

#13 REVOCATION OF BARGAINING RIGHTS

I. INTRODUCTION

When unions negotiate and enforce a collective agreement, they are exercising their bargaining rights. Unions acquire the right to bargain for a unit of employees either by being certified by the Labour Relations Board or by being voluntarily recognized by an employer. *See: Section 50; PSERA Section 18.*

Employees, unions and employers may apply to have these rights revoked. The Labour Relations Board can also revoke these rights on its own initiative in some cases. The most common type of revocation application is one filed by employees in a bargaining unit. Filing an employee revocation entails the following steps:

- at least 40% of the employees in the bargaining unit must sign a petition supporting the revocation of a union's bargaining rights;
- the petition and a completed application form is submitted to the Labour Relations Board at a time when employees are allowed to file for revocation;
- the Board investigates and may hold hearings about the application;
- if the application meets the requirements of the Code, the Board holds a secret ballot vote of the affected employees; and
- if the majority of the employees voting vote in favour of the revocation, the Board normally revokes the union's bargaining rights. This terminates any existing collective agreement.

This Bulletin describes when, how and why bargaining rights can be revoked.

II. OVERVIEW

The Labour Relations Board supervises the revocation process. Its duties are to:

- receive applications for revocation;
- notify the affected parties of the application;
- conduct investigations and hold hearings to make sure the applicant applied at the right time, in accordance with the Code's requirements, and with the necessary support if it is an employee application;
- if the application is made by employees or an employer, hold a secret ballot vote among the affected employees; and
- revoke bargaining rights if the application is successful.

- All of this takes place within a short time frame. The Code requires the Board to investigate applications and hold representation votes as quickly as possible. *See: Section 53(3).*

III. WHO CAN APPLY

Employees in the bargaining unit, the trade union, the employer or a former employer may apply for revocation. *See: Section 51(1); PSERA Section 18(1).*

IV. TIMING OF THE APPLICATION

Applications must be timely. The Code imposes specific time limits on applications. For example, no party can apply during a legal strike or lockout without the Board's consent. Employees in the unit may apply during one of five open periods. These open periods are normally:

- at any time, if there is no certification and no collective agreement in effect;
- 10 months after certification, if no collective agreement is in force and no judicial review regarding the certification is in progress; *See: Certain Employees of Bosco Home v. AUPE and Bosco Homes. [2002] Alta. L.R.B.R. 125.*
- 10 months after the date of the Court's decision on a challenge to the certification, if the certification is not overturned;
- within the last 2 months of a collective agreement; or
- in the 11th or 12th month of the second or subsequent year of a collective agreement with a term of more than 2 years, but not less than 10 months before the end of the agreement.
See: Section 52.

Where a trade union is a certified bargaining agent of employees who are engaged in work in the construction industry, such employees have additional time periods in which they may apply for revocation. These employees may apply for revocation anytime before the earliest of the following:

- (a) the date of the expiry of the 90-day period immediately following the date of the certification of the trade union;
- (b) if a collective agreement is entered into between the employer and the trade union after the date of certification, the date on which a majority of the employees in the bargaining unit confirm that they accept being bound by that collective agreement;
- (c) if the employer and the employees are bound by a collective agreement entered into under Part 3, Division 3, the date on which the employer and a majority of the employees in the bargaining unit confirm that they accept being bound by that collective agreement.

[amended September, 2008]

A trade union can apply when there is no collective agreement in effect.

An employer or former employer can apply in two instances:

- if there has been no collective bargaining with the union for three years from the date of certification; or
- if there has been no collective bargaining for three years since the original expiry date of the last collective agreement.

See: Section 52(5); J.S. Mechanical [1979] 2 Can. L.R.B.R. 87 (Ont).

V. FORM OF THE APPLICATION

Applications must be in writing (i.e., by letter, application form or petition). Parties can get copies of the optional forms and blank petitions from the Board's offices or download them from the Board's website at: <http://www.alrb.gov.ab.ca/forms.html>.

Employee Applications

Employees normally use petitions when applying to the Board.

It is important to identify who is the applicant, the contact person for any investigation, and the spokesperson at the hearing. One employee may act in all three capacities.

Employees may use an agent or legal counsel as their contact or spokesperson.

The names of persons acting in these capacities are the only names that the Board releases. The Board does not reveal who signed the petition.

