ALBERTA LABOUR RELATIONS BOARD

INFORMATION BULLETIN

#2 PROCESSING APPLICATIONS, COMPLAINTS AND REFERENCES

I. INTRODUCTION

Information Bulletin 2 outlines how the Board processes applications, complaints and references and describes the dispute resolution procedures the Board uses.

This Bulletin contains a revised pre-hearing process that came into effect on December 1, 1999. The key change is a renewed focus and emphasis on dispute resolution initiatives that may be used by the Board to help resolve disputes before a formal hearing is held.

This document applies to proceedings under the *Labour Relations Code*, the *Public Service Employee Relations Act*, and the *Police Officers Collective Bargaining Act*.

The Board welcomes comment from the labour relations community on the revised pre-hearing process.

II. PURPOSE OF CHANGES

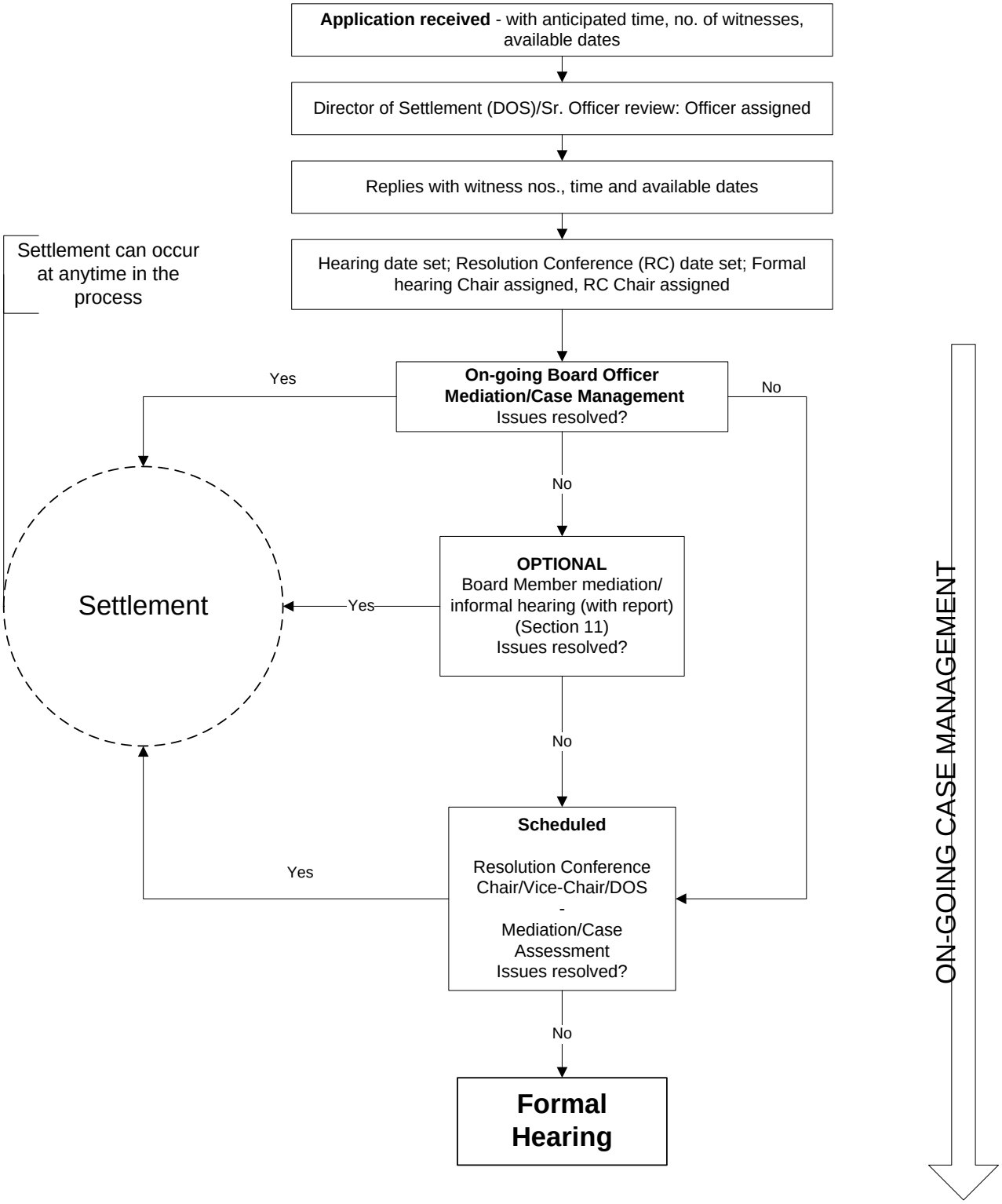
Labour relations legislation emphasizes communication between the parties and the early settlement of differences between them, without adjudication.

