

#16 STRIKE AND LOCKOUT VOTES

I. INTRODUCTION

The *Labour Relations Code* requires that the Board supervise all strike or lockout votes. The Board has certain powers to make sure that a party conducts a fair vote. Votes should permit the free and private expression of opinion of persons entitled to vote. *See: Section 76.*

A Board-supervised vote is necessary before taking lawful strike or lockout action. *See: Section 73(b).*

Board-supervision means that the applicant party, not the Board, actually conducts the vote.

Parties conduct votes under rules and guidelines established by the Board. These encompass the entire voting process, from application to declaration of the result. *See: Voting Rules, Part III.*

This Bulletin advises parties of information required in strike or lockout vote applications. It sets out the procedures to use when conducting votes. It also outlines the Board's role in supervising these votes.

II. TIMING OF THE APPLICATION

A party cannot take a strike or lockout vote unless:

- no collective agreement is in effect; or
- if a collective agreement is in force, it is in force under the bridging provisions of section 130; and
- the 14 day cooling-off period following the end of the mediation process has expired, but less than 2 years has passed since that expiry. *See: Section 65(7).*

See: Section 75.

If there is a vote on the mediator's recommendations, the cooling-off period follows the date the results are known.

Unions must apply for Strike votes at least seven (7) calendar days before the planned voting date. Employers' organizations must apply for a lockout vote at least fourteen (14) calendar days in advance. The Board has abridged Rule 24(2) for single employers. It polls single employers as soon as possible after they apply for a lockout poll. *See: Voting Rules, Rule 24(1), (2).*

Parties can apply for strike or lockout votes during the cooling-off period as long as the proposed date falls after its expiry.

The Director of Settlement may, with the consent of the other party to the bargaining relationship, reduce the 7 or 14-day requirements. Without consent, only the Board can shorten this time requirement. *See: Voting Rules, Rule 24(3).*

Section 77 of the Code limits the time after a vote during which any strike or lockout action can occur. These votes only remain current for 120 days, and to take action, a party must take a new vote, if strike or lockout action has not commenced within that period. *See: Section 77.*

III. APPLICATION

A party seeking a supervised vote must use the forms provided by the Board. *See: Rules of Procedure, Rule 4.*

A complete application includes the completed form and:

- a completed Notice of Vote, as prescribed or approved by the Board;
- an alphabetic list of voters; and
- a sample ballot as prescribed or approved by the Board.

IV. APPLICATION FORM

The application form includes the following:

- applicant's name, address, and telephone number;
- name, address, and telephone number of a contact person;
- respondent's name, address, and telephone number;
- description of the bargaining unit;
- date of expiry of any collective agreement;
- date of mediator's appointment;
- date the cooling-off period began;
- proposed date and place for the vote;
- proposed locations and times for polling stations;
- proposed method of vote, for instance, whether vote will be conducted by electronic ballot or mail-in ballot;
- proposed method to notify persons of the vote;
- names, addresses, and telephone numbers of the Returning and Deputy Returning Officers; and
- signature of the applicant party.

The application must also include a statement in a form prescribed by the Board, confirming the application has been served in a manner approved by the Board, on any parties known to be affected by the proceeding or subsequently added by the Board. *See: Rules of Procedure, Rules 5.1, 6.*

Parties should consider the following when planning the vote.

The date chosen for the vote should allow as many eligible voters as possible to vote. Consider using more than one voting day if the vote involves more than one employer, work site or shift. A party may conduct advance polls if approved by the Board.

The place of voting should allow the maximum number of eligible persons to vote. More than one place may be necessary, if it is not possible for everyone to vote at the same location.

The number and location of polling stations should provide maximum convenience for voters. Locate polling stations in central, easily accessible locations. They should provide voter privacy and locked ballot boxes.

Select polling station dates and hours to maximize the ability of voters to vote. Set the voting hours after considering the number of eligible voters, shifts worked and convenient hours for voting.

If the vote includes advance polls, or the vote is proceeding by electronic ballot, similar considerations apply.

