REPRESENTATION VOTES

INTRODUCTION
The Board often conducts representation votes to determine the wishes of employees (and sometimes employers). Representation votes usually stem from applications for:

- certification, see: [Section 34(1)(d); Certification, Chapter 21];
- revocation, see: [Section 53(1)(b); Revocation, Chapter 23]; and
- construction-industry registration, see: [Section 168(1)(e); Construction Registration, Chapter 25(b)].

The Board may also order a run-off representation vote. This occurs when two or more unions compete to represent the same group of employees. The merger of two unionized companies usually triggers this sort of vote. See: [Section 46; Modification of Bargaining Rights, Chapter 26(e)].

Representation votes are by secret ballot. This policy discusses:

- preliminary directions and vote arrangements;
- notice of vote;
- the voters list;
- voter eligibility;
- conduct of the vote; and
- effect of vote results.

PRELIMINARY DIRECTIONS and VOTE ARRANGEMENTS
The Board receives a variety of applications. If the applicant has met the Code’s requirements, the Board orders a representation vote. Section 15(4) allows the Board to make rules for conducting representation votes. This includes procedures followed before, during and after a vote. The Board’s voting rules govern fixing the date, time and location of the vote, preparing the voters list and deciding on acceptable ballot markings. See: [Voting Rules].

Under the voting rules, the Director of Settlement is the Chief Returning Officer (CRO). The CRO, in turn, appoints the Returning Officer (RO) to conduct the vote. Deputy Returning Officers (DROs) are sometimes appointed to help with the vote. See: [Employee Vote Procedures, Chapter 28(f); Deputy Returning Officer, Chapter 17]. Rule 8 of the voting rules gives the CRO or the RO the power to set up and conduct a vote. The RO can conduct:

- an advance poll;
- a mail-in vote; and
- a poll.
The Board does not allow a proxy vote. See: [Voting Rule 2].

While investigating an application, the Board officer discusses voting arrangements with the parties. The officer’s report usually suggests the date, time, location and type of vote. Factors considered in arranging a vote are:

- convenience and accessibility of the poll to voters;
- times when most voters can vote and, for an employee vote, the times creating the least disruption to the employer’s business; and
- the possibility of an advance poll.

For an employee vote, the vote is usually conducted at the work site or the employer’s premises in a “neutral” area such as a lunchroom. See: [Employee Vote Procedures, Chapter 28(f)].

If the parties cannot agree on the vote arrangements, the Board may give specific directions about the arrangements. The Board may also direct the RO to decide these matters. See: [Voting Rule 8].

Any affected party can object to the decision and direction of any RO. A party must file objections in writing with the Board within 24 hours of receiving notice of the decision or directions. See: [Voting Rule 10]. The Board deals with these objections quickly. It may confirm the directions already given or make changes as appropriate.

**NOTICE OF VOTE**

Voters need reasonable notice of the vote arrangements. The Board communicates vote arrangements to employees in a Notice of Vote. The Board generally schedules the vote two or three working days after a hearing.

Prepare a Notice of Vote to accompany letters to the union and the employer. Instruct the employer to post the notice at the worksites of the affected employees. Confirm with the employer where and when the notice was posted.

Notices for certification and revocation votes include a unit description of those eligible to vote. The Board decides on the unit description. The notice may also include any specific instructions from the Board on voter eligibility and electioneering.

Mail-in ballots can be used for employee votes and employer registration votes. In those cases, the Board notifies individuals about the vote in a letter accompanied by the ballot. The letter gives a deadline for returning the ballot to the Board. A normal time is 10 working days. See: [Employee Vote Procedures, Chapter 28 (f); Employer Vote Procedures, Chapter 28(g)].
THE VOTERS LIST
Compile a voters list. The list is usually based on the “included” employee list attached to the officer’s report from the investigation. For registration applications, the union provides a list of employers with which it has bargaining relationships. See: [Section 169(3)]. If a party does not provide the information, the Board will create the list based on the best information available.

Add inclusions or make exclusions based on rulings made by the Board or as agreed to by the parties, then generate the voters list on the database. Provide the voters list to the affected parties. The voters list is posted with the Notice of Vote. The notice contains instructions to excluded employees (whose eligibility has not already been ruled upon) about how they may vote if they feel they are eligible to do so.

VOTER ELIGIBILITY
Voting Rules 16 and 17 determine voter eligibility for employee representation votes. See: [Section 1(l); Determinations, Chapter 24]. These rules state:

16(1) Unless the board otherwise directs, the following persons employed in the bargaining unit shall be deemed to be eligible to vote in a representation vote:

(a) employees at work on the date of application,
(b) full-time or regular part-time employees, who are not at work on the date of the application, but who:
   (i) worked at any time during the 30 days preceding the application, and
   (ii) in the opinion of the officer presiding at the vote, are likely to return to work during the 30 days following the date of the application.
(c) employees absent from work on the date of the application because of parental leave.

In the construction industry, the 30-day time period is shortened to 14 days.

Section 173(3) gives the Board the power to determine employer eligibility for registration votes.

The Board deals with a preliminary objection that the voters list is generally unrepresentative of the persons entitled to vote at a hearing before the vote. Parties make such objections in writing before the date of the vote. The Board usually does not deal with objections over individual voter eligibility before the vote. Instead, scrutineers raise objections to the eligibility of voters at the vote. These ballots are double-sealed and the matter is dealt with after the vote. Scrutineers must object to the eligibility of particular voters at the vote, even if the parties have already filed objections with the Board. If the Board has already ruled on objections, the question has then been decided and cannot be challenged again. For example, if the objection had to be decided to determine if the applicant had 40% support, or if, for convenience, the objection was dealt with before the vote.
For mail-in ballots, the Director of Settlement gives instructions on how to raise objections so any challenges to individual eligibility can be raised before the date for the return of the ballots.

The RO or DRO can rule on voter eligibility at the polling booth and try to settle the dispute with the parties. Objections not resolved are heard and ruled upon by the Board after the vote but before the count. For details on handling disputed ballots, see: [Employee Vote Procedures, Chapter 28(f)].

**CONDUCT OF THE VOTE**

For details on how to conduct the vote, including information on the appointment and role of scrutineers, electioneering, handling the media and acceptable ballot markings, see: [Employee Vote Procedures, Chapter 28(f); Voting Rules].

**EFFECT OF VOTE RESULTS**

Where there are no objections and the Board has not ordered the ballot box sealed pending the outcome of some other matter(s), the RO or DRO counts the ballots after the vote with the scrutineers present. If a party files objections, the ballots are counted after the Board rules on any disputes over voter eligibility or the conduct of the vote.

The effect of the vote results depends on a Board order. When Board panels deal with the application, they will usually order that the success or failure of the application depend on the vote result.

Once the Board rules on disputes over voter eligibility or the conduct of the vote, count the ballots if that is what the Board orders. Results of the vote are official 24 hours after the ballot count, unless there are objections.

Section 40 outlines the effect of certification if a majority of those affected employees casting ballots voted in favour of the union.

Section 54 outlines the effect of revocation if a majority of those affected employees casting ballots vote against the union remaining as their bargaining agent.

Section 176 outlines the effect of registration if a majority of those affected employers casting ballots vote in favour of registration.