

# PETITION EVIDENCE

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## INTRODUCTION

The [Labour Relations Code](#) permits employees to express their wishes in the form of a petition. This policy deals with the use of petition evidence in support of an application for revocation of bargaining rights.

The Board will only accept petition evidence for revocation applications if satisfied that such support represents a free and voluntary expression of employee wishes. The Board's concern is to disclose unwarranted employer pressure on employees.

Questioning related to how the petition started, the circumstances under which each person signed and the safeguarding of the petition is relevant to determining the validity of the petition.

This policy examines:

- the statutory requirements;
- the tests for voluntariness;
- the officer's recommendation; and
- evidence before the Board panel.

## STATUTORY REQUIREMENTS

Section 53(2) of the Code contemplates the use of petitions in support of revocation applications.

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.

Unlike petition support for a certification application, there are no time restrictions.

## THE TESTS FOR VOLUNTARINESS

A petition must be a genuine and voluntary expression of the wishes of the employees, free from the influence of management. In [Lansdowne Foods v. UFCW 401 et al \[1992\] Alta. L.R.B.R. 413](#), the Board outlined the issues to examine in assessing voluntariness.

The petition must be **authentic**. The signatures must be genuine. Employees must sign on their own behalf. The Board will reject any petition if it finds a forged signature. All signatures must also be accurately dated. For these reasons, all signatures on a petition must be witnessed. The witness's

signature is an affirmation that the persons signing the petition did so on their own behalf on the indicated date.

The petition must be **understandable**. The heading on the petition must say clearly what it is for. It should be simple and straight forward. It should be free of confusing editorial comment. The heading must be on the petition before anyone signs it, and remain there, unaltered, from then on.

The petition must be **fairly presented** to employees. Persons circulating petitions must make it clear to the employees they solicit that their purpose is to ask the Board to revoke the union's bargaining rights. Substantial evidence that employees were told the petition, despite its heading, was for some other purpose, will destroy the petition's credibility.

The petition must be **freely signed**. Evidence of intimidation, undue influence, threats or coercion by those involved in the origination or circulation of the petition will cause the Board to reject the petition. This is so whether such conduct is a result of the petition organizer's own actions or as a result of management influence.

In revocation applications, the petition must be free of actual employer interference. In addition, the petition must be signed in circumstances perceived to be free of employer interference.

The test for voluntariness falls to the officer. The assessment is a cumulative process, the result of probing and reaching a conclusion based on experience and judgment. The decision on what evidence will invalidate a petition as a free and voluntary expression of employee wishes varies. As the Board states in *Lansdowne Foods, above*, "relevant and admissible evidence is that which shows employer involvement directly related to the origination, preparation or circulation of the petition that would objectively lead a reasonable employee to believe that management was involved in the circulation of the petition or would be likely to learn who signed it."

When testing for voluntariness of revocation petitions, the Board officer questions the spokesperson for the petitioners. The officer should learn:

- If the spokesperson is an employee of the respondent employer in the bargaining unit covered by this application?
- What is their position with the employer?
- Whose idea was it to start the application for revocation?
- Who obtained the signatures on the petition(s)? If the signatures were collected by someone other than the spokesperson, who were those people (names, position with the employer)?
- Where were the signatures obtained? If some or all of them were obtained on the employer's premises, how many were collected there and under what circumstances were they obtained?
- When were the signatures obtained? (During working hours, on breaks?)

- Was each person given the opportunity to read the Statement of Intent at the top of the petition? If not, why not?
- Was the spokesperson always in physical possession of the petition(s)? If not, why not and what were the circumstances surrounding that?
- Was the application or the purpose of the application discussed with anyone from management of the employer? If so, who did the spokesperson or anyone else talk with and what was said?
- Did anyone from management offer the spokesperson or any of the employees any reward or benefit for starting or proceeding with this application? If so, who was this discussed with and what was said?
- Did anyone from management threaten the spokesperson or anyone else they are aware of with termination of employment, wage reduction or anything relating to employment with the employer if they did not support the application? If so, who was this discussed with and what was said?
- Has the spokesperson been told or led to believe that this application will be funded in whole or in part by the employer? If so, who was this discussed with and what was said?

The spokesperson should understand:

- that the Board officer has the authority to investigate and verify all documents and statements made by parties to this application; and
- that they may be required to attend a hearing and testify about the events surrounding the collection of the petition signatures.

## THE OFFICER'S RECOMMENDATION

As part of the investigation into a revocation application, using the questions outlined above as a guide, the officer records the responses, probing further in areas that the officer feels need more investigation or clarification. The officer then makes a judgment about the voluntariness of the petition.

