

#4 LOCATION AND CONDUCT OF BOARD HEARINGS

I. INTRODUCTION

The Board recognizes that settlement of disputes in a timely fashion promotes good labour relations. Prompt and convenient hearings are basic to this goal.

This Bulletin describes the Board's hearing procedures and the Board seeks the co-operation of the parties in following them.

II. LOCATION OF HEARINGS

The Board usually conducts hearings at its offices in Edmonton and Calgary. It sits in other locations when justified by convenience or community interest. *See: Section 9(1).*

The Director of Settlement considers requests for alternate hearing locations.

III. SCHEDULING OF HEARINGS

The Director of Settlement schedules hearings as soon as possible given the need for fairness. Scheduling may occur in consultation with the parties. *See: Rules of Procedure, Rule 22(1)(j).*

A conference call with the Officer, the Director of Settlement, the Chair, a Vice-Chair, or a panel may be used to resolve scheduling issues.

The Board's hearing schedule is available for viewing on the Internet at: <http://www.alrb.gov.ab.ca/hearings.html>. This schedule, updated weekly, identifies the date, time and matters for hearing. The hearing panel is identified but may change without notice. Scheduled hearings may be adjourned, rescheduled or cancelled with notice given only to affected parties.

IV. TYPES OF HEARINGS

The Board processes cases through both formal and informal hearings.

Informal hearings are conducted by one or more Board members as one of the Board's dispute resolution options. *See: Sections 11, 12(2)(c).*

Formal hearings will usually involve two or more members sitting with a Chair or Vice-Chair. In some cases a Chair or Vice-Chair can sit alone. *See: Sections 9(1), 9(10), 9(11), 15(5).*

V. INFORMAL HEARINGS

Informal hearings are part of the Board's dispute resolution function. A matter may be completely resolved using an informal hearing. If not, the Board may schedule a formal hearing. *See: Section 11; Bulletin 2.*

The Chair makes the decision whether to schedule a matter for an informal hearing. The Chair assigns one or more Board members to hear the case.

During an informal hearing, the Board's member or panel sets the hearing procedure in consultation with the parties. The panel hears each party's case and attempts to assist the parties in resolving the problem between themselves. *See: Rules of Procedure, Rules 30 to 33.*

The panel may issue a settlement report to the parties containing its views on what should be done to resolve the matter.

This report will be sent to the parties for their response. If either party objects to part or all of the report, they can ask that the matter be set for formal hearing.

If both parties accept the report, they can simply carry out its recommendations voluntarily. Alternatively, either party can apply to the Board to have the report confirmed as an order of the Board.

When the Board receives an application for confirmation of a report, the Director of Settlement will specify a time within which the other party must reply to the request. If one party objects to confirmation, the matter, or as much of it as remains unsettled, will be scheduled for formal hearing. If a party does not object, the report will go to a formal Board panel for confirmation.

The contents of an informal panel's report are only released to the parties. A sealed copy is sent to the Board offices and remains sealed unless there is an application for confirmation that is unopposed.

Members of the informal panel may not sit on the formal hearing panel unless the parties consent. The informal panel's report may not be used as evidence in the formal hearing.

VI. FORMAL HEARINGS

Formal hearings fall into several categories. These include regular hearings, certification and revocation hearings, urgent hearings and hearings with the Chair or a Vice-Chair sitting alone. In some cases, parties can make submissions to panels by conference call.

The Board usually provides written notice of hearings to all parties, but may provide verbal

notice or notice by other means if it is satisfied that a party or person would not receive notice in the regular way. *See: Rules of Procedure, Rules 9 to 21.*

The special features of the various types of formal hearing are set out below.

Regular Hearings

The Director of Settlement schedules many contested applications directly to a regular hearing. *See: Bulletin 2.*

The Director of Settlement normally schedules regular hearings giving reasonable written notice. Affected employees receive notice of hearing by posting at the work site.

Preliminary disputes can result in the delay or adjournment of a regular hearing. The Board urges the parties to use the services of the officer or a conference call with the Chair or Vice-Chair to resolve these matters before the hearing.

