

WINDOW PERIODS

INTRODUCTION

Employees elect trade unions to represent them. A union's support within the workplace goes up and down over time. Once a trade union achieves certification, the [Code](#) gives it a protected period. This is the sensitive period when the union bargains towards its first collective agreement. During this protected period, no other union can apply for certification and employees cannot seek revocation.

Collective agreements last for a set term. They give employers, unions and employees a period of industrial peace. Sometimes employees want to choose a different trade union, or choose to work without a union. The [Code](#) balances these conflicting interests. It protects a union's status as bargaining agent during most of the collective agreement's term. It also gives periodic opportunities (called "open" or "window" periods) for the employees to seek alternate or no representation.

The [Code](#) defines window periods precisely. The resulting statutory provisions are complex. This policy describes the "window periods" available for certification and revocation applications. The Board may determine whether a collective agreement exists based upon these provisions. These differ for newly certified trade unions and bargaining relationships with a collective agreement in place.

NEWLY CERTIFIED TRADE UNIONS

The [Code](#) gives a newly certified union a protected period of up to 10 months. This allows time to negotiate a first collective agreement. Once the union signs an agreement, it gets protection from the collective agreement bar described below, and the newly certified union bar ends.

Under Section 37(2)(b), no other union can apply for certification until 10 months after the date of certification. The same bar applies to revocation applications under Section 52(3)(a) of the [Code](#). The bar applies to any application that includes "any employees" in the earlier unit. It need not affect the whole unit.

Sometimes, applications for judicial review of a certification delay a union's chance to negotiate its first agreement. The Code creates an extra protection for that situation. No party can apply for certification or revocation until 10 months after the date the court finally disposes of any judicial review application over a certification. See: [[Sections 37\(2\)\(c\) and 52\(3\)\(b\)](#)]. No certification time bar applies if the court quashes the Board's original certification.

BARGAINING RELATIONSHIPS WITH A COLLECTIVE AGREEMENT

Once a first collective agreement is signed, a new set of restrictions comes into play. The basic rule is that if a collective agreement applies to the employees, it bars revocation applications and rival certification applications except:

- The bar does not operate when the collective agreement continues during bargaining because of a contractual or statutory bridging provision. See: [[Section 56](#)].
- The bar applies to unions with voluntary recognition collective agreements applying to certify their own units except when employers end their recognition. See: [[Section 43](#)].
- The certification bar applies if an existing collective agreement covers any of the employees sought by the new certification application. The agreement creating the bar need not apply to the whole of the new unit.
- The agreement bar does not apply in the “window periods” set out in the [Code](#) and explained below.

The Board has exclusive authority to decide when a collective agreement is in existence. The collective agreement must exist at the time of the new application. An agreement reached later that day does not create a bar. See [*Carpenters 2103 v. Intercon* [1988] Alta.L.R.B.R. 351].

The expiry date of an “old” collective agreement and the effective date of a “new” collective agreement can be crucial in window-period determinations. Sometimes these appear to overlap. The Board must decide which one is “in effect” on the application date before it can decide whether the window period applies. For example, an employer and union entered into a new collective agreement from October 15 but with new wage rates only effective from October 24, the day after the old agreement expired. The Board found an application brought on October 18 timely, using the window period from the old agreement and holding the new agreement not yet in effect. See: [*IAW v. Board of Industrial Relations et al.* (April 11, 1978) (Alta. S.C.)].

Bridging Provisions

Section 130 is a statutory “bridging provision.” It continues a collective agreement beyond its expiry date if a party gives notice to bargain. Most collective agreements contain a similar contractual clause. Under Section 130, the old agreement remains in effect until:

- a new agreement is reached;
- bargaining rights are terminated; or
- a strike or lockout occurs.

The bridging of a collective agreement past its normal expiry date does not affect the window period. The “window” remains open as if there were no collective agreement in effect. Section 56 prevents raising bridged agreements as a bar to otherwise timely applications. See: [*CLRa v.*

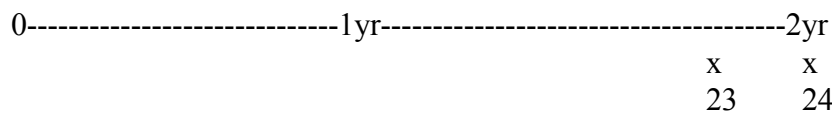
General Construction Carpenter Group of Trade Unions et al. [1991] Alta. L.R.B.R. 545].

Window Periods During a Collective Agreement of Two Years or Less

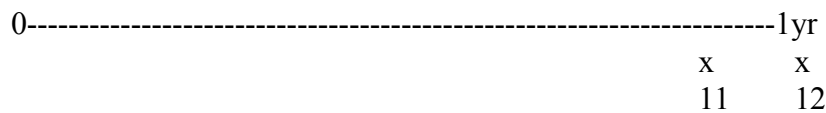
When a collective agreement is in effect for 2 years or less, parties can apply for certification or revocation in the last two months of the term of the agreement. See: [[Sections 37\(2\)\(d\) and 50\(3\)\(c\)](#)].

Examples:

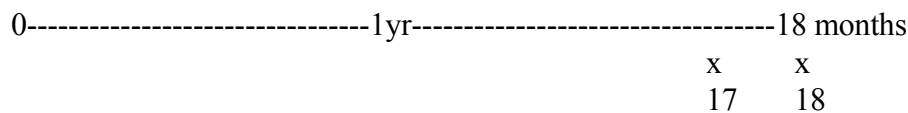
A collective agreement is for a two-year term. Parties can only apply for certification or revocation anytime in months 23 and 24.



A collective agreement is for a one-year term. Parties can only apply for certification or revocation anytime in months 11 and 12.



