

ONTARIO LABOUR RELATIONS BOARD INFORMATION BULLETIN NO. 1

Certification of Trade Unions

This Information Bulletin describes the procedures that must be followed when a union applies to represent a group of employees at a workplace. It does not describe the procedures that apply in applications made with respect to workplaces in the construction industry. For information on those procedures, please refer to Information Bulletin No. 6 - Certification of Trade Unions in the Construction Industry.

It is important that the parties involved in a certification application 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 in the bargaining unit proposed by the union appear to be members of the union that has applied for certification, the Board is required to conduct a representation vote. The vote is usually held five (5) days after the date the certification application is filed. In limited circumstances, or where an electronic vote is held, the vote may be delayed one or more days.

The materials that are required to file a certification application can be obtained from the Board at any time. The materials that are required for an employer to respond to an application for certification are delivered to it by the applicant union. The materials that are required for an affected trade union to intervene in an application are delivered to it either by the applicant or the Board, depending on the circumstances.

Parties to an application for certification 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 is accomplished by facsimile transmission, the fax confirmation sheet should be retained by the sender in case delivery, or the time of delivery, is later challenged.

- "Filed" - 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 and 3.5)

I. DELIVERY AND FILING OF THE CERTIFICATION APPLICATION

In order to apply for certification, a union must fulfill the following delivery and filing requirements.

1) Delivery of Certification Package to Employer

The union must deliver a Certification Package to the employer before it files its Application with the Board. The package may be delivered by hand delivery, courier, or facsimile transmission.

The Certification Package consists of the following materials arranged in the following order:

- (i) one **Notice to Employer of Application for Certification** (Form C-1). The union must fill in its name and the employer's name on page 1 and the date on page 3 of the Notice before making the delivery;
- (ii) one copy of the completed **Application for Certification** (Form A-1);
- (iii) one blank **Response to Application for Certification** (Form A-2), including **Schedules A and B** (list of employees) and the Instructions for filing Excel Schedules with the Board, found at Tab 4 of the Spreadsheet;
- (iv) one blank Confirmation of Posting (A-124);
- (v) one **Information Bulletin No. 1 - Certification of Trade Unions**;
- (vi) one **Information Bulletin No. 3 - Vote Arrangements**;
- (vii) one **Information Bulletin No. 4 - Status Disputes in Certification Applications**; and
- (viii) one copy of Part III of the **Board's Rules of Procedure**.

(Rule 9.3)

Note:The union is NOT to deliver to the employer a list of names of union members, evidence of their status as union members, or a copy of the Declaration Verifying Membership Evidence (Form A-4).

2) **Delivery of Application to Affected Trade Unions**

If the applicant is aware of any union that claims to represent any employees who may be affected by the application, it must deliver the material listed below to that affected union. This material may be delivered by hand delivery, courier, or facsimile transmission and must be received by the affected union(s) no later than the date the employer receives the Certification Package.

- (i) one copy of the completed **Application for Certification** (Form A-1);
- (ii) one blank **Intervention in Application for Certification** (Form A-3);
- (iii) one **Information Bulletin No. 1 - Certification of Trade Unions**;
- (iv) one **Information Bulletin No. 3 - Vote Arrangements**;
- (v) one **Information Bulletin No. 4 - Status Disputes in Certification Applications**; and
- (vi) one copy of Part III of the **Board's Rules of Procedure**.

(Rule 9.4)

Applicants should make every effort to identify and notify affected unions as failure to do so may result in the vote being delayed.

3) **Filing of Certification Application with the Board**

Not later than two (2) days after delivering the Certification Package to the employer, the applicant must file its application with the Board. The application may be filed by any means, except facsimile transmission, e-mail or registered mail, and must include:

- (i) one signed original of the completed **Application for Certification** (Form A-1);

- (ii) any **membership evidence** relating to the application. This evidence must be in writing and signed by each employee concerned, and it must indicate the date each signature was obtained;
 - (iii) a **list of employees**, in alphabetical order, corresponding with the membership evidence filed; and
 - (iv) a Declaration Verifying Membership Evidence (Form A-4).
- (Rules 6.2 and 9.1)

If the applicant does not file the application with the Board within two (2) days after delivering the Certification Package to the employer, the matter will be terminated. (Rules 6.10 and 6.12)

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

On the Application Filing Date (the day the application is received by the Board), the Board sends a Confirmation of Filing of Application for Certification to the union and employer (and any affected party(ies)). This letter confirms that the application has been filed with the Board, provides the Application Filing Date and Board File Number, reiterates the employer's obligations that are set out in its Notice to Employer of Application, and directs the employer to make and post copies of the Notice to Employees and the Application for Certification (Form A-1).

