

STRIKE AND LOCKOUT VOTES

INTRODUCTION

The [Labour Relations Code](#) prohibits strikes until the expiry of a collective agreement. The parties must also have gone through mediation. Finally, the union must have strike action approved by members via a secret-ballot vote. Strike votes are only valid if conducted under Board supervision.

The Board's task is to ensure strike votes are conducted in a fair and timely manner. This requires giving all affected employees a chance to vote as they choose. Multi-employer lockouts can only take place after meeting similar requirements. This policy sets out the Board's procedures and supplements Information Bulletin #16 and the Voting Rules. This policy **does not apply** to single-employer lockout polls. See: [[Single-Employer Lockout Polls, Chapter 28\(c\)](#)]. For more information on strikes and lockouts, see: [[Strikes and lockouts, Chapter 30\(a\)](#)].

SUPERVISION

Supervising a vote is different from conducting a vote. In conducted votes (e.g., certifications), Board staff makes the voting arrangements and conduct the vote. In supervised votes (e.g., strike or lockout votes), the applicant is responsible for arranging and conducting the vote. The Board supervises the vote by:

- making sure the applicant's plans comply with approved procedures;
- monitoring the vote itself to make sure it is run fairly; and
- providing an appeal mechanism for significant irregularities.

A supervised vote must comply with the [Labour Relations Code](#) and the Board's Voting Rules. Information Bulletin #16 provides extra guidance.

The assigned Board officer has responsibility for the supervision. This means the officer must make sure the application conforms with the statute, the Voting Rules and the Board's requirements. The officer also takes responsibility for deciding on the appropriate level of monitoring. This policy sets out guidelines for doing this, subject to Board direction in specific cases.

INITIAL RECEIPT OF THE APPLICATION

Applications arrive by mail, fax or personal delivery. Forward them immediately for Board officer or Director of Settlement review. Encourage applicants who come in person to discuss the application with a Board officer. That way, obvious problems can be corrected right away. Once an application has been reviewed, date and time stamp it. See: [[Incoming Mail, Courier and Fax, Chapter 11\(a\)](#)].

Examine the application and related documents for completeness and errors. Applications contain:

- a completed Board application form;
- a completed notice of vote;
- an alphabetical voters list;
- a sample ballot; and
- a copy of the letter from the Mediator writing out of the dispute.

The applicant must also serve the documents on any respondents. If there are no problems with the personally delivered application, date and time stamp it. Discuss any problems with the applicant. Have them initial any changes they choose to make to the application. The applicant may also choose to file a new application. After stamping, enter the application in the database and make up a S/L file.

WHEN CAN THE APPLICATION BE FILED?

To hold a strike or lockout vote, any collective agreement between the parties must be passed its expiry date and the 14-day cooling-off period after mediation must have expired. Applicants must apply at least 7 days before a proposed strike vote or 14 days before a multi-employer lockout vote. See: [[Voting Rule 24](#)]. The Board will accept applications before the collective agreement or the cooling-off period expire, so long as the vote itself takes place in the period allowed by the statute. Applicants who propose shorter time frames must get the consent of the Board and the respondent or else amend their application to comply with Voting Rule 24. The Director may approve a shorter time frame when both parties agree. See: [[Voting Rule 24\(3\)](#)].

If the officer foresees problems supervising the vote within the proposed time frame, s/he can recommend an extension. See: [[Voting Rules 24\(3\) and 27\(e\)](#)]. If the applicant objects, put the recommendation to the Board for decision.

The [Code](#) allows more than one strike or lockout vote per dispute. Such votes become “stale dated” after 120 days. See: [[Section 77\(1\)](#)]. The Board may not supervise a strike vote two years or more after the end of the cooling-off period. See: [[Section 77\(2\)](#)].

ACKNOWLEDGMENT AND PROCESSING

An officer calls the respondent after accepting the application. If the respondent has not received a copy of the application, advise them of it, the date(s) of the vote, poll location(s) and date(s) for the posting of notices. A call may not be necessary if there is enough time for adequate written notification.