The Board believes it can make more effective use of its powers to encourage early, purposeful communication and help parties settle their disputes before the stage of a formal hearing. To this end, the revised process places greater emphasis on dispute resolution techniques, including:

- early setting of a hearing date in consultation with the parties;
- more use of case management techniques to ensure hearings proceed efficiently;
- increased emphasis on mediation and non-binding hearings by Board Members; and
- scheduled Resolution Conferences with an adjudicator or senior Board official before the hearing, for most categories of cases.

A schematic diagram of the revised process appears on the next page.

ALBERTA LABOUR RELATIONS BOARD SETTLEMENT PROCESS



III. SUBMITTING APPLICATIONS, COMPLAINTS AND REFERENCES

Labour relations matters are submitted to the Board as either applications, complaints or references. *See: Section 12(2)(a); Rule of Procedure, Rule 22*.

An *application* is a request for the Board to carry out a procedure or determine a matter according to a specific provision of the Code or the Act.

A *complaint* is an allegation that a named party has done something the *Labour Relations Code* or other labour statute does not allow. A complaint usually asks the Board to give a direction to correct or stop the conduct. *See: Section 16(1); PSERA Section 50(1)*.

A *reference* is a request for the Board to interpret or clarify the application of a Code provision. *See: Section 16(3)*.

In this Bulletin, we use the word "application" to include all of these proceedings before the Board.

Rule of Procedure 4 requires some applications must be made using a Board form:

- an application for certification;
- an application to conduct a vote under section 68 or 69 of the Code;
- an application to supervise a strike vote or a lockout vote;
- an application for a notice to attend or a notice to attend and produce under section 14 of the Code and section 58 of the Act;
- a construction registration application;
- a declaration of strike vote;
- a declaration of a lockout vote; or
- an application to establish an arbitration board.

Making Applications

Some applications have special procedures, described in their own Information Bulletins or Rules of Procedure. The procedures in this Bulletin apply in addition to the specific procedures on:

- successor employer (Information Bulletin 21);
- common employers ("spin-offs") (Information Bulletin 19);
- trade union successorships (Information Bulletin 7);
- determinations (Information Bulletin 22);
- duty of fair representation complaints (Information Bulletin 18);
- notices to attend (Information Bulletin 5);
- applications to appoint arbitrators under the *Public Service Employee Relations Act* (Rule 43, Rules of Procedure); and
- determinations of arbitral and non-arbitral items for compulsory interest arbitration under section 32(2) of the *Public Service Employee Relations Act* (Rule 42, Rules of Procedure).

All applications must be in writing. A party must file its application by mail, courier, fax or personal delivery. The Board does not accept applications verbally, by telephone or via electronic filing at this time. *See: Rules of Procedure, Rule 21*.

An application must include:

- the name, address, telephone number, and fax number of the party making the application;
- the name, address, telephone number, and fax number of a contact person to whom correspondence may be directed;
- an address for service of documents, if different than the party's address;
- the name, address, telephone number, and fax number of the party or parties against whom the application is filed;
- the section or sections of the legislation under which the application is made. In a complaint, it must include the sections that it says have been violated. In a reference, it must include the section of the legislation that is in issue;
- the details, or particulars, of the application. These are explained below;
- a statement of the order, declaration, relief or other remedy that is requested; and
- confirmation that the document has been served on (given to) the party or parties against whom the application is filed. An applicant must serve the other parties in a way that the Board's Rules of Procedure allow.

See: Rules of Procedure, Rules 5.1, 6.

