

## #8 CERTIFICATION

**This bulletin reflects amendments to certification applications resulting from the *Restoring Balance in Alberta's Workplaces Act, 2020*. Please note that the changes to the open periods contained in section 37 of the *Labour Relations Code* will not come into force until Proclamation.**

### I. INTRODUCTION

The *Labour Relations Code* allows employees to join or form a trade union. A union may become the exclusive bargaining agent for a unit of employees in two ways. It may be voluntarily recognized by an employer. A union may also apply to the Labour Relations Board for certification. *See: Section 32.*

If a union applies for certification, employees vote on whether or not a union will represent them. The vote is by secret ballot. A union is certified only if the employees decide to be represented by it. Certified unions can require the employer to bargain in good faith. This normally results in a collective agreement. Such an agreement covers all employees in the bargaining unit.

This Bulletin explains the certification process. This includes applications under the *Labour Relations Code* and the *Public Service Employee Relations Act*.

### II. AN OVERVIEW

The Labour Relations Board supervises the certification process. It:

- receives applications from trade unions;
- notifies the employer, employees and other affected persons of the application;
- conducts investigations and holds hearings to make sure the union applied at the right time, with the necessary level of employee support, and according to the Code's requirements;
- makes sure the group of employees in question is a unit that is appropriate for collective bargaining;
- holds a secret ballot representation vote among the affected employees; and
- issues certificates for successful applications.

The Board must complete its inquiries and conduct any representation vote as soon as possible, and the Board's final decision regarding a certification application must be made no later than 6 months after the application date. The Chair may extend the timelines, but will only do so in exceptional circumstances. *See: Section 34(3)-(5).*

### III. THE APPLICATION

Unions file a certification application to begin the process. Applications must meet several criteria. Unions are required to file fully completed applications using the correct form. An application must be timely. The application must include evidence that at least 40% of the employees in the bargaining unit applied for support the union. The bargaining unit applied for must be appropriate. The application must also contain the correct legal name of the employer and the union. These criteria are explained below.

#### **Application Form**

Unions must file an “Application for Certification” form. A union organizer must complete the form’s declaration. Application and petition forms are available in the Board’s Edmonton or Calgary offices. These forms are also available on the Board’s website at: <http://www.alrb.gov.ab.ca/forms.html>. *See: Rules of Procedure, Rule 4; Bulletin 2.*

A complete application for certification includes:

- a fully completed application form signed on behalf of the union;
- a declaration by a union organizer; and
- evidence of at least 40% support in the unit applied for.

#### **Timeliness**

Applications are subject to time limits. These are outlined below. *See: Section 37.*

#### *Constitutional Filing*

Unions must file their constitutional documents with the Board. This filing must take place at least 60 days before applying for certification. This rule applies to newly formed unions and new locals of established unions. The Board can reduce this time in special cases. Unions must obtain any waiver **before** applying for certification. *See: Sections 24(1)(a), 37(1)(a); Bulletin 7.*

#### *Previous Applications*

If a union withdraws a certification application, or if an application remains before the Board without being actively pursued by the union, it cannot make the same application for 90 days. Similarly, if the Board has refused an application, the union must wait 90 days. The Board can reduce this waiting period on application by the union. The Board cannot grant consent after a certification application has been filed. Applicants must seek a waiver of the 90-day time-bar **before** applying for certification. In addition, if there is a complaint relating to a prohibited practice during the certification process, and the Board refuses a certification application, or the application is withdrawn or not actively pursued, and the Board is satisfied that the applicant did not comply with the *Code* in relation to the complaint, then the applicant cannot make the same or substantially the same application for 6 months from the date of refusal or withdrawal without the Board’s consent. *See: Section 57; Steelworkers 722 v. Handleman Co. of Canada Ltd. [1988] Alta. L.R.B.R. 431.*

#### *Strikes or Lockouts*

No union can apply for certification during a lawful strike or lockout without Board consent. *See: Section 37(1)(b).*

### *Existing Collective Bargaining Relationships*

Unions may apply for certification during one of six open periods. These are:

