

DISPUTE RESOLUTION INITIATIVES

INTRODUCTION

The Labour Relations Board tries to resolve differences and disputes between employers, unions and employees. The Board's involvement in resolving matters is a neutral and temporary one. Parties look to the Board to provide fair and objective assistance with as little disruption as possible to their bargaining relationships. The role the Board plays may foster or impair that relationship. Dispute resolution strategies aid in the timely disposition of applications. This policy describes:

- the definition of dispute resolution strategy;
- the statutory provisions and rules;
- how a strategy is determined;
- case-management techniques; and
- the types of dispute resolution procedures the Board commonly uses.

DEFINITION

A dispute resolution strategy is a plan to try to resolve the dispute. The Director of Settlement, usually in consultation with the assigned officer, develops the strategy. They must:

- think about what will work;
- tailor it to the circumstances and parties;
- set out the plan in the database so others within the Board know what is going on; and
- carry it out as the case progresses, making modifications where necessary.

Strategies vary depending upon the case and the officer. The strategy records the current direction for resolution. It enables us to tell the parties about the requirements for processing the matter, for example, attendance at a hearing, or submission of documents.

STATUTORY PROVISIONS AND RULES

The Board has specific powers to act when applications come before it. [Section 16\(4\)](#) outlines these powers. In addition, the Board's [Rules of Procedure](#) give specific authority to the Director of Settlement to carry out the powers set out in Section 16(4).

The Director of Settlement has other, less formal, tools that often avoid the need to investigate or hold a hearing. These are outlined in [Rule of Procedure 22](#). These tools include clarifying issues, speeding up responses, persuading, and informing the parties. When used with the formal procedures, the informal tools can narrow the issues and shorten hearing time. Under [Rule 23](#), the Chair can exercise all the powers of the Director of Settlement.

DETERMINING THE STRATEGY

The Board's approach in resolving differences emphasizes early resolution, informal settlement and communication between the parties. It looks at the parties' past relationship and the options most likely to achieve a resolution. It also considers the circumstances of the case and the characteristics of the parties. When deciding on a strategy, Board staff:

- **Encourage the parties to take responsibility for settlement:** A mediated resolution is more effective than an imposed one.
- **Encourage the parties to deal directly with each other:** They have the continuing relationship. We can provide the tools that help the parties to work out their differences.
- **Hasten attention to matters:** This can remove outstanding issues that can cloud their relationship.
- **Narrow the issues in dispute:** This too can hasten resolution and shorten hearing time.
- **Set hearing dates early:** This gives the parties a target date for resolution and ensures a timely disposition of the matter.

The Director maps out the initial dispute resolution strategy with the officer. After that, the officer (who is most familiar with the file) initiates it along with the Director. Determining and monitoring the strategy becomes a joint responsibility of the Director and the officer assigned to the file.

Many dispute resolution strategies fail because we do not appreciate the dynamics that take place as a file progresses. Delay can help or hurt a party's position. Some lawyers may not prepare until immediately before a hearing. Mediation may blunt the other side's good case. When determining an appropriate strategy of resolution, keep in mind:

- **Settlement often occurs when deadlines are looming:** Scheduling hearings while an officer's investigation or settlement initiatives are going on may help keep the pressure on. Do not delay scheduling just because something else may be going on.
- **Sometimes parties will not want to settle:** There may be broader issues at stake or labour relations reasons why they want to proceed to a hearing. For example, they may want a decision that will deter others from committing similar unfair labour practices. Such parties may see forced mediation as Board interference with their right to pursue their case.
- **Parties have internal political realities to deal with:** Try to design strategies that get the right people prepared and involved in the case. For example, if the party will not settle until their lawyer advises them to, it is important that the lawyer gets to know the case early. An early hearing may achieve that, while mediating with the client may not.

Enter the strategy in the database. Revise and update the database as the strategy changes or progresses. Make sure changes and new directions are clear and precise. The Director of Settlement, the officer, and the Chair can make these entries.

