

#14 REPRESENTATION VOTES

I. INTRODUCTION

A union must win a representation vote before being certified under the *Labour Relations Code* or the *Public Service Employee Relations Act*. A representation vote is a secret ballot vote of affected employees to see if they want the applicant trade union to represent them. *See: Sections 12(2)(d), 34(1)(d); PSERA Section 16.*

Representation votes are also used to decide applications to terminate bargaining rights and to determine whether construction employers want registration and to decide which trade union should represent workers after some successorship declarations.

This Bulletin describes the procedures used by the Board to conduct these votes and to resolve any disputes they generate. Formal Voting Rules govern the process and prevail if they conflict with this Bulletin. *See: Sections 12(2)(g), 15(4), 53(1)(b), 168(1)(e); PSERA Section 18; Voting Rules.*

II. TIMING OF A VOTE

A representation vote cannot be held unless the Board first determines that any statutory prerequisites to the vote have been satisfied. For example, in a certification application, the Board must be satisfied on the basis of the Board Officer's investigation that the union has the support of at least 40% of the employees in the bargaining unit applied for. If that requirement is met, the Board can order a vote. *See: Sections 34, 53, 168; PPF Local 488 v. J.V. Driver Installations Ltd. [2001] Alta.L.R.B.R.LD-011.*

[amended October, 2006]

Pre-vote hearings and representation votes will be held as soon as possible after an application is filed.

III. PRELIMINARY DIRECTIONS

The Director of Settlement is the Chief Returning Officer for all representation votes.

The Director will appoint an Officer of the Board as a Returning Officer primarily responsible for the administration of a vote. The Director may appoint Deputy Returning Officers to be responsible for the actual conduct of one or more polls in a vote. *See: Voting Rules, Rules 4, 5, 6, 7.*

The Returning Officer will contact the parties to discuss the date, times and location of the vote. Failing agreement, the Officer will decide those matters. *See: Voting Rules, Rule 8.*

Employee representation votes are usually held on the employer's premises or at or near a work site where a significant number of employees work. In special circumstances the Director of Settlement may approve an advance poll or a mail-in vote. *See: Voting Rules, Rule 8.*

Anyone objecting to a Returning Officer's preliminary direction must file their objection in writing with the Board within 24 hours of being notified of the direction. *See: Voting Rules, Rule 10.*

The Board deals with these kinds of objections immediately. It may convene a hearing on short notice to the parties. It may confirm the Officer's direction or make whatever other direction it sees fit.

IV. THE VOTERS LIST

The Board will normally establish a preliminary voters list compiled from the list of employees provided by the employer, the Officer's report of any investigation conducted, and any information the trade union provides. In multi-employer votes the Board may direct a trade union to provide information of the employers it has a bargaining relationship with to help prepare the voters list. *See: Section 169(3); Voting Rules, Rule 8(h); Bulletin 3.*

Where a party does not co-operate in furnishing information, the Board will compile the voters list from the best information available.

The Board will try to provide this voters list to the parties as soon as possible in advance of the polling time. The period of notice may be short.

The Board will not usually conduct hearings to decide disputes over the eligibility of particular voters before the date of the vote. Parties must make *specific* challenges regarding eligibility to the Officer conducting the poll if and when any person whose eligibility is disputed seeks to vote. Scrutineers must raise objections to voter eligibility at the time of the vote even if the objections were already filed with the Board before the vote. *See: Certain Employees of Zeidler v. IWA-Canada Local 1-207 et al. [1993] Alta.L.R.B.R. 3.*

For mail-in votes the Director will give special directions concerning challenges to eligibility so they can be raised before the date for return of ballots.

The Board may, however, hear a preliminary objection that the voters list is *generally* unrepresentative of the persons entitled to vote. Parties must make any such objections, either at the pre-vote hearing or in writing before the date of the vote. The Board will deal with such an objection at its pre-vote hearing or by convening a hearing on short notice.

