

INVESTIGATIONS AND REPORTS

INTRODUCTION

Two processes go on at the same time during a revocation application:

1. an officer investigates the facts for the Board, and then the Board makes a ruling; and
2. the people affected (i.e., the employer, union and employees) decide whether they oppose the application or want to raise concerns over particular issues.

The content of an officer's report affects the positions taken by the parties. They must have sufficient time to read and react to the report. Late reports deny them the time they need to assess their position and prepare their case. The policy describes:

- An officer's investigation and the report. The report includes the names of the employer and the union, the bargaining relationship at issue, employee support (if an employee-initiated application), the timeliness of the application and voting arrangements (if necessary).
- How a report is issued.

The Director of Settlement appoints an officer to investigate. Each application becomes a process file. Officers record all activity in the database daily. See: [[Synopsis, Chapter 19\(h\)](#); [LRO Comments, Chapter 19\(i\)](#)]. The officer compiles the results of an investigation into a report. The original of the report goes on the process file to become evidence before the Board at any hearing. Copies go to the parties. They use the report to assess their positions and decide whether or not to object to any item in the report. Affected parties **must** receive copies of the report **at least two working days** before the hearing. See: [[Rule of Procedure 26](#); [Information Bulletin #3, Officer's Investigations](#)].

The officer's report provides information about:

- **Bargaining relationship:** This tells the Board about the group of employees the union represents that is affected by the application.
- **Timeliness:** This helps the Board determine if there are any time bars to the application.
- **Evidence of Support:** This helps the Board decide whether the petitioners have the voluntary support of 40% of the employees in the bargaining unit. See: [[Petition Evidence, Chapter 23\(g\)](#)]. Using the officer's report for this keeps each employee's preference confidential.
- **Vote Arrangements:** This assists the Board in arranging the date, time, and place of any necessary representation vote.

BARGAINING RELATIONSHIP

The officer must report on the bargaining unit affected by the application. Confirm the information provided on the application with the database and review it with the affected parties.

TIMELINESS

Applications must be timely. The [Code](#) sets out time limits affecting revocation. Officers should consider if any of these limits affect an application. If so, investigate and report on the facts as set out below.

Existing Strikes and Lockouts

[Section 52\(1\)](#) prohibits revocation applications during a strike or lockout without the Board's prior consent. See: [[Consent, Chapter 31\(a\)](#)]. Strikes and lockouts have a limited duration of two years under [Sections 77](#) and [90\(1\)](#) of the Code.

Previous Applications

[Section 57](#) requires an applicant have the Board's consent **before** making an application for revocation that is the same, or substantially the same, within 90 days of the applicant withdrawing a previous application or the Board dismissing it. See: [[Consents, Chapter 31\(a\)](#)]. This prevents workplace and collective bargaining disruption caused by repeated applications by the same applicant. There are two questions involved:

- Is the applicant the same?
- Is the application the same or substantially the same?

For example, if a different group of employees filed a revocation application within 90 days of a first application being withdrawn or dismissed, would the 90-day time bar apply? The Board has not ruled on this. Some relevant issues might be whether or not each group submitted separate evidence **of support** and whether the applicant is the same from the perspective of employees. To be separate applicants, the employees must notice some difference between the applicants.

Open Periods

[Section 52\(3\)](#) outlines several periods when a revocation application may be made. These time periods vary depending upon who is filing the application.

Trade Union Applications

[Section 52\(2\)](#) states the bargaining agent may make a revocation application at any time if there is no collective agreement in effect.

Employee Applications

[Section 52\(3\) and 52\(4\)](#) outline when employees may apply for revocation. They are:

- at any time, if there is no certification and no collective agreement;
- 10 months after certification, if no collective agreement is in effect;
- 10 months after the date of the Court's decision on a challenge to the certification, if the certification is not overturned;
- within the last two months of any collective agreement; or
- in the 11th or 12th month of the second or subsequent year of a collective agreement with a term of more than 2 years, but not less than 10 months before the end of the agreement.

For more information on window periods in collective agreements, see: [[Window Periods, Chapter 24\(h\)](#)].

Employer Applications

Section 52(5) states employers or former employers can apply:

- if there has been no collective bargaining with the union for three years from the date of certification; or
- if there has been no collective bargaining for three years since the original expiry date of the last collective agreement.

