

Effective: November 17, 2010

INFORMATION BULLETIN PROCESSING APPLICATIONS, COMPLAINTS AND REFERENCES
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PURPOSE

This bulletin provides general information and guidance about how the Labour Relations Board (the “Board”) processes applications, complaints and references and describes the procedures used. It is for information purposes only.

The Board is responsible for the interpretation and application of certain provisions of various labour relations statutes. This document applies to proceedings under those pieces of legislation, which, among others, include the [Labour Relations Act](#), the [Public Service Collective Bargaining Act](#) and the [Fishing Industry Collective Bargaining Act](#). The [Labour Standards Act](#) provides minimum standards of conditions of employment in the Province. Following a labour standards decision, the Board has authority to review determinations made by the Director of Labour Standards and make orders it deems appropriate upon application to it for such review.

Under the [Occupational Health and Safety Act](#), the Board has authority to determine, upon an application made to it, whether an employer or a union has taken discriminatory action against the worker for a reason set out in section 49 of the Act. The Board is also the appeal body for stop work or other orders made by or confirmed by the assistant deputy minister of Occupational Health and Safety.

INTRODUCTION

Under the authority of section 22 of the *Labour Relations Act*, the Board has developed the [Labour Relations Board Rules of Procedure](#) (“Rules”) which govern the procedure of the Board. All matters are submitted to the Board as either applications, complaints or references. In this Bulletin, the word “application” is used to include all of these proceedings before the Board.

Section 6 of the Rules requires that where forms are prescribed by the Board, these are required to be used. The forms prescribed by the Board are:

- an application for certification;
- an application for revocation or termination of bargaining rights; and,
- an application for accreditation.

The Rules provide specific rules for certain applications, which specify the information that shall be contained in such applications. These are described in their own Information Bulletins or in the Rules. The procedures described in this Bulletin apply in addition to the specific procedures on the following types of applications:

- unfair denial of union membership complaints under section 30 of the *Labour Relations Act* (section 29 of the Rules);
- applications respecting access to employees under section 34 of the *Labour Relations Act* (section 30 of the Rules);
- applications as to whether an undertaking is a special project under section 69 of the *Labour Relations Act* (section 31 of the Rules);
- references to the Board by an arbitration board under section 89(1) of the *Labour Relations Act* (section 32 of the Rules);
- sale of business applications under section 93 of the *Labour Relations Act* or section 44 of the *Public Service Collective Bargaining Act* (section 33 of the Rules);
- trade union successorships under section 94 of the *Labour Relations Act* (section 34 of the Rules);
- change of name of a trade union under section 95 of the *Labour Relations Act* (section 35 of the Rules);
- unfair labour practice complaints under section 122 of the *Labour Relations Act* (section 36 of the Rules and an Information Bulletin);
- complaints alleging unlawful strikes and lockouts under section 18.1 of the *Labour Relations Act* (sections 36.1 and 36.2 of the Rules);
- duty of fair representation complaints under section 130 of the *Labour Relations Act* and section 43 of the *Public Service Collective Bargaining Act* (section 37 of the Rules and an Information Bulletin);
- applications for review of an order or decision of the Board under section 19 of the *Labour Relations Act* (section 38 of the Rules);
- applications for certification under section 36 of the *Labour Relations Act* (section 39 of the Rules and an Information Bulletin);
- applications for revocation of certification under section 51 of the *Labour Relations Act* (section 40 of the Rules and an Information Bulletin);
- references or applications under section 17 and 18(k) of the *Labour Relations Act* (section 45 of the Rules);
- references for first collective agreement under section 81 of the *Labour Relations Act* (section 46 of the Rules);
- common employer applications under section 88.1 of the *Labour Relations Act* (section 47 of the Rules); and,
- applications for determination of a jurisdictional dispute under section 9.1 of the *Labour Relations Act* (section 48 of the Rules).
- requests to the chairperson to appoint a conciliation officer to assist the parties in collective bargaining under section 13 of the *Teachers' Collective Bargaining Act* (section 52 of the Rules)

- requests relating to essential employees under section 10 of the *Public Service Collective Bargaining Act* (section 54 of the Rules);

FILING AN APPLICATION

All applications to the Board must be in writing, filed by mail, courier, fax or personal delivery. An application is considered to be filed at the time it is received by the Board and must be verified by affidavit or statutory declaration of the party submitting it. (Section 5 of the Rules)

When applications are received by the Board, there are general requirements that must be met. As stated earlier, these are set out in the *Labour Relations Board Rules of Procedure* and are discussed below.

Section 135 of the *Labour Relations Act* sets out who should sign applications to be Board, whether they are filed by an employer, natural person, corporation or a trade union or employers' organization. Section 55 of the Rules also deals with the signing of applications or notices to the Board.

