

**ONTARIO LABOUR RELATIONS BOARD  
INFORMATION BULLETIN NO. 2**

**Termination of Bargaining Rights  
Under Section 63 of the Labour Relations Act**

This Information Bulletin describes the procedures that must be followed when an employee or group of employees applies under section 63 of the Labour Relations Act to terminate the bargaining rights of their union. This Information Bulletin does not describe the procedures that apply in applications made with respect to workplaces in the construction industry. For information on those procedures, please refer to Information Bulletin No. 7 - Termination of Bargaining Rights Under Section 63 or 132 of the Labour Relations Act in the Construction Industry.

**It is important that the parties involved in a termination application read and comply with the directions in this Bulletin and the Board's Rules of Procedure. Failure to do so may result in the application or other materials not being processed by the Board.**

If 40 percent or more of the employees in the bargaining unit appear to have expressed a wish not to be represented by the union, a representation vote will usually commence held five to eight days after the termination application is filed with the Board. The Board may not order a vote if the application is made outside of the time periods provided for in the Act (please see page 7-8 for information on when these time periods are) or if the Board finds that the employer or a person acting on behalf of the employer initiated the application or threatened, coerced or intimidated employees in connection with the application.

Employees can get all of the materials that are necessary to file a termination application from the Board at any time. The materials that are necessary for a union to respond to a termination application, or for an employer to intervene in a termination application, are delivered to them by the applicant. (The term "applicant" means the employee or group of employees who are applying to terminate the union's bargaining rights.)

Parties to a termination application are required to "deliver" to the other parties and "file" with the Board a variety of documents within a specified number of "days". The words "day", "deliver" and "file" are defined in the Board's Rules of Procedure to have very specific meanings. It is very important that you apply the following meanings to each of these words whenever they appear in this Bulletin.

"Day" - does not include weekends, statutory holidays or any other day on which the Board is closed. (Rule 1.5)

- "Delivered" - Material is considered to be "delivered" on the day that it is actually received by the party to whom it is sent. (Rule 6.7) Where delivery is permitted and is accomplished by facsimile transmission, the fax confirmation sheet should be retained by the sender in case delivery, or the time of delivery, is later challenged.
- "Filed" - Material is considered to have been "filed" with the Board on the date it is actually received by the Board, provided that it is received between the hours of 8:30 a.m. and 5:00 p.m. on a day on which the Board is open. Materials received after 5:00 p.m. will be deemed to have been filed with the Board on the following business day. (Rules 3.4 and 3.5)

## **I. DELIVERY AND FILING OF THE TERMINATION APPLICATION**

In order to apply to terminate a union's bargaining rights, an applicant must fulfil the following delivery and filing requirements.

### **1) Delivery of Termination Package (Union) to the Union**

The applicant must deliver a Termination Package (Union) to the union before it files its Application with the Board. The Package may be delivered by any means permitted by Rule 6.4 and must be delivered to the senior union official responsible for the bargaining unit. The senior union official may be a paid staff representative of the union, a senior elected member of the bargaining unit, or some other individual exercising official responsibility for the bargaining unit on behalf of the union.

The Termination Package (Union) consists of the following materials arranged in the following order:

- (i) one **Notice to Union of Application for Termination of Bargaining Rights Under Section 63 of the Act** (Form C-3). The applicant must fill in their name and the union's name on page 1 and the date on page 3 of the Notice before making the delivery;
- (ii) one copy of the completed **Application for Termination of Bargaining Rights Under Section 63 of the Act** (Form A-6);

- (iii) one blank **Response to Application for Termination of Bargaining Rights Under Section 63 of the Act** (Form A-7);
  - (iv) one **Information Bulletin No. 2 - Termination of Bargaining Rights Under Section 63 of the Labour Relations Act**;
  - (v) one **Information Bulletin No. 3 - Vote Arrangements**;
  - (vi) one **Information Bulletin No. 5 - Status Dispute in Termination Applications**; and
  - (vii) one copy of Part III of the **Board's Rules of Procedure**.
- (Rule 10.3)

**2) Delivery of Termination Package (Employer) to the Employer**

The applicant must also deliver a Termination Package (Employer) to the employer before they file their application with the Board. This Package may be delivered by any means permitted by Rule 6.4.

