

March 17, 2010

INFORMATION BULLETIN UNFAIR LABOUR PRACTICES

PURPOSE

This bulletin provides general information to employees, individuals, trade unions and employers in order that they may better understand Board procedures. It is for information purposes only; it is not Labour Relations Board policy and it is not legislative interpretation. Further, it does not provide legal advice.

INTRODUCTION

The *Labour Relations Act* protects the right of employees to become a member of a trade union and to participate in its activities (section 5). The *Act* also states that employers shall not interfere with the selection, formation or administration of a union (section 23). Trade unions are not permitted to use coercion or intimidation to compel any person to join a union (section 28).

An unfair labour practice complaint is an allegation that a named party (an employer, an employers' organization, a trade union or an individual acting on behalf of one of those organizations) has engaged in an activity that is prohibited under the provisions of the *Labour Relations Act*.

I. OVERVIEW

Some examples of the types of allegations which may be made follow.

An employer, employers' organization or a person acting on behalf of an employer or employers' organization can be alleged to have:

- participated in or interfered with the selection, formation or administration of a trade union or contributed financial or other support to a trade union (section 23(1));
- refused to employ or to continue to employ a person or otherwise discriminated against a person in regard to employment because that person is a member of a trade union (section 24(1)(a));
- imposed conditions in a contract of employment seeking to restrain an employee from exercising his or her rights under the *Act* (section 24(1)(b));
- sought by intimidation, coercion, threat of dismissal or other kind of threat, or by the imposition of a monetary or other penalty or by other means to compel a person to refrain

from becoming or to stop being a member, officer or representative of a trade union (section 25(1));

- discriminated against a person in regard to employment or conditions of employment or suspended, discharged or imposed a financial or other penalty on a person employed by him because of that person having become a member, officer or representative of a trade union (section 25(2)(a) and (b));
- threatened to shut down or move a plant or a part of a plant in the course of a labour dispute (section 26);
- altered rates of wages or another term or condition of employment after having received written notice from the Board that a trade union has made an application for certification (section 45);
- failed to bargain in good faith (sections 74(a) or 75(a));
- altered rates of wages or another term or condition of employment without the prior consent of the bargaining agent where notice of collective bargaining has been given (sections 74(b) or 75(b)).

A trade union or a person acting on behalf of a trade union can be alleged to have:

- used coercion or intimidation with a view to encouraging or discouraging membership in or activity in or for a trade union (section 28(1));
- attempted, at an employer's place of employment during the working hours of an employee of the employer, to persuade the employee to become or refrain from becoming or continuing to be a member of a trade union (section 28(2));
- failed to bargain in good faith (sections 74(a) or 75(a));

II. FILING A COMPLAINT

Who may file a complaint?

Pursuant to section 122 of the *Act*, any person, employee, trade union, council of trade unions, employer or employers' organization may file a complaint with the Board. A complaint must be signed by the person or employee making it, by an authorized manager of a corporation, by the president and secretary or by any 2 officers of a trade union or employers' organization or by a person authorized for that purpose by a resolution duly passed at a meeting of the trade union or employers' organization (section 135 of the *Act* and section 55 of the [Labour Relations Board Rules of Procedure](#)).

What should it include?

A complaint with the Board must, in accordance with Section 36 of the Board's *Rules of Procedure*, include the following information:-

- the name and address of the complainant;

- the name and address of the person who is alleged to have failed to comply with the section or sections of the *Act*; and,
- a concise statement of the facts and circumstances upon which the complainant relies in alleging that the party named has failed to comply with the section or sections of the *Act*.

There is no specific complaint form prescribed by the Board. A complainant should file a complaint by writing a letter to the Board which includes the above-noted information. In addition to the information stated above, the complaint should also include the following:

- the name and address of the employer, if applicable;
- the provision of the *Act* alleged to have been contravened, for example, a statement that the complaint is filed pursuant to Section 122 of the *Labour Relations Act* alleging that the named party has violated Section 23(1) of the *Act*;
- a statement of the remedy the complainant is seeking from the Board; and
- copies of any relevant documents that the complainant has referred to in the complaint and intends to rely upon.