The Board may also contact the employer by telephone on the Application Filing Date, or the following day, to again confirm that the application has been filed, to clarify the employer's obligations, to advise that a vote will normally take place five (5) days after the Application Filing Date, and to inform the employer that it can expect a Board Officer to contact it after it files its response.

The employer should contact the Board to determine whether or not the application has been filed only if it has not received a Confirmation of Filing of Application by the end of the second day after the employer received the Certification Package. If an application is not filed within two (2) days after the employer received the Package, the employer will be advised by the Board that the matter is terminated. (Rule 6.12)

III. 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 the Application for Certification (Form A-1) and the Notice to Employees of Application for Certification. 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 employees affected by the application.

The Notice to Employees of Application for Certification advises employees that a union is applying for certification and directs them to the adjacent Application for Certification for details about the application. The Notice also notifies the employees that a secret ballot vote will likely be held five (5) days after the Application Filing Date. In addition, the Notice advises employees 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 Mediators and hearings.**

2) **File and Deliver a Response**

No later than two (2) days after it received the Certification Package, the employer is required to post and deliver its response to the applicant union and file its response with the Board. The response may be delivered to the union by hand delivery, courier, facsimile transmission or by e-mail if permitted by Rule 6.4(d). Two copies of the response should be filed with the Board, as described below. The response must consist of the following materials:

- (i) **Response to Application for Certification** (Form A-2).
- (ii) **Schedules A & B (Employee Lists).** The Schedules assist the Board in determining which employees are eligible to vote. The employer must include on these Schedules the names of all employees who fall within the union's proposed bargaining unit and, if the employer is proposing a bargaining unit that is different from the union's, the names of employees who fall within the employer's proposed unit.

All employees who fall within the union's and employer's proposed bargaining units who have an ongoing employment relationship with the employer on the Application Filing Date are to be included on the Schedules. For example, employees who are on vacation, maternity

leave, sick-leave or other leave, workers' compensation, or lay-off on the Application Filing Date are to be included on the Schedules if there is a reasonable expectation of their return to employment.

In addition to hard-copy versions attached to the Response, the Schedule(s) (i.e. the List(s) of Employees) 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 these schedules should also be provided by email to the primary contact for the Applicant Union. The Union should indicate its challenges on the appropriate column in the Excel Schedules, and send them by email to vote.coordinator@ontario.ca, with a copy to the primary contact for the Employer (and other Union(s), if applicable).

3) **File the Confirmation of Posting (Form A-124)**

- (a) No later than one day after its Response is due the employer must confirm that it has posted the Application, Notice to Employees, and its Response.

4) **Deliver to Affected Trade Unions**

(a) Affected Trade Union Identified by Applicant Union

The employer is also required to deliver a copy of its response to any affected trade union identified by the union in paragraph 7 of the Application for Certification no later than two (2) days after it received the Certification Package. The response may be delivered by hand delivery, courier, or facsimile transmission, and must consist of the Response to Application for Certification (Form A-2) and Excel Schedules A & B (Employee Lists).

(b) Affected Trade Union Not Identified by Applicant Union

The employer is required to deliver the documents listed below to any trade union that the employer is aware claims to represent an employee who may be affected by the

application, which was not identified as an affected trade union by the applicant union. These documents may be delivered by hand delivery, courier, or facsimile transmission, and must be delivered no later than two (2) days after the employer received the Certification Package.

- (i) a copy of the completed **Application for Certification** (Form A-1);
- (ii) a copy of the completed **Response to Application for Certification** (Form A-2), including **Excel Schedules A & B** (Employee Lists);
- (iii) a blank copy of **Intervention in Application for Certification** (Form A-3);
- (iv) a copy of **Information Bulletin No. 1 - Certification of Trade Unions**;
- (v) a copy of **Information Bulletin No. 3 - Vote Arrangements**;
- (vi) a copy of **Information Bulletin No. 4 - Status Disputes in Certification Applications**; and
- (vii) A copy of Part III of the **Board's Rules of Procedure**.

IV. AFFECTED TRADE UNION (IF ANY) FILES AND DELIVERS INTERVENTION

If any trade union that claims to hold bargaining rights for any of the employees affected by the application is notified of the application and wishes to participate in the proceedings, it must file an Intervention in Certification Application (Form A-3) with the Board and deliver a copy of it to both the applicant and employer. The Intervention must be received by the Board, the applicant, and the employer no later than two (2) days after the affected union received the application. The intervention may be filed with the Board by any means except e-mail, registered mail or facsimile transmission. The intervention may be delivered to the applicant and employer by hand delivery, courier, facsimile transmission or e-mail if permitted by Rule 6.4(d). One copy of the intervention should be filed with the Board.