V. NOTICE OF VOTE

When a Board panel orders a representation vote, it will review the details of the vote set by the Returning Officer. It may approve or vary the Officer's directions or authorize the Officer to set the voting date, time and place.

The Returning Officer will prepare a Notice of Vote stating the purpose of the vote, the time and place of polling, and a description of the eligible voters. The Officer will arrange for the notices to be posted where eligible voters will see them. *See: Voting Rules, Rule 8(c).*

The voters list is usually posted with the Notice of Vote. As well, the notice describes the voting constituency like a bargaining unit, such as:

"All employees of Prairie View Hospital District No. 7 employed in auxiliary nursing care."

VI. ELECTIONEERING

The basic rule of electioneering is that no campaigning or distribution of literature is allowed in the immediate vicinity of a poll while the vote is in progress. *See: Voting Rules, Rule 3.*

The Board is free to impose stricter limitations on electioneering. Parties seeking stricter limitations should apply to the Board at the hearing prior to the vote. *See: Bulletin 4; Health Care Employees Union v. The General Hospital [1989] Alta.L.R.B.R. 259.*

VII. ELIGIBILITY

The Board determines voter eligibility through the application of Voting Rules 16 and 17.

Non-Construction Applications

Any employee in the bargaining unit at work on the day the Board receives an application will be allowed to vote. Employees absent on that day will not be allowed to vote unless they have a significant continuing interest in their job. Employees absent on parental leave are considered to have such a continuing interest unless they advised their employer they will not return to work at the end of the leave. The Board will identify other such employees by applying the "thirty day rule". *See: Voting Rules, Rule 16(1), (3).*

The "thirty day rule" provides that a full-time or regular part-time employee not at work on the date of application may still vote if he or she:

- worked at any time in the thirty days before the application date; and
- worked or is likely to return to work at any time in the thirty days following the application date.

Both conditions must be satisfied.

Note that the "thirty-day rule" does not apply to casual employees. Generally, casual employees are ineligible to vote unless they worked on the date of the application.

This rule will usually allow persons who are absent due to casual illness, annual vacation or temporary layoff to vote. Persons absent due to long-term disability, extended sick leave, long-term layoff or a major disciplinary suspension will usually be ineligible.

Construction Applications

In the construction industry where employment is often more short-term in nature the Board will apply a similar "fourteen day rule". *See: Voting Rules, Rule 17.*

In addition, employees of employers who are engaged in work in the construction industry will only be allowed to vote if two additional criteria are met. First, the employee must have been an employee of the employer for at least the 30-day period immediately preceding the date of the certification or revocation application. Second, an employee may not have quit or abandoned his or her employment between the date of the application for certification or revocation and the date of the vote. *See: Code sections 34.1 and 53.1.*

[amended September, 2008]

The Board may depart from the Board's Voting Rules in appropriate cases.

VIII. SCRUTINEERS

Scrutineers appointed by each party may attend at the polling place to ensure the vote is conducted fairly and that only eligible persons vote. The scrutineer must raise any objections the party wants to raise on voting even if the objections were already filed with the Board before the vote. The scrutineer should be aware of any objections by their party and be able to resolve those, if possible.

Before a vote the Returning Officer will ask that Scrutineers be appointed in writing. Unless the Returning Officer allows more, only one scrutineer for each party can be present in a polling place at any one time. *See: Voting Rules, Rule 11(a), (b).*

IX. CONDUCT OF THE VOTE

At the opening of a poll, the Officer in charge will examine and seal the ballot box in the presence of the Scrutineers. The Returning Officer has voting instructions and sample ballots available which have been translated into Arabic, Chinese, French, German, Hindi, Polish, Punjabi, Spanish, and Vietnamese. Other translations can be requested in advance of the vote if necessary. *See: Voting Rules, Rule 11.*

Persons whose names appear on the voters list will be allowed to vote without proof of eligibility unless challenged.

Persons whose names do not appear may be asked to provide proof of eligibility or to make a declaration that they are eligible.