**Note: the amendments to section 37, summarized in bold below, will not come into force until Proclamation.**

1. at any time, if there is no existing collective agreement or certification covering employees in the unit;
2. 10 months after another bargaining agent is certified, if no collective agreement is in effect;
3. 10 months after the date of the Court's decision on a challenge to an existing certification, if the certification is not overturned;
4. within the last 2 months of an existing collective agreement **with a term of two years or less, unless the employer and the bargaining agent enter into a new collective agreement at any time before the two months immediately preceding the end of the term of the collective agreement, and the Board is satisfied that a majority of the employees voted to enter into the new collective agreement and were informed that voting in favour of the collective agreement would prevent certification applications from other unions.**
5. in the 11th or 12th month of the second or subsequent year of an existing collective agreement with a term of more than 2 years, but not less than 10 months before the end of the agreement, **unless the employer and the bargaining agent enter into a new collective agreement at any time before 11<sup>th</sup> or 12<sup>th</sup> month of the second or subsequent year, or the two months immediately preceding the end of the collective agreement term, and the Board is satisfied that a majority of the employees voted to enter into the new collective agreement and were informed that voting in favour of the collective agreement would prevent certification applications from other unions; or**
6. when the employer has served notice of its intention to terminate its voluntary recognition of a trade union and to refuse to bargain collectively. *See: Section 43.*

*See: Section 37.*

### **Proof of Support**

Certification applications must include evidence of employee support. At least 40% of the employees in the unit applied for must support the union. This evidence can be union membership evidence or petition evidence. *See: Section 33.*

### *Membership Evidence*

Membership evidence includes applications for membership, memberships in good standing, or a mixture of the two. This evidence can be:

- Copies of completed membership application cards along with proof of payment of a sum of not less than \$2. Membership applications must be no more than 90 days old when the certification application is filed. The Board does not require proof of payment of any other initiation fees. Applicants for membership must pay their own \$2. Loans from a union organizer disqualify the card. This may result in reducing support for the union. Including invalid cards may also cause the Board to question the organizer's declaration. Either can end in failure of the application for certification. *See: Section 33(a)(ii).*

- Copies of documents usually kept by the union showing membership in good standing. The Board usually decides membership status by looking at the union's records. Records showing that a person is a dues paying member are acceptable proof that the person is a member in good standing. The Board may examine the union's constitutional requirements about membership in good standing. *See: Section 33(a)(i).*

#### *Petition Evidence*

Petition evidence means a petition signed by each person supporting the application. Petition evidence and membership evidence cannot be combined. Signatures collected more than 90 days before the date of the certification application will not be counted. Petition headings must be **complete** (including the employer's name and the union's name) and **clearly worded**.

The Board has blank petition forms available from its offices and on its website for applicants to use. All signatures must be witnessed. *See: Section 33(b); Bulletin 1.*

The Board suggests trade unions include an alphabetic list of supporters with all applications. If this is not possible, membership or application cards should be in alphabetical order. A trade union seeking to certify a large group of employees can assist the Board by also providing an electronic copy of the list of supporters in an Excel or MS Word format.

#### **Appropriateness of the Bargaining Unit**

The bargaining unit must be appropriate for collective bargaining. Applicants word their own bargaining unit descriptions. The Board may modify this wording as necessary so long as the amended unit is appropriate for bargaining and is reasonably similar to the applied for unit. *See: Section 32, 35; PSEERA Sections 10, 11, 16; Bulletins 9, 10, 11; GCU v. Calgary Herald [1993] Alta. L.R.B.R. 222.*

#### **The Union's Name**

The Board uses a union's legal name and local number (when applicable) on certificates. Often unions use an abbreviation (e.g., CLAC, IBEW, AUPE, or Local 47) but each union has only one true legal name.

#### **The Employer's Name**

Employers operate under a variety of names. These may be divisions, trade names, abbreviations, or names of particular institutions. Each employer has only one proper legal name. The Board uses only the employer's full legal name. Do not put geographical references, division or institution names or operating names either as, or part of, the employer's name. If such references are necessary to show which employees the certificate covers, put them in the unit description.

