

ROLE OF THE OFFICER

INTRODUCTION

All Board staff possessing written authorization from the Chair are officers under the [Labour Relations Code](#). All full-time staff normally have such authorization but these powers are normally exercised only by the Labour Relations Officers. When the Chair designates persons as Board officers, it gives them certain legal rights and powers as well as certain responsibilities in carrying out their assigned duties. This policy describes the officer's role, including:

- powers of an officer;
- an officer's investigative and mediatory role;
- role in the hearing process; and
- relationship to counsel.

POWERS OF AN OFFICER

Section 8(8) of the [Code](#) grants the Chair the power to "in writing, designate officers of the Board for the purposes of this Act."

All Board employees are given this designation in writing by the Chair when they start employment with the Board. Show this letter to anyone questioning your right to exercise the powers given by the Code. All Deputy Returning Officers are also designated officers when appointed.

Section 12 of the [Code](#) gives the Board a wide range of powers. The Board exercises these powers either by itself or through its members or officers.

12(2) The Board may for the purposes of this Act

(b) conduct any inquiries or investigations that it considers necessary, either itself or through its officers,

(h) through its members, officers and other representatives undertake efforts to assist the parties to a proceeding before the Board to settle the matter,

All officers are legally empowered to do any of the above. What they normally do in the course of their duties depends on the tasks they have been assigned to, either by a Board panel or by the Director of Settlement.

Deputy Returning Officers normally conduct votes. They do not mediate unfair labour practice complaints or investigate certification applications.

Labour Relations Officers—“Board Officers”—are the officers who, on a daily basis, investigate or mediate disputes. Section 12(2)(b) above refers to an investigative role, and (h) to a mediatory role. These two roles are discussed separately below.

Section 13 of the [Code](#) sets out specific powers given to an officer:

13(1) The Board or an officer may

(a) inspect and examine all books, payrolls and other records of an employer, an employee or any other person relating to employment or terms or conditions of employment;

During the course of an investigation into certification or revocation applications, an officer needs to determine the names and classifications of employees employed on certain days and locations. The officer can get this information from an employer’s payroll records. This section gives the officer the power to get the information from the parties.

(b) by notice in writing demand the production of any books, records, documents, papers, payrolls, contracts of employment or other records relevant to employment or terms and conditions of employment or relevant to the membership or constitution of a trade union or employers' organization, either forthwith or at a date, place and timespecified in the notice;

When an officer requires information for an investigation and the party with the information will not give it up willingly, the officer can demand the production of documents under this section. The officer also decides when and where those documents are to be produced.

(c) take extracts from or make copies of books, records, documents, papers, payrolls, contracts of employment and any other records relating to employment or terms or conditions of employment;

Where it is necessary or convenient to do so, the officer may make copies of all books, payroll, other documents containing the information necessary for the investigation. The powers in Sections 13(1)(a), (b) and (c) must only be used to the extent necessary to get the required information. The records belong to the parties and these powers do not include confiscation.

(d) require an employer, employee or any other person to make, furnish or produce full and correct statements either orally or in writing respecting employment or terms and conditions of employment, and may require the statements to be made on oath or to be verified by statutory declaration;

Where necessary, the officer may require parties to give statements relating to the matters in dispute or under investigation, and have them made under oath.

(e) post or require any employer, trade union, employee or other person to post any notices or other communications of the Board at the locations that the Board or officer, as the case may be, considers advisable.

The Board notifies employers and employees, and other affected parties, of all applications and complaints, as well as of votes. It posts notices for all to see. The Board also posts directives and orders for the attention of affected parties. Depending on the circumstances, the Board officer may require an employer, or union, or any party to post such notices.

Board officers have all the powers granted them by Section 13 of the [Code](#). Officers can inspect, examine, and demand to inspect and examine, all books, payrolls and other records of an employer or employee or any other party, and obtain any other sort of information from these parties.

Section 13(3) requires the parties to give reasonable assistance to the Board and officers to enable them to do any of the things referred to in this section.

The powers given to officers can only be used for official Board purposes. No designated officer must ever purport to use these powers for any purpose beyond the Board business assigned to them.