Send Mediation Services a copy of the application. Make a check mark at the top of the first page to confirm this has been done. Prepare the acknowledgment letters. Record these letters as supporting documents as well as later letters, and documents such as the Declaration of Vote. Send the respondent a copy of the application, voters list, [Information Bulletin #16](#) and the [Voting Rules](#).

REVIEWING THE APPLICATION FOR APPROVAL

The Board officer's role at this stage is to make sure the proposed vote meets all the Board's requirements before giving Board approval. Areas to check include:

- the identity of the parties and the dispute;
- that the vote is polling all the right people;
- the timeliness of the proposed vote;
- the adequacy of notice to the voters;
- the suitability of the voting arrangements; and
- the form of the ballot

Notifying the respondent gives them an opportunity to raise objections to the application. It is, however, the applicant's vote and the respondent has no right to directly participate. The respondent's main responsibility is to check the accuracy of the voters list. Applicants may decide on their own process so long as it meets the Board's requirements for supervision.

Identity of the Parties and the Dispute

Check areas 1 and 2 on the application form. They show the complete names and addresses of the applicant and the respondent. Where a trade union has individual locals, the application must show the proper local union number. Get telephone and fax numbers for the parties if not provided or available on the database.

Make sure the parties listed are indeed the parties to the dispute. For example, if one union is servicing another union's bargaining unit, it is the certified local that must apply. If an employer engages in formal employers' association group bargaining, it is the association, not the employer, that must apply for any lockout vote.

On the second page, check the Collective Bargaining Information in area 4. Make sure you understand who is involved in the dispute. This may mean checking with Mediation Services, reviewing the collective agreement and the Board's records concerning the bargaining relationship.

Polling the Right People

The officer must check to ensure the applicant is polling the right people. Section 76(1) and (2) of the [Code](#) defines voter eligible. This requires a clear view of who is "an employee of the employer affected by the dispute." See the sections on voter eligibility and multi-employer bargaining below.

At the approval stage, the officer need not resolve all objections to the voters list. It is essential that the general description of the voting group be correct. For example, do not approve a vote that excludes employees in the unit who are not union members. Similarly, do not approve one vote among employees of several employers, unless they are engaged in formal multi-employer bargaining.

Timeliness

The Board can only supervise a strike or lockout vote when:

- no collective agreement is in force; or
- if a collective agreement is in force, it is only in force under the bridging provisions of Section 130; and
- the 14-day cooling-off period has expired following the date the mediator writes out of the dispute, the date fixed for accepting the mediator's recommendations, or the date the results of a vote requested on the mediator's recommendations are known, (whichever is later); and
- no more than two years have passed since the end of the cooling-off period.

Confirm with Mediation Services that the cooling-off period has expired. Also confirm that no settlement has been reached. The Board will not supervise a strike or lockout vote if there is no dispute. This may arise if the parties:

- agreed to voluntary binding arbitration;
- are in the hospital or firefighting industry or are the subject of some other form of binding arbitration which would make a strike or lockout illegal; or
- are bound by a collective agreement. If one party says they have a collective agreement when the other says they do not, this dispute will need resolving before a lawful strike or lockout can take place. This sometimes happens when one side says a settlement was not ratified while the other says it was.

Proposed Voting Arrangements

To be suitable, the proposed voting arrangements must ensure a secret ballot in which all eligible voters have a reasonable opportunity to vote. This requires reasonable notice of the vote, and a polling environment that ensures the vote will reveal the true wishes of the voters.

Review the polling-station arrangements suggested in area 6 of the application form. The polling station's location should be readily accessible to voters. Suitable locations include the employer's premises (if the employer consents) or other facilities close to the job site. A union can hold a vote on its own premises as long as the employees have easy access. Where employees are scattered throughout various locations, the applicant's returning officer can set up several polling stations or hold a roving poll or a mail-in vote.

Check the date(s) and time(s) in area 7. Be sure that the maximum number of persons eligible to vote can do so. The applicant must provide adequate voting time. It is the applicant's responsibility to propose these details. If they are not appropriate, question them. Only approve times and poll locations that are suitable considering the working hours, location and number of voters shown in areas 3 and 5. If the union proposes holding a vote on the employer's premises, make sure they have the employer's permission.