CASE MANAGEMENT

The Board uses case-management techniques to speed up and simplify file resolution. Case management can include:

- reducing the number of issues being adjudicated;
- clarifying the issues that remain;
- reducing procedural disputes and/or dealing with them in advance; and
- eliminating 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.

Once an application has been filed, the officer 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:

- 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 an agreed statement of facts or agreed exhibits for the hearing;
- encourage the parties to disclose their witnesses and the substance of what the witnesses' testimony is expected to be;
- refer disputes to the Director of Settlement for a procedure directed 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.

The 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 to the right to inspect and examine books, payroll and other records of an employer relating to employment or terms of employment.

In long or complex cases, or in 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 and case management by a Chair or Vice-Chair may also occur during a resolution conference. The Chair or Vice-Chair will hear from the parties as necessary. The Chair or Vice-Chair may raise case-management issues on his or her own initiative and will make whatever directions he or she considered 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;
- require the advanced disclosure of facts by directing, for example, the preparation of job profiles or worksheets in determination applications;
- 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.

APPROACHES TO DISPUTE RESOLUTION

The Board uses three approaches to dispute resolution.

1. an officer holds a settlement meeting with the parties;
2. a Board member attempts to mediate the issue; and
3. a Chair, Vice-Chair or the Director of Settlement holds a resolution conference.

The Board uses any combination of these approaches that is workable.

Settlement Meetings with an Officer

Board officers assist parties to settle their dispute without a Board hearing. They learn about each parties' 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 an officer is also conducting an investigation on the file.

Board Member Mediation

[Section 11](#) 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. 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 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 may recommend that the Chair appoint a member.

Once a member is appointed, the Director of Settlement contacts the member to:

- confirm their availability;
- check for conflicts;
- give preliminary information about the dispute;
- agree how to contact the parties aside from the formal letter and a Notice to Employees; and
- decide upon a reasonable period of time to conclude the Section 11 process.

Post the member's appointment on the database. The Director's recommendation and the written appointment are both supporting documents. Link the member to the process file and update the dispute resolution strategy.

The purpose of Board member mediation is to either (1) get the parties to agree, or (2) give them a report on your findings and hope they will accept some or all of the recommendations. A Board member assigned to a dispute decides what procedures to follow. The member may mediate the dispute, 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. Clarity surrounding whatever procedure is adopted and what steps will be taken next is important.

The report(s) should be issued as soon as possible after the hearing. Reports should be as clear as possible and the member should send a copy to each party involved. A copy, sealed in an envelope, should go to the Director of Settlement. If you issue one report for each matter, seal each report separately and label it showing the matter involved. The Director or officer ensures the report and the supporting documents are appropriately entered into the database.

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. Several things can happen following a Board member's report:

1. **Settlement:** The parties can reach a settlement without further Board action. If the Board member confirms a settlement, the Director of Settlement simply sends a confirming letter to both parties. Where possible, the agreement should be in writing and the confirming letter should refer to it.
2. **Adopt report:** The parties 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.
3. **Hearing:** If a party objects to the Board member's report, the report stays sealed. The dispute may proceed to a resolution conference and, more likely, to a hearing.

A subsequent Board hearing is a complete rehearing of the matters in dispute. The Board neither hears evidence about what happened at the informal hearing nor accepts the Board member's report as evidence. A Board member who mediates or holds a non-binding hearing into a dispute will not sit as a member of any panel that is assigned to adjudicate the dispute unless all parties agree.

Resolution Conferences

Officers schedule resolution conferences and hearings during the same phone call. Resolution conferences occur approximately 14 days prior to the first hearing date. If the parties are unable to agree on a date, the file goes to a Chair or Vice-Chair to decide upon an appropriate date.

Resolution conferences involve 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 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;
- determine what (if any) role parties requesting intervenor status may have;
- 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 a resolution conference to entail discussing 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 discussion with an officer or Board member. They may refer to a Board-member's recommendation if one has been made. The presiding officer may express an opinion on the strength of all or a part of case, or recommend withdrawal or settlement of one or more issues.

At the close of the 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. 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 the resolution conference, whether given after a case assessment or not, is confidential.

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