

Information Bulletin no. 1

Certification

General

In this bulletin references to the Act and to the Rules of Procedure are a reference to the *Industrial Relations Act* and to *Regulation 82-92* under the *Industrial Relations Act*. References to the Board are a reference to the Labour and Employment Board as established under the *Labour and Employment Board Act*.

The Board is required by the courts to take a consistent approach in matters of practice and procedure so as to operate effectively and command the respect of parties appearing before the Board and of the public. Moreover, consistency in the Board's approach to decision making is encouraged so as to avoid conflicting results in similar cases. However, the decision of one panel of the Board cannot bind another panel, and consistency in decision making cannot compromise the capacity of any panel member to decide in accordance with the member's conscience and opinion.

Information bulletins are meant to be used for general informational purposes only. They are not to be considered legal advice on any particular matter. A lawyer should be consulted for that purpose. Information bulletins are always subject to the Act and Rules of Procedure.

Purpose

The purpose of this bulletin is to outline the process of certification, including the requirements for filing an application for certification, and the New Brunswick Labour & Employment Board's policies and procedures for handling these applications. The information contained in this bulletin applies to applications in both construction and general industry, unless otherwise indicated.

Definition

Every employee has the right to be a member of a trade union and to participate in its lawful activities. **Certification** is the process by which a group of employees can choose to be represented by a trade union. A group of employees represented by a trade union is referred to as a bargaining unit. It is the role of the Board to determine who is a member of a bargaining unit. The process of certification is one of majority rule, meaning that if a majority of the eligible employees in the bargaining unit, as determined by the Board, support a trade union, all employees in the bargaining unit will be included in the certification. Once certified, a trade union becomes the bargaining agent for the unit. The **bargaining agent** has the exclusive right to represent the employees in the unit. Once an application for certification has been filed an employer is generally no longer permitted to negotiate working terms/conditions directly with their employees. The negotiation of terms and conditions of employment takes place during the **collective**

The Queen in Right of New Brunswick and CUPE (Re) (1982) 133 DLR (3d) 434 (QB); United Brotherhood of Carpenters and Joiners of America, Local 1023 et al. and Laviolette et al. (1998) 199 NBR (2d) 270 (C.A.)

Section 2(1) of the Act

Section 1(1) definitions

Section 21(1) of the Act

Section 35 of the Act

bargaining process. It is through collective bargaining that a bargaining agent and an employer reach a collective agreement, or contract. The collective agreement governs the parties' working relationship and is binding on the bargaining agent, the employer, and all the employees in the bargaining unit.

Section 56(2) of the Act

An Overview

There are four basic elements to an application for certification. These are as follows:

- The application must be timely;
- The applicant must have status as a trade union under the Act;
- The bargaining unit for which certification is sought must be one that is appropriate for collective bargaining;
- A majority of the employees in the bargaining unit must support the application.

See Information Bulletin No. 2: Representation Votes; *Section 14 of the Act*

Timeliness

If the employees in a bargaining unit are not represented by a bargaining agent, a trade union can file an application for certification at any time. If employees are currently represented by a bargaining agent, the Act limits the periods during which a different trade union can apply for certification of the same bargaining unit. This is commonly referred to as the 'open period'.

Sections 10 & 11 of the Act

Trade Union Status

Only a trade union, as defined by the Act, is entitled to certification. To be a trade union under the Act, an organization must meet the following conditions:

- It must be an organization of employees. The Act does not permit employer-dominated unions.
- One of the purposes of the employee organization must be the regulation of relations between employees and employers.
- It must have a written constitution, rules or by-laws which set out the purpose and objectives of the organization and which define the conditions for membership in the organization.

Loch Lomond Villa (Re) [1992]N.B.I.R.D No. 16

Section 18 of the Act

Section 1(1) of the Act definition of a Trade Union

An employee organization is generally only required to prove its status as a trade union once. It is then presumed to have status in all other proceedings before the Board. Where an applicant has not been found to be a trade union in a previous proceeding under the Act, the Board will serve on the parties a written notice to that effect.