If a former employer applies, make sure that application also meets the requirements under [Section 53\(1\)\(c\)](#): either the union abandoned its bargaining rights or there have been no employees in the bargaining unit for at least three years. Ask the union and the employer to provide information and documentation on the history of collective bargaining, representation of employees by the bargaining agent and the reasons why the employer has not had any employees performing bargaining unit work. Documentation could include payroll records, union dues records, notices to commence collective bargaining, last collective agreement, etc.

Sample Report Statements

Sample standard statements for the officer's report which address the timeliness issue for employee revocation applications are:

The Board certified the (name of incumbent union) on June 30, 1991. The parties have been negotiating a first agreement. On the date of application, May 5, 1992, there was no collective agreement in effect between the parties. This application is timely under Section 52(3)(a) of the Code.

OR

The term of the existing collective agreement between the parties is August 1, 1990 to July 31, 1992. The application, received June 10, 1992, falls within the last two months of the existing collective agreement. It is therefore timely under Section 52(3)(c) of the Code

or

The term of the existing collective agreement between the parties is April 1, 1990 to March 31, 1992. The parties signed a memorandum of agreement on July 20, 1992. The Employer is to ratify the agreement on July 27 and the Union on July 31. The application, received July 25, is timely, as the new collective agreement is not yet signed. The bridging clause in the existing collective agreement is not a bar to this application because of Section 56 of the Code.

or

The term of the existing collective agreement between the parties is December 31, 1990 to January 1, 1995. The application, received November 15, 1992, is timely. The application falls within the 11th or 12th month of the second year of a collective agreement with a term of more than two years. It is therefore timely under Section 52(3)(d) of the Code.

EVIDENCE OF SUPPORT

Employee-initiated revocation applications require employee support. Section 53(2) states:

53(2) Before conducting a representation vote on an application for revocation brought by employees the Board shall satisfy itself, on the basis of the evidence submitted in support of the application and the Board's investigation in respect of that evidence, that at the time of the application for revocation 40% of the employees within the unit indicated in writing their support for the application for revocation.

To discover whether the applicant's petition indicates 40% support in the bargaining unit for which revocation of bargaining rights are being sought, the officer must:

- decide which employees belong in the bargaining unit; and
- report if at least 40% of them have shown support for the revocation application.

Officers also assess the voluntariness of the petition. See: [[Petition Evidence, Chapter 23\(g\)](#)].

Creating an Employee List

Begin preparation of the employee list right away. Enter the names of petitioners and the date they signed the petition in the database. Add the information provided by the employer, such as names of other employees and job classifications, to the database as it becomes available.

Check for spelling consistency between the names provided by the petition and the employer. The list provided by the employer may help decipher illegible names on the petition. If there is a discrepancy in spelling an employee's name, use the employer's spelling to avoid giving away who is a supporter.

The employee list should include **all** employees, not just those affected by the application. In cases of large employers, officers can use their discretion to exclude obviously irrelevant employee groups. For example, if the affected bargaining unit is for one location, there is no need to include employees in other locations.

Account for all persons. If the applicant has evidence of support from a person, that individual's name must appear on the list. This is so even if the person is no longer employed by the employer. Be careful to list all recent ex-employees (as well as those on long-term leaves of absence) so as not to only identify petitioners. If the applicant is claiming support from someone whose name does not appear on the list of current or recently terminated employees, discuss the individual with the applicant. The applicant may be able to provide information to help account for all supporters

Even though the Code does not stipulate the timing of evidence of support for revocation applications, make mention in the report of the time period during which the signatures were collected. If anyone wants to raise objections to the timing of the support, they must do so in a letter to the Board. The Board will then deal with the issue at hearing. See: [[Objections and Responses, Chapter 23\(e\)](#)].

Inclusions and Exclusions

Examine the employer's payroll documents and time sheets. See which employees performed work, on and around the date and time of application, which placed them within the bargaining unit. See: [[Types of Employees, Chapter 24\(b\)](#); [Management Exclusions, Chapter 24\(d\)](#); [Confidential Exclusions, Chapter 24\(e\)](#); [Independent Contractor vs. Employee, Chapter 24\(f\)\(i\)](#); [True Employer vs. Subcontractor, Chapter 24\(f\)\(ii\)](#); [Professional Exclusions, Chapter 24\(g\)](#); [Voting Rules 16 and 17](#)].