The Director of Settlement may approve a supervised vote by mail-in ballot or electronic ballot where appropriate in the circumstances and where the Director of Settlement is satisfied that the vote can be conducted in a secure and reliable manner. The applicant must propose procedures for distributing and controlling ballots. *See: Voting Rules, Rule 29.*

The applicant must appoint a Returning Officer and if necessary, also appoint Deputy Returning Officers. The appointment of such deputies depends upon the number of polls, times of voting or the number of people voting. *See: Voting Rules, Rule 26.*

V. LIST OF VOTERS

Attach a copy of the alphabetic List of Voters to the application. This list helps the Returning Officer establish a person's eligibility to vote.

The eligible voters for a strike vote, are those employees in the unit affected by the dispute who worked at any time during the 60 days before the date, (or the last date if more than one) of the vote. *See: Section 76(5).*

For a lockout vote, the eligible voters are those employers who employed employees affected by the dispute at any time during the 60 days before the date, (or the last date if more than one) of the vote.

VI. NOTICE OF VOTE TO EMPLOYEES/EMPLOYERS

Complete the Notice of Vote and attach it to the application. The applicant must say on the application form where and when it intends to post the notices.

In multi-employer vote applications, the Board requires an outline of alternative means of notification. This is to ensure that the applicant attempts to notify all persons eligible to vote.

These alternative means might be a website posting or some fast form of letter communication, or email. The applicant should include draft communications in the application.

VII. BALLOT

The applicant must attach a sample of the proposed ballot. The ballot must be in a form approved by the Director of Settlement. *See: Voting Rules, Rule 30.*

VIII. PROCESSING OF THE APPLICATION

Upon receiving such an application, the Director of Settlement may appoint one or more Supervising Officers. *See: Voting Rules, Rule 25.*

Either the Director or a Supervising Officer reviews the application for conformity with Board Rules. They may refer an incomplete application back to the applicant. They may amend the application with the consent of the applicant. The Director of Settlement or a Supervising Officer may also amend the List of Voters with the agreement of the applicant. *See: Voting Rules, Rule 27.*

Notice of an application for a strike or lockout vote, with a copy of the application and list of voters must be provided to the other party by the applicant union. *See: Rules of Procedure, Rules 5.1, 6.*

The Director of Settlement may decide to refer an application to the Chair or a Vice-Chair for directions. The Rules allow this when:

- the application is incomplete;
- the proposed voting procedures may not reveal the true wishes of the eligible voters;
- the proposed procedures may not give all eligible voters a reasonable opportunity to vote; or
- the procedures do not protect the secrecy of the ballots cast.

See: Voting Rules, Rule 28.

The Supervising Officer may attend during the vote and the counting of ballots, or, where the vote is proceeding by electronic ballot, when the results of the vote are generated. If not in attendance, the Supervising Officer is available by telephone or videoconference for consultation during the vote.

IX. OBJECTIONS

The Voting Rules permit an objection that the list of voters is generally unrepresentative of the persons entitled to vote. Such an objection must be in writing and include detailed reasons. The objecting party must submit the objection at least 48 hours in advance of the vote. *See: Voting Rules, Rule 33.*

The Board may investigate any objection and may conduct a hearing. It can order the vote to proceed with any conditions or it may postpone the vote. It may amend the list of voters or make any other appropriate order.

An employer is not entitled to have a representative present during the conduct of a strike vote. A trade union is not entitled to attend at the conduct of a lockout vote.

Disputes over the eligibility of individual voters may arise at the polling station. The Returning Officer should attempt to resolve these disputes at the time. If not resolved, the Returning Officer seals the ballot and separates it from the other ballots. The Returning Officer does not count the ballots but refers the disputed ballots to the Board. The Board determines whether to count the disputed ballots. *See: Voting Rules, Rule 34.*

The Rules also allow objections to the manner in which the vote was conducted. The objecting party must submit its objections in writing with detailed reasons within 24 hours of the closing of the polls. *See: Voting Rules, Rule 36.*

X. CONDUCTING A VOTE UNDER BOARD SUPERVISION

The Returning Officer is responsible for conducting the vote under the approved procedures and Voting Rules. This person also supervises the duties of any Deputy Returning Officers.

There are no mandatory procedures for conducting a strike or lockout vote. However, the following procedures are recommended and may help those responsible for conducting such a vote, after obtaining Board approval.

Step One

Post the approved Notice of Vote at least seventy-two hours in advance of the vote. Notices should appear at all locations where there are eligible voters.