A collective agreement is for an 18-month term. Parties can only apply for certification or revocation anytime in months 17 and 18.



Window Periods During Collective Agreements with Terms of More Than 2 Years

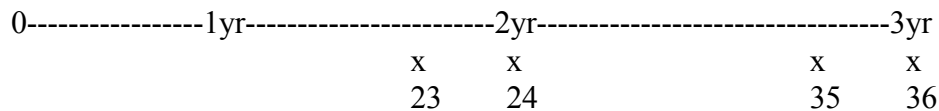
When a collective agreement is for a term of more than two years, parties can only apply for certification or revocation:

- in the 11th or 12th month of the second year or any subsequent year as long as the application is made at least 10 months prior to the end of the term of the agreement. See: [[Sections 37\(2\)\(e\)\(i\), 37\(3\) and 52\(3\)\(d\)\(i\), 52\(4\)](#)]; and
- in the two months immediately preceding the end of the term. See: [[Sections 37\(2\)\(e\)\(ii\) and 52\(3\)\(d\)\(ii\)](#)].

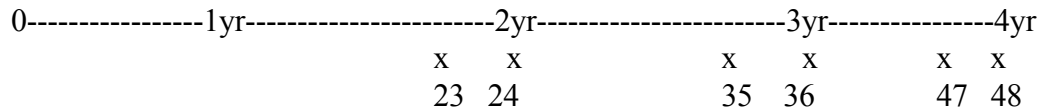
Examples:

A collective agreement has a three-year term. Parties can only apply for certification or revocation in months 23 or 24 and in months 35 and 36. Months 23, 24, 35 and 36 are the 11th and 12th

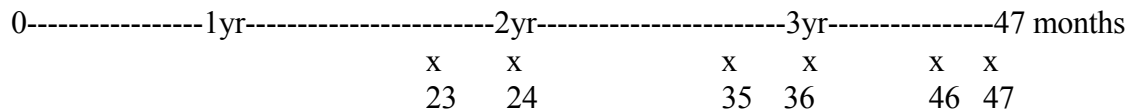
months of the second and third year of the agreement. See: [[Sections 37\(2\)\(e\)\(i\) and 52\(3\)\(d\)\(i\)](#)]. Months 35 and 36 are also the two months immediately preceding the end of the term. See: [[Sections 37\(2\)\(e\)\(ii\) and 52\(3\)\(d\)\(ii\)](#)]. Applications in months 23 and 24 are at least 10 months before the end of the agreement. See: [[Sections 37\(3\) and 52\(4\)](#)].



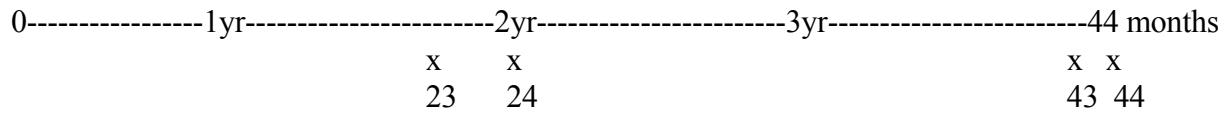
A collective agreement has a four-year term. Parties can only apply for certification or revocation in months 23, 24, 35, 36, 47 and 48. All of these months are the 11th or 12th months of the second or subsequent years in the agreement. See: [[Sections 37\(2\)\(e\)\(i\) and 52\(3\)\(d\)\(i\)](#)]. Months 47 and 48 are also the two months immediately preceding the end of the term of the agreement. See: [[Sections 37\(2\)\(e\)\(ii\) and 52\(3\)\(d\)\(ii\)](#)]. Months 23, 24, 35 and 36 are at least 10 months before the end of the term of the agreement. See: [[Sections 37\(3\) and Section 52\(4\)](#)].



A collective agreement has a 47-month term. Parties can only apply for certification or revocation in months 23, 24, 35, 36, 46 and 47. Months 23, 24, 35 and 36 are the 11th and 12th months of the second and subsequent years of the term. See: [[Sections 37\(2\)\(e\)\(i\) and 52\(3\)\(d\)\(i\)](#)]. Month 47 is the 11th month of year four. See: [[Sections 37\(2\)\(e\)\(i\) and 52\(3\)\(d\)\(i\)](#)]. Months 46 and 47 are the two months immediately preceding the end of the term. See: [[Sections 37\(2\)\(e\)\(ii\) and 52\(3\)\(d\)\(ii\)](#)]. Months 23, 24, 35 and 36 are at least 10 months before the end of the term of the agreement. See: [[Sections 37\(3\) and 52\(4\)](#)].



A collective agreement has a 44-month term. Parties can only apply for certification or revocation in months 23, 24, 43 and 44. Months 23 and 24 are the 11th and 12th months in the second year of the term. See: [[Sections 37\(2\)\(e\)\(i\) and 52\(3\)\(d\)\(i\)](#)]. Months 43 and 44 are the two months immediately preceding the end of the term. See: [[Sections 37\(2\)\(e\)\(ii\) and 52\(3\)\(d\)\(ii\)](#)]. Parties cannot apply in months 35 or 36. While these are the 11th and 12th months of year three, they would not leave at least 10 months between the time of the application and the end of the agreement. See: [[Sections 37\(3\) and 52\(4\)](#)].



A collective agreement has a 30-month term. Parties can only apply for certification or revocation in months 29 and 30. These months are the two months immediately preceding the end of the term. See: [[Sections 37\(2\)\(e\)\(ii\) and 52\(3\)\(d\)\(ii\)](#)]. No one can apply in months 23 or 24. While these are the 11th and 12th months of year two, they do not leave at least 10 months between the time of the application and the end of the agreement. See: [[Sections 37\(3\) and 52\(4\)](#)].

