Labour Unions & Collective Bargaining Quiz

QUESTION

Once a tentative collective agreement has been reached with a Union and an employer, the union must ratify the tentative agreement. What is the procedure?

ANSWER

Generally speaking, bargaining unit employees ratify an agreement through a secret-ballot vote in which the majority of those voting vote in favour of ratification.

The requirement to ratify does not apply to agreements that:

- are ordered by the Ontario Labour Relations Board
- are settled by interest arbitration
- reflect an offer accepted by a last-offer vote, or
- pertain to employees in the construction industry or employees doing maintenance represented by a construction-related union

WHY IS IT RIGHT

The Labor Movement

Labor unions are groups of workers organizing and taking collective action to improve their lives. The labor movement is all unions, union members and union organizations acting collectively.

There are approximately 15 million workers in unions and employee associations in the United States and approximately 4.5 million union workers in Canada.

What Unions Do

Unions are the principal means for workers to organize and protect their rights on the job. The union contract or “collective bargaining agreement” establishes the basic terms and conditions of work. Unions give workers a voice with employers and provide a means to gain a measure of security and dignity on the job. Most unions maintain a paid professional staff to manage their activities.

Unions pursue strategies and activities that serve the interests of their members. These include representing members and negotiating with employers, recruiting new members and engaging in political action when necessary to support policies that improve working conditions for all workers.

Collective Bargaining

The simple phrase, collective bargaining, covers a wide variety of subjects and involves hundreds of thousands of union members in the process.

Representatives of labor and management negotiate over wages and benefits, hours and working conditions. The settlement reached is spelled out in a written document or contract. The contract normally contains a grievance procedure to settle disputes. It is the job of the union to enforce the contract on behalf of the members.

It has not been easy to establish collective bargaining as a permanent part of American life. The efforts of unions to establish the concept of collective bargaining are a little known, but very important part of American history, involving great sacrifice and bitter struggle. Historically, management took the position that because they owned the means of production, they had the sole right to determine the conditions of employment. Collective bargaining forms the cornerstone of industrial democracy.

Importance of Unions

Workers formed unions so that they could have some say over wages, hours, working conditions, and the many other problems that arise in the relationship between a worker and employer. Unions are important because they help set the standards for education, skill levels, wages, working conditions, and quality of life for workers. Union-negotiated wages and benefits are generally superior to what non-union workers receive.

Most union contracts provide far more protections than state and federal laws. For example, in many states there is no legal right for workers to take a break. More importantly, most states follow a legal doctrine called “employment at will” and non-union workers can be fired for reasons that might be arbitrary or for no reason at all.

Unions also work to establish laws improving job conditions for their members through legislation at the national, state and local level. This ultimately benefits all workers. The 8-hour work day is an example of a positive change won by unions that affects everyone.

Why Working People Need Unions

Unions are more important today than they ever were. It is no secret that in a global economy, the nature of work is changing and some employers resist unions. Research consistently shows that far more workers would join unions if anti-union campaigns weren’t so common. Misinformation and intimidation – including firing union supporters – are routine responses when workers try to form unions.

Workers have less power when they act individually, but acting together as a group they can effect real change. Unions are the collective voice of workers. Unions are the workers’ watchdogs, using their power to ensure that workers

rights under the law are protected.

In addition to ensuring fairness and equitable treatment, many employers recognize that there are advantages to offering workers better wages and benefits. Companies concerned about long-term profitability want to maintain a supply of skilled labor and minimize turnover. The basic reason for this is simple: if unions provide a voice to workers, the number of dissatisfied workers who leave is reduced. Another valuable function of an organized workforce is that workers are able to contribute their knowledge about the job, which helps increase productivity.

Join Labor Unions

As a worker, you have a federally guaranteed right to form or join a union, and bargain collectively with your employer. Business agents and/or stewards are the representatives of the union who help workers deal with unfair treatment, discrimination and with other workplace issues. This helps balance the power that an employer has over individual employees.

