

**ONTARIO LABOUR RELATIONS BOARD  
INFORMATION BULLETIN NO. 4**

**Status Disputes in Certification Applications (Non-Construction)**

This Information Bulletin describes how the Board deals with "status" disputes in the context of certification applications. These disputes arise in two ways. The first is when the parties cannot agree on whether certain individuals should be on the voters' list or in the appropriate bargaining unit. The other way is when an employer disagrees with the union's estimate of the number of individuals in the bargaining unit proposed in the certification application and the employer has given notice to the Board under section 8.1 of the Act.

"Status" disputes typically focus on whether certain individuals exercise managerial functions, are employed in a confidential capacity in matters relating to labor relations, perform work of a classification that is or ought to be excluded from the bargaining unit or have a sufficient connection to the workplace to warrant inclusion in a bargaining unit.

This Bulletin does not describe the Board's procedures with respect to status disputes in the construction industry. Please refer to Information Bulletin No. 9 - Status Disputes in Certification Applications in the Construction Industry 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 list for the count under section 8.1 of the Act or on the voters' list or in the bargaining unit, each party must identify in writing those individuals whose inclusion on the list or in the bargaining unit it is challenging no later than the conclusion of the balloting on the day of the representation vote. Challenges that are made after the conclusion of the balloting 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**

A Board Officer contacts the parties at various stages in the certification process 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 Certification Meeting, and at the Regional Certification Meeting, which is ordinarily held in the regional centre closest to the workplace on the Wednesday of the third week after the week in which the vote was held.

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

#### **a) Procedure for Status and Other Issues in Dispute**

All certification applications in which issues remain in dispute after the Regional Certification Meeting are automatically scheduled to be heard by a panel of the Board on the Monday of the fourth week after the week in which the vote was held. Status issues are deferred for a further week. (A consultation may only be held in connection with matters under section 8.1 of the Act.) This re-scheduling allows time for the parties to provide a written summary of the material facts upon which they intend to rely detailing the reasons for their positions and to permit an opportunity for the procedural issues connected with the status issues to be determined by the Board. **All other issues remaining in dispute will be addressed at the hearing on the Monday of the fourth week after the vote.**

#### **b) Settlement Discussions and Submissions With Respect To Status Issues**

Once it is evident at the Regional Certification Meeting that there are unresolved status disputes that must be decided by the Board, the meeting is devoted to assisting the parties in reaching agreement on the procedural aspects of the upcoming hearing or consultation. Procedural aspects include the identification of "representative witnesses", the question of who is responsible for ensuring that the individuals in dispute attend the hearing or consultation (by summons or otherwise), the sequence in which individuals will be called as witnesses, and the days on which witnesses will be called.

**The party that asserts that an individual should be on the list or in the bargaining unit has the responsibility for ensuring that individual's attendance at the hearing or consultation, unless the Board orders otherwise.**

**The party that has the responsibility for ensuring an individual's attendance at the hearing or consultation will be responsible for calling that individual as a witness. There may be circumstances in which a party calling a**

**witness is allowed to cross-examine that individual. The Board may itself question a witness.**

If the parties cannot agree on all of the procedural aspects of the upcoming hearing or consultation **on status issues**, 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 following the Regional Certification Meeting. The Board considers the parties' submissions and ordinarily issues a decision on the procedural aspects of status issues on the Monday or Tuesday of the following week.

**c) Parties File and Deliver Submissions on the Substantive Aspects of Status Issues**

Each party that asserts that an individual or individuals should not be on the list or in the bargaining unit must file with the Board and deliver to the other party written submissions providing the reasons for each of their challenges and a summary of the material facts upon which they intend to rely by 5:00 p.m. on the Friday following the Regional Certification Meeting. Each party that resists a challenge to the status of an individual must file with the Board and deliver to the other party its response to each of the challenges, summarizing the material facts upon which they intend to rely by 5:00 p.m. on the following Wednesday.

**IV. THE HEARING OR CONSULTATION**

The consultation or hearing into the status disputes and all other outstanding issues ordinarily begins at the Board's offices in Toronto on the Monday of the fifth week following the vote.

Board hearings are open to the public unless the panel decides that matters involving public security may be disclosed or if it believes that disclosure of financial or personal matters would be damaging to any of the parties. 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 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.