

**ONTARIO LABOUR RELATIONS BOARD
INFORMATION BULLETIN NO. 7**

**Termination of Bargaining Rights in the Construction Industry
Under Section 132 of the Labour Relations Act**

This Information Bulletin describes the procedures to be followed when an employee or group of employees in the construction industry applies under section 132 of the Labour Relations Act to terminate the bargaining rights of their union. Subsections 63(3) – 63(18) apply to applications under s. 132. For information on the procedures for termination applications outside of the construction industry, please refer to Information Bulletin No. 2 - Termination of Bargaining Rights Under Section 63 of the Labour Relations Act.

It is important for the parties in a termination application to read and comply with the directions in this Bulletin and the Board's Rules of Procedure. Failure to do so may result in the application or other materials not being processed by the Board.

If 40 percent or more of the employees who were at work in the bargaining unit on the Application Filing Date appear to have expressed a wish not to be represented by the union, a representation vote will usually be held five (5) to eight (8) days after the termination application is delivered to the union and employer (the "Delivery Date") or the date on which the application is filed with the Board (the "Application Filing Date"), whichever is later. People who are eligible to vote are those individuals who were at work and employed in the bargaining unit on the Application Filing Date. The Board may not order a vote if the application is made outside of the time periods provided for in the Act (please see pages 8-9 for information on when these time periods are) or if the Board finds that the employer or a person acting on behalf of the employer initiated the application or threatened, coerced or intimidated employees in connection with the application.

Employees can get all of the materials necessary to file a termination application from the Board at any time. The materials that are necessary for a union to respond to a termination application, or for an employer to intervene in a termination application, are delivered to them by the applicant employee(s). (The term "applicant" means the employee or group of employees who is applying to terminate the union's bargaining rights.)

Parties to a termination application are required to "deliver" to the other parties and "file" with the Board a variety of documents within a specified number of "days". The words "day", "deliver" and "file" are defined in the Board's Rules of Procedure to have very specific meanings. It is very

important that you apply the following meanings to each of these words whenever they appear in this Bulletin.

- "Day" - does not include weekends, statutory holidays or any other day on which the Board is closed. (Rule 1.5)
- "Delivered" - Material is considered to be "delivered" on the day that it is actually received by the party to whom it is sent. (Rule 6.7) Where delivery is permitted and accomplished by way of facsimile transmission, the fax confirmation sheet should be retained by the sender in case delivery, or the time of delivery, is later challenged.
- "Filed" - *With the exception of the Application for Termination of Bargaining Rights*, material is considered to have been "filed" with the Board on the date it is actually received by the Board provided that it is received between the hours of 8:30 a.m. and 5:00 p.m. on a day on which the Board is open. Materials received after 5:00 p.m. will be deemed to have been filed with the Board on the following business day. (Rules 3.4, 3.5 and 24.2)

I. FILING AND DELIVERY OF THE TERMINATION APPLICATION

In order to apply to terminate a union's bargaining rights, an applicant must fulfil the following filing and delivery requirements.

1) Filing of Termination Application with the Board

The applicant must file the following materials with the Board. These materials may be filed using any means except Registered Mail, e-mail or facsimile transmission:

- (i) one signed original of the completed **Application for Termination of Bargaining Rights Under section 132 of the Act, Construction Industry** (Form A-77);
- (ii) any **evidence** that employees do not wish to be represented by the union. This evidence must be in writing and signed by each employee concerned and it must indicate the date on which each signature was obtained;
- (iii) a **list of employees**, in alphabetical order, corresponding with the evidence filed; and

- (iv) a **Declaration Verifying Evidence of Employee Wishes** (Form A-80).

(Rules 26.1 and 26.2)

On the date the Board receives the termination application, a Confirmation of Filing is sent to the applicant. The Confirmation of Filing confirms that the application has been filed with the Board, and provides the applicant with the Application Filing Date (see below) and the Board File Number assigned to the application.