Belonging to a union gives you rights under the law that you do not have as an individual. Once you have formed a union, your employer must bargain with your union over your wages, benefits, hours and working conditions.

Union workers, on average, earn higher wages and get more benefits than workers who don’t have a voice on the job with a union.

Types of Unions

“Craft Union”

A craft union was the term traditionally given to unions that represented members who specialized in a particular occupation. Crafts included printing, shoemaking, carpenters, painters, bakers, bookbinders, upholsterers, bricklayers, and stonecutters. In many respects, unions representing such craft industries were similar to the craft guilds that existed in medieval Europe.

“International Union”

An international union is one that crosses national borders in the same way that an international company might. Due to proximity to the United States, Canada plays host to various international unions.

The Knights of Labour

The Knights of Labour, formed in Philadelphia in 1869, were one of the first international unions to operate in Canada. The union organized members in Canada in the 1880s. The Knights organized unskilled labour as well as those belonging to particular trades and crafts. The union was also successful at organizing on a factory basis.

The Knights ultimately failed in the United States. Not only were there divisions between the craft unions and parent umbrella organizations, but the 1886 Chicago Haymarket Riot caused public outrage against the Knights. As a result, and because the leadership of the Knights did not always support its members, its membership dropped dramatically in the following years. The

American Federation of Labour developed in its stead.

In Canada, the Knights had given some workers their first opportunity to belong to a union. The Knights were very popular in Quebec and eventually combined with craft unions to establish the Trades and Labour Congress.

“Industrial Union”

The term “industrial union” characterizes a type of union that crosses craft and occupational boundaries within an industry. For example, instead of workers in a factory belonging to different unions based on their skill, craft, or occupation, everyone in the factory belongs to the same union. This kind of organization gives the members the power of unity rather than being fragmented into different groups. Mining and the textile industries were particularly open to organization by industrial unions.

Examples of early industrial unions were the Western Federation of Miners, which led workers in a serious strike in Rossland, British Columbia in 1901, and the Industrial Workers of the World (IWW), which was initially an American-based international union in the resource industry. IWW still exists and is now a general union, not just an industrial one.

Canadian Labour Congress

The Canadian Labour Congress (CLC) is an umbrella body for unions across Canada. Unions choose whether to register with the Congress. CLC represents union interests at a national and international level.

The CLC evolved over a long period of time. The Canadian Labour Union was formed in 1872 from groups that had promoted the Nine Hours Movement. In 1883, the Trades and Labour Congress evolved as successor to the Canadian Labour Union. In 1939, the Trades and Labour Congress expelled all unions affiliated with the American-based Committee for Industrial Organizing (CIO).In 1940, small CIO organizations in Canada amalgamated with the All-Canadian Congress of Labour to form the Canadian Congress of Labour. The expelled unions formed the Canadian Labour Council. In 1956, the Trades and Labour Congress and the Canadian Labour Congress merged to become the Canadian Labour Congress.

CONFEDERATION OF NATIONAL TRADE UNIONS (CNTU)

In Quebec in 1921, the Roman Catholic Church had set up an umbrella trade union organization to try to stop people from joining other unions. It was called the Canadian and Catholic Confederation of Trade Unions. In the 1960s, the Catholic unions severed ties with the church and evolved into the Confederation of National Trade Unions (CNTU). Also influential are the Quebec Teachers Corporation and the Quebec Federation of Labour.

Principles of Collective Bargaining

The CLC strongly encourages unions to include provisions designed to protect and support employees who are experiencing domestic violence in line with the following principles. Collective agreement language should, at a minimum, do the following:

1. Provide dedicated paid leave for employees experiencing family or domestic

violence;
2. Disclose information only on a “need to know” basis to protect confidentiality while ensuring workplace safety;
3. Implement workplace safety strategies, including risk assessments, safety plans, training and a timely and effective process for resolving concerns;
4. Provide for counselling and referral to appropriate support services;
5. Provide appropriate training and paid time off work for designated support roles (including union health and safety representatives);
6. Provide employees experiencing domestic violence with flexible work arrangements, an advance of pay, and other accommodations; and
7. Protect employees from adverse action or discrimination on the basis of their disclosure, experience, or perceived experience of domestic violence.

