

# **COLLECTIVE AGREEMENT RATIFICATION**

## **INTRODUCTION**

Nothing in the [Labour Relations Code](#) states that terms of a collective agreement must be ratified. Section 61(6) does state, however, that if one party asks, the other must advise of any ratification procedure that is in effect.

Ratification issues might arise in assessing the validity of a collective agreement, and also over collective agreement bars to certification and decertification applications. This policy describes:

- what ratification is, and when it is used;
- [Code](#) limitations on changing an announced ratification procedure;
- common ratification procedures in certain industries;
- Board decisions about ratification; and
- the significance of ratification where validity of a voluntary recognition agreement is challenged.

## **WHAT IS RATIFICATION AND WHEN IS IT USED?**

Unions and many employers (corporations, partnerships) act “through” persons. Each party gives its bargaining committee instructions known as a “mandate”.

A committee’s mandate may not allow it to conclude an agreement without ratification. Ratification is the process of putting proposed terms before a union’s members, or an employer’s owners, directors or senior officers for approval. The proposed terms are often set out in a document entitled Memorandum of Agreement or Memorandum of Settlement.

A bargaining committee seeks ratification when:

- a party chooses in advance to make an agreement conditional upon ratification; or
- the internal constitution or bylaws of the company or union require ratification of an agreement.

An offer put to ratification vote must be presented honestly and fairly. An offer misdescribed for the purpose of avoiding an agreement or destroying the bargaining relationship constitutes bad faith bargaining. See: [*Suncor v. McMurray Independent Oil Workers*, [1986] Alta. L.R.B.R. 452].

## WHO PARTICIPATES IN RATIFICATION?

### ***Union***

The union may allow all employees in the bargaining unit to vote, or it may limit the vote to union members. Sometimes, an agreement may be ratified on the authority of the union executive or even by the bargaining team. The [Code](#) does not require that all unit employees vote. Voting times, dates and places, voter eligibility, number of votes and the required majority are all union constitution or bylaw matters. Voting procedures may also be approved by motion at a meeting if the constitution allows it. The [Code](#)'s unfair labour practice provisions are the only limit on union decisions about ratification procedure and voting eligibility.

### ***Employer***

In a small closely held corporation, ratification may simply be approval of proposed terms by a senior officer or the Board of Directors. Corporate subsidiaries may require approval of the parent company. Councils and boards often make ratification decisions in the public or quasi-public sector (e.g., municipal council, library board, ambulance board). Employers sometimes bargain together. This can be informally through an agreed-upon agent, or formally by way of Section 60 employers' organization authorization. In either case, each employer votes. You must examine the authority of the negotiating committee and the ratification procedure. Individual employers in the group may be entitled to ratify proposed terms and conclude individual agreements. Or, a majority of employers may be required to ratify, at which point all employers are bound to an agreement on those terms.

## SECTION 61—CHANGES TO RATIFICATION PROCEDURES

At the outset of negotiations, parties usually advise each other of any ratification procedures. A party is, however, not obliged to do so unless the other party requests that information in writing. An announced ratification procedure cannot then be changed without notice in writing. Subsections 61(6) through (8) provide:

61(6) On the written request of the other party to the collective bargaining, the employer, employers' organization or bargaining agent shall advise the other party whether the authority to bargain of the person or group of persons referred to in subsections (1) through (3) is subject to ratification and, if so, by whom.

(7) If a party to the collective bargaining has advised the other party of a ratification procedure pursuant to subsection (6), the procedure shall not be changed unless the other party is notified in writing of the change.

(8) All notifications required by this section shall, on request, be provided to the Director or a mediator.

Subsections (6) and (7) decrease the surprise factor. Otherwise a committee could bargain to its bottom line position, and then discover the other party must seek ratification. If the terms are not ratified, the committee may be asked to make even further concessions. This is receding horizon bargaining. It can be bad faith bargaining by that other party if the other party represented that ratification wasn't required. See: [[Bad Faith Bargaining, Chapter 27\(d\)](#)].

Some employers' organizations use a "weighted vote" system of ratification. If so, the same system is used to tally the count in a proposal vote under Section 70(4). An offer put to proposal vote cannot later be the subject of ratification procedures by the party applying for the vote. That would defeat the binding nature of a proposal vote. See: [*AHA v. CHCG* [1991] Alta. L.R.B.R. 526].

## **SOME INDUSTRY-SPECIFIC RATIFICATION PROCEDURES**

Unionized brewing industry employers formally bargain through an employers' organization known as BEIRA. Initially each employer negotiates local issues with its union. BEIRA then negotiates general industry issues (e.g., wages, benefits) with all the unions. BEIRA's mandate comes from the employers.

BEIRA requires and awaits ratification of the negotiated terms by all unions. Only then is the proposed agreement put to the employers for a vote. The number of unionized brewers is small. They combine to give BEIRA its mandate. Unanimous employer ratification after negotiations has been, therefore, easily obtained.

Municipal- and hospital-sector unions commonly use area- or province-wide ratification. Employees in all units that are bargaining vote on one set of negotiated terms. The votes are pooled. If the required majority vote in favour, the resulting collective agreement binds all employees in all units.

In the construction industry, members of the union ratify proposed terms. Recent employment within the unit is not a requirement. Nor is it practical given the transient nature of employment relationships and hiring hall arrangements. Unit size is a factor in deciding whether to conduct the vote by way of special meeting, or by mail-in ballot.

## **SPECIAL SITUATIONS**

A bargaining committee cannot indicate that it is authorized to conclude an agreement without ratification, but then reject agreed-upon terms because the union or employer it represents will not ratify the terms. The other party can rely on the "apparent authority" of that bargaining committee. See: [*Fire Fighters 3021 v. City of Spruce Grove* [1987] Alta. L.R.B.R. 351].

In *OE 955 v. CLRa* [1987] Alta. L.R.B.R. 591, the union's bargaining committee advised the employers' organization that proposed terms were pre-ratified. CLRa relied upon the union's apparent authority. An internal union dispute about proper ratification procedure did not affect CLRa's right to do so.

In *UNA v. Athabasca Health Unit et al.*, [1985] Alta.L.R.B. 85-034, UNA advised the employers, and union local delegates and members, that a vote not favouring a strike would be seen as a decision to accept the employer's latest offer. After the vote, UNA could not say the results for 3 locals that were in favour of accepting the offer were subject to ratification.

The compulsory interest arbitration process for hospital and firefighting industries, and to some extent the construction industry dispute resolution tribunal (CIDRT) process in construction, allows some terms to be ratified before arbitration. Parties seek agreement on as many items as possible. If a negotiated term is not ratified, the item is added to the list of disputed items to be decided by the arbitrator. See: [*AHA v. UNA* [1988] Alta. L.R.B.R. 55].

## **RATIFICATION AND VOLUNTARY RECOGNITION**

An employer can only conclude an agreement with an uncertified trade union if that union acts on behalf of employees. A meaningful ratification procedure is one way a union can show it has support of the employees. See: [[Voluntary Recognition, Chapter 31\(l\)](#)].

In *Sie-Mac et al. v. Labourers 1111 et al.* [1991] Alta. L.R.B.R. 847, the Board found that, if the validity of a voluntary recognition agreement is in issue, the union and perhaps even employer, can be called upon to demonstrate validity. It is necessary to show that a representative group of employees within the unit authorized the union to act on their behalf. It is also necessary to show that the union did represent the unit in a real sense.

In *Sie-Mac*, ratification was conducted improperly and with strong employer influence. The employee group voting was not representative of all those covered by the agreement. Therefore, the purported ratification failed to prove “bargaining agent” status.