



RULES OF PROCEDURE

No. 1—Applications for Certification

This document describes the procedures that must be followed by a trade union, an employee association or a council of trade unions when filing an application for certification to represent a group of employees in a workplace.

It also describes the procedures to be followed by the employer and any incumbent bargaining agent that may be affected by the application following receipt of the Board's notice of the application.

To ensure the timely processing of the application, it is important that these rules be reviewed carefully as amendments to the *Canada Labour Code (Part I—Industrial Relations)* (the *Code*) in June 2017 have brought about important changes to the Board's certification procedure.

Should you have any questions concerning the Board's certification procedure, you can contact a Board officer at 1-800-575-9696.

General

Section 28 of the *Code* provides that, where the Board has determined the unit that constitutes a unit appropriate for collective bargaining and is satisfied that, as of the date of the filing of the application or of such other date as the Board considers appropriate, a majority of the employees in the unit wish to have the trade union represent them as their bargaining agent, the Board shall certify the trade union making the application as the bargaining agent for the bargaining unit.

The timely processing of applications for certification is important to ensure the fulfilment of the objectives of the *Code*. Therefore, the Board will aim to process these applications within 30 days of the date the application for certification is filed with the Board.

The Board has established the following procedures for the processing of applications for certification pursuant to its general powers found in section 46 of the *Canada Industrial Relations Board Regulations, 2012* (the *Regulations*), which provides that the Board may vary time limits and procedural requirements for the proper administration of the *Code*.

For copies of the *Code*, *Regulations*, rules of procedure, forms and information circulars, visit the Board's website at www.cirb-ccri.gc.ca.

Filing an Application

The applicant must submit the following information and documents with the Board when filing the application:

1. A copy of the completed Application for Certification form;
2. The original membership applications (membership cards) relating to the application for certification, as well as proof of payment of the \$5 membership fee;
3. A separate and confidential statement of the number of employees in the proposed bargaining unit that the applicant claims to represent (section 34 of the *Regulations*);
4. A completed Certificate of Accuracy;
5. A confirmation of its legal name in both official languages;
6. If the applicant has not yet established its status as a trade union or council of trade unions with the Board, it must also submit:
 - A copy of its constitution and by-laws, its charter, if any, as well as minutes of the founding meeting, minutes of the meeting at which the constitution and by-laws were adopted, and minutes of the meeting at which the officers were elected. This information is also required for any member of the council of trade unions that has not established its status as a trade union with the Board.

If any of this information is not available, a written explanation must be provided by the applicant when filing the documentation.

The application must be filed in person, by mail or by courier at the Board's Toronto, Montréal, Dartmouth, Vancouver or Ottawa offices.

An application is considered filed with the Board on the day that the application, the membership evidence relating to the application, the confidential statement required under section 34 of the *Regulations* and the completed Certificate of Accuracy are received. Failure to submit the required documentation with the application may result in its summary dismissal by the Board.

Notice of the Application by the Board

On receipt of an application for certification, the Board will send a notice of the application in writing to the employer, the incumbent bargaining agent, if applicable, and, to the extent possible, to any person whose rights may be directly affected by the application. The Board's notice will be accompanied by a Schedule for Processing, a copy of the application (subject to certain confidential documents that were attached thereto), as well as the Notice to Employees and the Certificate of Posting, which must be completed by the employer.

Employer's Obligations

Upon receipt of a notice of an application for certification, the employer is prohibited, by virtue of section 24(4) of the *Code*, from changing the terms or the conditions of employment of the affected employees, except under certain circumstances. For more information in this regard, parties should contact the industrial relations officer appointed by the Board.

The following outlines the employer's obligations once it has received from the Board a notice of an application for certification:

1. The employer must immediately complete the **Notice to Employees** appended to the Board's notice of the application as per the instructions contained therein, and post it, together with a copy of the application. The Notice to Employees must remain posted

for **15 calendar days**¹ following the date of receipt of the Board's notice of the application.

2. The employer must also complete the **Certificate of Posting** appended to the Board's notice of the application and return it to the Board with the documents listed at point 3 below.
3. The employer is required to submit the following material within **5 calendar days** after the Board's notice of the application is received:
 - a. **(for the Board only)** an alphabetical list showing the full name, job classification or position title, home address and telephone number of all persons affected by this application and employed by the employer, as of the date the application was filed with the Board. This list must identify managerial and supervisory personnel and, if applicable, casual and part-time employees;
 - b. a second alphabetical list showing the same information as that requested in a. above, **without** addresses and telephone numbers;
 - c. a record of the weekly hours worked by any casual or part-time employee for the three-month period preceding the date on which the application was filed, if applicable;
 - d. an organizational chart showing, as of the date of filing, the relationship of the employees in the proposed bargaining unit to the other employees, and also showing the lines of authority between management, supervisors, and subordinate employees;
 - e. a detailed description of the nature of the employer's business and operations; and
 - f. a confirmation of the employer's legal name **in both official languages**.
4. The employer must file its response within **10 calendar days** after the Board's notice of the application is received.

