



Labour Relations Board

INFORMATION BULLETIN APPLICATION FOR CERTIFICATION

June 5, 2014

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PURPOSE

This bulletin provides general information and guidance about the procedures that ought to be followed in the certification process pursuant to the [*Labour Relations Act*](#). It is for information purposes only; it is not Labour Relations Board policy and it is not legislative interpretation. Further, it is not legal advice.

INTRODUCTION

The *Labour Relations Act* provides a process for employees to join or form a trade union. A trade union may become the exclusive bargaining agent for a unit of employees in two ways. It may be voluntarily recognized by an employer or a union may apply to the Labour Relations Board for certification.

If a trade union applies to the Board for certification, employees will be provided with an opportunity to vote on whether or not a union will represent them (subject to Section 47(2) of the *Act*).

As per Section 36(1) of the *Act*, a trade union claiming to have as members in good standing of a majority of employees of 1 or more employers in a unit may, subject to the rules of the Board and in accordance with this section, make application to the board to be certified as bargaining agent of that unit (refer to the Board's website for a copy of the appropriate application form).

The way in which the union proves support for the application is by presenting union membership cards signed by the employees of a specific employer.

Certified unions require employers to bargain in good faith. Likewise, the Union must act in good faith throughout the process. This usually results in a collective agreement. Such an agreement covers all employees in the bargaining unit.

I. OVERVIEW

The Labour Relations Board supervises the certification process by receiving applications from trade unions, processing the applications or disposing of these applications.

II. APPLICATION FOR CERTIFICATION

To begin the process, the trade union must file an application for certification in the form prescribed by the Board and the application must meet several criteria. It must be properly signed in accordance with the *Act* and must be verified by affidavit or declaration by the appropriate union officials; it must be timely (see *Rules* 18 and 49); it must be accompanied by membership evidence showing that a majority (see 36(1) of the *Act*) of the employees in the bargaining unit applied for support the union; the bargaining unit applied for must be an appropriate unit; the application must contain the correct legal name of the employer and the union. These criteria are generally reviewed below and may vary in some cases (see Sections 36 to 38 of the *Act*). It should be noted that Section 38.1 of the *Act* deals specifically with bargaining units in relation to applications for certification for offshore platforms.

Application Form

Unions must file an [Application for Certification](#) form with the Board. The form is available at the Board's offices or on the Board's website at www.gov.nl.ca/lrb/.

A complete application for certification includes:

- a completed application form signed on behalf of the union;
- a completed affidavit or declaration, which forms part of the application; and
- evidence in the form of membership cards/applications for membership of a majority of the employees in the unit applied for.

Section 2(1)(w) of the *Act* defines a “trade union” or “union” as a local or provincial organization or association of employees, or a local or provincial branch of a national or international organization or association of employees within the province that has as one of its purposes the regulation in the province of relations between employers and employees through collective bargaining but does not include an organization or association of employees or a council of trade unions that is dominated or influenced by an employer.

Section 2(1)(x) of the *Act* defines “unit” as a group of 2 or more employees determined in accordance with this *Act* for the purposes of collective bargaining.

The President and Secretary or two officers of the trade union, or a person authorized to do so by resolution of the trade union, must sign the application. It is required that the application must be verified by affidavit or statutory declaration that the facts set out therein are true to the best knowledge of the applicant; this forms part of the application. This means that it must be signed by the officers of the trade union in the presence of a commissioner for oaths or a solicitor/lawyer who witnesses the signing. One of the Board's staff is a commissioner for oaths and can assist an applicant in having the document sworn. If an application is filed that has not been verified by statutory declaration, it cannot be processed until it has been sworn. (See Section 135 of the *Act* and Section 5 of the [Labour Relations Board Rules of Procedure](#)).

Unions must file their constitution and by-laws and names and addresses of its officers with the Board if they are not already on file with the Board (See Section 19 of the *Rules*).

Timeliness

Applications are subject to time limits. These are outlined below.

No existing Collective Agreement

An application can be made at any time, if there is no existing collective agreement or certification order covering employees in the unit.

Previous Applications

Where an application for certification has been refused by the Board, the union must wait six months to file a new application for the same or substantially the same unit of employees. The Board may in special circumstances reduce this time by granting special leave to the union upon an application by the union.

Existing Collective Bargaining Relationships

Where there is an existing certification or collective agreement in place, unions may apply for certification during the following open periods:

- within the last two months of an existing collective agreement with a two-year or less term; or,
- within the 11th or 12th month of the second or subsequent year of an existing collective agreement with a term of more than two years, or in the two months before the end of the term.