Individuals filing applications, complaints or references may be identified by name at various stages of the Board's procedures including in Board decisions, on the Board's website, and in print and online reporting services that publish the Board's decisions. An exception to this general practice may be made, at the discretion of the Board, in cases where sensitive personal information will be disclosed. Individuals wishing to have their names masked may apply to the Board by letter setting out the reasons for the request including what sensitive personal information will be disclosed. This request should be made early on in the processing of the application.

[amended August, 2012]

The Board believes the early setting of a hearing date encourages parties to a dispute to make an early assessment of their case. *Therefore, for proceedings covered by this Bulletin, the applicant is now required to provide the following information to the Board Officer at the time the application is filed*:

- a reasonable estimate of the amount of time required to hear the applicant's case;
- the number of witnesses the applicant expects to call at the hearing; and
- the dates the applicant, and its counsel if any, are available for the hearing.

IV. PRELIMINARY STEPS IN PROCESSING APPLICATIONS

Under section 12 of the *Labour Relations Code*, the Board has developed Rules of Procedure to conduct its business. The pre-hearing processing of matters before the Board has been delegated by the Rules of Procedure to the Director of Settlement and in Calgary to the Manager of Settlement. The Chair retains the power to direct matters be set for hearing and can exercise any

of the powers delegated to the Director of Settlement. *See: Section 12; Rules of Procedure, Rules 22, 23*.

The Rules of Procedure contain an appeal process from any decision of the Director of Settlement about the handling of an issue.

Completeness of the Application

The first question in reviewing an application is whether the information filed is complete enough for the application to proceed.

The Director of Settlement reviews all applications for completeness. If the submission is not complete, the Director of Settlement may request further details from the party making the submission. Often this is called "seeking further particulars". The Board may refuse to process the matter until the party provides all of the information required. *See: Rules of Procedure, Rule 22(1)*.

When an application is complete, and all affected parties have been notified by the applicant, they are given an opportunity to reply within time limits established by the Director of Settlement. In every case the respondent must file a reply to the application, unless the Director of Settlement directs otherwise. *See: Rules of Procedure, Rule 8(1)*.

Particulars

Particulars are the details, the "who, what, when, where and how," of the application. They are the facts and events the applicant relies on to justify the Board giving the relief the applicant seeks. The applicant's particulars should set out these facts and events in plain English. This should include: what did or did not happen, who was involved, and when and where these facts and events took place. The applicant must allege facts that, if true, establish the section of the legislation in question may apply or may have been violated. *See: U.A. Local 488 v. Fish Int'l Canada [1985] Alta. L.R.B. 85-073*.

Particulars are not the same as evidence. Particulars only set out what facts and events the applicant intends to prove. They do not have to say how the applicant intends to prove them. Nor do they have to disclose the identities of the applicant's witnesses. However, if the application alleges someone said something, the applicant must provide a description of what was said, who said it, and when and where it was said.

A good set of particulars tells the other parties what the thrust of the case against them is, and what they must do to prepare their own case. Poor particulars cause adjournments, hearing delays, additional expense or inconvenience, and can even cause the application to be dismissed.

The Board may refuse to process an application that lacks particulars. Or, a respondent may seek further particulars after it is served with the application. Generally, the Board will dismiss an application because of poor particulars only after the applicant has failed to file satisfactory particulars in response to a Board directive. *See: Carpenters Local 1325 v. Fraser Bros. Roofing Ltd. et al. [1997] Alta.L.R.B.R. 541*.

Notice to All Affected Parties

The Board requires applicants to provide a copy of their application to all respondents at the

same time as the application is filed with the Board. The only exceptions to this practice are certifications, revocations, and "urgent matters". In those cases the Board provides notice of the application. *See: Sections 12(2), 16(6); Rules of Procedure, Rules 5.1, 9-21*.

In some kinds of cases (like certifications, revocations, and some determinations) the Board also provides notice to groups of employees who may be affected by the application. Usually the Board does this by directing the employer to post a Board notice in the workplace.

To be effective, notice must be timely. If all affected parties do not receive timely notice, the Board may have to reschedule a hearing to accommodate proper notice. This can result in lengthy delays. *See: Junction Construction et al. v. Carpenters Local 2410 et al. [1990] Alta.L.R.B.R. 190*.