The complaint must be signed and verified by affidavit or statutory declaration that the facts set out therein are true to the best knowledge of the complainant. This means that it must be signed by the complainant 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 complainant in having the document sworn. If a complaint is filed that has **not** been verified by statutory declaration, it cannot be processed until it has been sworn.

A complaint may be filed at the Board's offices by delivery in person or by courier, or by mail or by fax. It is considered to be filed at the time it is received by the Board.

It is strongly recommended that employees or representatives of organizations who wish to file such complaints review some previous decisions of the Labour Relations Board by contacting one of the Board officers who can provide copies of previous decisions. These decisions explain the reasoning of the Board and the principles which the Board applies to decide whether provisions of the legislation have been violated. All Board decisions are also available on the Board's searchable Decision System which can be found on our website at www.hrle.gov.nl.ca/lrb/ Questions may be addressed to one of the Labour Relations Board Officers at telephone number (709)729-2707.

III. PROCESSING THE COMPLAINT

When a complaint is filed, it is reviewed by the Chief Executive Officer (CEO) or Deputy Chief Executive Officer (Deputy CEO) of the Board. The Board also employs Labour Relations Board Officers. All employees of the Board are impartial and assist the Board in the processing of complaints and applications. They do not advocate for employees, unions or employers.

Upon receipt of a complaint alleging that an employee has been dismissed in violation of the *Act*, the Board has adopted a policy of having the CEO, in consultation with the Chairperson, instruct the

parties to reserve a date for a hearing not less than three weeks from receipt of the complaint. A Policy Circular titled [Scheduling of Hearings](#) is accessible on the Board's website. This will be discussed further in the Hearings section of this bulletin.

The complaint is reviewed by the CEO to ensure that the complaint is complete and contains all of the required information. If the complaint is found to be in order, a copy of the complaint is sent to the affected parties for reply. At that time, the CEO appoints a Board Officer to attempt to effect a settlement of the complaint.

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 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.

The Board Officer meets with all of the parties in order to assist them in resolving the complaint. If a resolution cannot be reached, the Officer files a detailed report with the Board setting out the facts surrounding the complaint and the positions taken by the parties in relation to the complaint. 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*).

All replies and responses filed with the Board must be verified by affidavit or statutory declaration.

IV. DISPOSING OF THE COMPLAINT

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

Board Meetings

The Board meets to review the file which includes the complaint, 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.

The Board may refuse to inquire into a complaint in respect of a matter that, in the opinion of the Board, could be referred by the complainant to an arbitrator, arbitration board or other body under a collective agreement.

If the Board determines that the complaint is without merit, the complaint will be rejected. If the Board upholds the complaint, it can impose certain remedies. The Board's remedial powers are described in section 123 of the *Act*. The remedies which may be imposed by the board are intended

to restore the complainant to the position that he/she/it would have been in had the contravention of the legislation not occurred.

The remedies are:

The Board:

- shall issue a directive to the named party to do or to stop doing the act in respect of which the complaint was made (a cease and desist order);
- may, in the same or a later directive, require the named party,
 - to reinstate an employee suspended or discharged contrary to those provisions,
 - to pay to an employee or former employee suspended or discharged contrary to the provisions of the *Act* compensation not exceeding the amount that, in the opinion of the board, would have been paid by the employer to the employee,
 - to rescind a disciplinary action or monetary or other penalty taken or imposed contrary to the provisions of the *Act*,
 - to pay a person compensation not exceeding the amount that in the opinion of the board is equivalent to the monetary or other penalty imposed on a person contrary to the provisions of the *Act*.

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.

As mentioned earlier, in unfair labour practice cases alleging that an employee is dismissed from employment in contravention of the *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 *Act*, the Board's *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).

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*).