

**ONTARIO LABOUR RELATIONS BOARD  
INFORMATION BULLETIN NO. 10**

**Status Disputes in Termination Applications  
in the Construction Industry**

This Information Bulletin describes how the Board deals with "status" disputes in the context of construction industry termination applications. These disputes typically involve a dispute as to whether certain individuals were employed by the employer (intervenor) on the application date, whether they spent a majority of their time on the application date performing the work of the responding union's trade, whether they exercise managerial functions, or whether they are dependent or independent contractors.

This Bulletin does not describe the Board's procedures with respect to status disputes outside of the construction industry. Please refer to Information Bulletin No. 5 - Status Disputes in Termination Applications (Non-Construction) for information on those procedures.

**I. IDENTIFICATION OF INDIVIDUALS IN DISPUTE**

Where there is a dispute about whether certain individuals should or should not be on the voters list, each party must identify in writing those individuals whose inclusion on the list it is challenging not later than when the individual casts his or her ballot at the representation vote. Challenges that are made after an individual has cast their ballot will not be considered except in exceptional circumstances. In addition, in the interests of fairness and finality, parties cannot raise issues about the list to which they have earlier agreed.

**II. SETTLEMENT DISCUSSIONS**

**Regional Meeting**

A Regional Meeting is a meeting with a Board Officer which may be held in the regional centre closest to the workplace, on the Wednesday of the third week after the week in which the Application was filed. Its main purpose is to attempt to resolve, or at least narrow, any remaining issues between the parties. Where documents are disclosed to the Officer prior to, or during the course of, the Regional Meeting, the documents do not become evidence simply by their disclosure to the Officer. A party that wants the records to be considered as evidence must formally enter them into evidence with the Board.

A Board Officer contacts the parties at various stages in the processing of an application in an effort to reach an agreement on the status disputes, and all other issues surrounding the application. These

contacts are made before the vote is held, on the day of the vote, during the period after the end of the 5-day representation period after the vote and before the Regional Meeting with an Officer, and at the Regional Meeting.

### **III. WHAT HAPPENS IF STATUS ISSUES REMAIN IN DISPUTE AFTER SETTLEMENT DISCUSSIONS ARE EXHAUSTED**

#### **a) Settlement Discussions and Submissions With Respect To Procedural Aspects of Hearing**

After the Regional Meeting, the Board Officer reports to the Board. The Board may decide the remaining issues on the basis of the written material (including the submissions described in paragraph (b) below), or may schedule the application for hearing. Once it is evident at the Regional Meeting that there are disputes that cannot be resolved, the balance of the meeting is devoted to assisting the parties in reaching agreement on the procedural aspects of a hearing.

If the parties cannot agree on all of the procedural aspects of a hearing, each party must file with the Board and deliver to the other party written submissions detailing its position on the outstanding procedural aspects by 5:00 p.m. on the Friday of the week following the Regional Meeting. The Board considers the parties' submissions and issues a decision on the procedural aspects as soon as possible.

#### **b) Parties File and Deliver Submissions on the Substantive Issues**

Where a party asserts that an individual should be on the voters list and such assertion is disputed by another party, the party asserting that the individual should be on the list must file with the Board and deliver to the other parties a detailed statement of facts upon which it relies in support of its position that the individual in dispute is properly on the list, along with a copy of all documents upon which it relies by 5:00 p.m. on the Tuesday following the Regional Meeting. [When more than one party asserts there are persons who should be added to the list, each party making such assertion must comply with this obligation.]

Each party that disputes an assertion made by the other party that an individual should be on the list must file with the Board and deliver to the other parties a detailed statement of the facts upon which it relies in support of its position that the individual in dispute is not properly on the list, along with a copy of all documents upon which it relies, by 5:00 p.m. on the following Friday. [When more than one party asserts there are persons who should not be on the list, then each party making such assertion must comply with this obligation.]

In the normal course, the burden of proof lies on the party making the assertion that an individual should be on the list and that party also has the responsibility for ensuring that individual's attendance at the hearing, unless the Board orders otherwise.

A party will not be permitted to adduce evidence with respect to any facts it has not set out in its written submissions except with leave of the Board.

#### **IV. THE HEARING**

Should the Board refer the application to the Registrar to be listed for hearing, each party shall consider what documents it wishes the other party to produce, and shall file and serve a written demand for those documents within 7 days of the date of the Board's decision referring the application to the Registrar. Within 10 days of receiving the written demand, the party opposite shall produce the documents it does not object to producing and shall serve and file its response to the demand setting out specifically why it objects to the production of any remaining documents.

The Registrar will set the date for hearing and will normally schedule it to take place in Toronto.

Hearings are open to the public unless the Board decides that matters involving public security may be disclosed or that disclosure of financial or personal matters would be damaging to any of the parties or witnesses. Hearings are not recorded and no transcripts are produced.

The Board issues written decisions, which may include the name and personal information about persons appearing before it. Decisions are available to the public from a variety of sources including the Ontario Labour Relations Board Reports, the Ontario Workplace Tribunals Library, and over the internet at [www.canlii.org](http://www.canlii.org), a free legal information data base. Some summaries and decisions may be found on the Board's website under *Highlights* and *Recent Decisions of Interest* at [www.olrb.gov.on.ca](http://www.olrb.gov.on.ca).

#### **IMPORTANT NOTE**

IN ACCORDANCE WITH THE *ACCESSIBILITY FOR ONTARIANS WITH DISABILITIES ACT, 2005*, THE BOARD MAKES EVERY EFFORT TO ENSURE THAT ITS SERVICES ARE PROVIDED IN A MANNER THAT RESPECTS THE DIGNITY AND INDEPENDENCE OF PERSONS WITH DISABILITIES. PLEASE TELL THE BOARD IF YOU REQUIRE ANY ACCOMMODATION TO MEET YOUR INDIVIDUAL NEEDS.