

GOVERNING BODIES

INTRODUCTION

When a governing body is incorporated or established, the Board can modify existing bargaining relationships to reflect the change in the employer. This may also happen when a governing body is merged with, incorporated into, or annexed into, another governing body. Either the governing body or the union(s) affected, can apply for the change. This policy describes the process involved when bargaining rights have to be modified because any of the above situations arise. It describes:

- the statutory requirements;
- the application;
- the investigation and report; and
- the disposition of the matter.

SECTION 48

Section 48 of the [Code](#) defines “governing body.”

48(1) In this section, "governing body" means

- (a) a city, town, village or summer village,
- (b) a municipal district,
- (c) a board of trustees of a school district or division,
- (d) the owner or operator of a non-regional hospital as defined in the *Hospitals Act*, or
- (e) a regional health authority under the *Regional Health Authorities Act*.

(2) When a governing body is incorporated or established and replaces or takes the place in whole or in part of another or other governing bodies or when one or more governing bodies are in whole or in part formed into, incorporated into or annexed to another governing body or governing bodies, the Board may on the application of any governing body or trade union affected

- (a) declare which governing body is bound by proceedings under this Act,
- (b) determine whether the employees concerned constitute one or more appropriate units for collective bargaining,
- (c) declare which trade union or trade unions, if any, shall be the bargaining agent or agents on behalf of the employees,

(d) amend, to the extent the Board considers necessary, any certificate issued to any trade union or any bargaining unit defined in any collective agreement, and

(e) declare which collective agreement, if any, shall continue in force and to what extent it shall continue in force and which collective agreement, if any, shall terminate,

and before disposing of the application under this subsection, the Board may make any inquiries, require the production of any evidence and the doing of any things or conduct any votes that it considers appropriate.

A governing body is one of the following:

- **A city, town, village or summer village:** As established by the Lieutenant Governor in Council under the [Municipal Government Act](#).
- **A municipal district:** As established by the Lieutenant Governor in Council under the [Municipal Government Act](#).
- **A board of trustees of a school district or division:** As established by the Minister of Learning under the [School Act](#).
- **A non-regional hospital:** As defined in the [Hospitals Act](#).
- **A regional health authority:** As defined in the [Regional Health Authorities Act](#).

Governing bodies are public-sector bodies acting as employers under the [Code](#). They can have assets, liabilities, and own property, land, etc. just like a business. The only difference between a governing body and an ordinary business is that a governing body does not come into being by registering with Corporate Registry. It has to be established or incorporated by some act of legislation.

Other public “bodies” may come under the jurisdiction of the [Public Service Employees Relations Act](#), or under federal jurisdiction. For example, universities are governed by [PSERA](#) related to their support staff. They are not subject to [PSERA](#) or the [Code](#) regarding their academic staff. See: [[Post-Secondary Institutions, Chapter 31\(i\)](#)]. The Board has no recorded decisions on what happens when any of them are incorporated into, merged with, or annexed into governing bodies which are under the [Labour Relations Code](#), or vice versa.

THE APPLICATION

Affected governing bodies or trade unions may apply to the Board to amend their certificates to reflect the change in status of the employer. The application is usually in the form of a letter with supporting documents. Applicants must serve a copy of 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 bargaining relationships affected; and
- what the applicant proposes to do.

The Board requires supporting documents such as Ministerial Orders, agreements between the parties, termination letters, etc. See: [[Rule of Procedure 7](#)].

Any deficiencies should be brought to the attention of the applicant immediately. Have them provide missing information before accepting the application. Enter the matter in the database and open a process file. The Director of Settlement then assigns it to an officer.

The Director of Settlement, usually with the officer, decides on a dispute resolution strategy. See: [[Dispute Resolution Initiatives, Chapter 19\(c\)](#)].

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 need an officer's investigation and report. At yet other times, the matter is set down to hearing immediately.

INVESTIGATION AND REPORT

An officer contacts all the parties about the application.

In order to inform affected employees of the application, the Board prepares notices, and asks the employer or employers to post them. The notices give a brief description of the application in front of the Board. They ask affected employees who have objections or comments to contact the Board by a certain date—usually within 14 days.

The officer may then meet with the parties to obtain information for an officer's report. The officer looks for the following:

- Were there pre-existing governing bodies?
- Who were they?
- What are the governing bodies that have been incorporated or established?
- When were they incorporated or established? Obtain copies of the Ministerial Orders or [Orders in Council](#).
- What are the boundaries of the new governing body and the old governing body?
- Are there any agreements between the old and new governing bodies relating to property, rights, assets, liabilities, employees? Obtain copies if available.
- What units of employees are affected, and how?
- Which certificates or collective agreements are in effect, and how do they affect the employees?

The Board requires three elements exist in a successful Section 46 application:

- there must be a governing body;
- the governing body must be incorporated or established; and
- the governing body must replace or take the place, in whole or in part, of another or other governing bodies. Alternatively, the governing body or government bodies must, in whole or in part, be formed into, incorporated into or annexed to another governing body or governing bodies.

For this section to apply, **all** three elements must be met.

The officer makes a recommendation as to how to dispose of the application, such as revoking certificates, issuing new certificates, determining appropriate bargaining units, or whether a vote is necessary.

Send the parties copies of the report, and ask them to respond within 14 days should they have objections. Normally, if no one objects within the time period, the Board adopts the officer's report and recommendations. If someone objects, the Board may schedule a hearing date.

DISPOSITION OF THE APPLICATION

When differences cannot be resolved, the Board schedules a hearing to deal with the matter.

The Board may do a number of things with the application:

- It may declare which governing body is bound by proceedings under the Act. A new governing body may have completely replaced an old one, or it may have replaced only part of it.
- It may determine if the employees concerned constitute one or more appropriate units for collective bargaining. Sometimes employees from different governing bodies now work in the same bargaining unit, or they may still work in distinct bargaining units.
- It may declare which trade union or trade unions should be the bargaining agent or agents for the employees: sometimes one of the trade unions may give up on a unit which is too small, or the Board may decide that one or the other trade union should continue representing the employees.
- Amend any certificate(s) or the bargaining unit(s) contained in any collective agreement.
- Declare which collective agreement, if any, should continue in force and to what extent it should continue, and declare which one(s) should terminate.
- Order any vote(s) necessary, especially if more than one trade union has been representing similar units of employees. The Board may ask the employees to vote on which trade union they prefer.