

CONSENTS

INTRODUCTION

The [Labour Relations Code](#) and the [Rules of Procedure](#) impose time bars on certain applications to the Board. The Code and the [Rules of Procedure](#) give the Board the power to grant consent to lift these time bars in certain situations. This policy discusses:

- processing consent applications;
- consent for reapplication [[Section 57](#)];
- consent to lift the strike or lockout bar for a raid or a revocation [[Sections 37\(1\)\(b\) and 52\(1\)](#)];
- consent to shorten the waiting period for a certification application after filing a constitution and bylaws [[Sections 37\(1\)\(a\) and 170\(1\)](#)]; and
- consent to file a complaint outside the 90-day time limit [[Rule 22\(3\)](#)], [[Section 16\(2\)](#)].

PROCESSING CONSENT APPLICATIONS

Parties must get consent from the Board **before** making any application outlined in this policy (excepting late complaints). Only after the Board grants consent can a party make the application. The Board will reject applications as untimely, if made before getting consent.

The Board usually deals with consent applications on an expedited basis. On receipt of a consent application, the Director of Settlement reviews the application for completeness. The application must set out:

- full particulars. See: [[Particulars, Chapter 19\(b\)](#)];
- the type of consent needed; and
- the section of the Code in issue.

The Director will devise a suitable dispute resolution technique depending upon the urgency of the matter. See: [[Dispute Resolution Initiatives, Chapter 19\(c\)](#)].

CONSENT FOR REAPPLICATION

Section 57 of the [Code](#) contains a list of certain types of applications to the Board. Sometimes a party makes one of these applications, but then withdraws it, or the Board refused it. If so, the party cannot make the same or substantially the same application for at least 90 days, unless the Board consents. The consent must be separately applied for and obtained in advance. This is set out in Section 57 that provides:

57 Notwithstanding anything in this Act, if an application for

- (a) certification as a bargaining agent,
- (b) revocation of the certification of a bargaining agent,
- (c) a declaration that a bargaining agent is no longer entitled to bargain collectively,
- (d) registration of an employers' organization, or
- (e) cancellation of the registration certificate of an employers' organization,

has been refused by the Board or withdrawn by the applicant, the applicant shall not, without the **consent of the Board**, make the same or substantially the same application until after the expiration of 90 days from the date of the withdrawal or refusal.

To decide whether Section 57 applies at all, the Board will consider whether the dismissed certification or revocation application is the same or substantially the same as the present application. The Board relates the term—same or substantially the same—to the application, not the applicant. This is a threshold question. If the applicant satisfies the Board that the application is not the same or substantially the same, there is no need to ask any of the further questions. In exercising its discretion under Section 57, the Board may consider:

- The circumstances surrounding the application.
- Whether the original application was dealt with on its merits or on a technical irregularity. Where a representation issue has been dealt with on its merits, an incumbent union should normally be given a reasonable opportunity to bargain with the employer without impediment. Where the application is not dealt with on the merits or in the absence of a previous determination of the representation wishes of the employees, it is appropriate that consent be granted. See: [*AUSE 100 v. CUPE 763 et al.* [1988] Alta.L.R.B.R. 160].
- Whether it was an honest mistake that led to the dismissal. See: [*IBEW 254 v. Lockerbie Management Ltd.* [1988] Alta.L.R.B.R. 377].
- Whether there was uncertainty as to the number of employees in the unit applied for. See: [*CWC and CUC and Bell Canada, Montreal, Quebec* [1979] C.L.R.B. Decision No.191].
- The effect on the stability of the working relations of the parties and the employees. The Board's discretion to relieve from the effect of the bar will be exercised if it will promote industrial peace and stability. How far has collective bargaining progressed? In a raid situation, the Board may be more likely to grant consent where the incumbent union no longer has the majority support of the employees making it difficult for it to obtain ratification of a collective agreement. See: [*Bell Canada, above*].
- Are there important labour relations considerations? This refers to the overall labour relationship between the employer and the union(s). How will granting consent affect the employees? How will it affect their work place? Does it make labour relations sense to grant a request to waive the 90-day waiting period? Will granting consent improve the relationship between employees, union and employer? See: [*AUPE v. the Franciscan Sisters* [1995]. Alta.L.R.B.R. 124].