Section 127(1) of the Act & Section 71(1) of Regulation 82-92

To prove status, an employee organization is required to present evidence. This can be achieved by filing with the Board the organization's Minutes of Meetings, Constitution and/or By-laws. In its documents, the employee organization should demonstrate that the following steps have been taken:

1. The Constitution should be drafted setting out, among other things, the purpose and objectives of the organization (which must include the regulation of labour relations) and the procedure for electing officers and calling meetings;
2. The Constitution should be placed before a meeting of employees for approval;
3. The employees attending such meeting should be admitted to membership;
4. The Constitution should be adopted or ratified by the vote of said members; and
5. The officers should be elected pursuant to the Constitution.

Otherwise, the employee organization will be required to present evidence at a Board hearing, through the testimony of a union official who has personal knowledge of the affairs of the organization.

Appropriate Bargaining Unit

The Board can certify a trade union as bargaining agent for a group of employees in “an appropriate bargaining unit.” There can be more than one appropriate bargaining unit and the trade union and the employer can both propose a description of an appropriate bargaining unit. However, it is for the Board to determine what constitutes an appropriate unit in the circumstances of each case, and the Board is not bound by a proposed description and may exclude from or include additional employees in the unit.

In **general industry**, some general considerations in determining an appropriate bargaining unit can include:

- Community of interest among employees;
- Practice or history of collective bargaining in the workplace;
- A presumption against fragmentation of the unit;
- Agreement of the parties;
- Desire of the employees.

To determine whether there is a community of interest among different employees the Board may consider:

- the nature of the work performed by employees;
- the conditions of employment;
- the skills of employees;
- the relationship to administrative organization of the employer;
- the geographic proximity of the employees;
- the interdependence and proximity of the working relationship;
- the commonality of supervision and labour relations.

These considerations are applied with sensitivity to the circumstances of each case and no one factor is determinative.

Bathurst (City) (Re) [2009]
N.B.L.E.B.D. No. 11;
Fredericton (City) (Re) [2009]
N.B.L.E.B.D. No. 16; Centre for Youth Care Inc. (Re) [2009]
N.B.L.E.B.D. No. 9

Sections 13(1), 40(1),(2),(6) of the Act;
Beaulieu Plumbing (Re) [1993]
N.B.I.R.D. No. 27; CUPE, Local 4515 v. Central Carleton Nursing Home Inc. [2008]
N.B.J. No. 324; Bayshore Home Health (Re) [2009]
N.B.L.E.B.D. No. 17

New Brunswick Public Employees Association Staff Union (Re) unreported decision IR-004-97

Camden Park Terrace Inc. (Re) [2005]
N.B.L.E.B.D. No. 24

Managers and persons employed in a confidential capacity in matters relating to labour relations are excluded from the bargaining unit. Knowledge of confidential management affairs is not sufficient to exclude an employee from the bargaining unit; the knowledge must be in the area of labour relations.

Management functions can include such things as hiring, firing, determining wages, and disciplining employees, amongst other things; it can also include independent decision-making responsibilities in matters of policy or the running of an organization.

In the **construction industry**, an appropriate bargaining unit is determined in most cases on the basis of geographic area and the trade of the employees.

The Act deems a unit to be appropriate for collective bargaining if all the employees in the unit are employed in a recognized construction trade and the application is made by a trade union that has historically represented employees in that trade.

The description of an appropriate bargaining unit in construction industry will ordinarily make reference to a specific geographic area. This area can include the entire province or be confined to specific geographic areas. Generally, the Board does not limit the geographic area to a specific project.

Employee Support

Once the Board has made a determination that a bargaining unit is “an appropriate bargaining unit”, the Board must determine the level of support enjoyed by the trade union. A majority of the employees in the bargaining unit must be members in good standing of the trade union or have cast their vote in favour of the trade union in a representation vote, before the trade union will be certified as a bargaining agent.