AN OFFICER'S INVESTIGATIVE ROLE

Officers investigate a variety of applications and complaints, including certifications, revocations, determinations and successorship. Most investigations involve meeting with one or all of the parties, inspecting records and documents and posting notices or orders. Most investigations require a report containing findings and possibly recommendations for the Board and the parties. The Board accepts facts reported in these reports as *prima facie* evidence unless the parties bring evidence to the contrary. [Rule 26](#) states:

Where an officer of the Board has investigated a matter and has issued a report of the investigation, the Board may consider the officer's report to be evidence of the facts found therein and may dispose of the matter on the basis of such evidence unless contrary evidence is adduced.

In *City of Edmonton and ATU 569* [1980] Alta. L.R.B. 80-061, the Board wrote:

The Board has made it clear that we place a great deal of weight on the reports of our officers unless evidence is presented contradicting the report.

In the same decision, the Board quoted a previous panel in *IBEW 424 and Petrocare Services Ltd.* [1979] Alta. L.R.B. 79-055:

This Board in its deliberations places a great deal of weight on the report of our Officer and should either or both of the parties to an application take exception to such a report then it is incumbent on the disputing party to present sufficient evidence that would lead the Board to a finding other than that contained in the report. An argument unsupported by evidence will not be sufficient.

By examining records and questioning parties, an officer should be able to get the necessary information about the application at hand. Officers should prepare themselves ahead of time for their investigation by researching background information on the parties, previous similar applications and Board decisions.

The officers are the ones conducting and leading the investigation. They ask the questions, and look at relevant documents. They assess the facts and decide on the relevance of all issues and information presented. Then, from all the information and using previous applications, Board policies and decisions, they make a reasoned decision. In *Stuart Olson Construction Ltd., et al. v. Labourers 92, Labourers 1111, and Cement Masons 924* [1990] Alta.L.R.B.R. 210, the Board wrote:

The officer is an officer of the Board and is at all times an impartial Board representative. The officer is not there to lend support to one side's position or the other's. Officers carry out investigations using their own judgment. They must assess facts, decide the relevance of any issue and arrive at reasoned conclusions. The Board, through a panel or more frequently the Director of Settlement, may direct the officer as to what to investigate, but usually leaves the method of so doing to the officer's discretion.

The officers should make known to the parties at the outset what the purpose of the investigation is and what is required of them. The parties are required by the Code to co-operate with the officers, and most of the time they do. If necessary, you may quote Section 13(3):

13(3) An employers' organization, employer, trade union and employees, and any person acting on their behalf, shall give reasonable assistance to the Board and officers to enable them to do any of the things referred to in this section.

Throughout the investigation, officers should handle parties in a courteous, tactful, sincere, firm, and professional manner. This is particularly important as officers must deal with the same parties on a regular basis. An officer's credibility is essential when dealing with the parties, whether they be employers, employees, trade union representatives, or their legal representatives.

Officers must show themselves to be impartial.

The investigation should be thorough and meticulous to ensure all necessary information is obtained for the report. The officers have to get the positions of both sides to identify issues and explore them in one comprehensive report. This avoids re-investigations.

The Board, in *Stuart Olson Construction Ltd (above)*, continued:

It is for the officer, subject to the law and Board direction, to decide how the investigation is to proceed. The officer cannot let the parties, and the parties should not presume to direct the officer, in how to conduct the investigation. An officer's findings must be, and the Board takes them to be, based on the officer's own conclusions. The officer's report becomes evidence before the Board. However, it is evidence because it represents the results of the officer's investigation. It is not evidence in the sense that it makes the people to whom the officer spoke witnesses before the Board.

Officers should usually get the position of both sides to identify issues and explore them in one comprehensive report. This avoids re-investigations. However, this is not a license to inject new issues into the Board's process, piggybacking on an investigation into another matter. Obviously, the quality of an officer's report, particularly in an expedited process, depends upon the cooperation received from the parties and the degree to which the parties have the information necessary to address the issues. If either party is less than fully informed or cooperative, the risk is that the officer's report may omit, or inadequately assess, that party's point of view. However, the remedy for that is to file a timely objection to the officer's report and adduce a different or supplementary view of the facts in issue at a hearing. It is not the parties' right to insist on a particular type of investigation or re-investigation, or to try to cajole the officer down certain paths or into certain findings.

AN OFFICER'S MEDIATORY ROLE

Section 16 of the [Code](#) sets out the procedures the Board may follow for applications, complaints or references.

