

#13 REVOCATION OF BARGAINING RIGHTS

This bulletin reflects amendments to revocation applications resulting from the *Restoring Balance in Alberta's Workplaces Act, 2020*.

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;
- where required, 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.

The Board must complete its inquiries and conduct any representation vote as soon as possible, and the Board's final decision regarding a revocation 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 53(3)-(5).*

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 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 proceeding 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 a revocation application; 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, unless the employer and the bargaining agent enter into a new collective agreement at any time before 11th or 12th 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 a revocation application.

See: Section 52.

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

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

Where the application is made by employees in the bargaining unit or the employer, the Director of Settlement appoints a Board 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 hearing date. The hearing is usually scheduled for 13 working days after the date of application, but a longer timeframe may apply for complex applications. *See: Sections 13, 16(4); Rules of Procedure, Rules 14, 22(1)(g); Bulletin 3.*

The employer provides the officer with an alphabetical list of employees in the bargaining unit and may be requested to provide this information electronically. 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, or causal. 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 employees was on leave, dismissed or laid off, and when and if the employee is expected to return to work. In the case of an employee initiated application, the Board applies the criteria set out in the Voting Rules 16 and 17 to determine which persons are included in the unit for the purpose of determining at least 40% support for the application as required by section 53(5) of the Code. If the application is initiated by an employer, there is no requirement for evidence of support from the affected employees however the Voting Rules are applied by the officer to determine who is eligible to vote in a representation vote. *See: Voting Rules 16 and 17.*

This information must be provided to the Board Officer as soon as possible and preferably no later than five working days after the date the application for revocation is accepted by the Board. .

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 identify areas of concern. The areas of concern can be as general or specific as the officer considers necessary. Those questions can be dealt with through evidence before the Board at the scheduled hearing. In that case, the petitioners' spokesperson will have to testify at the Board hearing as to the voluntariness of the petition.

The Officer will seek input from the parties 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 vote will be provided to employees as soon as possible. The vote is generally ordered on the 10th day after the application, and the vote must be conducted as soon as possible.

The officer completes a report and sends it to the parties. The officer's report will be issued no later than 24 hours prior to the deadline for filing objections.

Where the application is made by a trade union or former employer there is usually no investigation or officer's report. The parties receive written notification and a notice is posted as the worksite. All parties are notified of the hearing date. The hearing is usually scheduled for 13 working days after the date of application, though this timeline may be longer for complex applications.

VII. OBJECTIONS

Any party may object to an application for revocation or to some or all of the contents of the officer's report. The objecting party must send its objections in writing to the Board and the other parties by the deadline stipulated by the Officer. If the objecting party does not meet this deadline, the Board may proceed without considering the objections. *See: Bulletin 3; Rules of Procedure, Rule 26.*

The Board requires that objections be clear, specific and detailed. General objections are not acceptable. 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 revocation application as soon as possible.

Any person intending to intervene in the application must give the Board written notice of that intention, along with sufficient particulars for the basis of the application, as soon as possible after the date of application, and no later than five working days before the hearing. A toll free telephone line is available (1-800-463-2572). *See: Rules of Procedure, Rule 27; Bulletin 4.* The same deadlines and requirement for document exchange apply to an employee or group of employees objecting to the application. They send the objections in writing and then they or their representative attend the scheduled hearing to present their objections to the Board. If their objections do not deal with statutory requirements related to revocation applications and no other objections are filed, the Board may cancel the hearing.

If the Board received no objections of substance, it processes the application relying on the facts contained in the application or the officer's report, if one was issued. It confirms the date of the representation vote if there is at least 40% support of employees in an employee initiated application. The success of this type of application as well as an application filed by an employer depends on the results of the vote.

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 objections. Ordering a vote usually occurs 10 days following the date of application. The Board will not order a vote if the Board Officer's investigation and report did not find the requisite 40% support for an employee application.

VIII. BOARD HEARING AND REPRESENTATION VOTES

If no objections are received by the deadline imposed by the Officer, the Officer notifies the employer, the trade union, and (in the case of employee applications) the petitioners' spokesperson. The officer advises the parties that the Board has cancelled the scheduled hearing and will review the file administratively on the 10th working day after the date of application, or as soon after as possible. A Chair or Vice-Chair alone may deal with the matters. *See: Section 9(11); 53(5); Bulletin 4.*

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, if one has been issued, unless a party objecting to the report presents additional evidence.

If the officer has raised concerns about the voluntariness of a petition, the applicant must appear before the Board on the scheduled hearing date 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.

At the hearing, once the Board is satisfied about timeliness, and in the case of an employee application, the voluntariness of the petition and the initial 40% employee support, the Board orders a vote of the employees in the unit, if one has not already been ordered. 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 to determine which persons are included in the unit for the purposes of calculating the 40% support required by Section 51(2) of the Code. *See: Voting Rules 16 and 17.*

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

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: 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 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 ballot 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 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.*

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.

IX. 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).*

X. 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.*

XI. 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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