A member in good standing includes an employee who has made a written application for membership and paid on his own behalf at least one dollar for initiation fee or union dues. This membership or initiation fee must have been paid within the three-month period immediately preceding the month in which the application is made.

Filing an Application

The application date is the date of receipt by the Board. The official office hours of the Board are 8:15 a.m. to 4:30 p.m. Monday to Friday. Documents can be filed by hand, registered mail, or prepaid courier. Documents are deemed to have been received by the Board on the date that they were sent by registered mail or prepaid courier.

Camden Park Terrace Inc. (Re) [2005] N.B.L.E.B.D. No. 24; 002842 N.B. Ltd. (c.o.b. Campbell's Plumbing) (Re) [2009] N.B.L.E.B.D. No. 35

Section 40(1),(2) of the Act

Section 13(2) of the Act

KM Contractors(Re) [1994] N.B.I.R.D. No. 12

See Information Bulletin No. 2: Representation Votes; Section 14 of the Act

Section 16(3) of the Act & Section 125(1)(a) of Regulation 82-92.

Section 68(1) of Regulation 82-92 & Interpretation Act Section 22(e.1)

The Board will accept documents sent by facsimile, with the original to follow by prepaid courier, registered mail, or hand delivery, consistent with any date set by the Board for timely filing.

The Application

The application for certification must be filed in quadruplicate in Form 1701 (General Industry) or Form 1784 (Construction Industry) with declaration attached.

The completed application document should include:

- The proper name and address for service of the applicant;
- The proper name and address for service of the respondent;
- The proper name and address for service of each union in the council of trade unions (where the applicant is a council of trade unions);
- The proper name and address for service of any affected employer organization (where the employer is a member of an employer's organization);
- The description of the bargaining unit that the trade union proposes is appropriate for collective bargaining;
- The approximate number of employees in the proposed bargaining unit;
- The approximate total number of employees of the employer in the work, undertaking, business, plant or plants affected by the application;
- The name of any other trade union which claims to represent any of the employees in the proposed bargaining unit;
- The date of expiry of any current or recently expired collective agreement affecting the parties also, the names of the parties to the agreement, and the terms of renewal or termination of the collective agreement.

If employees are currently represented by a bargaining agent, the Act limits the periods during which a different trade union can apply for certification of the same bargaining unit. In exceptional circumstances the Board may waive these time limits where it can be shown that the employees in a unit or the employer "would suffer substantial and irremediable damage or loss" if the Board did not entertain an early application. Where a trade union makes a request for consent to an early application their application must state the grounds for the request. (Paragraph 10 of general industry application and paragraph 12 of the construction industry application)

In certain circumstances where a trade union makes an application for certification involving employees currently represented by another trade union, **section 11 of the Act** stipulates certain preconditions that must be met before the Board can process the application. The application document (paragraph 7 of the general industry application and paragraph 9 of the construction industry application) must contain a statement indicating to the Board that these preconditions have been met.

The application must also indicate if the trade union requests a **pre-hearing representation vote** be held.

Sections 10 & 11 of the Act see Brown v. UFCW, Local 1288P (Re) [1986] N.B.I.R.D. No.1

Section 10(8) of the Act

Section 15 of the Act

In **construction industry** the application must also indicate:

- The general nature of the employer's business;
- The specific nature of the employer's business affected by the application;
- The specific work carried out by the employees in the proposed bargaining unit;
- The site or sites at which the work carried out by the employees is performed;
- The expected increase in the number of employees in the bargaining unit that is known to the trade union;
- Whether the trade union consents to the application being disposed of without a hearing or a request for a hearing.

Additional documentation must accompany an application for certification, if not previously filed, as follows:

- If a national or international trade union, or an affiliated local is the applicant, a certified copy of the trade union's charter, as required by the constitution of the trade union, a constitution and by-laws, if any;
- If the applicant is not a national or international trade union or affiliated local, a copy of its constitution and by-laws, if any;
- A list of union officers, where and when elected;
- A notice of person authorized to accept service;
- A declaration concerning membership documents.