Previously, the Board required applicants and respondents to file a Board "Declaration of Service" form with their initial application or reply. With the implementation of the processes outlined in this Bulletin, this practice will change. Beginning on the date this Bulletin takes effect, parties only need to provide a written confirmation to the Board that they have provided the filed document(s) to other parties. This applies to all documents, including initial applications and replies. The confirmation may take any form. It may include a notation that a named party has been "carbon copied" ("cc'd"). However, the applicant and respondent must still provide the name, address, telephone number, and fax number of all other parties to the Board. If parties still wish to use the "Declaration of Service" form, they are free to do so.

If translation into another language is required to ensure the employees are aware of the application, the applicant must provide to the Board a certified copy of the translated application and Notice to Employees (if required) in a form satisfactory to the Board. A Board Officer may advise the parties in this regard.

An affected party includes any person or organization who has a tangible and demonstrated direct legal interest in the outcome of the application. A Board Officer may be able to assist a party with identifying affected parties. An affected party can include:

- the applicant,
- the respondent(s) named in the application,
- the employees in the bargaining unit,
- the employees in a proposed bargaining unit,
- the registered employer's organization named in the registration certificate,
- an employer's organization,
- the bargaining agent,
- the parties to a collective agreement.

See: Plumbers Local 496 v. Uni-Melt Ltd. [1986] Alta.L.R.B.R. 229.

In some cases, parties will raise a constitutional or *Charter of Rights* argument or objection. In those cases, the applicant must also notify the offices of the provincial and federal Attorneys General, the Board and other parties giving 14 days notice. *See: Judicature Act, R.S.A. 2000 Chap. J-2 s. 24*.

[amended December, 2006]

How Does One Serve Notice?
An applicant or respondent notifies affected parties of an application or reply by serving the document using the methods set out in the Rules of Procedure. *See: Rules of Procedure, Rules 9-21*.

Service of an application or reply can be completed by:

- personal delivery,
- registered mail,
- signed courier receipt,
- delivering it to the address and leaving it with a qualified person as identified in the Rules of Procedure,
- transmitting it by fax to a responsible official with verbal confirmation,
- sending or delivering it to a party's solicitor,
- substitutional service where ordinary service is unlikely to work.

Appointment of the Officer
After the application is accepted, the Director of Settlement appoints a Board Officer to the file. The Officer is the parties' primary contact with the Board. The Officer plays an important role in investigating the issues, helping the parties reach a settlement, and ensuring the case proceeds expeditiously to a hearing if no settlement can be reached (see below).

Replies
In all proceedings, except certification or revocation applications and strike or lockout applications, the party or parties against whom the application is filed must file a written reply unless the Director of Settlement exempts them from filing one. The reply must include:

- identification of the matter responded to;
- the name, address, telephone number, and fax number of the respondent;
- the name, address, telephone number, and fax number of a contact person for the respondent;
- the respondent's address for service of documents, if different from above;
- an admission of any facts alleged by the applicant that are uncontested;
- particulars in reply. The respondent must make a concise statement of the facts and events the respondent relies upon, where those facts and events are different from the applicant's (see Particulars, above); and
- confirmation that the reply has been served on the applicant and other respondents.

See: Rules of Procedure, Rule 8.

Like the applicant, the respondent must now also provide the following information to the Board Officer at the time the reply is filed:

- a reasonable estimate of the amount of time required to hear the respondent's case;
- an estimate of the number of witnesses the respondent expects to call at the hearing; and
- the dates the respondent, and its counsel if any, are available for the hearing.

The respondent has a reasonable amount of time to file a reply. If the respondent does not reply, the Board may proceed with the application in the absence of a reply.

The Director of Settlement may also require other parties to reply to the specific allegations contained in the application.

Intervenors
Sometimes a person or organization is not legally affected by an application, but believes it has an interest in the issues raised and has expertise or experience that will assist the Board. In such a case, the person or organization may apply to the Board for the right to appear in the proceeding. If the Board believes that they have an indirect interest and can assist the Board, it may allow them to participate in the application as an *intervenor*. A common example is in the construction industry. There, registered employers' organizations and building trades unions often apply to participate in Board applications where the Code's definition of "construction" is an issue. The Board may allow an intervenor to participate fully, or it may restrict the evidence or argument that it will hear from the intervenor. *See: Rules of Procedure, Rule 27; CUPE Local 2147 v. Dynacare Kasper Medical Laboratories [1997] Alta.L.R.B.R. LD-024.*

Where the Board has allowed an intervenor, parties must provide the intervenor with copies of all documents filed in the proceeding.

