

NATIONAL ASSEMBLY

FIRST SESSION THIRTY-SIXTH LEGISLATURE

Bill 72

An Act respecting the provision of nursing services and pharmaceutical services

Introduction

Introduced by
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EXPLANATORY NOTES

The object of this bill is to ensure resumption of nursing services by ordering nurses who have ceased to discharge their duties to return to work according to their work schedule as of 4:00 p.m. on 3 July 1999.

The bill provides for certain sanctions to apply in the event that the strike in progress is continued.

The bill modifies certain conditions of employment of nurses, as agreed upon by the parties, and provides for the establishment of a joint committee on the remuneration of nurses.

The bill authorizes the Conseil des services essentiels to intervene in respect of any concerted action involving a body representing the pharmacists working for institutions.

Bill 72

AN ACT RESPECTING THE PROVISION OF NURSING SERVICES AND PHARMACEUTICAL SERVICES

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

DIVISION I

NURSING SERVICES

§1. — *Interpretation*

1. In this Act,

"association of employees" means an association which is certified to represent nurses, in respect of an institution, and which, on (*insert here the date of introduction of this bill*) is a member of, belongs to, is affiliated with or is bound by contract to the federation;

"federation" means the Fédération des infirmières et infirmiers du Québec (F.I.I.Q.);

"institution" means an institution to which the Act respecting the process of negotiation of the collective agreements in the public and parapublic sectors (R.S.Q., chapter R-8.2) applies;

"nurse" means an employee who is a member of the Ordre des infirmières et infirmiers du Québec and who is represented by an association of employees.

§2. — *Resumption of services*

2. As of 4:00 p.m. on 3 July 1999, all nurses who have ceased to discharge their duties by reason of the strike in progress shall return to work in accordance with their work schedule.

3. As of the same time, the institutions shall take the appropriate measures to see that the usual nursing services are provided.

4. Not later than 2:00 p.m. on 3 July 1999, the federation shall recommend to the associations of employees to put an end to the strike in progress and shall make that recommendation public.

5. Not later than 2:00 p.m. on 3 July 1999, every association of employees shall advise the employees it represents of its intention to put an end to the strike in progress.

6. If the federation contravenes section 4, it is guilty of an offence and is liable to the penalties provided for in paragraph 3 of section 10 of the Act to ensure that essential services are maintained in the health and social services sector (R.S.Q., chapter M-1.1). Every association of employees that contravenes section 5 is guilty of an offence and is liable to the same penalties.

§3. — *Administrative sanctions*

7. A nurse who is released to carry on union activities for the association of employees representing the nurse or for the federation on a day or part of a day on which the association contravenes section 4 of the Act to ensure that essential services are maintained in the health and social services sector, shall not be remunerated by the institution for that day or part of day.

In addition, the salary to be paid to the nurse after the association's contravention, according to the applicable conditions of employment, shall be reduced by an amount equal to the amount that would have been paid to the nurse in the absence of contravention.

Every institution which ascertains that an offence has been committed under the first paragraph shall make the deductions resulting from the application of the second paragraph, up to 20% of the salary for a pay period and shall pay the sums to a registered charity within the meaning of the Taxation Act (R.S.Q., chapter I-3), designated by order of the Government.

A nurse who did not participate in the activities of the association of employees or federation that are related to the contravention is entitled to a reimbursement of the deductions made under the second paragraph.

Any disagreement as to the application of this section shall be referred to arbitration as if it were a grievance within the meaning of the applicable conditions of employment.

8. Where an institution ascertains that a certified association of employees representing nurses in the institution's employ has declared or carried on a strike in contravention of section 4 of the Act to ensure that essential services are maintained in the health and social services sector, the institution shall cease to pay, for the period determined under the third paragraph, any salary to any nurse released during that period to carry on union activities for the association or the federation, after so advising the association of employees.

The first paragraph also applies where an institution ascertains that the nurses represented by the association of employees do not comply with section 2 of that Act in sufficient number to ensure that the essential services, as provided in an agreement or list or, if none, as provided in sections 111.10 and 111.10.1 of the Labour Code (R.S.Q., chapter C-27), are maintained.

The cessation of payment prescribed by this section shall continue for twelve weeks for each day or part of day during which the institution has ascertained the existence of circumstances described in the first or second paragraph.

9. The executive director of an institution shall take the necessary measures to ensure that the sanctions provided for in sections 7 and 8 of this Act and sections 18 to 22 of the Act to ensure that essential services are maintained in the health and social services sector are applied not later than from the second pay period after the pay period during which the contraventions occurred.

