

**ONTARIO LABOUR RELATIONS BOARD
INFORMATION BULLETIN NO. 6**

**Certification of Trade Unions
in the Construction Industry
Vote-based (s. 8) or
Card-based (s. 128.1)**

This Information Bulletin describes the procedures that must be followed when a union applies, pursuant either to section 8, or to section 128.1 (but NOT BOTH), to represent employees in the construction industry. For information on the procedures that apply in certification applications outside of the construction industry, please refer to Information Bulletin No. 1 - Certification of Trade Unions.

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.

For Vote-based certifications (s. 8) SEE Part A (pp. 1 - 8) and Part B (pp. 8 - 12)

If 40 percent or more of the employees in the bargaining unit proposed by the union appear to be members of the applicant union, the Board is required to conduct a representation vote. A vote is usually held five (5) days after the date on which the certification application is filed with the Board (the "Application Filing Date"), or the date on which the application is delivered to the employer (the "Delivery Date"), whichever is later. In limited circumstances the vote may be delayed one or more days.

For Card-based certifications (s. 128.1) SEE Part A (pp. 1 - 8) and Part C (pp. 12 - 13)

If the Board is satisfied that more than 55 percent of the employees in the bargaining unit are members of the trade union on the date the application was filed it may certify the trade union as bargaining agent or direct that a representation vote be taken. If the Board is satisfied that at least 40 percent but not more than 55 percent of the employees in the bargaining unit are members of the trade union on the application date, then it is required to conduct a representation vote. Where a vote is directed by the Board, it is usually held five (5) days after the Board directs that a representation vote be taken. 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, or for an affected trade

union to intervene in an application for certification, are delivered to them by the applicant union.

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 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" - *With the exception of the Application for Certification*, 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)

PART A: Vote-based (s. 8) & Card-Based (128.1)

I. FILING AND DELIVERY OF THE CERTIFICATION APPLICATION

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

1) Filing of Certification Application with the Board

The union must file the following materials with the Board by any means except Registered Mail, e-mail or facsimile transmission:

- (i) one signed original of the completed **Application for Certification, Construction Industry** (Form A-71);

- (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 on which 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, Construction Industry** (Form A-74).

(Rules 6.2 and 25.1)

On the date the Board receives the Application for Certification, a Confirmation of Filing of Application for Certification, Construction Industry is sent by the Board to the union and the responding party. This letter confirms that the application has been filed with the Board, and provides the union with the Application Filing Date (see below) and 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 by Canada Post's Priority Courier Service, the Application Filing Date is the date on which the application was accepted by Canada Post.
- (ii) If the application is sent by any method other than Canada Post's Priority Courier Service, the Application Filing Date is the date on which 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)

An applicant is required to set out the Application Filing Date in paragraph 4 of its application.

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

3) Delivery of Construction Certification Package to Employer

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

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

- (i) one **Notice to Employer of Application for Certification, Construction Industry** (Form C-32). 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 completed **Application for Certification, Construction Industry** (Form A-71);
- (iii) one blank **Response to Application for Certification, Construction Industry** (Form A-72), including Excel **Schedules A & B** (Lists of Employees) and the Instructions for filing Excel Schedules with the Board, found at Tab 4 of the Spreadsheet;
- (iv) a blank **Confirmation of Posting (Form A-124)**;
- (v) one blank **Intervention in Application for Certification, Construction Industry** (Form A-73);
- (vi) one **Information Bulletin No. 6 - Certification of Trade Unions in the Construction Industry**;
- (vii) one **Information Bulletin No. 8 - Vote Arrangements in the Construction Industry**;
- (viii) one **Information Bulletin No. 9 - Resolving Disputes in Certification Applications in the Construction Industry**; and
- (ix) one copy of Part V of the **Board's Rules of Procedure**.

(Rule 25.3)

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-74).