Terminal Date

A terminal date is set for each application. The terminal date is the deadline for the filing of all relevant documentation. This would include reply documents, interventions, all membership evidence, petitions/statements of desire and counter-petitions. An interested party who does not file documents on or before the terminal date may be deemed by the Board to have abandoned any claim to be a party to the application.

In **general industry**, the terminal date is usually twelve days beginning the day after notices of the application are mailed to the employer for posting. In the **construction industry**, it is usually six days beginning the day after notices of the application are mailed.

As a general rule, the terminal date is only extended in circumstances where affected employees have not received sufficient notice of the application. The Board may extend or abridge the time for filing documents. This extension or abridgement does not alter the terminal date for the filing of membership evidence, or objections by employees.

Section 139(3) of the Act

Section 10(1) & 92(1),(2) of Regulation 82-92

Sections 2 & 84 of Regulation 82-92

*Section 77(3), (4) of Regulation 82-92
CM
Ventilation(Re) [1991]
N.B.I.R.D. No. 2*

Notification

The Board notifies all interested parties of the filing of the application.

Notice to the employer includes: a copy of the application; a notice of application or a notice of application and of hearing, if a hearing date has been set; and notices to employees of the application, for posting at the work site.

Sections 4(2) & 86(2) of Regulation 82-92

Notice to other interested parties, such as another union or council of trade unions, or an employer's organization includes a copy of the application and a notice of application.

Sections 9(1),(2) & 91(1),(2) of Regulation 82-92

The affected employees are notified of the application for certification by the posting of a notice to employees at the work site. The Notice to Employees informs them of the application, the terminal date and the procedures and requirements for filing objections to the application, if any. Employers are required to post this notice, which is printed on a **green form**, in a place or places where it is most likely to come to the attention of all affected employees. This notice is to remain posted on the premises until the close of business on the terminal date. The employer is requested to immediately advise the Board of posting by completing a Return of Posting Card, as failure of the employer to post can result in delay. The applicant union is also requested to verify the posting and complete and return immediately an Advice of Posting Card.

Sections 4(2)(c) & 86(2)(c) of Regulation 82-92

Sections 70(1),(2) of Regulation 82-92

Employer's Reply

The employer must file his reply not later than the terminal date for the application. The reply must be accompanied, if applicable, by a copy of any existing or recently expired collective agreement that is or was recently binding on the employer for the bargaining unit contained in the application.

Sections 8(1) & 90(1) of Regulation 82-92

The completed reply document should include:

- the proper corporate name and address for service;
- the name of a lawyer or representative, if there is one;
- the name of other interested parties, if any;
- a proposed bargaining unit description, if different from the applicant union's;
- a complete list of all employees in the bargaining unit as proposed by the applicant, as well as their classification. If in the reply document the employer proposes a bargaining unit different than the one proposed by the applicant, the employer is to indicate on the schedule the name and classification of any person he proposes to exclude from the bargaining unit, as well as, the name and classification of any person he proposes should be added. These schedules must contain the signature of a representative of the employer confirming their accuracy;
- documents from among existing employment records containing the signature of those employees whose name appears on the schedules, including the signatures for those employees the employer proposes to add or exclude from the bargaining unit.

Section 40(7) of the Act

The Reply document should indicate whether the employer consents to the application.

In the **construction industry** the form should also indicate:

- The nature of the work performed by employees;
- Site or sites of the jobs at which work is being performed;
- Whether the employer requests a hearing of the matter or consents to the matter being disposed of without a hearing.

