

#8 CERTIFICATION

I. INTRODUCTION

The *Labour Relations Code* allows employees to join or form a trade union. A union may become the exclusive bargaining agent for a unit of employees in two ways. It may be voluntarily recognized by an employer. A union may also apply to the Labour Relations Board for certification. *See: Section 32.*

If a union applies for certification, employees vote on whether or not a union will represent them. The vote is by secret ballot. A union is certified only if the employees decide to be represented by it. Certified unions can require the employer to bargain in good faith. This normally results in a collective agreement. Such an agreement covers all employees in the bargaining unit.

This Bulletin explains the certification process. This includes applications under the *Labour Relations Code* and the *Public Service Employee Relations Act*.

II. AN OVERVIEW

The Labour Relations Board supervises the certification process. It:

- receives applications from trade unions;
- notifies the employer, employees and other affected persons of the application;
- conducts investigations and holds hearings to make sure the union applied at the right time, with the necessary level of employee support, and according to the Code's requirements;
- makes sure the group of employees in question is a unit that is appropriate for collective bargaining;
- holds a secret ballot representation vote among the affected employees; and
- issues certificates for successful applications.

The Board's certification process takes approximately 15 working days.

III. THE APPLICATION

Unions file a certification application to begin the process. Applications must meet several criteria. The application must be on the correct form. An application must be timely. The application must include evidence that 40% of the employees in the bargaining unit applied for support the union. The bargaining unit applied for must be appropriate. The application must also contain the correct legal name of the employer and the union. These criteria are explained below.

Application Form

Unions must file an “Application for Certification” form. A union organizer must complete the form’s declaration. Application and petition forms are available in the Board’s Edmonton or Calgary offices. These forms are also available on the Board’s website at: <http://www.alrb.gov.ab.ca/forms.html>. *See: Rules of Procedure, Rule 4; Bulletin 2.*

A complete application for certification includes:

- a completed application form signed on behalf of the union;
- a declaration by a union organizer; and
- evidence of 40% support in the unit applied for.

Timeliness

Applications are subject to time limits. These are outlined below. *See: Section 37.*

Constitutional Filing

Unions must file their constitutional documents with the Board. This filing must take place at least 60 days before applying for certification. This rule applies to newly formed unions and new locals of established unions. The Board can reduce this time in special cases. Unions must obtain any waiver **before** applying for certification. *See: Sections 24(1)(a), 37(1)(a); Bulletin 7.*

Previous Applications

If a union withdraws a certification application, it cannot make the same application for 90 days. Similarly, if the Board has refused an application, the union must wait 90 days. The Board can reduce this waiting period on application by the union. The Board cannot grant consent after a certification application has been filed. Applicants must seek a waiver of the 90-day time-bar **before** applying for certification. *See: Section 57; Steelworkers 722 v. Handleman Co. of Canada Ltd. [1988] Alta.L.R.B.R. 431.*

Strikes or Lockouts

No union can apply for certification during a lawful strike or lockout without Board consent. *See: Section 37(1)(b).*

Existing Collective Bargaining Relationships

Unions may apply for certification during one of six open periods. These are:

1. at any time, if there is no existing collective agreement or certification covering employees in the unit;
2. 10 months after another bargaining agent is certified, if no collective agreement is in effect;
3. 10 months after the date of the Court’s decision on a challenge to an existing certification, if the certification is not overturned;
4. within the last 2 months of an existing collective agreement;
5. in the 11th or 12th month of the second or subsequent year of an existing collective agreement with a term of more than 2 years, but not less than 10 months before the end of the agreement; or
6. when the employer has served notice of its intention to terminate its voluntary recognition of a trade union and to refuse to bargain collectively. *See: Section 43.*

See: Section 37(2).