- Whether any party is prejudiced if the Board grants consent. If the Board grants consent, will this give any advantage to the union or the employer? Prejudice will often be a factor when the employer and certified union have spent time bargaining successfully and that effort might be undone by a new union. Having a new bargaining agent may force bargaining to start from the beginning. See: [*USWA 5885 v. Home Hardware Company Employees Association and Home Hardware Stores Ltd.* [1991] Alta.L.R.B.R. 577].

CONSENT TO LIFT THE STRIKE OR LOCKOUT BAR

Consent is needed to apply for certification or revocation during a lawful strike or lockout. See: [[Sections 37\(1\)\(b\) and 52\(1\)](#)]. The purpose of these sections is to allow the Board to prevent, in appropriate circumstances, the disruptive effects of organizing efforts or decertification attempts when a work stoppage is in progress. Union support goes up and down over time. A union can be very vulnerable in a dispute because of temporary employee disaffection. The consent requirement allows the Board to separate these cases from cases where the disaffection with the union is more profound. There must be compelling reasons for the Board to entertain an application for consent during a work stoppage.

The Board may consider the following factors in determining whether to grant consent when a lawful strike or lockout is in progress:

- The circumstances surrounding the start of the strike or lockout. The Board looks at whether this is a new collective agreement or a renewal. How was the employer's authority exercised in a lockout? See: [*Brian Bolt as Spokesman for a Group of Employees v. Airtex Manufacturing Partnership and UFCW 1118*. [1992] Alta.L.R.B.R. 348].
- Is any party prejudiced if the Board grants consent? See: [*Home Hardware, above*].
- Are there lawsuits pending? Are there any injunctions? Have employees found other jobs? Have there been changes in working conditions since the strike began? Is the operation still operating? What type of production is there at the plant? Have employees crossed the picket line? How many employees crossed the picket line? Why did the employees cross the picket line?
- Has there been any coercion by the union or the employer during negotiations or since the work stoppage started? See: [[Certain Employees of the Shaw Conference Centre v. UFCW 401 v. Economic Development Edmonton](#) [2002] Alta.L.R.B.R. LD-044, LD-063].
- Has bargaining been in good faith? When did the strike take place? Is there picketing? How many employees are picketing? Where is the picketing? Were new persons hired? Have any employees been fired? Who comprises the current work force? Which employees have a sufficient, continuing interest in the fate of the bargaining unit? See: [*Certain Employees of Manalta Coal Ltd. v. United Mine Workers of America 2376 and Manalta Coal Ltd.* [1980] Alta.L.R.B. 80-052; [Certain employees of the Shaw Conference Centre](#), above].

CONSENT TO SHORTEN THE SECTION 37(1) WAITING PERIOD

Consent is needed to apply for certification where the union's constitution and bylaws have been filed for less than 60 days. See: [[Section 37\(1\)\(a\)](#); [Trade Union Status, Chapter 33\(a\)](#)]. Consent is needed to apply to become a registered employers' organization (REO) where the REO's constitution and bylaws have been filed for less than 60 days. See: [[Section 170\(1\)](#)]. This section discourages the formation of instant trade unions or employer associations to block an organizing drive. On certification applications by new unions, the Board must determine if that new trade union has complied with Section 24 of the Code. See: [[Certification, Chapter 21\(d\)](#)].

The Board might waive Section 37(1)(a) where a new local of an established trade union has been recently chartered. If the parent union holds certificates or has filed its constitution in Alberta, the Board may grant the new local consent to apply for certification. The trade union asking for consent would have to show the Board why it cannot wait the 60 days. They should provide evidence to rebut any inference that they are an instant trade union aimed at defeating employee rights.

CONSENT TO FILE A LATE COMPLAINT

Section 16(2) states:

16(2) The Board may refuse to accept any complaint that is made more than 90 days after the complainant knew, or in the opinion of the Board ought to have known, of the action or circumstances giving rise to the complaint.

The purpose of this section is to give some finality to matters which arise; the idea being that, on balance, it is important in industrial relations to get on with life rather than to leave matters open to the potential for litigation over a prolonged period.

Ninety days after the date on which the complainant knew, or ought to have known, is the operative phrase. What the complainant is expected to "know" is not the whole story surrounding the actual act but rather that it has taken place. If a person believes that the actual act may be in violation of the Code, he or she may file a complaint. The Code or Rules set no threshold standard as to the strength of the belief. See: [*Dartmouth Cable, above*].

Do **not** tell parties that they cannot apply outside the 90-day limit. Rather, explain to them that they first need consent from the Board to make the application.