4) Delivery of Application to Affected Trade Unions

If the applicant union is aware of any trade union that claims to represent any employees who may be affected by the application, the applicant union must deliver the material listed below to the affected trade union. This material may be delivered by hand delivery, facsimile transmission, courier or any other method agreed to by the parties and must be received by the affected union(s) no later than two (2) days after the Application Filing Date.

- (i) one copy of the completed **Application for Certification, Construction Industry** (Form A-71);
- (ii) one blank **Intervention in Application for Certification, Construction Industry** (Form A-73);
- (iii) one **Information Bulletin No. 6 - Certification of Trade Unions in the Construction Industry**;
- (iv) one **Information Bulletin No. 8 - Vote Arrangements in the Construction Industry**;
- (v) one **Information Bulletin No. 9 - Resolving Disputes in Certification Applications in the Construction Industry**; and
- (vi) one copy of Part V of the **Board's Rules of Procedure**.

(Rules 24.1 and 25.4)

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

5) Union Confirmation of Delivery(ies)

The union must file with the Board a Certificate of Delivery (Form A-75) verifying delivery to the employer and any affected trade union, 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, unions that filed their applications 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.)

The union may request that it be permitted to make its delivery(ies) by an alternative means and/or request an extension of time for the delivery(ies).

(Rule 6.6)

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

(Rule 24.3)

II. BOARD CONTACTS EMPLOYER TO CONFIRM THAT AN APPLICATION HAS BEEN FILED

On the day the Board receives the Certificate of Delivery, or the date the Certificate of Delivery indicates that the employer will receive the Construction Certification Package, whichever is later, the Board sends a Confirmation of Filing of Application for Certification, Construction Industry to the employer and any affected trade union(s). 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 employer's obligations as set out in the Notice to Employer of Application (Form C-32), and directs the employer to make and post copies of the Notice to Employees and the Application for Certification (Form A-71).

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

III. EMPLOYER'S OBLIGATIONS

1) Post Application and Notice to Employees

Upon receipt of the Confirmation of Filing, the employer must make and IMMEDIATELY post copies of both the Application for Certification, Construction Industry (Form A-71) and the Notice to Employees of Application for Certification, Construction Industry. 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 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. The Notice also notifies the employees that a secret ballot vote may be held five (5) days after the Application Filing Date (or on a later date), or the union may be certified without a vote. In addition, the Notice advises the 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 hearings, if any.

2) File and Deliver a Response

No later than two (2) days after it received the Construction Certification Package, the employer is required to post and deliver its response to the applicant union and file it with the Board, as described below. 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).

The response must consist of the following materials:

- (i) **Response to Application for Certification** (Form A-72).
- (ii) **Excel 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. Where more than one job site has been identified on Question #3 of the Response Form, the job site code must be inserted in the column after each employee's name.

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).

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

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) **Delivery 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 11 of the Application for Certification no later than two (2) days after it received the Construction Certification Package. The response may be delivered by hand delivery, courier, facsimile transmission or by e-mail if permitted by Rule 6.4(d), and must consist of the Response to Application for Certification (Form A-72) and Excel Schedules A and B (List of Employees).

(Rules 24.1 and 25.4)

(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, facsimile transmission or by e-mail if permitted by Rule 6.4(d), and must be delivered no later than two (2) days after the employer received the Construction Certification Package.

- (i) one copy of the completed **Application for Certification, Construction Industry** (Form A-71);
- (ii) one copy of the completed **Response to Application for Certification, Construction Industry** (Form A-72), including **Excel Schedules A and B** (List of Employees);
- (iii) one blank **Intervention in Application for Certification, Construction Industry** (Form A-73);
- (iv) one **Information Bulletin No. 6 - Certification of Trade Unions in the Construction Industry**;
- (v) one **Information Bulletin No. 8 - Vote Arrangements in the Construction Industry**;
- (vi) one **Information Bulletin No. 9 - Resolving Disputes in Certification Applications in the Construction Industry**; and
- (vii) one copy of Part V of the **Board's Rules of Procedure**.

