

MODIFICATION OF A CERTIFICATE

INTRODUCTION

Bargaining relationships begin with certification or voluntary recognition. This relationship may change to accommodate the workplace. For example, the parties may over-bargain a certificate. This occurs when they agree to bargain employment conditions for unrepresented employees outside the bargaining unit. Conversely, the parties may under-bargain the certificate.

Section 45 allows certified unions or employers to change the bargaining unit description of a certificate. This can occur when the circumstances of bargaining no longer reflect the certificate. In these cases, the Board may modify the bargaining-unit description. This policy deals with applications to amend a certificate under Section 45. It describes:

- the statutory requirements;
- the application;
- processing the application;
- the disposition of the application; and
- alternatives to Section 45 applications.

STATUTORY REQUIREMENTS

Section 45 applies in **limited** circumstances:

45 The Board may, on the application of any trade union or employer affected, modify the description of a bargaining unit contained in any certificate if it is satisfied that

- (a) the former certificate no longer appropriately describes the circumstances of collective bargaining between the parties,
- (b) the modification is not such as may call into question the union's majority support within the bargaining unit, and
- (c) it is otherwise appropriate to make the modification.

Collective bargaining is dynamic. Unions and employers may voluntarily over- or under-bargain their certificate. Either party may formalize this arrangement. They do so by asking the Board to change the bargaining unit description.

Section 45 applications differ from Section 43 or 44 applications that involve voluntary recognition bargaining relationships. Section 43 and 44 applications are discussed in other policies. See: [[Consolidation of Certificates, Chapter 26\(b\)](#)]; [[Extension of Certificate, Chapter 26\(c\)](#)].

THE APPLICATION

A union or employer may apply to modify a bargaining unit description. The application is usually in the form of a letter with supporting documents. The applicant must serve the application on the respondents. See: [[Rules of Procedure 5.1 and 6](#)]. The Director of Settlement checks the application for:

- the names and contact information of all affected parties and their counsel (if any);
- the certificate affected;
- the description of the current bargaining unit and the proposed unit;
- the circumstances of collective bargaining prompting the application (e.g., an over- or under-bargained scope clause in the collective agreement);
- what the applicant proposes to do; and
- evidence that the modification does not affect the union's majority support within the bargaining unit.

Bring any deficiencies to the attention of the applicant. Have them provide missing information before accepting the application. Enter the matter in the database and open a process file. The Director of Settlement, usually with the officer, decides on a dispute resolution strategy. See: [[Dispute Resolution Initiatives, Chapter 19\(c\)](#)].

PROCESSING THE APPLICATION

Notify the parties about the process. Inform affected employees of the application by preparing notices and asking the employer to post them. The notices briefly describe the application. They ask affected employees who have objections or comments to contact the Board—usually within 14 days. See: [[Notice to Affected Parties, Chapter 31\(f\)](#); [Information Bulletin #2](#)].

Sometimes, the parties can agree to the facts and may be able to resolve any differences with a little help from the officer. At other times, especially when the parties cannot agree on the facts, they may need an officer's mediation efforts or an investigation and report. At yet other times, the matter is set down to hearing immediately.

The officer should understand the nature and details of the application as well as the potential impact of the change sought. Discuss the application with the applicant. Find out whether they discussed the change with the other party and, if not, encourage them to do so.

Matters an officer should consider as the file progresses include:

- **The certificate involved.** How is the unit described? Is the description wide enough to incorporate the changes sought without amendment?
- **The employees affected.** How many employees will the change affect? How does their

work compare with that of the existing unit?

- **The circumstances of the collective bargaining relationship.** What has changed? How long has the change been in effect?
- **The wording of the collective agreement involved.** Does the collective agreement's wording reflect the change the applicant says occurred?
- **How the amended unit description would read.**
- **The impact of the proposed change on the majority support for the union.**

DISPOSITION OF THE APPLICATION

If the officer is unable to resolve any disputes, the Director of Settlement sets the matter to hearing. See: [[Hearing and Scheduling, Chapter 34\(a\)](#)]. If there are no objections to the application, or the objections settle, the officer presents the application and details to a Board panel, or a Chair or Vice-Chair alone, for approval. In this case, the Board may decide the matter without a hearing.

Before granting an application, the applicant must satisfy the Board of the statutory requirements set out above. It may do so using an agreed statement of facts. The Board also determines whether the proposed unit is appropriate. If the Board is satisfied, it directs a new certificate be issued and the old one be revoked. Advise the parties in writing. Update the database and close the file.