If the numbers differ significantly from those provided by the applicant, find out why. You may need the names and job classifications of employees who quit, were fired or laid-off in the 14-day period (construction) or 30-day period (non-construction) before the date of application. You may also need the same information about employees on long-term disability or some other type of leave of absence such as maternity leave. See: [[Voting Rules 16 and 17](#)].

While still at the employer's premises, the officer may want to discreetly crosscheck the employee list with the list of supporters provided by the applicant to see if there are any discrepancies, for example, missing names.

Do not, under any circumstances, allow the employer or the union to see the names of those who have shown support for the revocation application.

The officer may have to interview various individuals to determine if they are employees as defined by the Code, and if their job function falls within the bargaining unit. Be careful not to imply that these individuals are the ones who supported the application. These determinations are only done if the inclusion or exclusion of the individuals may affect the 40% support for the application.

An employee's last voluntary expression of opinion made before the application date is the one the Board uses in determining 40% support for the application. **Include** in the list of supporters those employees who signed a counter petition in opposition to the revocation application **after** the filing of the application with the Board. The officer's report should mention the number of supporters who signed a document indicating a change of mind, again being careful not to reveal the identity of those individuals. If some of the petition supporters signed a counter petition before the application was filed with the Board, **exclude** them from the list of supporters. Again, make mention of the numbers in the report but keep names confidential.

Calculating Support For Revocation

The Board keeps evidence of petition support confidential. Generate an *External Employee List* and an *Internal Employee List*. The internal list shows petition support. The Board members hearing the matter receive this list with the officer's report. The external list, without petition support, is the list for the parties affected by the application, the applicant, the union and the employer.

Calculate the 40% threshold using the total number of employees affected by the application and the number of those individuals who signed the petition. If the bargaining unit that the applicant is claiming is affected by the application differs from that described on the certificate, the reason for the difference must be explained in the officer's report. The officer should provide numbers indicating support for the application in both situations and recommend which group of employees is affected.

Sample statements for the officer's report are:

On the date of application for revocation, the employer employed (number) employees performing work within the bargaining unit. Of those, at least 40% have shown support for the revocation application by signing a petition. The signatures were gathered between (date) and (date). It appears the applicant has the 40% support required for a representation vote under the Labour Relations Code.

or

On the date of application for revocation, the employer employed (number) employees performing work within the bargaining unit. Of those, fewer than 40% have shown support for the revocation application by signing a petition. The signatures were gathered between (date) and (date). It appears the applicant does not have the 40% support required for a representation vote under the Labour Relations Code.

VOTE ARRANGEMENTS

If the employee or employer-initiated application meets the requirements under the Code, the officer's report should recommend date(s), time(s) and location(s) for a representation vote. If an employee applicant does not have the required 40% support but the numbers are close, include vote arrangements in the report. In the event objections are filed and the Board determines that the necessary support existed at the time of application, vote arrangements are in place. Work out proposed arrangements in consultation with the parties. Explain to them that you are making the vote arrangements **in case a vote is necessary**. The Returning Officer or the Deputy Returning Officer has the authority to make final vote arrangements if the parties cannot agree. For more information on vote arrangements see: [[Representation Votes, Chapter 28\(a\)](#); [Employee Vote Procedures, Chapter 28\(f\)](#)].

The Board should conduct the vote as soon as possible after the hearing. Allow enough time, to give voters reasonable notice of the vote arrangements. Generally, schedule the vote two or three working days after the hearing. Recommend adequate polling times to avoid congestion at the voting location(s).

ISSUING THE REPORT

Affected parties and their legal counsel must receive copies of the officer's report **at least two working days before the hearing**. In situations where there are employees in the bargaining unit, issue copies of the external employee list with the report. Fax or courier all reports.

If, for some reason, the report is not issued to the parties at least two days before the hearing, consult with the parties. See if they require an adjournment to prepare for the hearing or if they agree to go ahead as scheduled. If the officer was late issuing the report, the Board may have to waive the full business day deadline for objections. If the hearing is adjourned, issue amended Notices to the Employer and Employees for the employer to post.