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

§4. — *Modifications to certain conditions of employment*

10. The conditions of employment of nurses, in force pursuant to section 51 of the Act respecting the process of negotiation of the collective agreements in the public and parapublic sectors, are modified to make the conditions of employment agreed between the parties at the negotiating session of 22 June 1999 and set out in the schedule applicable until the renewal of stipulations negotiated and agreed at the national level.

11. A joint committee on the remuneration of nurses is hereby established.

The joint committee is composed of representatives of the federation, and of representatives of the Conseil du trésor and the management negotiating committee established under section 36 of the Act respecting the process of negotiation of the collective agreements in the public and parapublic sectors.

12. The mandate of the committee is to examine the following matters:

(1) the recognition of separate positions for nurses and nurses with a bachelor's degree;

(2) the admission requirements applicable to those separate positions;

(3) the consideration for salary purposes of post-college training;

(4) the evaluation of positions held by nurses with a bachelor's degree and their ranking in the government system of pay relativity, as well as the review of the evaluation and ranking of positions held by nurses.

The committee shall ensure that its work is coordinated with that of other work groups or committees whose mandate is also to examine the relativity, for salary purposes, of technical, professional or support positions in the public and parapublic sectors.

The committee shall submit to the parties, not later than 30 September 1999, a progress report setting forth matters that have been documented sufficiently to enable an agreement to be concluded during 1999, and matters that will necessitate the work being continued.

The final report of the committee shall be submitted to the parties not later than 31 December 2000.

DIVISION II

PHARMACEUTICAL SERVICES IN INSTITUTIONS

13. At the request of any interested person, the Conseil des services essentiels shall conduct an inquiry into any strike, slowdown or other concerted action, apprehended or in progress, involving a body representing the pharmacists working for institutions and in connection with the negotiations to renew an agreement referred to in section 432 of the Act respecting health services and social services (R.S.Q., chapter S-4.2).

The council may conduct such an inquiry on its own initiative.

14. If the council considers that the strike, slowdown or other concerted action is or is likely to be prejudicial to a service to which the users of institutions are entitled, the council may exercise its powers under sections 111.17 to 111.20 of the Labour Code.

DIVISION III

FINAL PROVISIONS

15. This Act shall not operate to restrict the application of the Act to ensure that essential services are maintained in the health and social services sector.

16. This Act comes into force on (*insert here the date of assent to this Act*).

SCHEDULE
(*section 10*)

CONDITIONS OF EMPLOYMENT AGREED BETWEEN THE PARTIES AT THE NEGOTIATING SESSION OF 22 JUNE 1999

Transfers

1. Vacant positions are posted within a period of 90 days from the day the positions become vacant except where they are covered by a special measure. In that case, they are posted within a period not exceeding 12 months from a notice relating to the special measure.

Positions temporarily deprived of an incumbent

2. An employee registered on an availability list assigned, for a scheduled period of six months or more, to a full-time position temporarily deprived of its incumbent is considered to be a full-time employee during that period, and the benefits associated with full-time status are applied to the employee.

3. The parties may agree locally on any question related to the float team, in particular questions related to the conditions for the assignment of employees.

4. When no assignment is available for an employee on the float team, the assignment held by an employee on the availability list may be given to the employee on the float team. The employee on the availability list concerned is the employee with the least seniority among those who have an assignment with less than 20 days left and for which the employee on the float team meets the requirements.

5. An employee registered on the availability list may be assigned in advance. The assignment may not be disputed by the employee and may not be claimed by another employee by reason of seniority, if not more than seven days remain before the date of the beginning of the assignment.

6. An employee holding a part-time position who temporarily leaves that position in order to obtain an assignment in the employee's centre of activities, is not obliged to continue in the assignment if the number of days of the assignment becomes less than that of the employee's position.

7. During the period of annual vacation, an employee on the availability list may be assigned to replace more than one employee on annual vacation. The assignments are given within 30 days of the posting of the annual vacation schedule.

8. Before recruitment agency nurses are called upon, an assignment in a local community service centre of 14 days or less or of an undetermined length of time that was not granted in whole to an employee on the availability list is divisible and is offered, by order of seniority, according to the availability expressed, in the following order:

(1) to employees who hold part-time positions in the centre of activities;

(2) to other employees registered on the availability list.

However, when it becomes foreseeable that the length of an assignment, which was undetermined, will be greater than 14 days, this paragraph ceases to apply following a notice of seven days to the employees concerned.