The Termination Package (Employer) consists of the following materials arranged in the following order:

- (i) one **Notice to Employer of Application for Termination of Bargaining Rights Under Section 63 of the Act** (Form C-4). The applicant must fill in their name and the union's name on page 1 and the date on page 3 of the Notice before making the delivery;
- (ii) one copy of the completed **Application for Termination of Bargaining Rights Under Section 63 of the Act** (Form A-6);
- (iii) one blank **Intervention in Application for Termination of Bargaining Rights Under Section 63 of the Act** (Form A-8)
- (iv) a blank Confirmation of Posting (Form A-124);
- (v) one blank **Excel Schedule C** (List of Employees) and the Instructions for filing Excel Schedules with the Board, found at Tab 4 of the Spreadsheet;

- (vi) one **Information Bulletin No. 2 - Termination of Bargaining Rights Under Section 63 of the Labour Relations Act**;
- (vii) one **Information Bulletin No. 3 - Vote Arrangements**;
- (viii) one **Information Bulletin No. 5 - Status Disputes in Termination Applications**; and
- (ix) one copy of Part III of the **Board's Rules of Procedure**.

(Rule 10.3)

Note: The applicant is NOT to deliver to the union or employer a list of names of people who have expressed a wish not to be represented by the union, evidence of those wishes, or a copy of the Declaration Verifying Evidence of Employee Wishes (Form A-9).

### **3) Filing of Termination Application with the Board**

Not later than two days after delivering the Termination Packages to the union and employer, the applicant must file their application with the Board. The application may be filed by any means, except Registered Mail, e-mail or facsimile transmission. The application must include the following materials:

- (i) one signed and completed **Application for Termination of Bargaining Rights Under Section 63 of the Act** (Form A-6);
- (ii) any **evidence** that employees do not wish to be represented by the union. This evidence must be in writing, signed by each employee concerned, and indicate the date on which each signature was obtained;
- (iii) a **list of employees**, in alphabetical order, corresponding with the evidence filed; and
- (iv) a **Declaration Verifying Evidence of Employee Wishes** (Form A-9).

(Rules 6.2 and 10.1)

If the applicant does not file the application with the Board within two days after delivering the Termination Packages to the union

and employer, the matter will be terminated. (Rules 6.10 and 6.12)

## **II. BOARD CONTACTS THE PARTIES TO CONFIRM THAT THE APPLICATION HAS BEEN FILED**

On the Application Filing Date (the day the application is received by the Board), the Board sends a Confirmation of Filing of Application for Termination of Bargaining Rights Under Section 63 of the Act to the applicant, union and employer. This letter confirms that the application has been filed with the Board, provides the Application Filing Date and Board File Number, reiterates the union's and employer's obligations that are set out in their Notices of Application (Forms C-3 and C-4), and directs the employer to make and post copies of the Application (Form A-6) and the Notice to Employees of Application for Termination of Bargaining Rights under section 63 of the Act.

The Board may also contact the union and employer by telephone on the Application Filing Date, or the following day, to again confirm that the application has been filed, to clarify the union's and employer's obligations, to advise that any vote that is held will likely commence five to eight days after the Application Filing Date, and to inform them that they can expect a Board Officer to contact them after they file their response and intervention.

The union and employer should contact the Board to determine whether or not the application has been filed only if it has not received a Confirmation of Filing of Application by the end of the second day after they received their Termination Packages. If an application is not filed within two days after the union and employer received their Packages, they will be advised by the Board that the matter is terminated. (Rule 6.12)

## **III. UNION DELIVERS AND FILES RESPONSE**

The Union is required to deliver a completed Response to Application for Termination of Bargaining Rights Under Section 63 of the Act (Form A-7) to the applicant and employer, and file it with the Board, no later than two days after it received the Termination Package (Union) from the applicant.

