

February 10, 2010

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| <p>INFORMATION BULLETIN REVOCATION OF CERTIFICATION TERMINATION OF BARGAINING RIGHTS</p> |
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PURPOSE

This bulletin provides general information and guidance about the procedures that must be followed when a group of employees apply under Section 51 of the [Labour Relations Act](#) to terminate the bargaining rights of their union. 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

Unions acquire the right to engage in collective bargaining for a unit of employees either by being certified by the Labour Relations Board or by being voluntarily recognized by an employer. When unions negotiate and enforce a collective agreement, they are exercising their bargaining rights.

The *Labour Relations Act* provides a process for employees in the bargaining unit to apply to have these bargaining rights terminated, or revoked. The employees must file an “[Application for Revocation of Certification or Termination of Bargaining Rights](#)” with the Board.

I. OVERVIEW

The Labour Relations Board (the “Board”) supervises the revocation process by receiving applications from employees, processing the application and disposing of the application.

II. APPLICATION FOR REVOCATION OF CERTIFICATION

To begin the process, an employee or employees (on behalf of a group of employees) must file an Application for Revocation of Certification with the Board in the form prescribed by the Board. The application must meet several criteria. It must be accompanied by a petition signed by at least 40% of the employees in the bargaining unit; it must be filed with the Board at a time when employees are allowed to apply for revocation; it must be properly signed in accordance with the *Act* and must be verified by affidavit or declaration by the person(s) filing it. These criteria are generally reviewed below. (See Sections 51 and 52 of the *Act*).

Timeliness

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

The Board is not required to deal with an application for revocation of certification:

- Within the period of 12 months immediately following the date of certification of the union;
- Within the period of 6 months immediately following the date when a previous application to revoke certification was refused by the Board; or
- Within the period of 12 months immediately following the date when the bargaining agent by notice required an employer to start collective bargaining, if the notice was given.

An application can be made twelve months following the date of certification.

Application Form

Employees in the bargaining unit must file an “Application for Revocation of Certification” form with the Board. The form is available at the Board’s offices or on the Board’s website at www.hrle.gov.nl.ca/lrb/.

A complete application for revocation of certification includes:

- a completed application form signed on behalf of the employees;
- a completed affidavit or declaration, which forms part of the application; and
- a petition signed by at least 40% of the employees in the bargaining unit. (see “Proof of Support” section below).

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 applicant employee(s) 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.

It is important to identify who is the applicant as that person will be the contact person for the Board during its investigation. Employees may use an agent or legal counsel as their contact if they wish.

The only employee name that the Board reveals to the parties is that of the applicant; it does not reveal who signed the petition.

Employees should ensure that they do not discuss their plan to file an application for revocation with management personnel of their Employer as this may jeopardize the validity of the application and petition. Such applications should not be employer sponsored or supported.

An application may be filed at the Board’s offices by delivery in person, by courier or by mail. It is considered to be filed at the time it is received by the Board.

Proof of Support

The application must be accompanied by a petition signed by at least 40% of the employees in the bargaining unit. Section 40 of the [*Labour Relations Board Rules of Procedure*](#) requires that the petition must contain the name, address, signature and date signed of each of the petitioners. The only name released by the Board is that of the applicant (the person(s) who signed the application). The Board does not release the names of the employees who signed the petition; this information remains confidential to the Board.

When circulating a petition to gather signatures, the organizer(s) of the petition should ensure that:

- the petition contains a statement of intent at the top of each page explaining the purpose of the petition;
- each person who is presented with the petition is given an opportunity to read the statement at the top of the petition; this ensures that the individual understands what he/she is supporting by signing the petition;
- the signing of the petition by the affected employees is voluntary;
- the signatures are not gathered during working hours; and
- the petition must contain the signatures of at least 40% of the employees in the bargaining unit. (See Section 51.1(1) of the *Act*).