Collective Bargaining Process

- The collective bargaining process begins with a notice to bargain, a written notification given by either the employer or the union requiring the other party to commence collective bargaining for the purpose of renewing or revising a collective agreement or entering into a new collective agreement. As soon as notice to bargain is given, it is the responsibility of the employer and union to negotiate in good faith.
- If an impasses is reached or if the negotiations have not started within the time specified in Section 50 of the Canada Labour Code, either party may file a notice of dispute to the Minister of Labour.
- In the event of a notice of a dispute which has been filed in full compliance as stipulated in section 6 of the Canada Industrial Relations Regulations, the Minister of Labour appoints a conciliation officer within fifteen days to assist the parties in resolving their differences.
- The conciliation officer has a 60 day mandate, but the parties may, if they both agree, request an extension of the time for conciliation. At the end of the conciliation period, a 21-day cooling off period begins.
- During the cooling off period, the Minister of Labour can appoint a mediator to continue to assist the parties in reaching an agreement. During this time, parties acquire the legal right to strike or lockout. However, a legal work stoppage cannot take place until the 21-days have expired.
- As a requirement to obtain the legal right to declare a strike or lockout, a seventy-two hours’ notice to the other party and to the Minister of Labour is needed. In addition, the union must obtain a strike mandate (60 days – section 87.3 of the Code) from its membership in order to commence strike action.
- If need be, the Minister of Labour can refer specific issues to the Canada Industrial Relations Board (CIRB). For example, parties must have an agreement on the maintenance of minimal services during a work stoppage to prevent an immediate and serious danger to the safety or health of the public. Where they cannot reach such an agreement, the Minister of Labour may refer the matter to the CIRB for adjudication.
- Another possibility is the appointment of an arbitrator to resolve outstanding issues, however **both parties must agree**.
- In summary, parties may not exercise their right to strike or lockout until a notice to bargain has been given, the conciliation process has taken place, twenty-one days have elapsed since the end of the conciliation process, a strike vote has been taken, and a 72-hour strike notice or lockout has been given.
- In rare instances, the period of the conciliation process (60 days) may be

shortened by agreement of the parties or eliminated if the Minister decides not to appoint a conciliation officer, a conciliation commissioner or a conciliation board.
- In rare instances, a strike or lockout may have such a significant impact on the public interest that back-to-work legislation or pre-emptive legislation is needed. Back-to-work legislation or special legislation has always been seen as a last resort.

DEFINITIONS

What is a "strike action"?

A strike action, also known as a "job action" or "industrial action, is an umbrella term including:

- picketing and secondary picketing;
- working to rule;
- striking; and
- a lockout.

Any strike or lockout taking place before the required steps are taken is unlawful. The intention is to give both sides a cooling off period and to try to avoid the industrial action.

Why is industrial action (for example, striking, picketing, working to rule) so important to union activity?

Unions evolved as a way for workers to join together to face the power that an employer has as the owner or operator of a business. The inequality of bargaining power between a worker and employer can be evened up in this way. As long as an employer is dealing with one employee, the balance of power is with the employer. When the employer is dealing with an organization that represents all employees, there is less power imbalance.

One of the few threats available to a worker in a disagreement with an employer is the withdrawal of labour, known as a strike. The threat or reality of a withdrawal of labour is greater if the whole workforce is involved rather than one person.

The timing of strike action is just as crucial as the fact of a strike itself. A union could plan to take strike action at a point when it would be crucial for an employer to have the business running. Strike action is arguably most effective if it happens when an employer has no contingency plans in place. If a requirement of delaying strike action is introduced, a union might be seen to have lost a valuable advantage.