The Officer in charge will keep a record of the names of persons who are issued ballots. Voters mark their ballots in secret and deposit them in the ballot box.

Any party may object that a person is not eligible to vote. A scrutineer should make such an objection, with reasons, to the Officer before the ballot is issued. The Officer will then make enquiries and give an immediate oral ruling.

If the ruling is not accepted, the Officer will allow the person to mark a ballot. The Officer will enclose the ballot inside two envelopes and mark the outer envelope with the voter's name and the reason for the objection. The Officer will keep these ballots separate from the unchallenged ballots.

At the close of the poll the Officer will try to resolve any disputes over segregated ballots. If all objections are resolved or waived, the Officer will open the segregated ballots, deposit them in the ballot box, and then count the ballots.

If the count is to proceed, remove all spoiled ballots. A spoiled ballot is any ballot marked with any other mark than that directed by the Board.

If all objections are not waived, the Officer will seal the ballot box, prepare a report of the outstanding objections and transmit the report and ballots to the Director of Settlement. The Director will set the matter for a Board hearing. *See: Bulletin 4.*

X. ADVANCE POLLS

If the Board orders a vote, it may, in rare cases, allow voters to cast their ballots in an advance poll if extenuating circumstances will prevent them from being available on the voting day. Ballots cast in the advance poll remain in the sealed ballot box until the vote is counted.

XI. MAIL-IN BALLOTS

Periodically, the Board will direct that a representation vote be conducted by return mail where the job has shut down or employees are working at a number of locations over a significant geographic area.

The procedure used by the Board to prepare for a mail-in ballot is the same except that it will also obtain the addresses of all potential voters, usually from the employer. One ballot is then mailed to the home of each employee with a letter containing the voting instructions.

Voters are told:

- only they are eligible to vote, not anyone else in their household. No proxy voting is allowed,
- to mark a cross (+), an (x), a check (√), or a dash (-) in the box of their choice. Any other marks on the ballot will spoil it and it will not count,
- to fold their ballot and place it in the small envelope provided,
- to seal the envelope,
- to place the sealed envelope in the white, marked self-addressed envelope provided and mail it or deliver it back to the Board,
- the return envelope has been security marked so the Returning Officer can check the authenticity of the returned envelopes. However, because of the sealed envelope, all votes remain anonymous.
- the deadline date and time by which the Board must receive the returned ballot, and
- the date on which the ballots will be counted.

On the date set for counting the ballots, the Officer will open the envelopes in front of the scrutineers and count the ballots. All other voting procedures remain the same.

XII. POST-VOTE HEARINGS

In some cases it will be necessary for the Board to hold a hearing after the vote. The Board may hear and decide any unresolved issues such as:

- whether a person is an employer or employee, *See: Section 12(3)(a), (b); PSERA Section 3(2).*
- whether a person who was the subject of an objection was eligible to vote, *See: Voting Rules, Rules 11(h), 12(2).* or
- whether the vote was conducted properly. *See: Bulletin 4.*

A party may have objections to the conduct of the vote itself, such as improper electioneering, voter fraud, or breach of secrecy. Such objections should be submitted in writing to the Board within 24 hours of the close of the polls. *See: Voting Rules, Rule 12.*

Upon receiving such an objection, the Director or the Chair may schedule the matter directly for hearing. The Board may order that the vote results not be released until the objection is heard and decided.

Where there has been a serious defect in the conduct of the vote, another vote may be ordered.

After all objections have been resolved, the Returning Officer will open the ballot box in the presence of the scrutineers, count the ballots, and report the results to the Director of Settlement. The Director will then either issue or revoke a certificate, or refuse to issue or revoke a certificate, according to the Board's direction. *See: Voting Rules, Rule 13.*

If a dispute exists over the *counting* of the vote, a party may make further objection in writing to the Board within 24 hours of the release of the results. The Director will refer such a dispute directly to the Board for decision. *See: Voting Rules, Rule 14.*

See also:

Information Bulletins 3, 4, 8, 13 and 16
Rules of Procedure
Voting Rules

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