Membership Evidence

To establish membership support the trade union must submit to the Board evidence of membership in its trade union. The Board accepts evidence of membership in the form of applications for membership and/or certified trade union records, which must be accompanied by receipts for initiation fees or for dues. All evidence of membership in the applicant trade union must be filed with the Board on or before the terminal date. Membership evidence is confidential and for the exclusive use of the Board. It is not disclosed except with consent of the Board.

Without employer consent trade unions and employees are not ordinarily permitted to gather membership evidence on the employer's premises during an employee's working hours. An exception exists for employees who reside on land owned or controlled by their employer.

Declaration concerning membership documents

In both general industry and construction industry, the membership evidence submitted on behalf of the applicant must be accompanied by a completed declaration concerning membership evidence. In **general industry** this form must be received by the Board not later than two days following the terminal date. In the **construction industry** it must be received on or before the terminal date. This form must be signed by a representative of the trade union, and must accurately reflect the totality of the membership evidence submitted by the trade union by the terminal date. The declaration is for the exclusive use of the Board and the information contained in it is not disclosed except on consent of the Board.

Objections to certification

An objection to the application filed by an employee is called a **statement of desire**. The Board refers to an objection filed on behalf of a group of employees as a **petition**. If a statement of desire/petition is filed by an employee who previously signed a

Fundy Masonry Ltd (Re) [1997] N.B.L.E.B.D. No. 1; JR. Mechanical Ltd.(Re) [1998] N.B.L.E.B.D. No. 49; See Information Bulletin No. 3: Membership Evidence; Section 138(1) of the Act

Section 4(1) of the Act Irving Oil Ltd.(Re) [1985] N.B.I.R.D. No. 14; See section 4(2) of the Act for exception

Sections 7(1),(3) & 87(1),(3) of Regulation 82-92; Loch Lomond Villa (Re) [1992] N.B.I.R.D. No. 16; Section 138(1) of the Act.

Moncton Community Residences Inc.

membership card, the statement of desire/petition, if voluntary, will tend to cast doubt on the membership evidence submitted by the trade union. When an employee signs both a card and a statement of desire/petition this is referred to as an overlap. An **overlap** will call into question the membership card submitted on behalf of that employee and raise concern as to whether it still represents the wishes of the employee. An overlap can cast doubt on the percentage of support enjoyed by the trade union, for purposes of determining whether a vote will be held. If sufficient overlap exists, the Board may order a representation vote even in circumstances where the trade union might have otherwise been entitled to outright certification. The Board does not consider the statements of desire/petition from employees who have not previously signed a membership card or who are not employees of the bargaining unit as these employees have no effect on the degree of employee support for the trade union.

The Board will only consider a statement of desire/ petition that is an expression of the true wishes of the employee(s). A statement of desire/petition that is the result of influence or intimidation by the employer or the collector of the signatures will be disregarded as involuntary.

The Board may also receive counter-petitions. A **counter-petition** is a document from an employee who signed a membership card, and then signed a statement of desire/ petition, and who now wishes to reaffirm his support for the trade union. A counter-petition, if voluntary, will be considered the last statement of an employee's intention for the purpose of the Board's determination of the level of support enjoyed by a trade union on an application for certification.

A statement of desire/petition or counter-petition must be received by the terminal date. It must be in writing, signed by the employee or each of the employees of a group of employees and must be accompanied by the return mailing address of the person who files the evidence. It should also be dated, identify the employer, and if in the form of a petition, each signature should be witnessed.

The Board will dispose of the application without considering the statement of desire/petition/counter-petition of any person(s) who does not appear and give evidence in person or by representative at the hearing of the matter. A person or representative appearing must present evidence that includes testimony as to the circumstances concerning the origination of the statement of desire/petition/counter-petition and the manner in which each signature on the statement/petition/counter-petition was obtained. Statements of desire, petitions and counter-petitions are for the exclusive use of the Board. The names of the employees signing these documents are not disclosed except on consent of the Board.