An Injunction is

An injunction is a court order that directs someone to stop doing something pending the outcome of a legal case. If an employer begins a civil action against a union for inducing breach of contract, he or she could immediately ask the court for an injunction ordering the union stop the industrial action until the case is decided.

Historically, an injunction was a legal tool to preserve a situation until a

case was finally decided, but in the case of an industrial action, it sometimes had the effect of destroying the reason for the case. Even today, once a union cannot take immediate industrial action, the impetus for the dispute is diminished, the dispute is often lost, and there is no reason to go to court. Union leaders face a difficult decision: whether to disregard the injunction and face personal and union liability for contempt of court, or to abide by the order and potentially give ground in the dispute.

A lockout is

Most commonly, a lockout is defined as an industrial action where an employer locks workers out of their workplace and will not let them in. The definition can also include the suspension of work by an employer or the suspension of employees in order to make them accept certain terms and conditions of work. In Alberta, a lockout can only take place in accordance with certain rules and cannot occur while a collective agreement is in force.

“Collective Agreement”

A collective agreement is an agreement between a union and an employer that deals with terms and conditions of employment of all workers covered by the collective agreement. In Alberta, a collective agreement must be in writing and it is legally binding upon the employer, the union, and the employees that the agreement covers. This means that legal action can be taken against anyone who breaks a term of the collective agreement

“Combination of People”

A combination of people is a term that was used in nineteenth-century England to describe a group of people that joined together for a common purpose. A trade union was a combination of people who joined together for the common purpose of lowering hours of work and/or raising wages.

What does the “delay of the work stoppage”

Delay of the work stoppage is a key feature of Canadian labour law. It means that before a strike or lockout can occur certain procedural steps have to be taken, for example, a strike vote amongst employees and notice of the strike given to the employer.

Picketing

Picketing in the field of labour relations refers to the action of persuading others not to do any business with a particular employer. Most commonly, picketers are seen outside a business where the workers are on strike. They try to persuade others not to cross the picket line to do business with the employer or work for the employer.

Secondary picketing occurs when workers picket at a location away from the business place of the employer involved in the dispute. Businesses which have relationships with the employer in a dispute are often the targets of secondary picketing. For example, picketers might go to the business place of a supplier of the employer to persuade the supplier not to make deliveries to the employer.

Work to Rule

Work to rule campaigns are a form of industrial action in which employees only perform their minimum job requirements under the rules of their employment contracts. During a work to rule action, employees follow workplace and job safety regulations to an exacting degree in order to slow the pace of work. No extra tasks, such as overtime, are performed.

Union Recognition

Union recognition means that an employer acknowledges a particular union as the bargaining agent for some or all of the employees at his or her workplace. Once the union is recognized, the employer will bargain collectively with that union. When a majority of employees at a workplace indicates that it wishes to be represented by a particular union, the law now requires that the employer recognize the union. Before the law set out the process for union recognition, an employer was free to disregard the union, even if most employees belonged to it.

Last-offer vote

At any time before or after a strike or lock-out begins, an employer may ask the Minister of Labour, Training and Skills Development to direct a vote of the employees in the affected bargaining unit to accept or reject the employer's last offer to the union on all matters remaining in dispute between the parties.

This request can only be made once in a round of collective bargaining. Such a vote is commonly called a last-offer vote, a final offer vote or a supervised vote. If requested to do so by the employer, the minister must direct the vote – except in the construction industry where the minister's authority to direct a vote is discretionary.

If the parties do not have the ability to engage in a strike or a lock-out, an employer cannot request a last-offer vote. A request for a last-offer vote or the holding of the vote do not affect time limits or periods set out in the LRA.

Request a last-offer vote

An employer may request a last offer vote under section 42 of the LRA by following these steps:

1. Prepare a letter addressed to the Minister of Labour or to the Director of Dispute Resolution Services.
2. Include a copy of the last offer the employer made to the union.
3. Include the contact information for the union, including email and mailing addresses, and phone and fax numbers.

WHY IS EVERYTHING ELSE WRONG

Collective bargaining is the negotiation process between a union and an employer.

