

HISTORY OF PROVINCIAL BARGAINING IN ONTARIO



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The Ontario Labour Relations Act (the “LRA”) mandates province-wide multi-employer single-trade bargaining for the industrial, commercial, and institutional (the “ICI”) sector of the construction industry in Ontario. Under the current mandatory province-wide bargaining scheme, there can be only one bargaining agent for the employers (the “ErBA”) and one bargaining agent for the employees (the “EeBA”) for each trade. These provincial bargaining agents have the exclusive bargaining rights for the trades they represent, and the collective agreements they negotiate will bind all employers and all unionized employees in the ICI sector in Ontario.

To an outside observer, the current bargaining system in the ICI sector presents a confusing web of relationships, reflecting history, local practice and organic evolution, devoid of any logical or legal explanation. To fully appreciate how the current system works, it is important to understand its historical root.

The current province-wide bargaining scheme is the product of a series of legislative reforms that sought to curtail the prevalent labour relations mischiefs in the construction industry during the 1960s and 1970s. The history of labour relations legislative reform in the construction industry in Ontario has been an attempt to replace a fragmented model based on individual employer labour relations with a more centralized multi-employer model reflecting the features peculiar to the construction industry.

Until 1977, the construction industry’s complexity was reflected in its fragmented traditional bargaining structure, and as such, two features characterized the bargaining structure in Ontario; (1) collective agreement applied to a local area; (2) each trade negotiated separately. However, this complex pattern of fragmented bargaining relationship created a considerable degree of instability, inter-union rivalry, and industrial conflict. For example, even though the construction industry during the 1960s represented about 7% of non-agricultural labour force and 10% of total union membership, it accounted for nearly 17% of the person-days lost due to strikes.

Despite strong pressures to retain local autonomy, the labour relations mischiefs of the 1960s and 1970s resulted in legislative reforms, transforming bargaining structure. In the end, local bargaining patterns gave way to a province-wide labour relations model.

In 1976, an inquiry into the bargaining patterns in the construction industry was headed by Mr. Franks and resulted in a published report called the “Report of the Industrial Inquiry Commission into Bargaining Patterns in the Construction Industry in Ontario”. This report is often referred to as the “Franks’ Report”. The Franks’ Report stemmed from a recommendation from the representatives from both management and unions that “a system of wider-area bargaining be introduced into the construction industry” in response to the labour relations mischiefs. Mr. Franks engaged in an extensive series of consultations with the parties and called for briefs from unions, employers, and group of purchasers of construction services. Each of three briefs submitted supported a change to province-wide bargaining by trade. As such, Mr. Franks recommended a province-wide multi-employer single-trade bargaining scheme in the ICI sector.

The Franks’ Report resulted in the 1977 Amendment to the LRA to address the fragmented bargaining structure by consolidating the ICI sector collective bargaining on a province-wide basis by trade. The new mandatory province-wide bargaining scheme required employers and unions to designate province-wide bargaining agents who were vested with exclusive bargaining rights for the trades they represent.

The newly amended LRA also put the structure of bargaining out of reach from those at the bargaining table by prohibiting individual bargaining and making the only lawful collective agreement in the ICI sector the multi-employer agreement between the provincial ErBA and the provincial EeBA.

Since 1977, the OLRB has repeatedly invalidated union-management arrangements that were contrary to the LRA’s mandatory province-wide bargaining system. The OLRB, therefore, has made it abundantly clear that only province-wide agreements are valid, and any agreement or arrangement reached without the approval of provincial bargaining agents was null and void.

The current version of the LRA (R.S.O 1995) preserves the mandatory province-wide multi-employer single-trade bargaining scheme introduced by the 1977 Amendment.

The introduction of mandatory province-wide bargaining scheme has consolidated the fragmented bargaining structure as the new scheme reduced the number of negotiations in the ICI sector from 250 in 1977 to 22 in 1978. Although success in curtailing prevalent labour relations mischiefs initially seemed elusive, significant improvements in bargaining outcomes were achieved in the long run, and stability has become the norm in the construction industry since 1977.

While strike activities in Canada as a whole has been declining since the 1980s, the decline has been more pronounced in the construction industry as reflected in terms of the number of strikes, workers involved, and person-days lost.

However, it is important to note that the current system is not static, but rather it is continuously evolving, “as unions grow or decline or supplant one another, and as new construction methods affect the kinds of skills and the kinds of workers involved in the industry”. Even to an insider like me, every day is a new challenge under this continuously changing system.