III. PROCESSING THE APPLICATION

When an application is received by the Board in proper form, the Chief Executive Officer (“CEO”) appoints a Board Officer to the file. The affected parties, in this case, the union and the employer, are notified of the application in writing. The officer contacts the parties to arrange for a vote to be taken unless the parties agree in writing that no vote is necessary. The officer investigates the application and prepares a report which is provided to the parties for comment. These steps are generally reviewed below and may vary in some cases.

Appointing an Officer

When an application is received, the CEO appoints a Board Officer. 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.

Notifying the Parties

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

- a copy of the application, excluding the petition (**names of employees who signed the petition is confidential to the Board and is not supplied to the union or the employer**);

- a copy of the statement of intent at the top of the petition with the supporting signatures removed (the parties are advised of the number of signatures which the petition contains);
- information about the possible secret ballot vote, including copies of relevant legislation; and
- information about the filing of a reply to the application and a response to a 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 the 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.

Officer's Involvement

The officer contacts the parties to discuss the application, including:

- generally acquainting the applicant employee(s), the union and the employer with the procedures which the application will undergo;
- informing the parties of the possibility and logistics of a secret ballot vote, if one is required; and,
- explaining the procedure for the parties to file replies and responses to replies to the application.

The officer seeks from the employer a list of employees in the bargaining unit and their classifications. It is also necessary to find out the number of work sites, their location(s), shift times and names of employees working at each site. Where a vote is required, the voters' list is prepared by the officer and includes the names of employees whose ballots may be disputed by either party. (Where there is a collective agreement in effect, there is less likely to be any dispute over which employees are included in the bargaining unit). The officer, applicant, union and employer review the date(s), place(s) and time(s) suitable for voting. The vote must be conducted within 5 working days of the Board's receipt of the application, unless exceptional circumstances apply. (See Sections 26 and 50 of the Board's *Rules of Procedure* which deal with the conduct of representation votes by the Board).

The Vote

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 the Board's website.

The officer conducts the secret ballot vote at the set time(s) and place(s). Representatives of the applicant, 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 replies and responses filed by the parties, the officer completes a report which is given to the parties. The report includes:

- the name and particulars of the applicant employee;
- the proper name of the respondent trade union;
- the proper name of the employer;
- a calculation of the level of employee support for the application, whether the application is supported by at least 40% of the employees in the bargaining unit;
- the positions of the parties on any disputed ballots;
- whether there exists a collective agreement and, if so, the date of expiry of the agreement;
- a discussion of matters which have been resolved by the parties and any outstanding issues raised by the parties during the investigation; and
- a list of employees affected by the application. **Note** that the officer prepares two employee lists – one is released to the parties showing the employees in the bargaining unit and whether or not they voted, but will not show if they supported the application. The second list is **confidential to the Board** and does show which employees supported the application by signing the petition.

The written report of the officer is sent to all the parties affected by the application.

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) working days** to file a 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 supporting petition, the 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.

Once the Board is satisfied that the application is timely, that it is supported by at least 40% of the employees in the bargaining unit, and determines all outstanding issues in relation to the application, where a vote has been taken, the Board may order that the ballots be counted and the success of the application depends on the results of the vote. The Board grants the application for revocation if a majority of the employees vote in favour of revoking/terminating the bargaining rights of the union. The certification will continue in the event that less than a majority of the employees vote in favour of the application.

The Hearing

If the Board determines that a hearing is necessary, hearing date(s) are 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. If there is evidence that would cause the Board not to terminate the bargaining rights of the union, the application is rejected by the Board.

Revocation Order

If the certification order is revoked by the Board, this means that the union's bargaining rights are cancelled. The employer is no longer required to bargain collectively with the trade union and any collective agreement in existence is no longer in effect between the parties. All parties receive notice of the Board's decision. (See Section 51(4) of the *Act*).

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*).

V. CHECK LIST FOR APPLICATION FOR REVOCATION

Ensure that the application includes:

- a completed application form signed on behalf of the employees, including the affidavit or statutory declaration; and
- a petition signed by at least 40% of the employees in the bargaining unit.