## **IV. PROCESSING APPLICATIONS**

Section 34(3) of the *Code* reflects the importance of processing, investigating and concluding certification applications as soon as possible.

When an application is received, a Board Officer is appointed to the file. The Officer notifies the affected parties and schedules a hearing. In order to ensure that certification applications are processed as soon as possible, hearings are usually scheduled for 13 working days after the date of the application, though a longer timeline may be appropriate for complex applications. The

Officer investigates the application and writes a report. Any party may object to the report's content. If objections are raised, a hearing is held as scheduled. Assuming the application is found to be in order, a vote will take place. If a majority of employees voting choose the union, the Board then issues a certificate. These steps are explained in detail below.

### **Appointing an Officer**

When an application is received, the Director of Settlement appoints an Officer to investigate. Board Officers are impartial employees of the Board. They do not advocate for employees, unions or employers. Rather, they make inquiries to assist the Board. *See: Section 34(1); Bulletin 1.*

The Officer begins by reviewing the union's status. The Board presumes a previously certified organization is a trade union. If not previously certified, the union must satisfy the Board that it has met the filing requirements in the Code. *See: Section 24; Rules of Procedure, Rules 22(1)(g), 25; AUPE 124 v. Oak Hill Foundation [1984] Alta. L.R.B. 84-054.*

### **Notifying the Parties**

The Officer phones the employer to:

- notify the employer about the application; *See: Rules of Procedure, part III.*
- outline the bargaining unit applied for;
- explain the procedure for the employer's response to the application;
- make arrangements for the Officer to review the employer's records;
- advise of the date of the hearing and explain the possibility of cancelling the hearing if no one objects to the application or the Officer's report; *See: Rules of Procedure, Rules 22(1)(m);*
- explain if there are objections the hearing will go ahead as scheduled and will usually be completed in one day;
- explain if there are objections but the Officer has found that there is at least 40% support for the application, the Board may administratively order a vote with a direction that the ballot box be sealed until the scheduled hearing and a decision or resolution of the objections;
- explain if there are no objections the Board will review the file administratively 10 days after the date of application at which time a vote may be ordered;
- provide instruction about the posting of notices;
- notify the employer about the statutory freeze period; *See: Section 147(1);* and
- address the possibility of a vote.

The Officer also sends written notice to the employer, trade union and any other party affected by the application. The notice contains:

- a copy of the application (without specific information on employee support);
- details of the hearing, and the possibility of cancelling the hearing if the application is uncontested; and
- information about the possible employee representation vote.

Employees are notified by a "Notice to Employers and Employees" posted at the work site. The Officer usually directs the employer to post the notice, but may arrange posting through some other party where appropriate. The notice tells employees about the procedures and time limits for filing objections and the possibility of cancelling the hearing if no one objects to the application. *See:*

*Section 13(1)(e); Rules of Procedure, Rule 14.*

### **Employer Response**

The information from the Employer must be provided to the Board Officer as soon as possible, and preferably within five working days after the date the application for certification is received.

The Officer seeks from the employer:

- the proper corporate name, address, and phone number;
- a contact person and phone number;
- the employer's legal counsel or agent (if any);
- the number of work sites, their location, shift times and employees working at each site;
- an employee list, preferably in alphabetical order;
- employment documents including but not limited to job descriptions, contracts, cost codes, hire on sheets and payroll information; and
- suggestions for a location and times for a work site vote.

*See: Section 13; Voting Rules, Rule 8(h).*

If an employer fails to provide the necessary information, the Board can proceed with the application using information obtained from the employees or union. *See: Section 13(3).*

### **Officer's Investigation**

During the investigation, the Officer will determine who can provide the necessary information for the report and will usually attempt to speak to one person on behalf of each party.