The officer does not report on specific answers to the questions posed but makes a general recommendation in the officer's report. See: [[Investigations & Reports, Chapter 23\(d\)](#)]. If the officer is satisfied about the voluntariness of the petition, the officer states this in the report. A sample standard statement is:

*I have investigated the circumstances surrounding the circulation and signing of the petition(s) in support of this application. It appears the signatures were obtained voluntarily.*

If the officer finds the petition evidence voluntary and no one objects to that finding or anything else about the application, the Board may deal with the application without an in-person hearing. The scheduled hearing can only be cancelled if there are no objections and all the affected parties agree to waive their right to a hearing. See: [[Hearings, Chapter 23\(f\)](#)].

If the required 40% support for the application is established on the basis of the officer's investigation, a Chair or Vice-Chair sitting alone can order a representation vote for an uncontested revocation application.

If the officer is not satisfied about the voluntariness of the petition evidence, the officer's report will identify areas of concern and recommend that those questions be dealt with through evidence before the Board panel. The areas of concern can be as general or as specific as the officer considers necessary. A sample standard statement is:

*I have investigated the circumstances surrounding the circulation and signing of the petition(s) in support of this application. I leave it to the Board to determine the voluntariness of the petition through evidence presented to the panel by the applicant. The area I am concerned with deals with .....*

Areas of concern could include a manager circulating a revocation petition, management promising a financial reward to a bargaining unit employee for initiating a revocation application, knowledge that the employer tried to file the application on behalf of the employees, or someone circulating a petition under false pretences. Identification of areas of concern will not necessarily invalidate the petition. If the officer identifies areas of concern, the spokesperson for the revocation petitioners must appear before the Board to testify about those areas. The voluntariness of the petition must be proven to the Board's satisfaction.

In addition to the officer's questioning, the Board encourages employees affected by the application to confidentially contact an officer if they have any reason to doubt the validity of the petition support. This is done through a Board notice that also informs the employees about the receipt of the application and the hearing. If the officer's report has not yet been issued, the officer tries to address the doubts raised through investigation and discussion with the employee. If the officer is then not satisfied that the petition is valid, refer the matter to the Board for determination, identifying that and any other concerns the officer may have. Keep the identity of the employee confidential. If the officer is satisfied with the voluntariness of the petition but the employee is not, instruct the employee that if they want to pursue their concern, they must send in a signed letter of objection. The letter must provide detailed particulars about their concerns related to the petition.

If an employee contacts the Board after the release of the officer's report and wants to object, the employee must send in a signed, particularized letter of objection if they want to pursue concerns about the validity of the petition.

Such employees are then linked to the process file and expected to attend the hearing prepared to pursue their concerns. The manner in which this is done is outlined below in the discussion on how the Board deals with objections about the voluntariness of revocation petitions raised by any affected party.

The other option is for the employee to tell the union about their concerns. The union may then decide to raise an objection with the Board. This can be done without revealing an employee's identity. Depending on the nature of the objection, the employee may have to testify at the hearing.

## **EVIDENCE BEFORE THE PANEL**

If the officer leaves it to a Board panel to determine the voluntariness of a petition, the spokesperson must appear before the Board panel and present evidence related to the area of concern identified in the officer's report. The spokesperson presents this evidence to the Board panel by answering questions under oath from the panel and other affected parties about the areas of concern identified by the officer.

The Board also requires the spokesperson to take the stand if a party affected by the application files a written objection questioning the voluntariness of the petition. Again, the objection must include detailed particulars.

In this situation, the spokesperson is affirmed or sworn in as a witness and usually states that they agree with the officer's report. The party who raised the objection then cross examines the spokesperson. Questions are restricted to the issues raised in the objections. The Board regulates the questioning and allows cross-examination by other parties affected by the application. The onus of proof is with the party who raised the objection. It is up to that party, through cross examination of the spokesperson and through presentation of other evidence as necessary, to convince the Board that their concerns about the voluntariness of the petition are valid.

Based on the evidence presented by the spokesperson through questioning, the Board makes a determination about the voluntariness of the petition. If satisfied that the petition evidence bears out the minimum 40% employee support required for a revocation application, the Board determines if the application meets the other relevant requirements under the Code. If the Board is not satisfied as to the voluntariness of the petition and finds that it affects the 40% support requirement, the Board dismisses the application.

Sometimes the hearing into the voluntariness (which goes to the 40% support) is not held as originally scheduled because of the parties' availability. If the officer has found 40% voluntary support, a Board panel will order a vote with the ballot box sealed pending a future hearing into the objections.