Setting the hearing
Upon receiving the respondent's reply, the Officer assigned to the file will contact the parties (usually by conference call) to set the hearing date or dates. The Officer will take into account the parties' estimates of how much hearing time is required, as well as the parties' available dates.

At the same time, where one applies, the Officer will schedule a "Resolution Conference". The Resolution Conference will take place approximately fourteen days prior to the first hearing date. Again, the Officer will take the parties' available dates into account. *See: Section VII below*.

Please note, however, that unavailability for the Resolution Conference will generally not be allowed to delay the scheduling of the hearing. If necessary, the Board will schedule Resolution Conferences for early in the morning or late in the afternoon to accommodate parties' commitments or their counsel's calendars.

If the parties are unable to agree on acceptable dates, the file will go to a Chair or Vice-Chair to decide an appropriate date. The Chair or Vice-Chair may hold a conference call hearing before deciding on dates.

V. BOARD OFFICER INVOLVEMENT

In all applications, the Director of Settlement and the assigned Officer decide how best to bring about either a settlement of the dispute or a timely hearing. The Officer plays an important role in processing the application. That role may include:

Investigation: Board Officers investigate all certification and revocation applications. The Director of Settlement may direct them to investigate other kinds of applications as well. An Officer investigating the application produces an Officer's Report. The Officer sends copies of the Report to all parties. This Report may be used as evidence by the Board itself. *See: Section 12(2)(b); Rules of Procedure, Rule 22(1)(g), (h)*.

Mediation: Board Officers try to assist the parties to reach a settlement of their dispute without a Board hearing. They learn about each party's position and underlying interests. They use their knowledge and experience in labour relations to assess the parties' situation and suggest possible solutions. Board Officer mediation of this sort starts early in the processing of the file and can continue right through to the date of the hearing. It can take place whether or not the Officer is also conducting an investigation on the file.
See: Bulletin 3.

VI. SUMMARY DISPOSITION OF APPLICATIONS

Sometimes it is clear from the filed documents or the Officer's discussions with the parties that there is an important issue that should be addressed before the Board holds a formal in-person hearing on the application's merits. Examples include:

Deferring to Arbitration or Other Statutory Processes
If arbitration or some other process could decide the matter, the Director of Settlement may recommend that the Board decline to deal with the issue. The Board could send the matter back to the parties to settle the matter through another process, such as collective agreement arbitration. The Board may impose conditions on any decision to defer to another process. *See: Section 16(4)(d); PSERA Section 51(4); Paperworkers Union Local 1118 v. MacMillan Bathurst Corp. [1990] Alta.L.R.B.R. 662*.

Untimely Complaints
The Director of Settlement can refuse to accept any unfair labour practice complaint under the *Labour Relations Code* filed more than 90 days after the time the party knew or ought to have known of the actions or circumstances causing the complaint. This provision also applies to unfair labour practice complaints arising under sections 45 to 49 of the *Public Service Employee Relations Act*. A party can seek the Board's consent to waive the time limit in a deserving case. *See: Section 16(2); Neville Toppin v. PPF, Local 448 [2006] Alta.L.R.B.R. 31*.

Summary Dismissal
The Director of Settlement can recommend or a party can ask for the summary dismissal of a matter. This option is available where a party fails to provide any real particulars. It can also occur where there is non-compliance with a directive from the Director of Settlement or the Board about particulars, or where the matter is, on its face, without merit, or is trivial, frivolous, or vexatious. An example is where the facts alleged, even if proven, could not amount to a violation of the Code or the Act. Another example would be where an applicant has failed to comply with procedural directives of the Board and, in essence, abandoned the application. *See: Section 16(4)(e); Rules of Procedure, Rule 24; Steelworkers Local 7226 v. Handleman Company of Canada [1989] Alta.L.R.B.R. 38*.

VII. DISPUTE RESOLUTION INITIATIVES

This part of the Bulletin describes the full range of dispute resolution techniques the Board will use to help settle a case without a formal, in-person hearing. Those techniques are set out in the order they will be used.