The goal of the negotiation is to reach a collective agreement. This is a written agreement that sets out the employment terms and conditions for unionized employees, as well as the rights, privileges and duties of the union, employer, and employees.

Some of the steps that may be part of the negotiation process generally include:

- notice to bargain
- conciliation
- mediation
- strikes and/or lock-outs
- interest arbitration

Beginning the negotiation process

Generally, to begin the negotiation process, the union or the employer must notify the other party that they would like to begin negotiations for a first collective agreement or the renewal of a collective agreement. This is known as providing notice to bargain.

After a union has been certified, or if the employer has voluntarily recognized the union, the union must notify the employer in writing of its desire to start negotiating a first collective agreement.

If there’s already a collective agreement between the parties, either can provide notice to bargain to the other, in writing, within 90 days before the agreement expires or during any period specified within the agreement.

The union and the employer must meet within 15 days from giving notice, unless they agree to a different timeframe.

Bargaining

The union and the employer have a legal duty to meet and to bargain in good faith, and to make every reasonable effort to conclude a collective agreement.

At any time during bargaining, either the employer or the union may ask the Minister of Labour, Training and Skills Development to appoint a conciliation officer, where applicable.

If the union and the employer reach an agreement on their own

If the employer and the union reach a new agreement while bargaining on their own, that agreement has no effect until it is ratified by a vote of bargaining unit employees (in certain circumstances, for example in the construction industry or where a collective agreement is settled by arbitration, a ratification vote is not required).

The union and the employer must also file a copy of the agreement with the Minister of Labour, Training and Skills Development, in Microsoft Word or PDF format. This is required by the Labour Relations Act, 1995 (LRA). Collective agreements are published on the Collective Agreements e-Library website, which houses public and private sector collective agreements filed with the Minister of Labour, Training and Skills Development.

If the union and the employer do not reach an agreement

At any time during bargaining, the union, the employer, or both may ask the Minister of Labour, Training and Skills Development to appoint a conciliation officer, where applicable, to meet with them to attempt to conclude a collective agreement.

In addition to making a request for the appointment of a conciliation officer (a step that is required under the LRA for parties to put themselves in a legal strike/lock-out position) if the union and the employer don't reach a collective agreement, they also have other options to settle their collective agreement. They can:

- continue bargaining
- put the employer's last offer to a vote, if the employer decides to initiate one
- jointly agree to voluntary interest arbitration
- jointly agree to retain the services of a private mediator

Conciliation

Conciliation is a process by which a conciliation officer is appointed by the Minister of Labour, Training and Skills Development to meet with the union and the employer to attempt to conclude a collective agreement. In that meeting, the conciliation officer tries to help the union and the employer resolve their differences so they can reach a collective agreement.

Most parties (except, for example, those governed by Part IX of the Fire Protection and Prevention Act, 1997) must go through the conciliation process before engaging in a strike or lock-out or the next step in bargaining (for example, interest arbitration).

Generally, if your sector or industry is only regulated under the LRA, you must meet with a conciliation officer before you may legally strike or lock out.

If conciliation results in an agreement

If the employer and the union settle their differences concerning the terms of the collective agreement during conciliation, the conciliation officer reports the results to the Minister of Labour, Training and Skills Development.
A ratification vote needs to be held before the new agreement can have effect.

The union and the employer must also file a copy of the agreement with the Minister of Labour, Training and Skills Development, in Microsoft Word or PDF format. This is required by the LRA. Collective agreements are published on the Collective Agreements e-Library website, which houses public and private sector collective agreements in Ontario filed with the Minister of Labour, Training and Skills Development.

If conciliation does not result in an agreement

If the union and the employer don't reach an agreement during conciliation, the conciliation officer will report the outcome to the Minister of Labour, Training and Skills Development and the minister will send a written notice to the union and the employer.

Typically, this notice will inform the parties that a board of conciliation will not be appointed. This is commonly known as a "no-board". Less commonly, the notice will inform the parties that the process to appoint a board of conciliation (a three-person panel that attempts to help the parties agree on the matters referred to the board of conciliation) has been started.

