TYPES OF EMPLOYEES

INTRODUCTION

The Labour Relations Board sometimes needs to determine who is an employee. This often occurs when unions apply for certification. To order a vote, the Board must be satisfied that 40% of employees in the bargaining units applied for support the union. Who is an employee can affect if there is a vote and, subsequently, who votes. The Board also decides employee status for some revocation and determination applications. This policy discusses:

- whether people in certain categories of employment will or will not be included in a bargaining unit(the prime function test);
- if those people are included in a bargaining unit, whether they will be counted as employees employed on the date of application for the purposes of determining 40% support on certification and revocation applications; and
- whether such people are entitled to vote in a representation vote.

PRIME FUNCTION TEST

The <u>Labour Relations Code</u> defines an employee as anyone employed to do work and who is in receipt of or entitled to wages. The Code lists a number of exceptions. For example, managers are not employees. See: [<u>Management Exclusions, Chapter 24(d)</u>]. Sometimes the Board must also decide if an employee is in a specific bargaining unit. The Board uses the prime function test to make this determination

TYPES OF EMPLOYEES

Employers have different types of employees. Some may be full-time while others are regular part-time or casual. In *CUPE 417 v. Westerner Exposition Association*, [1986] Alta. L.R.B.R. 273, the Board distinguished between three categories of employees.

Full-Time Employees

Full-time employees are employed on a regular basis. For example, they may be employed Monday to Friday, 8:30 to 4:30. Shift workers scheduled for a full shift for a full period are also considered full-time employees.

Regularly Scheduled Part-Time Employees

Regularly scheduled part-time employees are employed on a regular basis but do not work full-time. This could include a person who only works Saturdays and Sundays while the normal days of work are Monday to Friday.

Casual Employees

Casual employees work irregularly or on a call-in basis. A casual employee includes someone who has the right to refuse work and is generally not directed to be at work on a specific day(s) and time(s). By contrast, a regularly scheduled part-time employee is generally directed to work on scheduled days at specified times and is required to provide notification of absence or to arrange coverage if absent.

The Board—not the employer—determines whether a person is part-time or casual. What an employer calls casual may well, from the Board's perspective, be regular part-time.

Are Part-Timers or Casuals Included in or Excluded from a Bargaining Unit?

The Board favours "all employee" units which include full-time, part-time or casual employees falling within the scope of the certificate. This differs from practice in some (principally Ontario) provinces. This is not an absolute policy. If the Board is satisfied that full-time employees and part-time or casual employees had no shared community of interest, a unit excluding part-time or casual employees, or both might be granted. Similarly, a bargaining unit consisting only of part-time and casual employees might also be granted where those employees had markedly different interests (in respect to the employment relationship) from the full-time work force.

Part-Time and Casual Employees in Certification and Revocation Applications

Certification (and some revocation) applications require employee support. The Board must be satisfied that 40% of employees in the bargaining unit applied for support an application in order for it to order a vote. Determining the percentage of employees supporting the application requires an employee list. The <u>Code</u> provides no direction about how casual and part-time employees are treated when it comes to creating this list.

The Board has developed a set of general rules to assist in this process. These same rules are used to determine voter eligibility. See: [Voting Rules 16(1)(b) and 17)]. Regularly scheduled part-time workers are treated as employees assuming they worked on the date of the application doing bargaining unit work, or:

- 1. worked in the 30 days prior to the application (14 days in construction), and
- 2. worked or are expected to work in the 30 days after the application (14 days in construction).

This means that most full-time and part-time workers are considered employees for the purposes of the application even if they were absent on the date of the application because of casual illness, annual vacation or temporary layoff. Those absent on long-term disability, extended sick leave, long-term lay-off, major disciplinary suspension or lengthy education or vacation leaves which place them outside of the 30/30 (or 14/14) day provisions are not considered employees. Full-time and part-time workers absent on parental leaves are considered employees.

Casual employees are eligible to support a union (for the purpose of determining the 40% support and voting) if they worked on the date of the application. Casual employees not working on the application date are not subject to the 30/30 rule outlined above.

Although some employees may not be eligible to support the union or vote in a certification application, they may still be members of the bargaining unit. The Board may depart from these rules in specific cases.

How Does the Board Handle Part-Time and Casual Employees in Other Matters?

Part-time and casual employees are employees and are entitled to the protections of the Code. They may file unfair labour practice complaints and otherwise exercise the rights set out in the legislation.

In some instances, such as strike votes under Section 76, the Code defines who is eligible to vote. If there is a dispute in such cases, the Board will establish rules on a case-by-case basis that may differ from the rules set out above in respect of certification and revocation applications.