

**ONTARIO LABOUR RELATIONS BOARD
INFORMATION BULLETIN NO. 33**

**Accreditation in the Construction Industry
Under s. 136 of the *Labour Relations Act, 1995* (NON-ICI)**

Where a union or council of unions represents the employees of more than one employer, an employers' organization may apply to the Board to be accredited as the bargaining agent for all employers in one or more sector of the construction industry (other than ICI) and in the geographic area for which the union or council of unions has bargaining rights.

The Board determines an appropriate unit of employers by reference to geographic areas and sectors of the construction industry. If the employers' organization represents a majority of employers in the unit and that majority of employers employs a majority of the employees, the employers' organization will be accredited as the bargaining agent, provided that:

1. it is a properly constituted organization which has been vested with appropriate authority by each of the employers it represents;
2. it has not received trade union support, and
3. it does not discriminate against any person because of any ground of discrimination prohibited by the *Human Rights Code* or the *Canadian Charter of Rights and Freedoms*.

With respect to the vesting of authority, evidence of membership in the employers' organization is not necessary; evidence that employers have vested appropriate authority in the organization to enable it to discharge the responsibilities of an accredited bargaining agent (that is, have authorized the employers' association to bargain and enter into a collective agreement on their behalf) is sufficient.

On accreditation, all the rights, duties and obligations of employers for whom the employers' organization becomes the bargaining agent apply, with necessary modifications, to the accredited employers' organization.

As long as the employers' organization is entitled to represent the employers, individual bargaining between the union and employers is prohibited and any such agreement entered into is void.

In order to be accredited as the exclusive bargaining agent for all the employers in a unit of employers, the employers' organization must not only

represent a majority of employers in the unit of employers, but the employers it represents must have employed a majority of the employees who were employed by all the employers in that unit of employers in the week immediately before the application was made to the Board.

A complete application for accreditation consists of the Board form, a copy of the Applicant's charter, constitution or by-laws; a description of the unit of employers, including the appropriate geographic area and sector; and the Applicant's List of Employers.

The Board issues a Confirmation of Filing, providing a Response Date. The Response Date is the last day for the Applicant to file evidence of membership of employers or evidence of authorization by employers; it is also the date by which the respondent trade union must file its response and Employer lists; finally, it is the date by which an intervening organization (interested employers' organizations or trade unions) must file their interventions.

The Applicant must file a declaration concerning representation documents not later than two days after the Response Date.

The Response must set out in detail the unit of employers the Responding Party trade union claims is appropriate for accreditation, which must include a description of the unit of employers, including the geographic scope and sector.

The Application and Response must be accompanied with their requisite Employer Lists.

Applicant's list: Employers in proposed bargaining unit, as defined by geographic scope and sector. The list will include (a) member employers of the organization; (b) non-member employers who have given the organization authorization to bargain on their behalf; and (c) other employers who could be in the geographic scope and sector applied for.

Responding Party trade union's list: Employers who have had employees working in the proposed bargaining unit in the year immediately preceding the application (may overlap with Applicant's list).

If the Responding Party proposes a different geographic area or sector for the bargaining unit, the Responding Party should include a second list of employers with employees in its proposed geographic area. The purpose of this list is to highlight the differences in geographic areas between the bargaining unit proposed by the Applicant and the bargaining unit proposed by the Responding Party.

The Board sends notice of the application (and any meetings) to any employers' organization or trade union identified by the Applicant or Respondent as having an interest in the application. Interested parties must file an intervention setting out their claim to participation in the proceeding.

A Mediator is assigned to the file to assist the parties in compiling a list of potentially affected or interested employers, to facilitate the resolution of outstanding issues, and to ascertain the method and manner of publication of the notice to employers.

Once the Board has obtained the Mediator's report and has made the initial determination of employers in the unit of employers, the Board fixes an Employer Filing Date and may set the matter down for hearing, if necessary. The Employer Filing Date is the last day for any employer to file the Employer Filing in Accreditation (with a list of employees, including place of work and description of project), a statement of objection, or any other issue.

The Board reviews what has occurred between the parties and with the Labour Relations Officer, and issues a decision directing the publication of a Notice to All Employers of the proposed Accreditation, as well as its posting on the Board's website. The purpose of the Notice is to advise every employer who might be affected by the Accreditation of the application.

Every employer who receives notice of the application must file the requisite Employer Filing. This is essential for the Board to be able to make a final determination as to the number of employers on the respective lists.

An Employer Filing should contain the following information:

- whether the Responding Party trade union is entitled to bargain on behalf of employees working in the proposed bargaining unit;
- whether the employer has employed workers affected by the application within the last year;
- whether the weekly payroll is representative; if it is not, the employer should explain the discrepancy;
- further submissions, if any, with respect to the application; and
- list of employees.

Before granting the accreditation, the Board must determine:

1. the Responding Party trade union represents employees of more than one employer in the construction industry;
2. the Applicant is a properly constituted employers' organization that represents and has been vested with authority by employers in the construction industry;
3. the description of the appropriate bargaining unit;
4. the number of employers in the bargaining unit on the application date who have had employees in their employ in that unit within the last year and whose employees are represented by the Responding Party trade union;
5. the number of such employers represented by the Applicant on the application date;
6. whether the Applicant represents a majority of such employers;
7. the number of employees of such employers on the payroll of each such employer for the weekly payroll period prior to the date of application (or such other payroll period as the Board considers advisable); and
8. whether the employers represented by the Applicant employed a majority of such employees.

The Board may schedule a hearing if necessary to make any of the above determinations. Notice of hearing will be sent by the Registrar to the Applicant, Responding Party, and every other party that filed a timely intervention or Employer Filing in Accreditation.

An accredited employers' organization has a duty to fairly represent the employers in the bargaining unit for which it is accredited and must not deny or terminate membership, except for fair and reasonable cause, or charge initiation fees, dues, or assessments that are, in the opinion of the Board, unreasonable or discriminatory.

For more information see the Board's website and Rule 23 of the Board's Rules of Procedure.

Applications to terminate an accreditation will be handled by the Board in a process similar to accreditation. There are no Board Forms for terminating an accreditation, and no Information Bulletin.