Unwarranted pressures from an employer may jeopardize the validity of an employee application and petition. When preparing to file a revocation application, employees should ensure that:

- the application was not management's idea;
- the application or the purpose of the application was not discussed with anyone from management;
- no one from management offered any of the employees any reward or benefit for starting or proceeding with the revocation application;
- no one from management threatened termination of employment, wage reduction, or anything relating to employment with the employer if an individual did not support the application; and
- the spokesperson has not been led to believe that the revocation application will be funded in whole or in part by the employer.

The following information must accompany the petition:

- The full name, address, and phone number of the applicant. The applicant must have signed the petition.
- The name, address and phone number of a spokesperson.
- The full name, address and phone number of the trade union.
- The full name, address and phone number of the employer.
- The relevant certificate number, if known.
- The section of the Code relied upon, (i.e., Section 51(1)).

- A statement of the purpose of the application.
- An identical heading on each page of the petition explaining the purpose of the petition. The header must clearly identify the employer and the union involved. The header must be on the petition before anyone signs it and must remain unaltered.
- The signature, printed name, address, and date of signing of each person.
- A witness's signature for each person signing. A person can witness more than one signature.

The Board only accepts petition evidence if satisfied that the petition represents a free and voluntary expression of employees' wishes. When circulating a petition to gather signatures, ensure that:

- the statement of intent at the top of each page is completed before any person signs;
- each person is given the opportunity to read the statement of intent at the top of the petition in order to understand what the individual is supporting by signing;
- the signatures are witnessed as they are collected;
- the signatures are not gathered during working hours; and
- the organizer(s) of the petition is always in physical possession of the petition(s).

See: Certain Employees of Lansdowne Foods v. UFCW 401 et al. [1992] Alta.L.R.B.R. 413.

The petition for revocation of bargaining rights must contain the signatures of at least 40% of the employees in the bargaining unit. *See: Section 51(2).*

Trade Union or Employer Applications

Unions and employers normally use letters when applying. These letter applications must include:

- the full name, address, and phone number of the applicant;
- the name, address and phone number of the applicant's contact person;
- the full name, address and phone number of the other affected party (employer or union);
- the section of the Code relied upon; and
- a statement of the purpose of the application and of the result desired.

See: Rules of Procedure, Rules 5, 6; Bulletin 2.

VI. PROCESSING OF THE APPLICATION

The Director of Settlement appoints an Officer to investigate and issue a report. The Officer contacts the parties and advises them of the application. The employer and trade union receive written notice. Employees receive notice by posting at the work site. All parties receive notice of the scheduled hearing date. *See: Sections 13, 16(4); Rules of Procedure, Rules 14, 22(1)(g); Bulletin 3.*

The employer provides the Officer with a list of employees in the bargaining unit and the date each employee commenced employment with the employer.

[amended September, 2008]

When investigating employee applications, the Board Officer examines the voluntariness of a revocation petition. The investigation is based on the criteria outlined earlier related to management involvement and the gathering of petition signatures. Based on an interview with the spokesperson or other enquiries, the officer's report will either contain a finding that the petition appears voluntary (which any affected party may then object to) or indicate that no conclusion is reached on voluntariness. In that case, the petitioners' spokesperson will have to testify at the Board hearing as

to the voluntariness of the petition.

The Officer accepts objections to the application. Objections must be in writing. They must include the name, address and phone number of the objecting parties and must set out the details of the objection in a clear manner. *See: Bulletin 3.*

The Officer completes a report and sends it to the parties. If the applicant uses a petition showing employee support, the report may include the Officer's general recommendation on the voluntariness of the petition. If the Officer is not satisfied about the voluntariness of the petition, the Officer's report will identify areas of concern and state that those questions can be dealt with through evidence before the Board. The areas of concern can be as general or specific as the Officer considers necessary. A party may object to the facts set out in the report.

For applications involving work in the construction industry, the Officer will also report on the employees in the bargaining unit that have been employed for at least the 30-day period immediately preceding the date of the application as well as those who have quit or abandoned their employment since the date of the application.