The response may be delivered by any means permitted by Rule 6.4. The response may be filed with the Board by any means, except e-mail, Registered Mail or facsimile transmission. One copy of the response should be filed with the Board.

The employer is required to meet its posting obligations (as described in the next section) by filing with the Board a Confirmation of Posting (Form A-124). (Rules 10.5 and 6.10-6.12)

#### **IV. EMPLOYER'S OBLIGATIONS**

##### **1) Post Application and Notice to Employees**

Upon receipt of the Confirmation of Filing, the employer must IMMEDIATELY make and post copies of both the Application for Termination of Bargaining Rights (Form A-6) and the Notice to Employees of Application for Termination of Bargaining Rights. These documents are to be posted with each other in a sufficient number of locations so that they are likely to come to the attention of all employees affected by the application.

The Notice to Employees of Application for Termination of Bargaining Rights advises employees that an employee or group of employees is applying to terminate the union's bargaining rights and directs them to the adjacent Application for Termination of Bargaining Rights for details about the application. The notice also notifies the employees that a secret ballot vote will likely be held, and, if it is, that it will normally commence five to eight days after the Application Filing Date. In addition, the Notice advises the employees of their rights, including the right to make statements to the Board about the application, and alerts them to look for future postings that will inform them of voter eligibility, the date, time, method and location of the vote, and **the date and location of meetings with Mediators and Hearings.**

##### **2) File and Deliver Excel Schedule C (List of Employees)**

Whether or not the employer wishes to participate in the proceedings, it must file with the Board and deliver to the applicant and union a completed Excel Schedule C (List of Employees) no later than two days after it received the Termination Package (Employer). Two copies of the Schedule must be filed with the Board, as described below. It may be delivered to the applicant and union by any means permitted by Rule 6.4.

The Schedule C assists the Board in determining which employees are eligible to vote. All employees who are within the bargaining unit who have an ongoing employment relationship with the employer on the Application Filing Date are to be included on the Schedule. For example, employees who are on vacation, parental

leave, sick-leave or other leave, workers' compensation, or lay-off on the Application Filing Date are to be included on the Schedule if there is a reasonable expectation of their return to employment.

(Rules 10.5 and 6.10-6.12)

In addition to the hard-copy version, the Schedule should also be sent to the Board in Excel format by email to [vote.coordinator@ontario.ca](mailto:vote.coordinator@ontario.ca) (please note that the Board will accept ONLY these Schedules by email – no other material can be filed with the Board by email). Pre-formatted Excel versions of these documents may be found on the Board's website ([www.olrb.gov.on.ca](http://www.olrb.gov.on.ca)).

Copies of the schedule should also be provided by email to the primary contact for the Applicant and the Union. The Applicant and the Union should indicate their challenges on the appropriate column in the Excel Schedule, and send them by email to [vote.coordinator@ontario.ca](mailto:vote.coordinator@ontario.ca), with a copy to the primary contact for the Employer.

**3) File and Deliver an Intervention If it Wishes to Participate in the Proceedings**

If the employer wishes to participate in the application, it must file with the Board and deliver to the applicant and union a completed Intervention in Application for Termination of Bargaining Rights Under Section 63 of the Act (Form A-8) no later than two days after it received the Termination Package (Employer).

The Intervention may be delivered to the applicant and union by any means permitted by Rule 6.4. It may be filed with the Board by any means, except e-mail, Registered Mail or facsimile transmission.

(Rules 6.3, 6.4, 6.8 and 6.9)

One copy of the intervention should be filed with the Board.

**4) File the Confirmation of Posting [Form A-124]**

No later than one day after its Intervention is due the Employer must confirm that it has posted the Application, Notice to Employees and its Intervention (if applicable).

**V. BOARD ORDERS THE VOTE**

## **1) Vote Arrangements Determined**

The Board's Vote Co-ordinator examines the vote arrangement proposals filed by the applicant and union (and employer if it is participating in the application), and sets the vote arrangements.