Section 5 of the Rules requires that every application, reply and intervention shall be filed in writing with the Board and shall be verified by affidavit or statutory declaration of the party submitting it. The affidavit or statutory declaration verifies that the facts set out in the application are true to the best knowledge of the party filing it. This means that it must be signed 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 a party in having a document sworn.

PROCESSING AN APPLICATION

The Chief Executive Officer ("CEO") of the Board is responsible for reviewing all applications filed to ensure that they are properly signed and dated, are sworn by affidavit or statutory declaration and, where specific rules dictate the information that shall be contained in the applications, that the proper information is included. If the application is not complete, the CEO may formally or informally request further particulars from the party filing the application. If the application is not complete and the required information is not forthcoming, the CEO may refuse to process the application until all the necessary information is provided.

When an application is found to be in order, a copy of it is sent to the parties named in the application for reply. Section 7 of the Rules requires that the CEO also send a copy of the application to a party known by the CEO to be affected by the application. At that time, the CEO usually appoints a Board Officer to investigate and/or mediate a settlement of the application. The Labour Relations Board Officers employed by the Board are impartial and assist the Board in the processing of applications. They do not advocate for employees, unions or employers.

Section 8 of the Rules provides that a party desiring to intervene as an interested party in an application to the Board may request a copy of an application and file a reply to the application within the time specified.

The Board's Rules provide a time limit of **10 calendar days** for the affected parties to file a written reply to the complaint (section 7(2)). When such replies are filed, they are sent to the complainant and any other affected party with a time limit of **5 calendar days** in which they may file a response to a 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. All replies and responses filed with the Board must be verified by affidavit or statutory declaration. There is one exception to this practice. Where Section 7 of the *Occupational Health and Safety Regulations, 2009* provides a 14 calendar day time for the filing of a reply to applications or appeals filed under the *Occupational Health and Safety Act*, this is the time provided for the filing of a reply. However, other than this distinction, these applications and appeals are processed in accordance with the Board's Rules as discussed herein.

If a party to an application is unable to file a reply or response within the time limit prescribed by the Rules, the party may write to the CEO requesting an extension of time to file the document, citing the reason for the request. Pursuant to Section 15(2) of the Rules, the CEO is authorized to grant a short extension of time. If an extension for an extended period of time is sought the request will likely be placed before the Board for consideration. The Board considers such requests pursuant to Section 15(1) of the Rules.

The Board Officer meets with all of the parties to investigate the matter and assist them to reach a settlement, where possible. If a resolution cannot be reached, the Officer files a detailed report with the Board setting out the facts surrounding the application and the positions taken by the parties in relation to it. This written report of the Officer is sent to the parties (or their representatives). The parties may comment on some or all of the contents of the Officer's report. Any comments which the parties wish to make in relation to the report must be filed with the Board within **two (2) working days** of their receipt of the report (section 11(3) of the Rules).

DISPOSING OF AN APPLICATION

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

Board Meetings

The Board meets to review the file which includes the application, replies and responses filed by the parties, the officer's report, 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.

If the Board determines that the application is without merit, it will be rejected. If the Board grants the application, it will order appropriate remedies or make the determination requested by the applicant.

The Hearing

If the Board determines that a hearing is necessary, hearing date(s) will be set. Hearings normally take place in the Board's hearings room located in the Beothuck Building, St. John's, NL. The hearing panel consists of three Board members, the Chairperson (or a Vice-Chairperson), an employee representative and an employer representative. At the hearing, each party presents evidence and introduces documents to support its case.

In unfair labour practice complaints alleging that an employee is dismissed from employment in contravention of the *Labour Relations Act*, the Board policy dictates that an early hearing date be set. The hearing will be cancelled if a settlement of the complaint is achieved or if the Board dismisses the complaint upon a review of the file. If there is no settlement, and if, following a review of the file, the Board determines that a hearing is necessary, then the CEO will confirm to the parties that the hearing will take place on the date the parties were instructed to reserve for a hearing. Please refer to the Policy Circular titled [Scheduling of Hearings](#) which is accessible on the Board's website.

Further, in a complaint alleging that an employee has been dismissed from his or her employment in contravention of the *Labour Relations Act*, the Board Rules state that the Employer shall proceed first in the order of presentation of evidence and the order of submissions at a hearing (section 28).

Other sections of the Rules that deal with hearing procedures are section 17 (consolidation of proceedings), section 22 (summons to give evidence), section 27 (pre-hearing procedures) and section 28 (hearing procedure in relation to the presentation of evidence and the order of submissions at a hearing).

Following the completion of the hearing, the Board will consider the evidence and arguments adduced at the hearing and will issue a decision.

Issuance of Board Decisions

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 receipt of the Board Order. Where a formal hearing has been held, written reasons for decision are generally issued together with the Board Order (section 12 of the *Act* and section 16 of the Rules).