

Guidelines for Board Approval of Union Appeal or Review Processes for Representation Issues

Many unions have internal or external appeal mechanisms to review decisions about whether or not to proceed with a grievance. Section 153(6) of the *Labour Relations Code* permits the Board to approve a union's appeal or review process. Having a Board approved appeal or review process affects the Board's processing of duty of fair representation complaints against the union. See *Code, sections 153(4) and (5), and Information Bulletin #18.*

How Unions Obtain Board Approval

A union seeking Board approval of an appeal or review process must apply to the Board under section 153(6).

Applications under section 153(6) may be in the form of a letter to the Director of Settlement of the Board. The application must attach the documents showing the adoption of the process by the union. The full written procedures and rules adopted by the union must be attached. The inclusion of any forms or form letters to be used would be useful. The application must set out how the process and its procedures will be made available on an on-going basis to members of the union.

More than one union (or local) may adopt the same internal or external process. If a joint application is filed to have the same process adopted by several different locals, the documents must show the process has been adopted by, or is binding upon, each local.

Subsequent changes to a union's appeal or review process are not effective unless an application under s. 153(6) has been filed and the Board has approved the amended process.

The Board's Review

Pursuant to section 153(6), the Board's review of an appeal or review process is to ensure the process is sufficiently robust to:

- assess fairly the merits of any grievance,
- investigate the grievance, and the sufficiency and quality of any prior investigation, and
- assess an employee's rights under the *Alberta Human Rights Act* (including any duty to accommodate) or under an enactment relating to employment matters.

The Guidelines used by the Board to assess an appeal or review process are set out below.

Board Website

The Board's website will provide a list of all unions that have an appeal or review processes approved by the Board.

Guidelines for Obtaining Board Approval

The following guidelines are intended to assist unions in establishing or adopting grievance appeal or review processes that meet the requirements of section 153(6). To approve a process, the Board must be satisfied the written procedures and rules adopted by the union provide for each of the following.

The general requirements for a union's appeal or review processes are to:

- provide notice to members with concerns about representation of their rights under the process, and the process and timeline for filing an application or appeal;
- allow an appellant/applicant to understand the case against them, in advance of any hearing, through the sharing of the union's investigative materials (including statements provided by the employer), relevant grievance documents, and documents setting out earlier decisions of the union in relation to the grievance;
- provide an opportunity for the appellant/applicant to respond to the case against them at a hearing before a decision-maker. Hearings can be in-person, over the phone, or based on written submissions alone, so long as the process provides a fair opportunity to make submissions in the particular circumstance at issue;
- require proper notice of the appeal or review hearing to the appellant/applicant. Proper notice includes the date, time, and location of the hearing and a reasonable amount of time for appellant/applicant to prepare for hearing after a union has shared the information referenced above;
- ensure procedural rules for the process are fair, and are flexible enough to accommodate any duty to accommodate that may arise. For example, timelines for receiving appeals or review applications must generally provide a reasonable opportunity to appeal, and may need to be waived in some circumstances to comply with the duty to accommodate;
- provide a decision-maker (or decision-makers) who:
 - is unconnected with the factual circumstances at issue in the grievance;
 - harbours no ill will towards the appellant/applicant; and
 - makes a decision based upon the information presented by the union (as shared with the applicant/appellant as set out above) and the information presented by the applicant/appellant.
- ensure in all cases that the union's assessment of the grievance considered any relevant rights of the applicant/appellant under the *Alberta Human Rights Act*, including the duty to accommodate, and any other employment related statute relevant to the grievance;
- permit a remedy if the circumstances merit. This means there must be some mechanism to allow for the supplemental investigation, reinvestigation or reassessment of a grievance if the union's prior investigation or determination is

found insufficient. It also means that a proper process will, in most circumstances, maintain the grievance, or right to file a grievance, in existence pending resolution of the appeal or review;

- provide a written explanation for any decision dismissing an appeal or review application; and
- notify any unsuccessful appellant/applicant of the 45 day timeline to file a duty of fair representation complaint to the Board (see section 153(4)(b)).

The Board cautions that votes of the general membership of a union about grievance matters may have a difficult time meeting the above requirements. Any process involving a vote must ensure the written reasons for the decision reflect the basis of the voting decision-makers.