Except in extraordinary circumstances, the Board will generally conduct the vote by way of electronic and telephone voting, with the poll being open for a 24 hour period, but will consider the parties' submissions, the number of voters, the employees' regular working hours, and the cost to the Board should any party request a variation from the Board's general practice. The Co-ordinator will consider any agreed upon arrangements, but if it is determined that they are unsuitable because they are too costly or do not adequately allow employees the opportunity to vote, or if there is no agreement, the Co-ordinator normally sets the arrangements without further consultation with the parties.

In the normal course, the vote takes place by way of electronic and telephone voting commencing between five and eight days after the Application Filing Date.

For more detailed information on vote arrangements, refer to Information Bulletin No. 3 - Vote Arrangements and the Board's Notice Regarding Electronic Voting, available on the Board's website.

## **2) Vote Ordered**

If 40 percent or more of the employees in the bargaining unit appear to have expressed a wish not to be represented by the union, the Board orders that a vote be held among the employees in the bargaining unit.

The Board may not order a vote at this point if the applicant, union or employer provides information that raises an issue about the timeliness of the application. In order to be timely, applications must be made during one of the "open periods" provided for in the Act. Generally, these open periods are:

### **(i) Existing Collective Agreement**

If there is an existing collective agreement that is for a term of three years or less, the application can be made only after the commencement of the last three months of its



operation. If there is an existing collective agreement that is for a term of more than three years, the application can be made in the last three months of its third year of operation, the last three months of each following year, and after the commencement of the last three months of its operation.

(ii) Following Expiry of Agreement

The entitlement to make an application after the expiry of the collective agreement depends on whether a conciliation officer has been appointed and whether a legal strike has started. If a conciliation officer has been appointed, an application cannot be made until at least a year after the appointment.

(iii) Union Certified but no Collective Agreement

If the union has been certified (as opposed to voluntarily recognized) and no collective agreement has yet been made, an application can be made one year after the date of the certification. This one year period may be extended if the union and employer are in the conciliation process or if a legal strike or lock-out is in progress.

For more detailed information on the open periods, please refer to sections 63 and 67 of the *Labour Relations Act*.

The vote may also be delayed if the union alleges that the employer or someone acting on behalf of the employer initiated the application or threatened, coerced or intimidated employees in connection with the application. The Board considers the nature of the allegations and determines whether it is appropriate to hold a hearing into the matter before ordering a vote.

The vote may also be delayed if there is disagreement between the applicant, union and/or employer about the number of employees in the bargaining unit.

If a vote is ordered, a Board Decision ordering the vote and a Notice of Vote are sent by the Board to the applicant, union and employer. These documents set out the date, method, time and place of vote, the directions concerning sealing the ballot box or segregating or counting the ballots where appropriate, and the dates, times and locations of the Regional Meeting with a Mediator and of the Hearing before the Board. The union and employer are

also provided with a copy of the Declaration Verifying Membership Evidence of Employee Wishes (Form A-9) at this time.

### **3) Employer to Post Decision and Notice to Employees**

Upon receipt, the employer must immediately post copies of the Decision and the Notice of Vote and of Hearing with each of the earlier posted Notices to Employees of Application for Termination of Bargaining Rights. The employer must then confirm to the Board that it has completed the postings by filing with the Board a completed Confirmation of Posting (Form A-124).

## **VI. PRE-VOTE CONSULTATION PROCESS**

After the vote has been ordered but before it is held, a Board Officer contacts the parties, usually over the telephone, in an effort to reach agreement between the parties on all issues surrounding the vote, including: the voters list, which is developed from the Excel Schedule C (List of Employees) provided by the employer; the correct bargaining unit description; the correct name of the union and the employer; and the timeliness of the application.

Agreements reached by the parties during the pre-vote consultation process are confirmed by the Officer in writing and sent to the parties. In the interests of fairness and finality, parties cannot later raise issues about matters to which they have earlier agreed.

## **VII. VOTING DAY**

### **1.(a) Conduct of the Vote – Electronic Vote**

The Board contracts with an outside electronic voting provider to conduct the electronic vote.

The systems used by the voting providers have significant security measures to ensure the secrecy of the ballot is maintained throughout. The providers create and maintain a website and phone line to facilitate the vote.