Examine the procedures in area 8 for notifying voters. The posting of notices by the applicant is usually enough, so long as they will come to the attention of the eligible voters. The applicant should post notices where they are most likely to come to the attention of the eligible voters such as on employee bulletin boards. Ensure the applicant indicates when they will post notices but ensure they understand they are not to post notices until the Board approves the vote arrangements.

Check the proposed Notice of Vote. The details of the vote (i.e., dates, times, and locations) should be the same as those in the application. Notices should clearly tell employees what they will be voting on. The Strike and Lockout Vote information kit contains a sample notice. This sample is a guide, and its use is not mandatory.

The applicant's notices must give eligible voters 72 hours of notice. See: [[Voting Rule 32\(1\)](#)]. The Director has the power to allow deviations from the Voting Rules. See: [[Voting Rule 27](#)]. The applicant should give the date it proposes to post notices in area 8 on the application. Make sure Board approval can be given in time for this posting. Other satisfactory methods of notification include individual notices mailed to all eligible voters and newspaper advertisements.

The applicant should provide details of an advance poll or a mail-in ballot in area 9 if required. Advance polls and mail-in votes are acceptable, but must be scrutinized closely to ensure a truly secret ballot. See: [[Voting Rule 29](#)]. Proxy votes can not be approved. See: [[Voting Rule 2](#)]. The applicant provides its Returning Officer's name and other pertinent information in area 11. Area 12 provides information on Deputy Returning Officers.

Form of the Ballot

The applicant must provide a sample ballot and the ballot's wording in area 10. A standardized strike vote ballot says, "Are you in favour of taking strike action?" with a choice of a "Yes" or "No". The Director of Settlement must approve any deviation from this form. See: [[Voting Rule 30](#)]. The key is to make sure the voters can clearly understand that they are giving unconditional approval to strike or lockout action.

APPROVING THE APPLICATION

Before approving a vote, satisfy yourself that the applicant meets all of the Board's requirements. Discuss all difficulties with the applicant. If the applicant refuses to accept any changes to their proposal, refer the matter to the Director of Settlement. If the Director has concerns over the vote, refer the matter to the Chair or Vice-Chair. See: [[Voting Rule 28](#)]. The Chair or Vice-Chair can make a ruling or give appropriate directions.

[Voting Rule 27](#) gives the Director of Settlement or a supervising officer the power to approve an application or to make amendments with the applicant's concurrence.

[Voting Rule 33](#) gives respondents a power to file general objections to a scheduled vote provided they do so 48 hours before the vote. It is usually prudent for the supervising officer to talk to the

respondent soon after they get the notice of the application. That way the officer can consider any special circumstances raised by the respondent. This may help to resolve problems before the officer gives approval to the voting arrangements, and pre-empt objections that might arise later.

Once the supervising officer is satisfied all the voting arrangements are appropriate and the vote qualifies for supervision, prepare and send the applicant a formal approval letter. Send a copy to the respondents. At this point, the applicant can post voting notices.

VOTER ELIGIBILITY

Applications must include a voters list in alphabetical order. The officer should try to iron out disputes about the voters list before the vote. It is the applicant's vote, and the applicant has the initial responsibility for ruling on the eligibility of individual voters. The Board should only withhold approval where the description of eligible voters, in the application and notice, excludes people who have a right under the statute to vote or includes those who do not.

[Section 76\(5\)\(a\)](#) sets out who is eligible to vote in a strike vote. Essentially, all employees in the unit affected by the dispute, who worked at any time during the 60 days before the date (or the last date if more than one) of the strike vote, are eligible. The union conducts a strike vote for each unit of affected employees. It cannot vote just some of the employees of the unit affected by the dispute. The union must poll all the employees in the unit.

[Section 76\(5\)\(b\)](#) sets out who is eligible to vote in a lockout vote. In a lockout vote, all employers who employed employees affected by the dispute at any time during the 60 days before the date (or last date if more than one) of the lockout vote, are eligible to vote. When the eligible voter is a corporate body, it can vote in any authorized fashion in accordance with its own procedures. For example, it can designate a company officer or other representative to cast a ballot on its behalf.