Establishing the number of employees in the bargaining unit on the date of application

*(Re) [1995]
N.B.L.E.B.D. No.
45; Fortis
Property Corp.
(Re) [2005]
N.B.L.E.B.D. No.
37*

*Brunswick
Chrysler [1999]
N.B.L.E.B.D. No.
41*

*Carleton-Kirk
Complex
Inc.(Re)
[1994]
N.B.I.R.D.No.1*

*Section 66(3) of
Regulation 82-
92*

*Section 66(4) of
Regulation 82-
92*

*Section 66(5) of
Regulation 82-
92*

*Section 138(1)
of the Act*

The Board determines the number of employees in the bargaining unit on the date of application from the employee lists or **schedules** which the employer is required to complete and file with their Reply.

There are four schedules which are to be completed as follows:

1. Schedule A contains the name and classification of all employees in the bargaining unit described in the application for certification, who were employees on the date of the application, except those listed under schedules B, C or D;
2. Schedule B contains the name and classification of all employees, who were employees on the date of application and who are regularly employed for not more than 24 hours per week;
3. Schedule C contains the name and classification of all employees not actually at work on the date of application by reason of lay-off; and
4. Schedule D contains the name and classification of all employees not previously shown who were not at work on the application date, other than by reason of lay-off.

These schedules are to be confirmed as accurate by a representative of the employer who can verify their accuracy.

Upon receipt, a copy of these schedules is forwarded to the trade union, which it is expected to file any objections with the employer and copy the Board, prior to the hearing date. The trade union is given the opportunity to challenge the list before a determination is made as to the number of employees in the bargaining unit.

If no reply, schedule or signatures of affected employees are filed by the employer, the Board will act on the information supplied by the trade union in the application and declaration concerning membership documents.

Calculating the percentage of support: The count

For the purpose of the count the Board will make a determination of the level of membership support for the trade union amongst employees in the bargaining unit. "For the purpose of the count" means for the purpose of determining whether to dismiss the application, certify the trade union, or order a representation vote to determine the wishes of the employees in the bargaining unit.

The Board determines this level of support by comparing the number of employees in the bargaining unit on the date of application with the number of employees who were members in good standing in the trade union on the terminal date. As noted, voluntary objections can cast doubt on this level of support.

In **general industry**, the number of employees in the bargaining unit on the date of

*Beaulieu
Plumbing (Re)
[1993]
N.B.I.R.D. No.
27 on
objections to
schedules*

*The 30/30 rule
is a guideline,
rather than a
hard and fast
rule, but there
is an onus on
any party
seeking an
exemption from
it.*

*The 30/30 rule
is not applied in
the construction*

application includes all employees at work on the date of application and those employees not at work who worked in the bargaining unit at any time during the 30-day period prior to the application date, and returned to work or are expected to return within the 30 days following the application date. Both conditions must be met. This is referred to as the **30/30 rule**.

In the **construction industry**, the number of employees in the bargaining unit is the number of employees actually at work and engaged in their trade on the date of application.

The application for certification must be supported by at least 40% of the employees in the bargaining unit, or it will be dismissed.

In **general industry**, if an application has the support of between 40% and 50% of the employees in a bargaining unit, the Board shall direct that a representation vote be taken. If an application is supported by more than 50% of the employees in a bargaining unit, the Board may certify without the holding of a vote, depending on the circumstances of each case. A trade union that is supported by more than 60% of the employees in a bargaining unit is entitled to certification without a vote.

In **construction industry**, the Board must certify a trade union when a majority of the employees in the bargaining unit have selected the applicant trade union to be their bargaining agent.

Certification without majority support

In certain circumstances, the Board has the discretion to certify a trade union without proof of majority support. The Board can exercise this discretion where three factors are present:

1. The employer has breached the Act by committing an unfair labour practice such as intimidation;
2. The actions of the employer are such that it is no longer likely that the Board can determine the true wishes of the employees in the bargaining unit;
3. The trade union has adequate support of the employees in the unit.