Certification and Revocation Applications

The Board must process certification and revocation applications as quickly as possible. When an application is received a hearing date is immediately set so that the hearing date can be posted at the worksite. *See: Section 34(3); Bulletins 8, 13.*

If a certification or revocation application is uncontested, the Board may cancel the hearing. The Board then decides the issue solely on the basis of the material before it. Where objections arise that affect the threshold support, the Board may conduct a vote and seal the ballot box, pending a later hearing on the objections. Objections dealing only with employee inclusions or exclusions are normally deferred to be dealt with at or after the vote. *See: Rules of Procedure, Rules 22(1)(m), 26; UFCW, Local 401 v. Freson Market Ltd. [1995] Alta.L.R.B.R. 491; Bulletin 14.*

[amended October, 2006]

Urgent Hearings

The Board schedules special hearings on urgent matters as soon as possible. The parties receive a minimum of four (4) hours notice for these hearings. *See: Bulletins 17, 18.*

Urgent hearings may be scheduled for:

- applications alleging illegal strikes or lockouts;
- applications involving picketing issues;
- certain applications involving votes;
- questions involving the duty of fair representation where delay may result in a substantial financial loss to a party; and
- other matters of demonstrable urgency.

Hearing with a Chair or Vice-Chair Alone

The Chair or a Vice-Chair sitting alone may conduct a formal hearing or conference call, or receive written submissions, to decide:

(i) under section 9(10), and 9(11) of the Code:

- if:
 - a person is an employee, *See: Section 12(3)*.
 - an organization of employees is a trade union,
 - a group of employees is a unit appropriate for collective bargaining,
 - a person has applied for membership or has terminated membership in a trade union,
 - a person is a member in good standing of a trade union,
 - a person is included in or excluded from a unit,
- to order, summon and enforce the attendance of witnesses and compel them to give oral or written evidence and to produce documents and any other materials the Board considers necessary, *See: Section 14(2)*.
- to determine questions with respect to a strike or lockout vote, *See: Section 76(4)*.
- a matter where all parties consent, or
- a matter where, after a period of notice, none of the parties object.

(ii) under section 15(4) of the Code to:

- appoint persons to act as returning officers for any vote,
- determine who is eligible to vote on any matter,
- investigate any complaint made concerning any vote,
- require an employer to make available a suitable portion of its premises for a vote,
- direct persons to stop electioneering or issuing propaganda for any time before the date of a vote.

(iii) under section 3(2) of the Act:

- to determine if:
 - a person is an employee,
 - an organization of employees is a trade union,
 - two or more employees are a bargaining unit,
 - a person has applied for membership,
 - a person is a member in good standing of a trade union, or
 - a person is included in or excluded from a unit.

VII. PARTICIPATION IN BOARD HEARINGS

Only those directly affected by the matter, or their representatives, may normally participate in the hearing. Parties can represent themselves or use an agent or lawyer. *See: Rules of Procedure, Rule 5.1; Bulletin 2.*

If a person feels they are affected by a matter and have not been provided notice of the hearing, the person may apply in writing to the Board for status at the hearing. The Board will seek the views of the other parties to the matter and will decide the issue. If granted status, such parties are called intervenors.

Employees participating in a matter through a petition must have named a spokesperson. It is this person who receives any notices from the Board. This person must appear at any hearing on behalf of the petitioners.

If a party, having received notice, does not attend, the Board may proceed in the party's absence. *See: Section 12(2)(g).*

VIII. CONDUCT AT HEARINGS

Board hearings are open to the public.

There is no smoking, eating or drinking (except water) allowed in the hearing room.

Persons cannot use any electronic device in the hearing room during hearings without the Board's consent, and electronic devices must be turned off and kept out of sight during the hearing. "Electronic device" means any device capable of transmitting and/or recording data or audio, including smartphones, cellular telephones, cameras, video cameras or television equipment, audio recorders, computers, laptops, tablets, notebooks, personal digital assistants or other such devices. Legal counsel, instructing representatives of parties and self-represented parties are permitted to utilize electronic devices for the purpose of assisting in the presentation of their case to the Board, so long as the device is in silent mode, is not disruptive to the hearing, and is not used to record or photograph the proceedings. *See: Section 12(2)(g).*

IX. HEARING PROCEDURES

The formality of a Board hearing may vary with the nature of the application. However, the following points may help the parties to prepare for a hearing.

Opening Statements

The Board finds it helpful if the parties begin each hearing with a brief opening statement about the issues. An opening statement briefly describes the issue, the evidence and the remedy sought so as to alert the Board to the matters it will hear.

Exclusion of Witnesses

Parties may, at the start of a hearing, request the exclusion of witnesses from the hearing room. An exclusion order means that all scheduled and potential witnesses should leave the hearing room during the giving of evidence.

An exclusion order is given to preserve the integrity of each witness's independent testimony.

Excluded witnesses must not discuss evidence amongst themselves or with others who have been

present in the hearing. While excluded the witness must not seek out or obtain, via telephone, electronic device or otherwise, information about the hearing from any person or from media reports.