2) Application Filing Date

The Application Filing Date assigned to an application depends on the method used to file the application:

- (i) If the application is sent to the Board by Canada Post's Priority Courier service, the Application Filing Date is the date the application was accepted by Canada Post.
- (ii) If the application is sent to the Board by any method other than Canada Post's Priority Courier service, the Application Filing Date is the date the Board actually receives the application.
- (iii) If the application is filed electronically, the date of filing is the date on which the application was sent (the date recorded in the return e-mail which automatically generates upon successful e-mail submission)

The applicant is required to set out the Application Filing Date in paragraph 3 of its application.

(Rule 24.2)

An application may be filed electronically by attaching it and the included material to a Form A-108.

3) Delivery of Construction Termination Package (Union) to the Union

The applicant must deliver a Construction Termination Package (Union) to the union no later than two (2) days after the Application Filing Date. The Package may be delivered by facsimile transmission, hand delivery, courier, or any other method agreed to by the parties. The Construction Termination Package

should be delivered to the senior union official responsible for the bargaining unit.

The Construction Termination Package (Union) consists of the following materials arranged in the following order:

- (i) one **Notice to Union of Application for Termination of Bargaining Rights Under Section 132 of the Act, Construction Industry** (Form C-34). The applicant must fill in their name and the union's name on page 1 and the date on page 3 before making the delivery;
- (ii) one copy of the completed **Application for Termination of Bargaining Rights Under Section 132 of the Act, Construction Industry** (Form A- 77);
- (iii) one blank **Response to Application for Termination of Bargaining Rights Under Section 132 of the Act, Construction Industry** (Form A-78);
- (iv) one **Information Bulletin No. 7 - Termination of Bargaining Rights in the Construction Industry Under Section 63 or 132 of the Act**;
- (v) one **Information Bulletin No. 8 - Vote Arrangements in the Construction Industry**;
- (vi) one **Information Bulletin No. 10 - Status Disputes in Termination Applications in the Construction Industry**; and
- (vii) one copy of Part V of the **Board's Rules of Procedure**.

(Rules 26.3 and 26.4)

4) Delivery of Construction Termination Package (Employer) to Employer

The applicant must also deliver a Construction Termination Package (Employer) to the employer no later than two (2) days after the Application Filing Date. This Package may be delivered by facsimile transmission, hand delivery, courier or any other method agreed to by the parties.

The Construction Termination Package (Employer) consists of the following materials arranged in the following order:

- (i) one **Notice to Employer of Application for Termination of Bargaining Rights Under Section 132 of the Act, Construction Industry** (Form C-35). The applicant must fill in their name and the union's name on page 1 and the date on page 3 before making the delivery;
- (ii) one completed **Application for Termination of Bargaining Rights Under Section 132 of the Act, Construction Industry** (Form A-77);
- (iii) one blank **Intervention in Application for Termination of Bargaining Rights Under Section 132 of the Act, Construction Industry** (Form A-79);
- (iv) a blank Confirmation of Posting (Form A-124);
- (v) one blank **Excel Schedule C, Construction Industry** (List of Employees) and the instructions for filing Excel Schedules with the Board, found at Tab 4 of the Spreadsheet;
- (vi) one **Information Bulletin No. 7 - Termination of Bargaining Rights in the Construction Industry Under Section 132 of the Act**;
- (vii) one **Information Bulletin No. 8 - Vote Arrangements in the Construction Industry**;
- (viii) one **Information Bulletin No. 10 - Status Disputes in Termination Applications in the Construction Industry**; and
- (ix) one copy of Part V of the **Board's Rules of Procedure**.

(Rules 26.3 and 26.4)

Note: The applicant is NOT to deliver to the union or the employer a list of names of people who have expressed a wish not to be represented by the union, evidence of those wishes or a copy of the Declaration Verifying Evidence of Employee Wishes (Form A-80).

II. APPLICANT CONFIRMS DELIVERIES

The applicant may request to be permitted to deliver the Construction Termination Package (Union) and/or Construction Termination Package (Employer) by an alternative means and/or request an extension of the time within which to make the deliveries.