Step Two

Make available the necessary materials for each poll conducting the vote. Be sure to include:

1. Ballot box,
2. Ballots,
3. Polling Booth (if available),
4. Voters List for Returning Officer,
5. Copy of Notice of Vote with sample ballot attached,
6. Double envelopes (large and small) for disputed ballots,
7. Sealing labels and tape,
8. Pencils and ruler, and
9. Where the vote is proceeding by electronic ballot, a detailed email to voters providing instructions on how to proceed, and contact information if they encounter technical difficulties during the vote.

Step Three

At the poll, the Returning or Deputy Returning Officer must do the following:

- Arrange for easy entrance and exit of voters.
- Establish a voting booth to provide secrecy for voters.
- Make sure that the ballot box is empty, then close and lock it.

- Declare the poll open at the approved time. Be sure that the polls are open during the times stated on the Notice of Vote. Do not deviate from the announced voting times.
- Control activities at and around the polling station to be sure that no interference, coercion or intimidation takes place. Do not allow electioneering at the poll unless approved by the Board.
See: Voting Rules, Rule 3.
- Be sure that persons attending to vote do so in an orderly fashion.

The Board does not permit voting by proxy. All votes under the *Labour Relations Code* are by secret ballot. *See: Voting Rules, Rule 2.*

When a person arrives to vote, check the name against the List of Voters to confirm the person's eligibility to vote. If eligible, initial the back of a ballot and give it to the person. If someone challenges the person's eligibility, follow the procedures for contested ballots.

Be sure that a minimal number of ballots are in circulation at any one time. This is to maintain control of who is marking a ballot and who has cast a ballot.

Make sure that persons who have voted leave the polling station after casting their ballot.

Declare the poll closed at the time approved.

If there is more than one poll, properly seal and transport the ballot boxes to where the counting will occur.

Step Four

Contested ballots or objections to the vote may remain. In either case, do not open the ballot boxes or count the votes, or, in the case of an electronic vote, generate the vote results.

If the count is to proceed, first establish clearly what a spoiled ballot is. As a guideline, a proper ballot is normally any ballot which gives a clear indication as being yes or no. If it is not clear that the ballot signifies a yes or no vote, it is a spoiled ballot. For information on spoiled ballots, please refer to the Board's Voting Rule 2.1 and Information Bulletin 14 on representation votes.

If the vote used more than one ballot box, count the ballots one of two ways. Open the boxes at one time and count them separately or mix the ballots and then count them.

When finished counting or reviewing the vote results in an electronic vote, complete the Declaration of Vote and deliver it immediately to the Board's Supervising Officer. Keep the ballots until the time for objections passes. If there are no objections, and a reasonable period has passed, you may destroy the ballots.

Step Five

If no-one objects to the vote within 24 hours, the Director of Settlement releases the results of the vote.

Parties receive written notice of the results.

XI. CONTESTED BALLOTS

At the polling station, a dispute over eligibility may arise. If so, follow the steps below.

Ask the person seeking a ballot for evidence of entitlement to vote.

If the person provides evidence which resolves the dispute, add the person's name to the list of voters, if necessary. Allow the person to vote.

If the person cannot provide such evidence or the dispute remains unresolved, give the person a ballot and an unmarked envelope. Allow the person to vote. Instruct the person to place the ballot in the envelope and seal the envelope. Make sure no one marks this envelope in any way.

Place the voter's sealed envelope in another envelope. On the outside envelope, write the name of the voter, and the reason why the ballot is disputed.

Put the sealed ballot in the ballot box in the presence of that voter.

When the polls close, ask the persons objecting to each sealed ballot whether they wish to waive the objection and count the ballot. If any objection is maintained, seal the ballot box and forward the ballot box to the Board's Supervising Officer. *See: Voting Rules, Rule 34.*

If all objections are waived, open the ballot box. Open the outside envelope and include the voter's name on the list of voters. Destroy the outside, marked envelope.

Open the unmarked envelope and, without examining the ballot, allow that ballot to drop into the box with the other ballots.

Where a dispute over voting eligibility arises in an electronic vote, any disputed ballots should be segregated from the other electronic ballots pending a resolution or waiving of the objection. The results of the electronic vote should not be generated until all objections have been resolved.

See also:

Voting Rules, Part III

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

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