Workload complaint procedure

9. Where a complaint filed with the Committee on Nursing has not been settled:

(1) one of the parties may, within five working days from the date the Committee's recommendations are received, require the intervention of a resource person. That person is responsible for collecting the facts and attempting to bring the parties to an agreement within a period of five working days;

(2) the parties agree on the choice of the resource person within 10 working days. Failing agreement, the person is appointed by the Minister of Health and Social Services;

(3) if the complaint is not settled, the resource person files a written report and the evidence collected with each party and the designated arbitrator in accordance with paragraph 4;

(4) the employee concerned or the association of employees may request arbitration within 30 days of the date the resource person's report is filed. The parties agree upon the choice of the arbitrator. Failing agreement, the arbitrator is appointed by the Minister of Labour;

(5) the arbitrator decides the complaint summarily after receiving the parties' observations. The decision of the arbitrator must contain reasons and be rendered in writing within three weeks following the arbitrator's appointment. The arbitrator transmits the decision to the Minister of Health and Social Services as well as to the parties. The decision is executory and binding on the parties. Unless otherwise indicated therein, the decision must be put into application within 30 days, except if it is absolutely impossible;

(6) the expenses and fees of the resource person and of the arbitrator, if any, are borne by the employer.

Conversion of replacement hours into positions

10. The parties agree on the importance of converting replacement hours into positions so as to contribute to the reduction of precarious employment among the employees.

To that end, a parity committee is set up in each institution. The local parties undertake, in the four months following the coming into force of this Act, to convert replacement hours into positions. Such conversion is to be effected to the extent justified by the needs.

For that purpose, the parties use as an annual basis for calculation the budget period in which there was the lowest number of replacement hours in the 12 months preceding the coming into force of the schedule. These hours include the hours worked in the certification unit by employees on the availability list, those worked by the replacement team, excluding those worked by surplus personnel, those worked by an employee of another certification unit and those worked by recruitment agency nurses, to which are added overtime hours worked to replace a complete work shift.

The parties analyze the number of hours so obtained and, in order to reduce them, take into account

(1) the number of hours of positions that were created following a conversion of replacement hours into positions and the number of replacement hours attributable to vacant positions. Those hours are those worked since the end of the reference month and do not include those attributable to development;

(2) the number of hours worked as replacement for positions that have been abolished;

(3) the number of hours involving a conversion affecting employment;

(4) the recurrent nature of absences;

(5) the frequency of simultaneous absences per work shift or part of work shift as well as per day of the week;

(6) the need to ensure that the creation of positions does not lead to a shortage of staff or an increase in the number of hours worked.

The employer must post the number of positions corresponding to the total number of hours resulting from the conversion. The number must be posted within 30 days of the end of the work by the committee.

The parties agree to promote as much as possible the conversion of replacement hours into full-time positions. The conversion is carried out by the creation of positions in the following manner:

(1) first in the centres of activities where justified by the needs:
— first full-time positions;
— then part-time positions in accordance with the procedure established for the assignment of part-time positions;

(2) then by float team positions or compound positions or compound positions of which the float team is a component:

— first full-time positions;

— then part-time positions in accordance with the procedure established for the assignment of part-time positions.

Where, in one of the preceding steps, the number of work days not recovered following the procedure established for the assignment of part-time positions is lower than four days per two-week period, the employer may also post a compound position including more than one position title in the same centre of activities or in more than one centre of activities or consider that the float team is a component of the compound position, despite the definition of compound position. The parties agree locally on the administrative arrangements necessary for the management of the compound positions.

The local parties may agree to set up interdepartmental float teams. The employees on such a team are called upon to work exclusively within a limited number of pre-determined centres of activities.

The parties may also agree upon any other arrangements capable of maximizing the effect of the provisions of this paragraph.

For the purpose of participation in the work of the parity committee, the employer grants days of leave without loss of salary to one or several employees in the proportion established as follows:

— from 1 to 49 employees: 10 days
— from 50 to 99 employees: 21 days
— from 100 to 299 employees: 42 days
— 300 employees and more: 60 days.

For the purposes of the preceding paragraph, the number of employees included in the certification unit is the number of employees on 1 January of the current year.

Institutions affected by a total closure or change of vocation following the publication of the regional boards' three-year plans for the reorganization of services are exempted from the application of this paragraph.

Two years after the conversion of replacement hours into positions has been effected, the parties shall effect another conversion.