(Rule 6.6)

Unless the Board has granted the applicant an extension of time within which to make the deliveries, the applicant must file a Certificate of Delivery (Form A-81) verifying delivery to the union and employer no later than two (2) days after the Application Filing Date. The Certificate of Delivery may be filed by any means, except facsimile transmission, e-mail or Registered Mail. Along with the Certificate of Delivery, applicants who filed their application using Canada Post's Priority Courier service must also file with the Board a copy of the postal receipt. (This is so that the Board can confirm the Application Filing Date).

If the applicant has not requested an extension of time and the Board does not receive a Certificate of Delivery confirming the applicant's deliveries to the union and the employer within two (2) days of the Application Filing Date, the matter may be terminated.

(Rule 24.3)

III. BOARD CONTACTS THE PARTIES TO CONFIRM THAT THE APPLICATION HAS BEEN FILED

On the day the Board receives the Certificate of Delivery, or the date the Certificate of Delivery indicates the employer and the union will receive the Construction Termination Package, whichever is later, the Board sends a Confirmation of Filing of Application for Termination of Bargaining Rights under Section 132 of the Act, Construction Industry to the union, applicant, and employer. This letter confirms that the application has been filed with the Board, provides the Application Filing Date, Delivery Date and Board File Number, reiterates the union and employer's obligations that are set out in their Notices of Application, and directs the employer to make and post copies of the Notice to Employees and the Application for Termination of Bargaining Rights (Form A-77).

The Board also contacts the union and employer by telephone on the same day or the following day to again confirm that the application has been filed, to clarify the union and employer's obligations, and to advise that a vote will normally take place five (5) to eight (8) days after the date on which the union and employer received the Construction Termination Package or the Application Filing Date, whichever is later.

IV. UNION'S OBLIGATIONS

The Union is required to deliver a completed Response to Application for Termination of Bargaining Rights Under Section 132 of the Act, Construction

Industry (Form A-77) to the applicant and the employer, and file it with the Board, no later than two (2) days after it received the Construction Termination Package (Union) from the applicant.

If the applicant seeks to terminate bargaining rights in the **industrial, commercial and institutional sector** of the construction industry, the Union is also required to deliver a copy of the application to the relevant employee bargaining agency and to the affiliated bargaining agents of the employee bargaining agency, no later than two (2) days after it received the Construction Termination Package (Union) from the applicant.

Delivery may be made by hand delivery, courier, facsimile transmission or email if permitted by Rule 6.4(d). Filing may be done by any means, except facsimile transmission, e-mail or Registered Mail. One copy of the Response must be filed with the Board if it is filed electronically; otherwise one (1) signed original and (1) copy must be filed.

At the earliest opportunity, the union is required to advise the Board as to whether the employer has complied with its posting obligations (as described in the next section) by filing with the Board, by facsimile transmission, a Confirmation of Posting (Form A-124).

A response may be filed electronically by attaching it and any included material to a Form A-108.

(Rule 26.5)

V. EMPLOYER'S OBLIGATIONS

1) Post Application and Notice to Employees

Upon receipt of the Confirmation of Filing, the employer must IMMEDIATELY make and post copies of both the Application for Termination of Bargaining Rights under Section 132 of the Act, Construction Industry (Form A-77) and the Notice to Employees of Application for Termination of Bargaining Rights (Form C-36). These documents are to be posted adjacent to one another in a sufficient number of locations so that they are likely to come to the attention of all persons affected by the application. The employer must then confirm to the Board that it has completed the postings by filing with the Board the completed Confirmation of Posting (Form A-124).

The Notice to Employees of Application for Termination of Bargaining Rights under Section 132 of the Act, Construction Industry advises employees that an employee or group of employees has applied to terminate the union's

bargaining rights, directs them to the adjacent Application for details about the application, notifies them that a secret ballot vote will likely be held, and, if it is, that it will normally take place five (5) to eight (8) days after the Delivery Date or Application Filing Date, whichever is later, advises them of their rights, including the right to make statements to the Board about the application, and alerts them to look for future postings that will inform them of voter eligibility, the date, time and location of the vote, and the date and location of meetings with Labour Relations Officers and Hearings, if any.