[amended September, 2008]

The objecting party must send its objections in writing to the Board and the other parties so that they receive a full business day's notice of the objections before the hearing. If the objecting party does not, the Board may proceed without considering the objections. *See: Rules of Procedure, Rule 26.*

Any person intending to intervene in the application must give the Board notice of that intention at least one full business day before the scheduled hearing. A toll free telephone line is available (1-800-463-2572). *See: Rules of Procedure, Rule 27; Bulletin 4.*

VII. BOARD HEARING AND REPRESENTATION VOTES

If no objections are received one full business day before the hearing, the Officer notifies the employer, the trade union, and (in the case of employee applications) the petitioners' spokesperson. If everyone agrees, the Officer may cancel the hearing. If so, the application is reviewed by the Board without the affected parties in attendance.

If parties tell the Officer they will be attending the hearing, the Officer asks the names of their representatives, the number of witnesses they will call, and the length of their presentations.

If the Officer leaves it to the Board panel to determine the voluntariness of a petition, the applicant must appear before the Board panel and present evidence related to the area of concern identified in the officer's report. The applicant presents this evidence to the Board panel by answering questions under oath from the panel and other affected parties about the areas of concern identified by the Officer. *See: Rules of Procedure, Rule 28.*

The Board also requires the applicant to take the stand if a party affected by the application files a written objection questioning the voluntariness of the petition. In this situation, the applicant is sworn as a witness. If the witness supports the voluntariness of the petition under oath, the party who raised the objection then cross-examines the witness on the issues raised in the objections. The burden is on the party who raised the objection to convince the Board, by cross-examining the applicant's witness or by presenting other evidence, that the petition was not voluntary.

Once the Board is satisfied about timeliness, and in the case of an employee application, the initial 40% employee support, the Board orders a vote of the employees in the unit. The initial 40% support is based on the findings of the Officer's investigation. The Board applies the same criteria as set out in Voting Rules 16 and 17(a) to determine which persons are included in the unit for the purposes of calculating the 40% support required by section 34(2) and 51(2) of the Code. *See: Voting Rules 16 and 17.*

[amended March, 2009]

The Officer prepares a Notice of Vote and Voters List and arranges for their posting at the work site.

The Board has Voting Rules and an Information Bulletin on representation votes. *See: Information Bulletin 14.*

For applications involving work in the construction industry, the employer shall, as close to noon as possible on the day before the vote, and in any event no later than noon, provide all parties and the Board with a declaration (Construction Industry Continuing Employment Declaration – See Board Forms) identifying the names of any employees included on the Voters List who have quit or abandoned their employment since the date of the application. The Voters List will be amended to exclude such employees.

[amended September, 2008]

The Board grants the application for revocation if a majority of the employees vote in favour of revoking the bargaining rights, unless there is evidence of other relevant matters that would cause the Board not to revoke the bargaining rights. *See: Section 52(5), 52(2); Bulletin 14; Orlovsky Painting [1995] Alta. L.R.B.R. 251; Lansdowne Foods [1992] Alta.L.R.B.R. 413.*

[amended October, 2006]

If a former employer applies, it must satisfy the Board at the hearing that the union abandoned its bargaining rights, or that there have been no employees in the unit for 3 years. *See: Comstock Company [1987] Alta. L.R.B.R. 374.*

In applications from former employers or trade unions, the Board grants or denies the application after the hearing without a vote.

VIII. EFFECT OF REVOCATION

All parties receive notice of the Board's decision.

A declaration of revocation by the Board means that the employer is no longer required to bargain collectively with the trade union. Any collective agreement in effect at the time becomes void. Further, the trade union cannot bargain with the employer or re-apply for certification for that unit of employees for six months. *See: Section 54(2).*

IX. REVOCATION WITHOUT APPLICATION

The Board can also revoke bargaining rights without an application. This normally occurs only where it appears the parties no longer exist. In these cases the Board attempts to give notice of its intention to the parties. Parties can object within 60 days of the notice. If any party objects, the

Board does not revoke the bargaining rights. *See: Section 55.*

X. REVOCATION BY EMPLOYER UNDER VOLUNTARY RECOGNITION

An employer who has voluntarily recognized a trade union for collective bargaining has an option to revoke that recognition. This option can be exercised by giving the trade union a notice that it wishes to revoke the recognition and refuse to engage in further voluntary collective bargaining. This notice is only effective if given at least 6 months before the expiry date of the collective agreement. *See: Section 43; PSERA Section 17.*

If a trade union receives this form of notice, the union may apply to the Board for certification. In this case the usual open periods are modified to allow an immediate application. *See: Bulletin 8.*

See also:

Information Bulletins 1, 3 and 4
Rules of Procedure
Voting Rules

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