In a decision, the Board orders that a vote is to be conducted electronically. In that same decision, the Board may also direct the employer to provide the email addresses and phone numbers of the voters.

The Notice of Vote is issued by the Board once the vote has been ordered. This notice of vote will contain voting instructions, the hours during which the electronic poll will be open and the phone number for the Help Desk and the hours it will be open.

In some circumstances the Notice of Vote will be posted on the OLRB website.

### **1. (b) How to Vote**

Voters will have a choice to cast their secret ballot either by phone or online, in either English or French.

The provider sends each voter an email with a phone number and a URL to a website, together with a unique personal identification number (PIN). The PIN may only be used once.

A ballot is provided either on a recorded message on the phone or on the computer/mobile device screen. The union(s) and employer(s) who are parties to the vote will be identified in the message and on the screen.

By phone, the voter receives automated prompts to submit their PIN and cast a ballot, pressing 1 or 2 to vote in response to the ballot question. The voter is asked to confirm their choice before their vote is cast.

In the online vote, the voter submits their PIN and selects a checkbox on the ballot displayed on the computer/mobile device screen. The voter is asked to confirm their choice before the vote is completed.

No record is kept or recovered which would allow identification of how votes were cast by a PIN ie. an individual.

### **1. (c) The Help Desk**

Voters can call the Help Desk if they have questions or encounter any issues with the e-voting process. The Help Desk hours and phone number are included in the Notice of Vote. The Help Desk is staffed by a Board Vote Officer and is open for a period of time each day the poll is open.

Individuals who call the Help Desk will be asked to verify their identity. Once verified, the Help Desk may assist voters with a variety of issues. This can include when an individual did not receive an email or they misplaced their PIN.

If the Help Desk is not able to verify the caller's status as an eligible voter, the individual is considered "not on the list" or NOL, as they would be at an in-person vote, and a new PIN will be provided. The resulting ballot will be segregated to be discussed with the parties at the close of the vote.

If a PIN has already been used but a voter has contacted the Help Desk for a new PIN, both ballots will be segregated for post-vote discussions with the parties.

### **1.(d) Updates on Voter Participation**

The Board is able to provide updates to the parties during the course of the vote as to which voters have voted and which voters have not. This allows the parties to contact eligible voters should they wish to do so. No record is kept or recorded about how an individual voted.

The Board's general practice is to email an update at 4:30 p.m. each day of the vote and one hour before the Help Desk opens on the last day of voting. One final update is sent at the close of voting. The Board Officer might alter that schedule in consultation with the parties, where appropriate.

### **1.(e) Voters List – Before, During and after the Vote**

Prior to the vote, both parties will be given a copy of the voters list and will have the opportunity to review it. As with an in-person vote, parties can add voters' names to the voters list and also challenge the eligibility of certain voters in advance of the poll starting.

During the vote, ballots cast by challenged voters are segregated by the voting system. Challenges to voters may be made during the vote, as is the usual process at an in-person vote, but on e-votes this can also be done up to the point that the Board directs a count of ballots and a report is produced.

After the vote, the Vote Officer works with the parties to attempt to reach agreements on voter challenges, segregated ballots and any other issues. The Vote Officer will advise the parties if any issues arose during the vote, for example, voter identification issues raised at the Help Desk. This allows parties to reach agreements or take this final opportunity to challenge the eligibility of any voters.

### **1.(f) Counting the Ballots**

Once the Vote Officer is finished post-vote discussions with the parties, the Vote Officer will generate the results of the vote from the electronic

voting system. This is then released to the parties electronically in a Board Report.

The tabulation of votes by the electronic system is far quicker than physically counting ballots. Ballots which continue to be challenged remain segregated in the system to be dealt with in the normal course.

2. (a) **Conduct of the Vote – In-Person Vote**

The vote is conducted by a Vote Officer. Individuals who have been selected by the parties to be scrutineers must arrive at the polling place 15 minutes in advance of the voting to receive instructions, examine the ballot box, and otherwise assist the Vote Officer in the preparation of the polling place.