2) File and Deliver List of Employees (Schedule C)

Whether or not the employer wishes to participate in the proceedings, it must file with the Board and deliver to the applicant and the union a completed Schedule C, Construction Industry (List of Employees) no later than two (2) days after it received the Construction Termination Package (Employer). Filing may be done by any means except facsimile transmission, e-mail or Registered Mail. Delivery may be completed by hand delivery, courier, facsimile transmission or by e-mail if permitted by Rule 6.4(d). One copy of the Schedule C must be filed with the Board if it is filed electronically. If the employer is not filing an intervention, it must confirm its deliveries of Schedule C by filing with the Board, at the same time it files its Schedule C, the Certificate of Delivery that forms page 2 of Schedule C.

The Schedule C assists the Board in determining which employees are eligible to vote. All employees who were at work in the bargaining unit on the Application Filing Date are to be included on Schedule C.

(Rule 26.5)

In addition to the hard-copy version, the Schedule should also be sent to the Board in Excel format by email to vote.coordinator@ontario.ca (please note that the Board will accept ONLY these Schedules by email – no other material can be filed with the Board by email). Pre-formatted Excel versions of these documents may be found on the Board’s website (www.olrb.gov.on.ca).

Copies of the schedule should also be provided by email to the primary contact for the Applicant and the Union. The Applicant and the Union should indicate their challenges on the appropriate column in the Excel Schedule, and send them by email to vote.coordinator@ontario.ca, with a copy to the primary contact for the Employer.

3) If it Wishes to Participate in the Application, the Employer is Required to File and Deliver an Intervention

If the employer wishes to participate in the application, it must file with the Board and deliver to the applicant and union a completed Intervention in

Application for Termination of Bargaining Rights Under Section 132 of the Act, Construction Industry (Form A-79) no later than two (2) days after it received the Construction Termination Package (Employer). It must also file with the Board the Certificate of Delivery that forms part of the intervention form, confirming that it has delivered a copy of the intervention and the Schedule C to both the applicant and the union. One copy of the intervention must be filed with the Board.

Filing may be done by any means except facsimile transmission, e-mail or Registered Mail. Delivery may be made by hand delivery, courier, facsimile transmission or by e-mail if permitted by Rule 6.4(d).

(Rule 26.5)

VI. BOARD ORDERS THE VOTE

1) Vote Arrangements Determined

The Board's Vote Co-ordinator examines the vote arrangement proposals filed by the applicant and union (and employer if it is participating in the application), and sets the vote arrangements.

In setting the vote arrangements, the Co-ordinator considers the parties' submissions, the number of voters, the employees' regular working hours, and the cost to the Board. The Co-ordinator typically accommodates any agreed-upon arrangements, but if it is determined that they are unsuitable because they are too costly or do not adequately allow employees the opportunity to vote, or if there is no agreement, the Co-ordinator normally sets the arrangements without further consultation with the parties.

In the normal course, the vote takes place on the employer's premises and/or job site(s) between five (5) and eight (8) days after the Application Filing Date or the date the application is delivered to the employer, whichever is later.

For more detailed information on vote arrangements, refer to Information Bulletin No. 8 - Vote Arrangements in the Construction Industry and the Board's Notice Regarding Electronic Voting, available on the Board's website.

2) Vote Ordered

If 40 percent or more of the employees in the bargaining unit appear to have expressed a wish not to be represented by the union, the Board orders that a vote be held among the employees in the bargaining unit.

The Board may not order a vote at this point if the applicant, union or employer provides information that raises an issue about the timeliness of the application. In order to be timely, applications must be made during one of the "open periods" provided for in the Act. Generally, these open periods are:

(i) Existing Collective Agreement [132(3)]

If there is an existing collective agreement that is for a term of three (3) years or less, the application can be made after the commencement of the last two (2) months of its operation. If there is an existing collective agreement that is for a term of more than three (3) years, the application can be made in the last two (2) months of its third year of operation, the last two (2) months of each following year, and after the commencement of the last two (2) months of its operation.

