiry of a time limit provided for in the first four paragraphs.

55. Any arbitration hearing conducted under the Labour Code (chapter C-27) that has begun on 10 June 2016 continues to be governed by that Code, as it read on that date.

An arbitrator who, on that date, has not begun to hear a dispute pending before the arbitrator is removed from the dispute; any act done after that date is deemed to be null and void.

The hearing includes the evidence stage, followed by oral argument, in which parties make their addresses to the arbitrator.

Section 54 applies to disputes referred to in the second paragraph, unless there has been mediation or conciliation in accordance with the Labour Code, in which case the employer must notify the Minister on or before 2 December 2016. The following rules then apply:

(1) the Minister must refer the dispute to which section 3 applies to a dispute settlement board, unless, within the same time, both parties notified the Minister that they wish to submit their dispute to the mediation provided for in Division II of Chapter II; and

(2) the Minister must refer the dispute to which section 37 applies to an arbitrator, unless, within the same time, both parties notified the Minister that they wish to submit their dispute to the mediation provided for in Division II of Chapter III or unless a party applied for the appointment of a special mandatary in accordance with Division III of that chapter.

If the employer fails to send the notice provided for in the fourth paragraph within the prescribed time, the certified association may do so itself. The Minister may act on the Minister's own initiative if no notice has been received on the 15th day after the day of expiry of the time limit provided for in the fourth paragraph.

56. The conciliation officers who, on 2 November 2016, have been designated in accordance with sections 54 and 55 of the Labour Code to assist the parties in reaching an agreement continue to act until the time limits provided for in section 54 of this Act have expired.

57. The Regulation respecting the remuneration of arbitrators (chapter C-27, r. 6) applies, with the necessary modifications, to the remuneration of the members of a dispute settlement board or of the arbitrators governed by this Act, until the coming into force of a regulation made under section 34.

Among such modifications, that regulation applies as if the arbitration were that of a dispute referred to arbitration under section 75 of the Labour Code. In the case of a dispute settlement board, each member of the board is entitled to the fees the member would receive if the member were the sole arbitrator involved. However, the total number of hours allowed for the drafting of the decision, in accordance with the second paragraph of section 4 of the Regulation, must be allocated among the three members of the board, as they specify.

58. The minister who is responsible for municipal affairs is responsible for the administration of this Act.

59. This Act comes into force on 2 November 2016.