Proof of Support

Certification applications must be accompanied by evidence of support of employees in the proposed bargaining unit. Upon filing, a trade union must show on the face of the application that it has evidence of over 50% employee support. Membership evidence is an application for membership in the union signed not more than 90 days prior to the filing of the application for certification with the Board (See Section 49(1) of the *Rules and Information Bulletin* titled Membership Evidence).

Appropriateness of the Bargaining Unit

Applicants provide their own bargaining unit description as part of the application for certification. The Board determines if the proposed unit is appropriate for collective bargaining. The Board may modify the proposed bargaining unit. If it is not appropriate, certification will not be ordered.

Union's Name

The Board uses a trade union's legal name and local number, if applicable, on certification orders. Many unions use an abbreviation (e.g., CUPE, IBEW) but each union has only one true legal name. It must be properly identified with the issuance of any Board Order.

Employer's Name

Employers operate under a variety of names, including divisions, trade names, abbreviations or names of institutions. Each employer should use and be referred to by its proper legal name. Geographical references, division names or institution names are more appropriately put in the description of the bargaining unit.

III. PROCESSING THE APPLICATION

When an application, with supporting evidence of support in the form of membership cards, is received by the Board in proper form, the Chief Executive Officer ("CEO") appoints a Board Officer to the file. The affected parties are notified of the application in writing. The officer investigates the application and prepares a report which is provided to the parties for comment. Subject to Section 47(2) of the *Act*, a vote may or may not be required to determine if the Union will be certified. These steps are generally reviewed below and may vary in some cases.

Please refer to the Information Bulletin titled **Application for Certification – the Steps** (June 2014).

Appointing an Officer

When an application is received, the CEO appoints an Officer to investigate. Board Officers are impartial employees of the Board. They do not advocate for employees, unions or employers. They make inquiries and gather information to assist the Board in making its decisions.

The Officer begins by reviewing the union's status as a trade union. The Board presumes a previously certified organization is a trade union within the meaning of the *Act*. If not previously certified, the union must satisfy the Board that it has met the filing requirements of the *Act*.

Notifying the Parties

The CEO sends written notice to the employer, trade union and any other party known to be affected by the application. The notice contains:

- a copy of the application (**names of employees who signed union membership cards is confidential to the Board and is not supplied to the employer**);
- information about the possible employee representation vote, including copies of relevant legislation; and

- information about the filing of a reply to the application and a response to the reply.

The Board's *Rules of Procedure* provides a time limit of **10 calendar days** for the affected parties to file a written reply to the application (Section 7(2)). When such replies are filed, they are sent to the applicant and any other affected party with a time limit of **5 calendar days** in which they may file a response to the reply (Section 9.1)). Responses are sent to the parties for information only. Please refer to the Policy Circular titled **Applications, Replies and Interventions** which is accessible on the Board's website. Applications, replies or interventions must be verified by affidavit or statutory declaration unless the Board directs otherwise (see Policy Circular titled Applications, Replies, and Interventions).

Officer's Involvement

The Officer contacts the employer to discuss the application, including:

- generally acquainting the employer with the procedures which the application will undergo;
- informing the employer of the possibility and logistics of a secret ballot vote, if one is required;
- discussing the bargaining unit applied for; and
- explaining the procedure for the parties to file replies and responses to replies to the application.

The Officer seeks from the employer:

- a contact person, phone and fax number;
- the name of the employer's legal counsel, if any;
- an employee list, with classifications. In accordance with the Board's *Rules of Procedure*, this list must **immediately** be provided to the Officer upon receipt of the application (Section 26(3) of the *Rules*);
- the number of work sites, their location(s), shift time(s)s and names of employees working at each site; and
- any other information required at this time.

The Officer obtains a complete list of employees, indicating the work site and classification of each employee. This list will be supplied to the union. The Officer, union and employer discuss which persons the parties believe are included in, or excluded from, the bargaining unit applied for by the union for the purpose of preparing either an employee list or a voters' list in the event that a vote is required. Section 47 of the *Act* outlines the legislation as it pertains to a vote.

If necessary, the Officer may review the employer's records for the purpose of attempting to verify the employee list supplied by the employer. Information may be needed on whether the employees are full-time, part-time, casual, or employed in managerial or confidential labour relations positions. The officer may ask the employer to identify which employees worked on the date of application, this is most important with respect to construction industry applications.