Not all dispute resolution techniques can apply to every kind of case before the Board. Generally, the full range of settlement initiatives set out in this Bulletin will not apply to:

- certifications (Information Bulletin 8);
- revocations (Information Bulletin 13);
- "urgent matters," meaning complaints about illegal strikes, illegal lockouts and picketing (Information Bulletin 17);
- reconsideration applications (Information Bulletin 6);
- applications for votes (Information Bulletins 15 and 16);
- registration proceedings in the construction industry (Information Bulletin 12);
- notices to attend (Information Bulletin 5);
- applications to appoint arbitrators under the *Public Service Employee Relations Act* (Rule 43, Rules of Procedure);
- applications for consent under sections 37, 52 or 57 of the Code (Information Bulletins 8 and 13); and
- speeding up arbitration (Information Bulletin 20).

However, the full process will generally apply to:

- "determinations." This means applications under section 12(3) of the Code, section 3(2) of the *Public Service Employee Relations Act*, and section 43(2) of the *Police Officers Collective Bargaining Act*;
- applications to modify bargaining rights. This includes employer successorships (section 46), trade union successorships (section 49), governing bodies successorships (section 48), common employer or "spinoff" declarations (sections 47 and 192), applications to modify bargaining rights under sections 41, 44 and 45 of the Code, and counterpart sections under the *Public Service Employee Relations Act*;
- unfair labour practice complaints;
- duty of fair representation complaints; and
- applications for religious exemption from union dues.

These categories are not rigid and the Board may make exceptions in a proper case. (See discussion below under section VIII. It outlines when the Board may allow matters to bypass part or all of the dispute resolution process.)

While some steps in the dispute resolution process are generally obligatory, others are optional. Whether a particular step is optional or not is clearly set out in this Bulletin.

Case Management

As part of its renewed pre-hearing process, the Board will make greater use of case management techniques than before. Parties can expect the Board, at all levels, will make efforts to reduce the number of issues being adjudicated; clarify the issues that remain; reduce disputes over procedure or deal with them in advance of the hearing; and, as far as possible, eliminate surprise developments at a hearing that might require an adjournment.

Case management begins even before an application is filed. *The Board expects the parties to have had meaningful discussions between themselves about their dispute before applications are filed*. The Board also encourages the parties to, as much as possible, share information, explore settlement and discuss suitable procedures directly between themselves both before and after the application is filed.

Case management continues after the Officer is appointed. The Officer, in consultation with the Director of Settlement, looks for ways to simplify the case and reduce the number of issues to be decided by the Board. The Officer also tries to ensure that the issues that cannot be resolved are ready to be heard by the Board as scheduled. The Officer may:

- try to clarify the issues in dispute;
- recommend settlement discussions on one or more issues;
- request parties to produce or exchange documents;
- encourage and assist the parties to reach agreed statements of facts or agreed exhibits for the hearing;
- encourage parties to disclose their witnesses and the substance of what the witnesses' testimony is expected to be;
- try to resolve disputes about procedure;
- refer disputes to the Director of Settlement for a procedural direction under Rule 22 of the Board's Rules of Procedure; or
- convene a preliminary hearing or conference call with the Chair or a Vice-Chair for a ruling on a disputed issue.

In appropriate cases, the Officer may involve the Director of Settlement or other senior officers of the Board in these discussions.

The Director of Settlement or an Officer can also order a party to provide access to or copies of documents for inspection by the Board. Section 13(1) of the *Labour Relations Code* and section 3(1) of the *Public Service Employee Relations Act* give the Board or an Officer the right to inspect and examine books, payrolls and other records of an employer relating to employment or terms of employment.

In long or complex cases, or cases in which procedural issues cannot be resolved by the Officer, the Director of Settlement may refer the file to the Chair or a Vice-Chair for case management. The Chair or Vice-Chair will hear from the parties as necessary, either in writing, by conference call or in an in-person meeting. The Chair or Vice-Chair may raise case management issues on his or her own initiative and will make whatever directions he or she considers appropriate to ensure that the Board hears the dispute quickly and efficiently. Possible directions include, but are not limited to:

- ordering further or better particulars;
- segregating some issues for separate hearing or a separate dispute resolution process;
- directing production of an agreed statement of facts;
- ordering production and exchange of documents;
- directing that witnesses be identified to the other party;
- setting a timetable for any or all steps leading up to the hearing; or
- limiting the number of witnesses.