At the outset of the voting, each scrutineer is provided with a copy of the agreed upon voters list (if any). They are asked to assist in the identification of voters and to mark voters' attendance on the list as they present themselves to the Officer to vote. Scrutineers are advised that any questions asked by individuals regarding their eligibility to vote or any other matter should be directed to the Board Officer.

The names of any individuals whose eligibility to vote is challenged are marked as such on the voters list by the Vote Officer and their ballots are segregated. Individuals whose names do not appear on the voters list are permitted to vote and their ballots are also segregated.

Except in displacement applications, generic ballots that do not identify the union or employer by name are used. The names of the parties are set out in a Notice that is placed in every voting booth.

The scrutineers are given an opportunity to sign a Conduct of Vote form after the vote is completed. Signatories to this form certify that the balloting was fairly conducted, that all eligible voters were given an opportunity to cast their ballots in secret, and that the ballot box was protected in the interest of a fair and secret vote.

2) **Further Settlement Discussions**

On the day of the vote, the Board Officer who conducts the vote engages the parties in settlement discussions on any issues that remain in dispute. All agreements are recorded in writing.

If the parties have resolved all issues raised up to that point, or agree to the point that a hearing is not required to resolve outstanding issues, this will be reflected in the Termination Worksheet. This document sets out the parties' agreements and

confirms that the parties have waived their right to a hearing subject to their right to file representations relating to any new matter in the five days following the vote or to respond to representations filed by any other party.

3) **Counting the Ballots**

Ballots may or may not be counted on the day of the vote, depending on the directions of the Board, the agreements of the parties, and the discretion of the Board Officer. It may be necessary in some circumstances to seal the ballot box until outstanding disputes have been resolved.

4) **Report of Vote Provided and Posted**

The Board Officer who conducts the vote normally provides a copy of the Board Officer's Report of Vote to the parties on the day of the vote. This Report sets out whether the ballots were counted and, if so, the outcome of the vote, and explains that the parties and employees have five days to file objections to the vote. Upon receipt, the employer is required to immediately post copies of the Report with each of the earlier posted Notices to Employees of Application for Termination, and then confirm that it has completed the postings by filing with the Board a Confirmation of Posting (Form A-124). The union must also, at the earliest opportunity, advise the Board as to whether the employer has completed the postings by filing with the Board a Confirmation of Posting.

## **VIII. AFTER THE VOTE**

1) **Statement of Representations**

Any person who wishes to say something to the Board concerning the vote or any other previously unidentified issue remaining in dispute must file a statement of representations with the Board and deliver a copy of the statement to the applicant, union and employer, whose names and addresses can be found on the Application for Termination. This statement may be filed using any means, except e-mail, Registered Mail or facsimile transmission, and must be received by the Board and the other parties no later than five days after the day of the vote. (Rule 11.3)

The Board reviews any representations it receives. If the parties have agreed on all issues in dispute and no relevant

representations have been received, a final decision will normally issue and the Regional Meeting and Hearing will be cancelled. If issues remain in dispute and/or relevant representations are received, the matter will proceed to the Post-Vote Mediation Process.

## **2) Post-Vote Mediation Process**

A Board Officer contacts the parties, usually by telephone, to discuss and attempt to resolve all outstanding issues. This contact normally takes place in the period after the end of the five day representation period and before the scheduled Regional Meeting. If issues remain in dispute after the Post-Vote Mediation process, the matter proceeds to a Regional Meeting.

## **3) Regional Meeting**

A Regional Meeting is a meeting with a Board Officer on the Wednesday of the third week after the week in which the vote is held. At this meeting, a Board Officer again assists the parties in an attempt to resolve, or at least narrow, the remaining issues.

For information on what occurs at and after the Regional Meeting when there is a dispute as to whether an individual is properly on the voters list, see Information Bulletin No. 5 - Status Disputes in Termination Applications (Non-Construction).

## **4) Hearing**

If issues remain in dispute after the Regional Meeting, a hearing begins on the Monday of the fourth week after the week in which the vote is held.

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.