Where a vote is required, a voters list is prepared by the officer and includes the names of employees whose ballots may be disputed by either party.

The vote taken shall be taken at the time and place, or by mail, as the Board determines. The Officer will work with the union and employer to review the date(s), place(s) and time(s) suitable for voting.

Where a vote is required, it must be conducted within five working days of the Board's receipt of the application or the Board's order for a vote unless exceptional circumstances apply (see Section 47(5) of the *Act* and Sections 26 and 50 of the Rules of Procedure which deal with the conduct of representation votes by the Board).

The Vote

If a vote is required, the Officer prepares a Notice of Vote and arranges for its posting at the work site. The Notice should be posted in a conspicuous place where it will come to the attention of the employees. The Board has Policy circulars on [Procedure for Secret Ballot Votes](#) and [Representation Votes](#) which are accessible to the parties on its website.

The officer conducts the secret ballot vote at the set time(s) and place(s). Representatives of the union and the employer are entitled to be present to act as scrutineers during the voting. In certain circumstances, votes may be conducted by mail.

Any ballots in dispute are segregated by the Officer during the voting process. The segregation process is discussed in the Policy circular titled [Procedure for Secret Ballot Votes](#).

Officer's Report

After the vote has been conducted and the reply and response are filed by the parties, the officer completes the investigation and prepares a report which is given to the parties. The report includes:

- the proper name of the applicant union;
- the proper name of the employer;
- a summary of the views of the parties on the appropriate bargaining unit;
- a calculation of the level of employee support;
- whether the union has met the majority support level;
- the positions of the parties on any disputed ballot or dispute over inclusions or exclusions of positions;
- a discussion of any outstanding issues raised by the parties during the investigation; and
- a list of employees in the unit. **Note that** the Officer prepares two employee lists - one which is released to the parties showing persons employed in the bargaining unit applied for, but will not show if they supported the application. The second list is **confidential to the Board**; it outlines the union's membership evidence and employee support for the application for the purposes of the Board.

The written report of the Officer is sent to all the parties.

Comments on the Report

All parties may comment on some or all of the contents of the Officer's report. The parties are given **two (2) business days** to reply to the report. The replies must be verified by affidavit or statutory declaration (See Section 11(3) of the *Rules*).

IV. DISPOSING OF THE APPLICATION

Board meetings are held regularly to review applications. Hearings may or may not be held to assist the Board in its consideration of applications.

Board Meetings

The Board meets to review the file which includes the application, the replies and responses filed by the parties, the Officer's report including the employee list showing the support of the employees for the application, the replies to the Officer's report, and any other relevant documents. The Board will assess whether or not a hearing is required before making a decision.

In making its decision, the Board determines whether or not the unit applied for is appropriate for collective bargaining. Where it considers it relevant, the Board may determine other issues raised by the parties such as inclusions in or exclusions from the unit, or disputed ballots. If a vote has been taken and the union has employee support in excess of 40% of the appropriate bargaining unit, the Board may order that the ballots be counted and the success of the application depends on the results of the vote. If the Board determines that the bargaining unit is not appropriate for collective bargaining, or that when the inclusions and exclusions are determined the union does not have the requisite support of the employees, the Board may reject the application for certification. Circumstances may exist which will cause the Board to reject the application and order that the ballots cast in connection with the application be destroyed, i.e., that the ballots cast in the vote will not be counted.

The Hearing

If the Board determines that a hearing is necessary, hearing date(s) will be set. The hearing is before a three-person panel consisting of the Chair (or a Vice-Chair), one employer representative and one employee representative, all of whom are Board members.

Evidence and argument are presented by the parties. The parties may be represented by legal counsel. Please refer to the Policy Circular titled [Scheduling of Hearings](#) which is accessible on the Board's website.

Following consideration of the evidence and argument adduced at the hearing, the Board determines

the relevant issues related to the application.

Certification Order

If the Board issues a certification order, the trade union and employer receive original copies. The certificate includes the proper names of the trade union and employer, the bargaining unit description and the date of certification.

Section 50 of the *Act* sets out the effect of granting a certification regarding the exclusive authority of the bargaining agent of a unit.

All decisions of the Board are issued in the form of Board Orders. Where there is no hearing held, Orders are issued following Board meetings. If a party wishes to have written reasons for the Board's decision, a written request for reasons can be filed with the Board within 30 calendar days of the party's receipt of the Board Order. Where a formal hearing has been held, written reasons for decision are generally issued together with the Board Order (See Section 12 of the *Act* and Section 16 of the *Rules*).