Proof of Support

Certification applications must include evidence of employee support. At least 40 percent of the employees in the unit applied for must support the union. This evidence can be membership evidence or petition evidence. *See: Section 33.*

Membership Evidence

Membership evidence includes applications for membership, memberships in good standing, or a mixture of the two. This evidence can be:

- Copies of completed membership application cards along with proof of payment of a sum of not less than \$2. Membership applications must be no more than 90 days old when the certification application is filed. The Board does not require proof of payment of any other initiation fees. Applicants for membership must pay their own \$2. Loans from a union organizer disqualify the card. This may result in less than 40% support for the union. Including invalid cards may also cause the Board to question the organizer's declaration. Either can end in failure of the application for certification. *See: Section 33(a)(ii).*
- Copies of documents usually kept by the union showing membership in good standing. The Board usually decides membership status by looking at the union's records. Records showing that a person is a dues paying member are acceptable proof that the person is a member in good standing. The Board may examine the union's constitutional requirements about membership in good standing. *See: Section 33(a)(i).*

Petition Evidence

Petition evidence means a petition signed by each person supporting the application. Petition evidence and membership evidence cannot be combined. Signatures collected more than 90 days before the date of the certification application will not be counted. Petition headings must be **complete** (including the employer's name and the union's name) and **clearly worded**. The Board has blank petition forms available from its offices and on its website for applicants to use. All signatures must be witnessed. *See: Section 33(b); Bulletin 1.*

The Board suggests trade unions include an alphabetic list of supporters with all applications. If this is not possible, membership or application cards should be in alphabetical order. A trade union seeking to certify a large group of employees can assist the Board by providing a computer disc with a copy of the list of supporters in an Excel or MS Word format.

Appropriateness of the Bargaining Unit

The bargaining unit must be appropriate for collective bargaining. Applicants word their own bargaining unit descriptions. The Board modifies this wording as necessary so long as the amended unit is appropriate for bargaining and is reasonably similar to the unit sought. *See: Section 32, 35; PSERA Sections 10, 11, 16; Bulletins 9, 10, 11; GCU v. Calgary Herald [1993] Alta.L.R.B.R. 222.*

The Union's Name

The Board uses a union's legal name and local number (when applicable) on certificates. Often unions use an abbreviation (e.g., CLAC, IBEW, AUPE, or Local 47) but each union has only one true legal name.

The Employer's Name

Employers operate under a variety of names. These may be divisions, trade names, abbreviations, or names of particular institutions. Each employer has only one proper legal name. The Board uses only the employer's full legal name. Do not put geographical references, division or institution names or operating names either as, or part of, the employer's name. If such references are necessary to show which employees the certificate covers, put them in the unit description.

IV. PROCESSING APPLICATIONS

When an application is received, a Board Officer is appointed to the file. The Officer notifies the affected parties and schedules a hearing. The Officer investigates the application and writes a report. All parties may object to the report's content. If objections are raised, a hearing is held. Assuming the application is found to be in order, a vote will then take place. If a majority of employees voting choose the union, the Board then issues a certificate. These steps are explained in detail below.

Appointing an Officer

When an application is received, the Director of Settlement appoints an Officer to investigate. Board Officers are impartial employees of the Board. They do not advocate for employees, unions or employers. Rather, they make inquiries to assist the Board. *See: Section 34(1); Bulletin 1.*

The Officer begins by reviewing the union's status. The Board presumes a previously certified organization is a trade union. If not previously certified, the union must satisfy the Board that it has met the filing requirements in the Code. *See: Section 24; Rules of Procedure, Rules 22(1)(g), 25; AUPE 124 v. Oak Hill Foundation [1984] Alta.L.R.B. 84-054.*

Notifying the Parties

The Officer phones the employer to:

- notify the employer about the application; *See: Rules of Procedure, part III.*
- outline the bargaining unit applied for;
- explain the procedure for the employer's response to the application;
- make an appointment for the Officer to review the employer's records;
- state the date of the hearing and explain the possibility of cancelling the hearing if no one objects to the application or the Officer's report; *See: Rules of Procedure, Rules 22(1)(m).* and
- address the possibility of a vote.

The Officer also sends written notice to the employer, trade union and any other party affected by the application. The notice contains:

- a copy of the application (without specific information on employee support);
- details of the hearing, and the possibility of cancelling the hearing if the application is uncontested; and
- information about the possible employee representation vote.

Employees are notified by a "Notice to Employers and Employees" posted at the work site. The Officer usually directs the employer to post the notice, but may arrange posting through some

other party where appropriate. The notice tells employees about the procedures and time limits for filing objections and the possibility of cancelling the hearing if no one objects to the application. *See: Section 13(1)(e); Rules of Procedure, Rule 14.*

Employer Response

The Officer seeks from the employer:

- the proper corporate name, address, and phone number;
- a contact person and phone number;
- the employer's legal counsel or agent (if any);
- the number of work sites, their location, shift times and employees working at each site;
- an employee list, preferably in alphabetical order;. and
- the date the employee commenced employment with the employer.