The Officer reviews the employer's records. The Officer obtains a complete list of employees for the Board to use in determining the application for certification. It will assist the Board in determining how many employees are in any appropriate unit and who should be on any voters list, if a vote is ordered. The Officer may ask the employer to provide an alphabetical list of employees or provide this information electronically. *See: Section 13; Bulletin 3.*

The employee list needed by the Officer will indicate each employee's work site and work function. The list will show whether employees are full-time, part-time, casual, or employed in managerial or confidential labour relations positions.

For an application under the *Public Service Employee Relations Act*, the Officer's report will indicate individuals excluded from the unit under Section 12 of the Act.

The Officer will ask the employer to identify which employees worked on the date of application. If an employee did not work, the employer should advise the Officer of the last day worked, whether the employee was on leave, dismissed or laid off and when and if the employee is expected to return to work. The Officer, employer and union discuss which persons the parties believe are included in, or excluded from, the unit. The Board applies the same criteria as set out in Voting Rules 16 and 17 to determine which persons are included in the unit for the purposes of calculating the 40% support required by section 34(2) of the Code. *See: Voting Rules 16 and 17.*

During the investigation, the Officer may randomly check employee signatures to verify evidence of support for the application.

The Officer will seek input from the union and employer concerning the date, places and times suitable for voting; however, the Board will make the final decision about vote arrangements. If a vote is recommended by the Officer, notice of the vote must be given by the Board to employees as soon as possible. The vote is generally ordered on the 10<sup>th</sup> day and must be conducted as soon as possible. *See: Section 34(3); Bulletin 14.*

### **The Officer's Report**

At the end of the investigation, the Officer completes a report and gives it to the parties. The report includes:

- the legal name of the employer;
- the correct name of the applicant;
- a statement about whether the union has met the 40% support level in the unit applied for; *See: CUPE 41 v. Westview Regional Health Authority [2002] Alta. L.R.B.R. 174.*
- a statement about whether the petition appears to be a genuine and voluntary expression of the employees' wishes if the evidence of support is by petition;
- a list of employees in the unit (no reference is made to their support for the application) *See: Timeu Forest Products [1997] Alta. L.R.B.R. 430.;*
  
- a recommendation about the appropriate bargaining unit;
- a recommendation about trade union status;
- a recommendation about the timeliness of the application;
- any necessary recommendations on persons who may be included in or excluded from the unit;
- information about any other relevant matter concerning the application; and
- where required, vote arrangements.

*See: Bulletin 3.*

The employee list in the Officer's report will include persons employed in the bargaining unit applied for, but will not show if they supported the application. The Officer will, if there is a dispute over which employees should be included in the unit, and where possible, make a recommendation as to whether a named person is an employee included in the bargaining unit applied for, or a reasonably similar unit. *See: Bulletin 22; Voting Rules.*

The Officer sends the written report to all the parties. The report will be issued no later than 24 hours prior to the deadline for filing objections.

### **Objections to the Report**

Any party may object to some or all of the contents of the report. The objecting party must send its objections in writing to the Board and the other parties by the deadline set by the Officer. If the objecting party does not meet this deadline, the Board may proceed without considering the objections. *See: Bulletin 3.*

The Board requires that objections be clear, specific and detailed. General objections are not acceptable (e.g., the bargaining unit is inappropriate). The parties must exchange all documents

they plan to rely on as exhibits at the hearing at least 48 hours before the scheduled hearing. Parties and any legal counsel must make themselves available as hearings will proceed on the scheduled date and will usually be completed in one day. Adjournments may be granted if the hearing can be rescheduled within a reasonable amount of time, in accordance with the statutory requirement that the Board consider the certification application as soon as possible. *See: Rules of Procedure, Rule 26; Bulletin 2; UA 488 v. Vikon Technical Services et al. [1985] Alta. L.R.B. 85-073.*

The same deadlines and requirement for document exchange apply to an employee or group of employees objecting to the application. They send the objection in writing and then they or their representative attend the scheduled hearing to present their objections to the panel. If their objections do not deal with the statutory criteria set out above, and no other objections are filed, the Board may cancel the hearing.