(ii) Union Not Certified - Existing First Collective Agreement [132(2)]

Where the union was voluntarily recognized by the employer and a first collective agreement between the employer and the union is in effect, in addition to the open periods described above, a termination application may be brought after the 305th day of the agreement's operation and before the 365th day of its operation.

(iii) Following Expiry of Agreement

The entitlement to make an application after the expiry of the agreement depends on whether a conciliation officer has been appointed and whether a legal strike has started. If a conciliation officer has been appointed, an application cannot be made until at least a year after the appointment of the conciliation officer.

(iv) Union Certified But no Collective Agreement [132(1)]

If the union has been certified (as opposed to voluntarily recognized) and no collective agreement has yet been made, an application can be made six months after the date of the certification.

For more detailed information on the open periods, please refer to sections 67 and 132 of the Labour Relations Act.

The vote may also be delayed if the union alleges that the employer or someone acting on behalf of the employer initiated the application or threatened, coerced or intimidated employees in connection with the

application. The Board considers the nature of the allegations and determines whether it is appropriate to hold a hearing into the matter before ordering a vote.

The vote may also be delayed if there is disagreement between the applicant, union and/or employer about the number of employees in the bargaining unit.

If a vote is ordered, a Board decision ordering the vote and a Notice of Vote and of Meeting (Form B-63) is sent by the Board to the applicant, union and employer. These documents set out the date, time and place of vote, the directions concerning sealing the ballot box or segregating or counting the ballots where appropriate, and the date on which the Regional Meeting with a Board Officer will take place. The union and the employer are also provided with a copy of the Declaration Verifying Evidence of Employees Wishes (Form A-80) at this time.

3) Employer to Post Decision and Notice to Employees

Upon receipt, the employer must immediately post copies of the decision and the Notice of Vote and of Meeting adjacent to each of the earlier posted Notices to Employees of Application for Termination of Bargaining Rights under Section 132 of the Act. The employer must then confirm to the Board that it has completed the postings by filing with the Board a completed Confirmation of Posting (Form A-124). The union must also, at the earliest opportunity, advise the Board as to whether the employer has completed the postings by filing with the Board by facsimile transmission an Confirmation of Posting (Form A-124).

VII. PRE-VOTE CONSULTATION PROCESS

A Board Officer contacts the parties, usually over the telephone, after the vote has been ordered but before it is held in an effort to reach agreement between the parties on all issues surrounding the vote, including: the voters list, which is developed from the Schedule C (List of Employees) provided by the employer; the correct bargaining unit description; the correct name of the union and the employer; and the timeliness of the application.

Agreements reached during the pre-vote consultation process are confirmed by the Officer in writing and sent to the parties. In the interests of fairness and finality, parties cannot later raise issues about matters to which they have earlier agreed.

VIII. VOTING DAY

1) Conduct of the Vote

The vote is conducted by a Board Officer. Individuals who have been selected by the parties to be scrutineers must arrive at the polling place 15 minutes in advance of the voting to receive instructions, examine the ballot box, and otherwise assist the Board Officer in the preparation of the polling place.

At the outset of the voting, each scrutineer is provided with a copy of the voters list (if any). They are asked to assist in the identification of voters and to mark voters' attendance on the list as they present themselves to the Officer to vote. Scrutineers are advised that any questions asked by individuals regarding their eligibility to vote or any other matter should be directed to the Board Officer.

The names of any individuals whose eligibility to vote is challenged are marked as such on the voters list at the outset and their ballots are segregated. Individuals whose names do not appear on the voters list are permitted to vote and their ballots are also segregated.

Generic ballots that do not identify the union or employer by name are used. However, a Notice that sets out their names is placed in every voting booth.