See: Section 13; Voting Rules, Rule 8(h).

If an employer fails to provide the necessary information, the Board can proceed with the application using information obtained from the employees or union. *See: Section 13(3).*

Officer's Investigation

During the investigation, the Officer will determine who can provide the necessary information for the report and will usually attempt to speak to one person on behalf of each party.

At the appointment with the employer, the Officer reviews the employer's records. The Officer obtains a complete list of employees for the Board to use in determining the application for certification. It will assist the Board in determining how many employees are in any appropriate unit and who should be on any voters list. The Officer may ask the employer to provide an alphabetical list of employees or one on computer disc. *See: Section 13; Bulletin 3.*

The employee list needed by the Officer will indicate each employee's work site and work function. The list will show whether employees are full-time, part-time, casual, or employed in managerial or confidential labour relations positions.

For an application under the *Public Service Employee Relations Act*, the Officer's report will indicate individuals excluded from the unit under Section 12 of the Act.

The Officer will ask the employer to identify which employees worked on the date of application. If an employee did not work, the employer should advise the Officer of the last day worked, whether the employee was on leave, dismissed or laid off and when and if the employee is expected to return to work. The Officer, employer and union discuss which persons the parties believe are included in, or excluded from, the unit. The Board applies the same criteria as set out in Voting Rules 16 and 17(a) to determine which persons are included in the unit for the purposes of calculating the 40% support required by section 34(2) and 51(2) of the Code. *See: Voting Rules 16 and 17.*

[amended March, 2009]

The Officer, union and employer review the date, places and times suitable for voting. *See: Bulletin 14.*

[amended September, 2008]

The Officer's Report

At the end of the investigation, the Officer completes a report and gives it to the parties. The report includes:

- the legal name of the employer;
- the correct name of the applicant;
- a statement about whether the union has met the 40% support level in the unit applied for; *See: CUPE 41 v. Westview Regional Health Authority [2002] Alta.L.R.B.R. 174.*
- a statement about whether the petition appears to be a genuine and voluntary expression of the employees' wishes;
- a list of employees in the unit (no reference is made to their support for the application) *See: Timeu Forest Products [1997] Alta.L.R.B.R. 430.;*
- on applications involving work in the construction industry, a statement identifying those employees in the unit that have been employed for at least the 30-day period immediately preceding the date of the application for certification; *[amended September , 2008]*
- a recommendation about the appropriate bargaining unit;
- a recommendation about trade union status;
- where possible, recommendations concerning vote arrangements; and
- any necessary recommendations on persons who may be included in or excluded from the unit.

See: Bulletin 3.

The employee list in the Officer's report will include persons employed in the bargaining unit applied for, but will not show if they supported the application. For applications involving work in the construction industry, the list will also identify whether each employee has been employed for at least the 30-day period immediately preceding the date of the application. The Officer will also report on those employees who have quit or abandoned their employment since the date of the application. The Officer will, if there is a dispute over which employees should be included in the unit, and where possible, make a recommendation as to whether a named person is an employee included in the bargaining unit applied for, or a reasonably similar unit. *See: Bulletin 22; Voting Rules.*

[amended September, 2008]

The Officer sends the written report to all the parties.

Objections To the Report

All parties may object to some or all of the contents of the report. The objecting party must send its objections in writing to the Board and the other parties so that they receive a full business day of notice of the objections before the hearing. If the objecting party does not, the Board may proceed without considering the objections. *See: Bulletin 3.*

The Board requires that objections be clear, specific and detailed. General objections are not normally acceptable (e.g., the bargaining unit is inappropriate). An objecting party should be prepared to explain its objections and bring evidence to support them. *See: Rules of Procedure, Rule 26; Bulletin 2; UA 488 v. Vikon Technical Services et al. [1985] Alta.L.R.B. 85-073.*

An employee or group of employees objecting to the application must file their objections at least one full business day before the hearing. They send the objection in writing and then they or their representative attend the scheduled hearing to present their objections to the panel. If their objections do not deal with the statutory criteria set out above, and no other objections are filed, the Board may cancel the hearing and may let the employees decide the matter in the vote.