The full range of case management initiatives can also be used or directed in a Resolution Conference (see below).

Board Member Mediation/Non-Binding Informal Hearings

Section 11 of the *Labour Relations Code* allows the Chair to appoint one or more Board Members to conduct an informal hearing or attempt to settle a dispute. Board Members are knowledgeable and experienced labour relations practitioners. While Board Member intervention continues to be an optional dispute resolution step, it can be better used to resolve disputes before a hearing. With its increased focus on encouraging settlement through appropriate dispute resolution techniques, the Board will use Board Members in mediation and settlement efforts more often than in the past.

Parties can expect that in many cases, the Director of Settlement will canvass them on whether to appoint a Board Member to the file. The Director of Settlement may refer the dispute to a Board Member where the parties consent. Where a party does not consent but the Director of Settlement considers it an appropriate case, he or she may recommend that the Chair appoint a Member.

A Board Member assigned to a dispute decides what procedure he or she will follow. The Member may mediate the dispute and help the parties reach a settlement, conduct an informal hearing, or use a mixture of both approaches.

A Board Member hearing usually takes place in an informal setting. It may be at the workplace or at a convenient location other than the Board's offices. Procedure is not strict. Evidence may or may not be given under oath. The Board Member may give an opinion quickly or may decide to issue a report to the parties with recommendations for settlement.

The opinion or recommendation of a Board Member is not binding. Any report is provided only to the parties. The Board's copy of any report is sealed and is not seen by other Board adjudicators.

Three things can happen to a Board Member's report. First, the parties can reach a settlement without further Board action. Second, they can reach a settlement that involves adopting the Member's report as an order of the Board. In this case the Board unseals the report and may confirm the report as an order of the Board itself. Third, if a party objects to the Board Member's report, the report stays sealed. The dispute proceeds to a Resolution Conference and, if necessary, a hearing.

A Board hearing, after an unsuccessful Board Member informal hearing, is a complete re-hearing of the matters in dispute. The Board will not hear evidence about what happened at the informal hearing. Nor will it accept the Board Member's report as evidence.

A Board Member that mediates or holds a non-binding hearing in a dispute will not sit as a Member of any panel that is assigned to adjudicate the dispute, unless all parties agree.

Resolution Conference

Under the revised pre-hearing process, the Board also implements a scheduled Resolution Conference approximately two weeks before the scheduled hearing date. Again, Resolution Conferences will generally apply to:

- determinations;
- applications to modify bargaining rights;
- unfair labour practice complaints;
- duty of fair representation complaints;
- applications for religious exemption from union dues; and
- any other application the Director of Settlement directs.

The Resolution Conference has three purposes:

- It will provide an opportunity for the parties to reach a settlement close to the hearing date, when all parties have had ample opportunity to prepare their cases and learn about their opponent's case (mediation).
- It will give parties an opportunity to hear the opinion of a senior representative of the Board on the strength of their case and the likely result if the case goes to a full hearing (case assessment).
- It will give the Board an opportunity to ensure that the case has, as far as possible, been reduced to the necessary issues and the essential evidence, and all procedural issues that might delay the hearing are resolved (case management).

The Director of Settlement may dispense with the Resolution Conference if considered appropriate to do so. The Board expects that this will be rare.

As stated before, the Board will schedule a Resolution Conference at the same time as it schedules the hearing. Resolution Conferences will be scheduled to occupy no more than two hours, unless the Director of Settlement directs otherwise.

The Resolution Conference will be held between the parties, their counsel (if any), and a senior representative of the Board. The Board's presiding officer will be the Chair, a Vice-Chair, the Director of Settlement or the Manager of Settlement. Unless the presiding officer provides otherwise, the Conference must be attended by representatives of the parties who are authorized to settle the dispute. The presiding officer will determine the procedure to be followed and the approach that he or she will take to the Resolution Conference.