After the minister sends the notice, the union and the employer continue to have a duty to bargain in good faith and attempt to reach an agreement. Until a collective agreement has been concluded, the union and the employer have different options depending on the circumstances, including the following:

- **If the parties are able to engage in a legal strike or lock-out**, the release of the "no-board" notice begins the countdown to the date on which either the employer or the union could begin a legal work stoppage. See sections 79 and 122 of the LRA for rules related to the release of no-board notices, conciliation board reports, and communication by the minister.
- **If the parties are negotiating their first collective agreement**, the union or the employer can apply to the Ontario Labour Relations Board to direct them to interest arbitration to settle the collective agreement in certain circumstances. The Board will determine whether to make that direction.
- **If the parties are not able, or have a limited ability, to strike or lock out,** the release of the "no-board" notice in a compulsory interest arbitration or essential services framework generally enables them to proceed to interest arbitration to resolve the dispute, where applicable.
- **Parties may agree to participate in voluntary interest arbitration**
- **Employers may request a last-offer vote**

Further assistance

Often, the union and the employer discuss the possibility of mediation with the conciliation officer at the end of conciliation, if conciliation has ended without reaching an agreement. As well, a mediator will generally contact the union and the employer after the minister's notice has been released to offer assistance, whether or not mediation was discussed at the end of conciliation.

STRIKES AND LOCK-OUTS

Before a legal strike or lock-out

Unions and employers regulated under the LRA must do the following before they may legally engage in a work stoppage:

- The collective agreement between the union and employer must be expired, or the union and the employer must be negotiating a first collective agreement
- The union and employer must:

- be in a sector that has the ability to strike or lock out
- meet with a conciliation officer appointed by the Minister of Labour, Training and Skills Development
- receive a no-board notice or a notice of a conciliation board's report from the Minister of Labour, Training and Skills Development
- wait until the 17th day after the day the no-board notice is released (or wait until the 10th day after the day a conciliation board's report is released)

- The union must also hold a strike vote and the majority of the votes must be in favour of going on strike. This doesn't apply to employees in the construction industry or those doing maintenance who are represented by a construction-related union if they or another employee in the bargaining unit were referred to the employer by the union.

When a legal strike or lock-out may begin

A legal strike or lock-out may begin on the 17th day after the day the Minister of Labour, Training and Skills Development releases the no-board notice to the employer and the union.

For example, if the date on the notice was August 1, the employees may legally strike and the employer may legally lock out on August 18.

While the minister rarely appoints a board of conciliation, when that occurs, a strike or lock-out may begin on the 10th day after the day the minister releases a conciliation board's report to the parties.

See sections 79 and 122 of the LRA for rules related to the release of no-board notices and conciliation board reports by the minister.

Participating in a work stoppage

Ability to participate in a strike or lock-out

Most employees and employers regulated by the LRA are able to participate in a legal strike or lock-out, as long as they meet the necessary conditions.

Parties that have the ability to legally engage in a strike cam jointly agree to participate in voluntary interest arbitration.

Interest arbitration

Some employees and their employers are not able to engage in a legal strike or lock-out. Instead, they must resolve their differences through interest arbitration. These include:

- ambulance workers, in certain circumstances
- employees of hospitals, as defined in the *Hospital Labour Disputes Arbitration Act* (HLDAA)
- professional firefighters
- provincial correctional officers
- municipal police services employees
- provincial police services employees
- Toronto Transit Commission employees
- employees performing residential construction work in specific geographic areas

Ability to participate in a strike or lock-out if there's an essential services agreement in place

Some employees and their employers have a limited ability to strike or lock out. In these circumstances, the union and the employer are required to sign an essential services agreement that addresses the continued delivery of identified essential services in the event of a strike or lock-out. These include:

- ambulance workers
- certain employees in the Ontario Public Service and designated Crown agency employees (except provincial correctional officers)