

## **Labour and Employment Board**

### **Notes on Practice and Procedure:**

#### **Introduction - General**

1. Under each of the Statutory Labour and Employment Law Regimes over which it has jurisdiction, the Board is mandated to determine its own procedure and to make Rules governing its procedure.

Reference:                *Industrial Relations Act* s. 121(3)  
                              *Public Service Labour Relations Act* s. 18(1)(g)  
                              *Employment Standards Act* s. 53(3)  
                              *Pension Benefit Act* s. 96(3)

2. Rules of Procedure in the form of subordinate legislation exist under each of the statutory Labour and Employment Law regimes over which the Board has jurisdiction, and parties before the Board are expected to comply with their provisions.

3. Practice before the Board is governed by the enabling legislation, the subordinate legislation, and the jurisprudence developed by the Board and its predecessor Tribunals.

4. The Courts require that the Board 'take a consistent approach to matters of practice' if it is to 'operate effectively or command the respect of disputing parties or indeed of the public'. Furthermore, 'a party should not see its case undermined by a shifting in the position of the Board on matters of practice or procedure'. There is a danger that inconsistency of practice and procedure may prejudice a party before the Board.

Reference: *The Queen in Right of New Brunswick and Canadian Union of Public Employees* (1982) 133 DLR(3d) 434 at 437 (NBQB).

5. The Board strives to develop an integrated practice and procedure which cuts across the discrete labour and employment law regimes entrusted to its superintendance. In its decision in *Burman & Fellows Electrical Contracting Co. Ltd.* (unreported decision I.R.B. 2-8-94, issued 24 January 1995); the Board noted:

"...[I]n the case of its practice and procedure, the Labour and Employment Board, as a matter of first impression, inherits the practices and procedures of the defunct Tribunal developed under their respective enabling legislation and as expressed formally in subordinate legislation or informally by practice. However, ... the very fact of structural integration would indicate a legislative intent that a single cohesive and coherent practice and procedure be developed by the Labour and Employment Board in the exercise of its general jurisdiction over the several employment law regimes entrusted to its administration. This is a process now in its infancy which will mature apace as the Board undertakes its mandate and exercises its superintending jurisdiction over ... enabling legislation with respect to which the Legislative Assembly may from time to time vest it with jurisdiction." [para. 14].

6. These Notes on Practice and Procedure are intended to give the parties direction and assistance in matters brought before the Board for consideration in proceedings before it.

Departure from the Practice and Procedure of the Board is permitted only when, in the interests of justice, the merits of a particular case require such departure.

## VII. PRE-HEARING CONFERENCE

1. This Practice Note applies to any matters filed with the Board wherein the Board, in its discretion, deems it appropriate to conduct a pre-hearing conference. The pre-hearing conference may be assigned to the Chairperson, a Vice-Chairperson or other Officer of the Board as the case warrants, hereinafter referred to as the **presiding officer**.

2. Ordinarily, a direction to schedule a pre-hearing conference will be made by the Chairperson at the same time as the matter is assigned for hearing. However, at the request of a party, or on the Board's own motion, such a pre-hearing conference may be directed at any time.

3. The purpose of a pre-hearing conference is to provide the Board and the parties the opportunity to have a better overall view of the case scheduled for hearing. It could result in:

- i) the disclosure of documents and witnesses;
- ii) settlement of procedural issues and preliminary matters which might otherwise delay the hearing;
- iii) narrowing of issues to be tried;
- iv) agreement on facts; and
- v) possible settlement of matters.

4. At the time of setting the date for hearing of a matter, the Board may direct that the pre-hearing conference be set for approximately two weeks prior to the first scheduled date of hearing. If the parties are unable to agree upon a date, the presiding officer to whom the pre-hearing conference is assigned will set the date. Pre-hearing conferences are expected to require no more than two hours, and the Board will attempt to schedule conferences to accommodate parties' and counsel's commitments.

5. The directing of a pre-hearing conference is at the discretion of the Board, but when the Board does direct a conference, attendance by the parties or a representative with complete decision-making authority on their behalf is expected. The presiding officer of the conference will determine the procedure to be followed. Notwithstanding the absence of a party or its representative, the conference may proceed between the presiding officer and the other party or parties and counsel.

6. The presiding officer at a pre-hearing conference may:

- i) inquire into the dispute;
- ii) attempt to narrow the issues in dispute;
- iii) facilitate disclosure of documents;
- iv) determine the identity and the number of witnesses in the event of a hearing;
- v) attempt to mediate and assist the parties to reach a settlement; and
- vi) ensure that the Board's directions have been followed,

and generally do such other things as may assist in advancing settlement or narrowing issues and avoiding procedural delay.

7. Discussions which take place during pre-hearing conferences are on a without prejudice basis, and any opinion expressed to the parties by the presiding officer is treated confidentially. The discussions will not be revealed to any panel which may later conduct a hearing on the matter, except for those items upon which the parties agree.

8. At the close of the conference the presiding officer will record the terms of any withdrawal or settlement of issues, any agreement about procedures, and any directions given by the presiding officer for the hearing of the merits. That information shall form part of the Board's file to be transmitted to the parties and the panel to whom the hearing of the matter is assigned. The presiding officer shall not, unless all parties expressly agree, sit on the panel which hears the matter.