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

If any affected trade union is notified of the application and wishes to participate in the proceedings, it must file an Intervention in Application for Certification, Construction Industry (Form A-73) with the Board and deliver a copy of it to both the applicant union and employer. The intervention must be received by the Board, the union, and the employer no later than two (2) days after the affected trade union received the application. The intervention may be filed with the Board by any means, except facsimile transmission, e-mail or Registered Mail. It may be delivered to the union and employer by hand delivery, courier, facsimile transmission or by e-mail if permitted by Rule 6.4(d). One copy of the intervention must be filed with the Board.

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

Note: A vote, if any, may be delayed by two days in cases where the affected trade union is first identified by the employer.

PART B: Vote based (s. 8) only

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 and/or job site(s) five (5) 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) Voting Constituency Determined and Vote Ordered

The voting constituency is a description of the portion of the employer's workforce that is eligible to vote. The Board determines the appropriate voting constituency 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.

A Board decision ordering the vote and a Notice of Vote and of Case Management Hearing is sent to the union and employer (and any intervenor). These documents set out the voting constituency, the date, time and place of the vote, directions concerning sealing the ballot box or segregating or counting the

ballots where appropriate, and the date on which the Case Management Hearing, if required, will take place.

The employer (and any intervenor) is also provided with a copy of the applicant's Declaration Verifying Membership Evidence (Form A-74) 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 Certification, Construction Industry. 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 normally contacts the parties in an effort to reach agreement on issues surrounding the vote, including: the bargaining unit description (if not determined by the Board in its decision directing the vote); the voters list, which is developed from the Excel Schedules A and B (Lists of Employees) filed 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 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.

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 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 posting by filing with the Board by facsimile

transmission a Confirmation of Posting (Form A-76). 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** must file a statement of representations with the Board and deliver a copy of the statement to the union, the employer, and any affected trade union, whose names and addresses can be found on the Application for Certification (Form A-71). 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**. (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.)

(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.

PART C: Card-based (s. 128.1) only

Status Disputes

Where there is a dispute about the person listed (or not listed) on the employee list, the union will be directed by way of a Board decision to deliver to the employer and file with the Board, **no later than five (5) days from the date of the Board's decision**, a statement simply challenging any names on the Schedule A that normally accompanies the employer's Response. In the event the Union wishes to make additions to Schedule A, it may also do so but must include the reasons for such additions and all the basic facts upon which it relies, for example, *where* the individual sought to be added was working, *what* tasks the individual was performing and *how long* the individual was engaged in those tasks, particularly, but not only, where it may be arguable that tasks performed by the individual may fall outside of the craft bargaining unit being sought. The Board's decision will direct the employer to deliver to the union and file with the Board a statement of its position in reply to each of the union's challenges (including any of the union's proposed additions), together with reasons for such position and the basic facts upon which it relies, including, for example, , *where* the individual sought to be added was working, *what* tasks the individual was performing and *how long* the individual was engaged in those tasks, particularly, but not only, where it may be arguable that tasks performed by the individual may fall outside of the craft bargaining unit being sought. **within ten (10) days of that decision.** Together with this the employer is expected to produce copies of all relevant documents concerning the individuals in dispute (including payroll records, time sheets, invoices, cheques, etc). Within a further five (5) days (that is, **within fifteen (15) days of the Board's decision**), the Union must file its response to the Employer's position, together with any relevant documents that the union relies on. **Once the union has filed its statement of challenges and additions, neither**

party will be permitted to add to, or delete from, the list without agreement of the parties or leave of the Board. 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.

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. 9: Resolving Disputes in Certification Applications in the Construction Industry .

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.

Vote direction

Where the Board directs a vote, the Board's decision will have appended to it a vote arrangement sheet to be completed by each party. This document must be filed with the Board within two days of the date of the Decision.

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 and/or job site(s) five (5) days after the Board's decision directing the vote or another date set by the Board.

For more detailed information on vote arrangements, refer to Information Bulletin No. 8 - Vote Arrangements in the Construction Industry. For specific procedures regarding electronic voting, see the Board's Notice Regarding Electronic Voting, posted on the Board's website.

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.