



RULES OF PROCEDURE

No. 2—APPLICATIONS FOR REVOCATION

This document describes the procedures that must be followed by an employee who occupies a position in a bargaining unit and who claims to represent a majority of the employees in this bargaining unit, when filing an application for revocation to terminate a collective bargaining relationship between a union and his or her employer.

It also describes the procedures to be followed by the incumbent bargaining agent and the employer 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 revocation procedures.

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

General

Section 39 of the *Code* provides that the Board shall, by order, revoke the certification of the trade union as the bargaining agent for the bargaining unit, or declare that the bargaining agent is not entitled to represent the employees in the bargaining unit where, on receipt of an application for revocation and after any inquiry by way of a representation vote or otherwise as the Board considers appropriate in the circumstances, the Board is satisfied that a majority of the employees in the bargaining unit no longer wish to have the bargaining agent represent them.

The timely processing of applications for revocation 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 revocation is filed with the Board.

The Board has established the following procedures for the processing of applications for revocation 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* and the *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 Revocation form;
2. The original confidential employee statements in support of the application and authorizing the applicant to act on their behalf;
3. A completed Certificate of Accuracy.

An application for revocation must include separate and confidential employee statements, signed by each employee whom the applicant claims to represent. In their statements, employees must state that they no longer wish to be represented by the bargaining agent and that they authorize the applicant to act on their behalf. These statements must be made separately by each employee and must show the printed name, the employee's signature, and the date on which the employee signed the statement. That date must not be more than six months before the date on which the application is filed. Petitions (list of signatures on one sheet of paper) are not accepted in support of applications for revocation.

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 the application and the original employee statements in support of the application 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 revocation, the Board will send a notice of the application in writing to the incumbent bargaining agent and to the employer. 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

A response from the employer is not requested; however, the employer will be directed to provide certain information in order to allow the Board to process the application. The following outlines the employer's obligations once it has received from the Board a notice of an application for revocation:

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.

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

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; and
 - e. a confirmation of the employer's legal name **in both official languages**.
4. If applicable, the employer must file its response within **10 calendar days** after the Board's notice of the application is received.

Incumbent Bargaining Agent's Obligations

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 incumbent bargaining agent's response and, if applicable, the employer'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 revocation, 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, the 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*. Parties are required to advise the Board in writing of the time and manner of service.

The Board's Investigation

Once an application for revocation 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 validity of their confidential statement.

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 revocation procedure;
- the dates for filing this information; 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).

Following this meeting, the industrial relations officer will provide the parties with a letter of understanding, pursuant to the Board's policy, stating that he or she is referring the matter to the Board for its consideration. This letter states, among other things, the description and composition of the affected bargaining unit, any disputes between the parties as well as the list of relevant documents submitted to the Board. Although the Board will give serious consideration to an 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 review the matter. The Board may:

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

Holding of a Representation Vote

If the Board's investigation confirms that a majority of the employees included in the bargaining unit at the date of the filing of the application have supported the applicant's application for revocation, it will usually order a representation vote to determine whether the union will continue to represent the employees or not. The Board will then designate a returning officer—usually the industrial relations officer who conducted the investigation—who will be responsible for conducting the representation vote. The returning officer will make the necessary arrangements with the parties for the conduct of the vote, and will require the employer to post in the workplace a Notice of Vote and list of voters based on the instructions provided.

Representation votes are usually conducted in person (by ballot box) at the employees' place of work or at easily accessible locations, during, before or after normal working hours. If the vote is held in person at 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.

Parties are entitled to be represented by scrutineers, whose responsibilities are to assist the returning officer in identifying voters and to help ensure that the vote is conducted in a fair and impartial manner. It is a secret ballot.

Unless the Board has ordered that the ballots be sealed, the returning officer will normally count the ballots immediately following the representation. Normally, this will be done at the vote site if the representation vote is a ballot box vote.

After the Representation Vote

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 revocation order; or
- dismiss the application for lack of support of the majority of voters.

If the Board ordered that the ballots be sealed, the returning officer will inform the Board that the vote has been conducted and the latter will determine any outstanding questions. The Board can:

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

IMPORTANT NOTE: You can consult the Board's Information Circular No. 10–Applications for Revocation to obtain further information concerning applications for revocation and the holding of representation votes. The timelines contained in this document are targets set for the Board's processing of revocation applications. There may be circumstances and issues in certain applications that will prevent these timelines from being met.