The scrutineers are given an opportunity to sign a Conduct of Vote form after the vote is completed. Signatories to this form certify that the balloting was fairly conducted, that all eligible voters were given an opportunity to cast their ballots in secret, and that the ballot box was protected in the interest of a fair and secret vote.

2) Further settlement discussions

On the day of the vote, the Officer who conducts the vote engages the parties in settlement discussions on any issues that remain in dispute. All agreements are recorded in writing.

3) Counting the Ballots

Ballots may or may not be counted on the day of the vote, depending on the directions of the Board, the agreements of the parties, and the discretion of the Board Officer. It may be necessary in some circumstances to seal the ballot box until outstanding disputes have been resolved.

4) Report of Vote Provided and Posted

The Board Officer conducting the vote normally provides a Board Officer's Report of Vote to the parties on the day of the vote. This Report sets out whether the ballots were counted and, if so, the outcome of the vote, and

explains that parties have five (5) days to file objections to the vote. Upon receipt, the employer is required to immediately post copies of the Report adjacent to each of the earlier posted Notices to Employees of Application for Termination of Bargaining Rights and then confirm that it has completed the postings by filing with the Board a Confirmation of Posting (Form A-124). The union must also, at the earliest opportunity, advise the Board as to whether the employer has completed the postings by filing with the Board a Confirmation of Posting (Form A-124).

5) Electronic voting

For specific procedures regarding electronic voting, see the Board's Notice Regarding Electronic Voting, posted on the Board's website.

IX. AFTER THE VOTE

1) Statement of Representations

Any person who wishes to say something to the Board concerning the vote or any other previously unidentified issue remaining in dispute must file a statement of representations with the Board and deliver a copy of the statement to the applicant, union and employer, whose names and addresses can be found on the application form. This statement may be filed by any means except facsimile transmission, e-mail or registered mail, and must be received by the Board and the other parties no later than five (5) days after the day of the vote.

(Rule 11.3)

2) Status Disputes

Submissions about challenges to any ballot that was cast and sealed, and the basic facts in support of the challenges, must be delivered to the other parties and filed with the Board within the same five (5) day period.

Any party wishing to file a response to the challenges may do so within a further five (5) days (that is, 12 days after the Board's decision ordering the vote).

3) Other Issues

If there are issues other than status disputes to be litigated in the application for certification, they must be fully pleaded **within fifteen (15) days of the initial date of the Board decision** (in the case of an application under

section 128.1—card-based) or **fifteen (15) days of the date of the representation vote** (where one is held), in the case of an application under section 8 (vote-based). In either case, the submissions must include substantial particulars of the facts on which the party raising the issue(s) relies and a statement of the legal issues that party wishes to argue.

A Case Management Hearing will be scheduled before a panel of the Board to begin the adjudication of the dispute. There will be no Regional Certification Meeting.

For a further description of the adjudication of disputes in construction industry applications for certification, please read Information Bulletin No. 10: Status Disputes in Certification Applications in the Construction Industry .

Board hearings are open to the public unless the panel decides that matters involving public security may be disclosed or if it believes that disclosure of financial or personal matters would be damaging to any of the parties. Hearings are not recorded and no transcripts are produced.

The Board issues written decisions, which may include the name and personal information about persons appearing before it. Decisions are available to the public from a variety of sources including the Ontario Workplace Tribunals Library, and over the internet at www.canlii.org, a free legal information data base. Some summaries and decisions may be found on the Board's website under *Highlights* and Recent Decisions of Interest at www.olrb.gov.on.ca.

IMPORTANT NOTE

IN ACCORDANCE WITH THE *ACCESSIBILITY FOR ONTARIANS WITH DISABILITIES ACT, 2005*, THE BOARD MAKES EVERY EFFORT TO ENSURE THAT ITS SERVICES ARE PROVIDED IN A MANNER THAT RESPECTS THE DIGNITY AND INDEPENDENCE OF PERSONS WITH DISABILITIES. PLEASE TELL THE BOARD IF YOU REQUIRE ANY ACCOMMODATION TO MEET YOUR INDIVIDUAL NEEDS.