At the Resolution Conference, the presiding officer may:

- inquire into the dispute;
- attempt to narrow the issues in dispute;
- attempt to mediate and assist the parties to reach a settlement;
- hold a case assessment;
- ensure that all case management directions have been complied with; and
- make any other case management directions required to make the case ready for hearing.

Generally, the parties can expect that a Resolution Conference will involve a discussion of the issues, the evidence the parties expect to bring, and the law (in cases where legal issues may be important). The parties may refer to their settlement discussions with an Officer or Board Member. They may refer to the contents of a Board Member's recommendation where one has been made. The presiding officer may express an opinion on the strength of all or a part of a party's case, or recommend withdrawal or settlement of one or more issues.

At the close of a Resolution Conference, the presiding officer will record any withdrawal or settlement of issues; any agreement between the parties about procedure; and any case management directions given by the presiding officer. This record, referred to as the "Hearing Summary", will stay on the Board's file and be made available to the parties at the close of the Resolution Conference. It will also be transmitted to the hearing panel.

For Resolution Conferences to function effectively, the parties must speak freely. Accordingly, all discussions during the Conference are "off the record". This means that a party may put forward a position without fearing that it will be disclosed if the matter proceeds to hearing. In other words, the discussions that take place during a Resolution Conference are strictly confidential. If a formal hearing is required, the hearing panel will not be informed about the Resolution Conference discussions and the parties will not be allowed to rely on such discussions during the hearing. In addition, the opinion of the presiding officer at a Resolution Conference, whether given after a case assessment or not, is confidential.

Where the presiding officer in a Resolution Conference is the Chair or a Vice-Chair, he or she will not sit on the hearing panel that decides the case, unless all parties expressly agree.

VIII. BYPASSING DISPUTE RESOLUTION INITIATIVES

As mentioned above, some or all of the Board's dispute resolution initiatives may be inappropriate in certain cases. Accordingly, from time to time, matters will bypass all or part of the settlement process listed above. Examples of situations where it may be appropriate to bypass those initiatives include where the Board:

- orders an interim hearing. This option is available to resolve immediately a limited number of issues. The Board uses this option where there is a request or need for an interim order to preserve the status quo, or to deal with an urgent issue. *See: Rules of Procedure, Rule 23; UFCW Local 280-P v. Gainers Inc [1986] Alta.L.R.B.R. 323*.
- refers the matter to the Chair or a Vice-Chair sitting alone for hearing. The Director of Settlement may recommend a hearing by the Chair or a Vice-Chair sitting alone if the matters arising in the application fall under sections 9(10), 9(11), and 15(5) of the *Labour Relations Code* and section 3(3) of the *Public Service Employee Relations Act*. Urgent pre-vote or post-vote matters needing a quick decision might use this method. *See: Sections 9(10), 9(11), 15(5); PSERA Section 3(2); Bulletin 4*.
- schedules the matter directly for formal hearing. This may occur when a matter is complete, with clearly defined issues, and others resolution initiatives are considered inappropriate.
- requests that the matter be heard by written submissions alone. This procedure asks the parties to submit argument in writing, with opportunity for rebuttal. This method is used where there is little dispute over evidence, but the parties differ about the application of the legislation to the facts.

IX. THE HEARING

If a dispute is not fully resolved after the Resolution Conference, the file passes to the hearing panel for a formal in-person hearing.

In deciding a case after a hearing, the Board relies on the officer's investigation report (if one is issued), the submissions of the parties and the evidence before it from the parties. *See: Section 3; Rules of Procedure, Rule 26; LRB v. I.W.A. Local 1-207 and Zeidler Forest Industries [1989] Alta.L.R.B.R. 33*.

Any Board Officer or Board Member who attempted to settle the dispute cannot be a witness at the hearing and information they receive through pre-hearing settlement efforts is not communicated to the Board panel.

For more information about the conduct of formal hearings, please see *Information Bulletin 4*, "*Location and Conduct of Board Hearings*".

Procedure at Hearing
See Information Bulletin 4 – "*Location and Conduct of Board Hearings"*.

After the Hearing
See Information Bulletin 6 – "*Reconsideration"*.

See also:

Information Bulletins 1, 3 and 4
Rules of Procedure

For further information or answers to any questions regarding this or any other Information Bulletin please contact:

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