In certain circumstances, the Board has the discretion to refuse to certify a trade union despite the submission of membership evidence on behalf of a majority of employees in the bargaining unit. The Board can exercise this discretion where there are three factors present;

1. The trade union has breached the Act by committing an unfair labour practice, such as intimidation in the gathering of membership evidence;
2. The actions of the trade union are such that it is no longer likely that the Board can determine the true wishes of the employees in the bargaining unit,

*industry.
Thibeault(Re)
97 CLLC 220-
015*

*Sections 14(2),
14(3), 14(5) of
the Act; See
Information
Bulletin No. 2:
Representation
Votes*

*Section 40(8) of
the Act*

*Section 106(8)(e)
of the Act;
Bradley & Walsh
(1974) Ltd.(Re)
[1993]
N.B.I.R.D. No.
29*

*Section 106(8)(e)
of the Act;
Bradley & Walsh
(1974) Ltd.(Re)
[1993]
N.B.I.R.D. No.
31*

3. The membership support for the trade union was obtained by virtue of the unfair labour practice.

The Hearing

A hearing is not always required in certification proceedings. The Board has the discretion to dispose of an application based on the documentation before it without holding a hearing. This generally occurs in circumstances where the four elements of a successful application are present and where the parties consent to the matter being disposed of without a hearing.

If a party requests a hearing, it is required to include in its application, reply or intervention, as the case may be, a brief statement of the facts it intends to rely on at the hearing, the remedy requested, and its submissions in support of this request. A party requesting certification without a hearing must set out in its application a statement in support of the request.

If in a **construction application**, the Board dismisses the application or certifies a trade union without a hearing, the trade union or employer, as the case may be, may, within ten days of the order, request a hearing, which the Board must hold.

Hearings are generally held at the Board's Offices in Fredericton, New Brunswick but, on request of a party, may be held at any location in the province, if necessary or convenient, as determined by the Board.

Hearings can be held before the full Board or a panel consisting of the Chairperson or a Vice-Chairperson alone, or the Chairperson or a Vice-Chairperson, as the chairperson of a panel, and two other members of the Board equally representative of employees and employers.

The Chairperson generally has discretion to direct how a panel will be constituted. In exercising this discretion the Chairperson will consider the nature of the duties and functions required by the Board, the circumstances of the particular matter to be determined, the representations of the parties, if any, and any other factors that the Chairperson considers relevant.

At the request of a party, the Chairperson will assign a three person panel to deal with an application for certification in the construction industry.

Board hearings are open to the public and the media; however, filming and recording during the proceedings is not permitted and cameras are only permitted to film the hearing room and/or the Board members entering or leaving the hearing room.

The Board does not record its own proceedings and there is no transcript; however, a party can request that the proceedings be recorded. A request must be in writing and it

Section 40(5) of the Act (construction Industry)

Section 94(1) of Regulation 82-92 (construction industry); Section 94(2) of Regulation 82-92 (construction industry); Section 40(10),(11) of the Act

Labour and Employment Board Act Sections 9(1) & 9(2)

Section 9.1(2)(a) of the Labour and Employment Board Act

Burman and Fellows Electrical

must outline the reasons for the request. The party making a request, if granted, is responsible for all arrangements including, all associated expenses, which can include the hiring of a court stenographer and the preparation of the transcript to be distributed to the Board and to all other parties.

*Contracting(Re)
95 CLLC 220-
049*

The Certificate

The Board will issue an Order either granting the application, dismissing the application or consenting to the withdrawal of the application.

A certification order contains the proper name of the trade union, the proper corporate name of the employer, a description of the bargaining unit and the date of certification.

Once certified a trade union immediately replaces any other bargaining agent that may have represented employees in the unit. The trade union has the exclusive authority to bargain on their behalf and to bind them by a collective agreement until such time as the certification order is revoked. If any other trade union had previously been certified in respect of employees in the unit their certification for those employees shall cease to operate and will be deemed to be revoked.

*Section 21 of the
Act*