If the Board receives no objections of substance, it processes the application relying on the facts contained in the Officer's report. It confirms the date of the representation vote if there is at least 40% or more support of employees. The success of the application then depends on the results of the vote. *See: Rules of Procedure, Rule 26.*

In cases where objections are filed, and the Board orders a vote, the ballot box is sealed pending a hearing and decision or resolution of the objections. The Board will not order a vote if the Board Officer's investigation and report did not find the requisite employee support for the union in the applied for bargaining unit. *See: Section 34(5); UFCW 401 v. Freson Market Ltd. [1995] Alta. L.R.B.R. 491. [amended October, 2006]*

### **The Hearing**

If no objections are received by the deadline set by the Officer, the Officer notifies the employer and the trade union(s). The Officer advises the parties that the Board has cancelled the scheduled hearing and will review the file administratively on the 10<sup>th</sup> day after the date of application, or as soon after as possible. A Chair or Vice-Chair alone may deal with the matters. *See: Sections 9(11), 34(5); Bulletin 4, GCU 34-M v. Southam Inc. et al. [1993] Alta. L.R.B.R. 529; Carpenters 1325 v. Fraser Bros. Roofing et al. [1997] Alta. L.R.B.R. 541.*

If objections are filed, the Board will deal with them on the scheduled hearing date. The Board will usually rely on the facts set out in the Officer's report unless a party objecting to the report presents additional evidence. *See: Rules of Procedure, Rule 22(1)(m), 26; Bulletins 3, 4.*

At the hearing, the Board decides:

- if the applicant is a trade union;
- if there is evidence of at least 40% support;
- if the application is timely;
- the appropriateness of the bargaining unit;
- the date, place and times of any vote, if not already ordered, and
- if there are any prohibitions to the certification under Sections 37 and 38. *See: Sections 37, 38. See: Section 34(2),(5).*

## **The Vote**

In accordance with the statutory requirement to conduct a representation vote as soon as possible, the Officer prepares a Notice of Vote and Voters List and arranges for their posting at the work site. *See Section 34(3).*

The Board has Voting Rules and an Information Bulletin on representation votes. *See: Information Bulletin 14.* The Board requires the employer to place a suitable portion of its premises where its employees work at the disposal of the Board for the purpose of taking a vote. If the employer is not the owner of the premises where the affected employees work, the employer must provide notice of this requirement to the owner of the premises, and make arrangements for the Board to access those premises to conduct a vote. *See: Section 151(2)(1) and (2).*

The Board then conducts the vote. If there are no disputed ballots and no objections have been filed, the Returning Officer counts the vote and advises the parties of the results.

If disputed ballots remain and the parties are unable to resolve the differences with the Returning Officer, the sealed ballots and sealed ballot box are sent to the Board and the dispute is immediately set for hearing. A Chair or Vice-Chair alone may deal with disputed ballots. *See: Section 9 (10); Voting Rules, Part II; Bulletin 14.*

At this hearing, the Board will decide any disputed ballots and any challenges to the proper conduct of the vote. After the hearing, if the Board directs, the ballots are counted and the results released to the parties and the Board. *See: Voting Rules, Rule 4 to 17.*

The Board notifies all parties of the success or failure of the application.

## **The Certificate**

The Board issues certificates in triplicate. The trade union and employer receive originals. The Board retains the third. *See: Section 39.*

The certificate includes the proper name of the trade union and employer, the bargaining unit description and the date of certification. *See: Section 40.*

Section 40 of the *Labour Relations Code* sets out the effects of granting a certificate when a trade union becomes a certified bargaining agent where a collective agreement is in force regarding the employees in the bargaining unit.

## **V. CHECK LIST FOR APPLICATIONS FOR CERTIFICATION**

Ensure the application is supported by:

- trade union documents filed at least 60 days before the application or Board consent to apply within the 60 days;
- a **fully** completed application form;
- attached evidence of support (lists or cards sorted in alphabetic order, receipts where applicable, or a petition); and

- a completed declaration by a union organizer verifying the authenticity of the membership evidence.

See also:

Information Bulletins 1, 3, 4, 7, 13 and 14  
Rules of Procedure  
Voting Rules

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

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