(Rules 6.2, 6.3 and 6.4)

Note: The vote will likely be delayed by two days in cases where the affected trade union is first identified by the employer.

V. BOARD ORDERS THE VOTE

1) Vote Arrangements Determined

The Board's Vote Co-ordinator examines the vote arrangement proposals filed by the union and employer (and intervenor, if any) 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 five (5) days after the Application Filing Date.

For more detailed information on vote arrangements, refer to Information Bulletin No. 3 - Vote Arrangements or the Board's Notice Regarding Electronic Voting, available on the Board's website.

2) Voting Constituency Determined and Vote Ordered

The Board determines the appropriate voting constituency (a description of the portion of the employer's workforce that is eligible to vote) after considering the union's and employer's proposed bargaining units. If the statutory criteria for holding a vote are met, the Board orders that a vote be held among the employees in the voting constituency. (Please note that the voting constituency does not necessarily correspond with the bargaining unit that will ultimately be found to be appropriate for collective bargaining.)

A Board Decision ordering the vote and a Notice of Vote and of Hearing is sent to the union and employer (and any intervenor).

These documents set out the voting constituency, the date, time and place of vote, directions concerning sealing the ballot box or segregating or counting the ballots where appropriate, and the dates, times and locations of both the Regional Certification Meeting with a Mediator and of the Hearing before the Board.

The employer (and any intervenor) is also provided with a copy of the applicant's Declaration Verifying Membership Evidence (Form A-4) 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 Hearing adjacent to each of the earlier posted Notices to Employees of Application for Certification. The employer must then confirm to the Board that it has completed the postings by filing with the Board by facsimile transmission a completed Confirmation of Posting (Form A-124).

VI. PRE-VOTE CONSULTATION PROCESS

After the vote has been ordered but before it is held, a Board Officer contacts the parties, usually over the telephone, in an effort to reach agreement between the parties on all issues surrounding the vote, including: the bargaining unit description (the union and employer may agree on a bargaining unit that is smaller than the voting constituency ordered by the Board, in which case employees who fell within the voting constituency but not within the agreed upon bargaining unit are entitled to vote, but their ballots are segregated and are not counted); the voters list, which is developed from Excel Schedules A and B (the lists of employees provided by the employer); the correct name of the employer; the status of the trade union; and the timeliness of the application.

Agreements reached by the parties 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.

VII. 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 agreed upon 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 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.

Except in displacement applications, generic ballots that do not identify the union or employer by name are used. The names of the parties are set out in a Notice that 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.

If the parties have resolved all issues raised up to that point, or agree to the point that a hearing is not required to resolve outstanding issues, this will be reflected in the Certification Worksheet. This document sets out the parties' agreements and confirms that the parties have waived their right to a hearing subject to their right to file representations relating to any new matter in the five (5) days following the vote or to respond to representations filed by any other party.

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 who conducts the vote normally provides a copy of the 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 the parties and employees 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 Certification, and then confirm that it has completed the postings by filing with the Board by facsimile transmission 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 by facsimile transmission a Confirmation of Posting.

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

VIII. 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 union, employer, and any affected trade union, whose names and addresses can be found on the Application for Certification. (The name and address of an affected trade union that was first identified by the employer will not be on the Application for Certification. The Board will send a copy of any representations it receives to such a union.) This statement may be filed by any means except for e-mail, registered mail or facsimile transmission 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)

The Board reviews any representations it receives. If the parties have agreed on all issues in dispute and no relevant

representations have been received, a final decision will normally issue and the Regional Certification Meeting and Hearing will be cancelled. If issues remain in dispute and/or relevant representations are received, the matter will proceed to the Post-Vote Mediation ("Waiver") Process.

2) **Post-Vote Mediation ("Waiver") Process**

A Board Officer contacts the parties, usually by telephone, to discuss and attempt to resolve all outstanding issues. This contact normally takes place in the period after the end of the five (5) day representation period and before the scheduled Regional Certification Meeting. If issues are still in dispute after the Waiver Process, the matter proceeds to a Regional Certification Meeting.

3) **Regional Certification Meeting**

A Regional Certification meeting is a meeting with a Board Officer ordinarily held in the regional centre closest to the workplace on the Wednesday of the third week after the week in which the vote is held. At this meeting, a Board Officer again assists the parties in an attempt to resolve, or at least narrow, the remaining issues.

For information on what occurs at and after the Regional Certification Meeting when there is a dispute as to whether an individual is properly on the voters list, see Information Bulletin No. 4 -- Status Disputes in Certification Applications (Non-Construction).

4) **Hearing**

If issues remain in dispute after the Regional Certification Meeting, a hearing will normally be held at the Board's offices in Toronto on the Monday of the fourth week after the week in which the vote is held.

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.