Inclusion/Exclusion of Job Classification or Positions

If a party wishes to contest the inclusion or exclusion of any job classification or position, it must give the following information in its submissions for each disputed job classification or position:

- a. job classification or position title;
- b. reason(s) why the job classification or position is, in its opinion, inappropriate for either inclusion or exclusion;
- c. job description that includes details of the duties and responsibilities of the incumbent; and
- d. all documentary evidence in support of its position.

¹ As defined in section 1 of the *Regulations*, "day" means a calendar day.

Incumbent Bargaining Agent's Obligations

Where an application for certification seeks to displace an incumbent bargaining agent, the latter will receive a copy of the application for certification and of the other documents on file, subject to the confidentiality of certain documents.

The incumbent bargaining agent will have **10 calendar days** after the Board's notice of the application is received to file a response and its comments relating to the list of employees provided by the employer.

Applicant's Obligations

The applicant will have **5 calendar days** following the date of the filing of the employer's response and, if applicable, the incumbent bargaining agent's response, to file a reply and its comments relating to the list of employees provided by the employer.

Extension of the Time Limits

To ensure the timely processing of applications for certification, and in furtherance of the objectives of the *Code*, the Board's practice is **not** to grant extensions of the time limits for submitting information, responding and replying, except in exceptional circumstances.

Exchange of Documents

It is important to note that all documents submitted to the Board will be placed on the public record and that, pursuant to section 23 of the *Regulations*, parties to a proceeding are required to serve on the other party or parties a copy of any response, reply or other document filed with the Board. This requirement does not apply to the list containing employees' home addresses and telephone numbers, the completed Certificate of Posting, completed Certificate of Accuracy, or any document that could reveal the wishes of the employees or that the Board declares to be confidential pursuant to sections 22 or 35 of the *Regulations*, or documents required from the applicant to establish its status as a trade union. Parties are required to advise the Board in writing of the time and manner of service.

Affected Trade Union

If a trade union who claims to hold bargaining rights for any of the employees affected by the application is notified of the application and wishes to participate in the proceedings, it must file a request to intervene with the Board. The request to intervene as well as the affected trade union's submissions on the merits of the application must be filed with the Board no later than **10 calendar days** after the affected trade union is notified of the application. The parties will have **5 calendar days** following the date on which the Board advises them of the filing of the request to intervene to file a response.

Where an affected trade union makes a request to intervene, it may result in a delay in the processing of the application.

The Board's Investigation

Once an application for certification is filed, the Board will acknowledge receipt of the application, will notify the parties concerned and will appoint one of its industrial relations officers to complete an investigation and oversee the conduct of the file. Over the course of his or her investigation, the Board's industrial relations officer may contact certain employees to verify the membership evidence.

Within 24 hours of the application being filed with the Board, the industrial relations officer will contact the parties to review the following issues:

- the information required at various stages of the certification procedure;
- the dates for filing this information;
- any potential intervenors that should be provided with a copy of the application; and
- any matter that could arise during the conduct of the matter.

After receiving the submissions, materials and information requested, the industrial relations officer may convene the parties to a meeting (in-person or by conference call) to attempt to resolve any disagreements between the parties regarding the employee list(s), inclusions/exclusions and the scope of the bargaining unit.

Following this meeting, the industrial relations officer will provide the parties with a letter of understanding setting out his or her understanding of the proposed bargaining unit and any disputed positions. Although the Board will give serious consideration to any agreement reached between the parties, such an agreement is not binding on the Board.

If applicable, the parties must provide their comments to the industrial relations officer's letter of understanding in writing within 24 hours of its receipt.

Determination by the Board

A panel of the Board will then review the matter. The Board may:

- request additional information or submissions from parties;
- order that a representation vote be conducted;
- schedule a hearing; or
- allow or dismiss the application.

If the Board is satisfied that the proposed bargaining unit is appropriate for collective bargaining and that the union has more than 50% membership support amongst the employees in the bargaining unit at the date of the filing of the application, it will allow the application. However, in any case, the Board may order that a representation vote be conducted to ascertain the true wishes of the employees affected. In such a case, the Board will designate a returning officer who will be responsible for conducting the representation vote. The returning officer may convene the parties to a meeting in person or by conference call to discuss voting arrangements.

If the representation vote is conducted in person (by ballot box) and involves a single or few easily-accessible locations, it will normally be completed within one day. If the representation

vote is conducted electronically, by mail, or if it involves multiple or remote locations, it may take longer to complete.

The returning officer will normally count the ballots immediately following the representation vote unless the ballot box has been ordered sealed. Normally, this will be done at the vote site if the representation vote is conducted in person.

After the conduct of the representation vote, the returning officer will communicate the results to the Board. The Board will then proceed to make a determination on the application and may:

- allow the application and issue a certification order; or
- dismiss the application for lack of support.

If the ballot box was ordered sealed by the Board, the returning officer will advise the Board that the representation vote has been completed and the Board will proceed to make a determination on the issues that remain in dispute. The Board may:

- request additional information or submissions from parties; or
- schedule a hearing.

IMPORTANT NOTE: More information on applications for certification and the conduct of votes is available in the Board's Information Circular No. 07–Applications for Certification. The timelines contained in this document are targets set for the Board's processing of applications for certification. There may be circumstances and issues in certain applications that will prevent these timelines from being met.