If the Board receives no objections of substance, it processes the application relying on the facts contained in the Officer's report. It confirms the date of the representation vote if there is 40% support of employees. The success of the application then depends on the results of the vote. *See: Rules of Procedure, Rule 26.*

In some cases, objections may be filed which do not affect the 40% support. In those cases, the Board frequently orders the vote taken and the ballot box sealed pending a hearing and decision on the other objections. If the objections affect the 40% support, the Board orders the vote taken and the ballot box sealed pending a hearing and decision on the objections. *See: UFCW 401 v. Freson Market Ltd. [1995] Alta.L.R.B.R. 491.*

[amended October, 2006]

The Hearing

If no objections are received one full business day before the hearing, the Officer notifies the employer and the trade union(s). The Officer discusses the voting arrangements and advises the parties if the Board has cancelled the hearing. *See: Section 34(3); Bulletin 4.*

If objections are filed, on the hearing date, the Board will usually rely on the facts set out in the Officer's report unless a party objecting to the report presents additional evidence. *See: Rules of Procedure, Rule 22(1)(m), 26; Bulletins 3, 4.*

At the hearing, the Board decides:

- if the applicant is a trade union;
- if there is evidence of 40% support;
- if the application is timely;
- the appropriateness of the bargaining unit;
- the date, place and times of any vote, and
- if there are any prohibitions to the certification under Sections 37 and 38. *See: Sections 37, 38.*

See: Section 34(1), (2).

The Board normally orders the vote once it is satisfied the union has 40% support in the unit applied for. The vote is ordered based on the Board Officer's findings of 40% support for the application. Objections that may affect the 40% support will be heard by the Board usually after the vote is conducted and the ballot box sealed. Where no objections are filed, a Chair or Vice-Chair alone may deal with the matters. *See: Sections 9(11), 34(2); Bulletin 4; GCU 34-M v. Southam Inc. et al. [1993] Alta.L.R.B.R. 529; Carpenters 1325 v. Fraser Bros. Roofing et al. [1997] Alta.L.R.B.R. 541.*

[amended October, 2006]

The Vote

The Officer prepares a Notice of Vote and Voters List and arranges for their posting at the work site.

The Board has Voting Rules and an Information Bulletin on representation votes. *See: Information Bulletin 14.*

For applications involving work in the construction industry, the employer shall, as close to noon as possible on the day before the vote, and in any event no later than noon, provide all parties and the Board with a *Construction Industry Continuing Employment Declaration* identifying the names of any employees included on the Voters List who have quit or abandoned their employment since the date of the application. The Voters List will be amended to exclude such employees. The declaration is available on the Board's website at <http://www.alrb.gov.ab.ca/forms.html>.

[amended September, 2008]

The Board then conducts the vote. If there are no disputed ballots, the Returning Officer counts the vote and advises the parties of the results.

If disputed ballots remain and the parties are unable to resolve the differences with the Returning Officer, the sealed ballots and sealed ballot box are sent to the Board and the dispute is set for hearing. *See: Voting Rules, Part II; Bulletin 14.*

At this hearing, the Board will decide any disputed ballots and any challenges to the proper conduct of the vote. After the hearing, if the Board directs, the ballots are counted and the results released to the parties and the Board. *See: Voting Rules, Rule 4 to 17.*

The Board notifies all parties of the success or failure of the application.

The Certificate

The Board issues certificates in triplicate. The trade union and employer receive original copies. The Board retains the third copy. *See: Section 39.*

The certificate includes the proper name of the trade union and employer, the bargaining unit description and the date of certification. *See: Section 40.*

Section 40 of the *Labour Relations Code* sets out the effect of granting a certificate.

V. CHECK LIST FOR APPLICATIONS FOR CERTIFICATION

Ensure the application is supported by:

- trade union documents filed at least 60 days before the application or Board consent to apply within the 60 days;
- a fully completed application form;
- attached evidence of membership support (lists or cards sorted in alphabetic order, or a petition); and

- a completed declaration by a union organizer verifying the authenticity of the membership evidence.

See also:

Information Bulletins 1, 3, 4, 7, 13 and 14

Rules of Procedure

Voting Rules

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

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