An exclusion order normally allows each party to have one person remain in the room, if necessary, to instruct counsel.

Evidence

While not as formal, the Board is in some ways similar to a court. The Board takes evidence under affirmation and witnesses can be cross-examined. Evidence is presented to the Board through an agreed statement of facts, agreed documents, or witness testimony. Documents that are agreed to by the parties or presented to a witness may be marked as exhibits. Under section 14(5) of the Code, the Board can accept any evidence it considers proper. See: *Retail Clerks Union Local 401 v. 4 Way Wholesale Ltd.* [1979] Alta.L.R.B. 79-053; *Gainers Inc. v. UFCW Local 280-P* [1986] Alta.L.R.B.R. 743; *IBEW Local 424 v. Canem System Ltd. et al.* [1987] Alta.L.R.B.R. 170 and [1987] Alta.L.R.B.R. 203; *Stuart Olson et al. v. Labourers, 92 & 1111 and Cement Masons' 924* [1990] Alta.L.R.B.R. 210; *Wayne Hamilton v. Edmonton Police Association* [1993] Alta.L.R.B.R. 515; *UFCW Local 401 et al. v. European Cheesecake Factory Ltd. et al.* [1994] Alta.L.R.B.R. 30; *Timeu Forest Products v. IWA Local 1-207* [1997] Alta.L.R.B. - September 11, 1997 - GE-02534. See: *Section 14(5)*.

Constitutional Issues

Parties intending to raise an argument based on the Charter of Rights and Freedoms or questioning the Board's constitutional jurisdiction must give 14 days advance notice of that intention to the Board, other parties, the Minister of Justice and Attorney General of Alberta and the Attorney General of Canada. See: *Judicature Act, R.S.A. 2000 C.J.-2, section 24; Administrative Procedures Amendment Act RSA 2005, section 12.*

[amended December, 2006]

Cases and Documents

Parties introducing documents as exhibits must bring to the hearing:

- one copy for the Board's file;
- one copy for the witness;
- one copy for each party; and
- one copy for each Board member.

When bringing copies of cases for argument, a party must bring:

- one copy for each Board member; and
- one copy for each party.

An officer can assist a party in determining the number of copies to make. If a party does not bring the required number of documents, the Board may recess the hearing to enable the party to make the appropriate number of copies.

At the commencement of the hearing, the chair of the hearing will circulate a document on which the parties are to list the following in clear and legible printing:

- the party's representative's full name and title;
- counsel's name, firm, and which party they represent;
- the name(s) and title of the representative's or counsel's advisor;
- the names of all witnesses intended to be called.

During or after the hearing, the Board may advise the parties of policies or case authority not raised but of importance to the matter. If the matters are of sufficient importance to the case, the Board normally gives parties a reasonable but brief period to respond in writing. In most cases, no further hearing is convened.

X. DECISION WITHOUT HEARING

In some cases, the Board processes and decides cases on the written material filed and without a formal hearing. If the persons affected do not object to an application, a hearing may not be necessary. The Board advises the parties where this is the case. The Board may also request written submissions from the parties.

XI. ADJOURNMENTS

Rules 34 and 37 describe the Board's power to grant adjournments.

Lawyers or agents seeking adjournments must assure the Board that they have their client's consent to do so. *See: Rules of Procedure, Rules 34(a), 37.*

Second and subsequent adjournments are normally not granted without compelling reasons.

In reviewing adjournment applications, the Board considers the following:

Adjournment by Consent

A party seeking an adjournment should first seek the consent of the other parties. If all parties agree, the requesting party advises the Director of Settlement. The Rules authorize the Director of Settlement to adjourn a hearing with consent. However, the Board reserves the right to deny a request for an adjournment even if all parties agree. *See: Rules of Procedure, Rule 22(1)(l).*

Contested Adjournments

If the parties cannot agree, the party seeking an adjournment should advise the Director of Settlement and all other affected parties in writing as soon as possible. Wherever possible, the Board will try to hear adjournment applications in advance of the hearing date. This is to save the parties expense and inconvenience. The Board may use a conference call to hear the adjournment application.

Board-Ordered Adjournments

The Board reserves the right to adjourn any matter, with or without the agreement of the parties.

Adjournments Sine Die

When all parties agree to indefinitely adjourn a proceeding and no requests for rescheduling

occur within six months, the proceeding will be considered withdrawn. *See: Rules of Procedure, Rule 37.*

See also:

Information Bulletins 1, 2, 3 and 5
Rules of Procedure

For further information or answers to any questions regarding this or any other Information Bulletin please contact:

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