16(4) When a complaint is made under subsection (1), a reference is made under subsection (3) or any other application to the Board is made under this Act, the Board may do one or more of the following:

(a) appoint an officer to inquire into the complaint, reference or application and endeavour to effect a settlement within a reasonable time;

(5) The Board's powers under subsection (4)(a) may be delegated to the Chair, a vice-chair, or an officer designated by the Board.

The [Code](#) emphasizes informal settlement of disputes and clear, open communication between the parties.

The Board has in place a number of pre-hearing dispute resolution options. The Director of Settlement decides on the option, or combination of options, to be used in each application, complaint or reference. [Rule 22](#) gives the Director the power to decide what to do in each case. See: [*Dispute Resolution Initiatives, Chapter 19(c)*].

One of these options is the appointment of an officer to effect a settlement.

In mediating a dispute, whether it be a duty of fair representation complaint or an unfair labour practice complaint, the officer must be familiar with the parties, the history to the dispute, and the issues at hand. The officer should find out as much as possible about the dispute before meeting with the parties.

Sometimes, the officer is required to submit a report on the settlement discussions.

Rule 29 says that such a report shall be “issued only to the parties and the Director of Settlement, and such report shall be neither disclosed to any Board panel hearing the matters remaining in dispute nor introduced or accepted as evidence in any hearing into those matters without the consent of all parties to the proceeding.”

The officer should make the parties aware of this rule. This puts the parties at ease, and assists in settling differences. The officer must also ensure that such reports do not get treated as ordinary fact finding reports and get disclosed to the panel hearing the case.

Officers may use different techniques in attempting to mediate a dispute, but should normally encourage the parties to deal directly with each other. Officers must demonstrate that they are unbiased, fair to all parties, and available when needed.

The ultimate purpose in mediating a dispute is so the parties can settle their differences without having to appear at a Board hearing. This does not mean that an officer has failed if the parties cannot settle and a hearing has to be scheduled.

AN OFFICER’S ROLE IN THE HEARING PROCESS

An officer’s report is *prima facie* evidence before the Board. The officer’s job is not finished until the Board decides on the matter. At times, an officer is still meeting with the parties and mediating while a hearing is in progress. At other times, the Board at a hearing may direct an officer to mediate and help the parties settle.

The officer does not participate in the decision-making process. Neither does an officer sit in caucus during a hearing. This is so officers are not perceived as influencing the panel’s decisions and so that information given in confidence to the officers during investigations are not inadvertently relayed to the panel.

An officer is not a compellable witness in proceedings before the Board, the Court of Queen’s Bench or any other court. This is set out in Section 3 of the [Code](#).

3(1) The Minister, a member or officer of the Board, an employee of the Crown in right of Alberta employed in the administration of this Act or any person designated by the Minister or selected by the parties to endeavour to effect settlement of any matter to which this Act applies is not a compellable witness in proceedings before any court respecting any information, material or report obtained by that person under this Act.

(2) In this section, "court" means the Court of Queen's Bench or any other court and includes the Labour Relations Board or any other board or person having by law or by the consent of the parties authority to hear, receive and examine evidence, but does not include an inquiry under the *Public Inquiries Act*.

If an officer chooses to sit in a hearing they should conduct themselves in an impartial manner.

AN OFFICER'S RELATIONSHIP TO COUNSEL

Parties to any matter in front of the Board can be represented by legal counsel.

The officers deal with counsel all the time in the course of their duties, and it is not unusual for counsel to approach officers on matters.

Counsel should always be sent all correspondence as soon as we find out they represent a party in an application. The other parties to the application should be copied on all correspondence we receive from counsel.

Counsel very often deal directly with the officers during an investigation, and because of their familiarity with the Board process, can help speed up the investigation process. This does not mean that the officer cannot deal directly with their clients. Officers still have the authority and discretion to get information from the parties directly should they so choose.

Counsel are entitled to be kept aware of all the officer's dealings with a client. They should, however, not be allowed to restrict an officer's access to, or to act as the exclusive contact between, the officer and the client when the officer needs to obtain information as part of an investigation.

In dealing with counsel, officers must act in an unbiased manner, and be courteous and professional. Clients and counsel legitimately expect that the Board will deal with the client through appointed legal counsel. Officers must avoid even the appearance of short circuiting that process.