The voting rules set out a procedure that the applicant's returning officers must follow for disputed ballots, such as when voters present themselves to vote and are ruled ineligible. [Rule 34](#) requires that votes with disputed ballots be sealed and sent to the Board rather than counted. The Board (usually the Chair or a Vice-Chair) then rule on any eligibility question that cannot be resolved. Once this is done, the returning officer can proceed with the count.

MULTI-PARTY BARGAINING

Some votes involve multi-party bargaining where employers formally bargain through an employers' association. When an employers' organization has served a notice to bargain under Section 62, treat it as being one dispute. Check with [Mediation Services](#) to see if formal group bargaining is involved. An employer's organization is required to file a list of employers and authorizations whenever a notice to bargain is served. If there is group bargaining apart from Section 62, then separate disputes are involved between the union and the individual employers. This means separate votes for each employer and its employees.

This policy does not apply to Construction Industry Registration bargaining. It has special strike and lockout vote legislation in [Sections 185 and 187](#). No individual strike or lockout vote can be supervised for a bargaining relationship falling under registration.

SUPERVISING THE VOTING PROCESS

Most strike or lockout votes require only brief supervision. Before the vote, be sure that the applicant and its returning officer understand their responsibilities for conducting the vote. Refer them to [Information Bulletin #16](#).

Normally, the Board supervising officer does not attend the polling station or the counting of the ballots. Supervising officers do, however, have the right to do so if they think appropriate. They may decide to do so when there are concerns about irregularities in voting procedures, inter-union or membership disputes, or a history of problems between the employer and union. If it is expected that there will be a problem (e.g., interference with voters), this warrants special treatment.

Where an applicant asks an officer to attend during the vote or at the count, the officer should try to accommodate this request. Respondent's requests should be considered. They should be accommodated when the applicant agrees, or where the respondent raises matters that satisfy the officer that closer monitoring is appropriate. Any officer with concerns about attending or monitoring a vote should discuss them with the Director of Settlement.

DECLARATION OF VOTE

Returning Officers must complete the Declaration of Vote and send it to the Board as soon as possible. They may fax, courier or personally deliver the Declaration. Board officers attending a vote can accept the declaration, but if they do so, they must send it to the Board as soon as possible. No party can serve strike or lockout notice until their Returning Officer has filed the results with the Board. See: [[Section 73\(b\)\(ii\)](#)].

The Returning Officer completes area 1 of the declaration form including the trade union local number. The complete results must be broken down and shown in area 2. It is not sufficient to simply give the overall result, such as "the majority voted in favour." The returning officer must sign the form in area 3. If it comes in after business hours, stamp it for the next business day.

Date and time stamp the completed declaration immediately upon receipt. This must be done to be sure that any strike or lockout notice is timely. Enter the declaration as a supporting document. Advise the respondent of the vote results by telephone if the applicant has not already served the respondent with a copy of the declaration. Immediately enter the results in the database.

Do not give the results of the vote to outside parties, such as the media, until after the Board notifies the affected parties and the 24-hour objection period has passed. Send Mediation Services a copy of the declaration. Put a check mark on the top right-hand corner of the page to confirm

delivery of their copy.

Once the 24-hour period expires, prepare and send appropriate letters confirming the results. Send a copy of the declaration to the respondent. Conclude the matter on the Board's database.

CONTESTED VOTES

Parties or persons affected by the vote who allege any impropriety in the vote have 24 hours from the closing of the last poll to file a written objection. The objection must include detailed reasons. The Board can extend this period "upon being satisfied that the objector has acted expeditiously in all the circumstances." See: [[Voting Rule 36](#)].

If the objection, even if successful, would not change the result of the vote, the Board may dismiss the objection without a hearing. For example, this might occur if an eligible person was denied a vote, where the vote carried by a substantial margin.

If the Board receives an objection, it can investigate and try to settle the matter. Remaining objections are decided at an expedited hearing.