

Information Bulletin no. 3

Membership Evidence

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

This bulletin outlines the Board's practice with regard to membership evidence and its standard procedures for reviewing the sufficiency of the membership evidence submitted by a trade union on an application for certification. The purpose of the bulletin is to assist parties coming before the Board to conform with what the Board has indicated will satisfy its requirements as to the sufficiency of membership evidence filed in support of an application. The Board expects membership evidence to comply with these requirements; however, these guidelines do not remove from the Board its exclusive role of making a determination as to the sufficiency and timeliness of the membership evidence submitted in each application.

The information contained in this bulletin applies to applications for certification in both construction and general industry, unless otherwise indicated.

Introduction

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

*Hilton Canada
and
International
Union of
Operating
Engineers,
Local 946 1998
NBLEBD No.
36 upheld on
Judicial Review
[1998] N.B.J.
No.506 &
[1998] N.B.J.
No. 517*

When an application for certification is filed the Board is required to determine the number of employees in the bargaining unit who are members in good standing in the trade union. This determination is made on the basis of membership evidence that is submitted by the applicant trade union. It is the Board's role to determine the form in which, and the time as of which, evidence of membership in a trade union is to be presented to the Board.

*Sections 14,
40(6) &
126(2)(e) of the
Act*

Procedural Matters

The Terminal Date

To become certified a trade union must establish that a sufficient number of the employees in a bargaining unit were members in good standing of the trade union at a time that is determined by the Board. This time is referred to as the terminal date.

*Sections 14,
40(6) &
126(2)(e) of the
Act*

Evidence of membership in a trade union must be collected by the trade union and filed with the Board on or before the terminal date set for the application.

*Section 66(1)(b)
of Regulation
82-92*

In ordinary circumstances, the Board will not consider membership evidence filed after the terminal date, even when collected on or before the terminal date.

*C.M.
Ventilation 91
CLLC 16,026*

The Board has the jurisdiction to enlarge or reduce the time for filing membership evidence and it may do so, where, for legitimate reasons a party seeks to file membership evidence, after the terminal date that was collected on or before the terminal date.

*Section 77(3) of
Regulation 82-
92 & George
Wimpey
Canada Ltd.
(Re) 97 CLLC
220-061*

The Board does not accept membership evidence collected after the terminal date.

*Section 66(1)(b)
of Regulation
82-92 & Peter
M. Cox
(Re)[1990]
N.B.I.R.D. No. 6*

Confidentiality of Trade Union Records

All records of a trade union relating to membership evidence or any other **records that may disclose membership in a trade union are for the exclusive use of the Board and its officers** and will not be disclosed except with the consent of the Board. The Board will not disclose the name of any individual who has signed a membership card.

*Section 138(1)
of the Act*

Where, after a review of the membership evidence filed, the Board is of the opinion that it may not meet the requirements of the Act and/or the Regulations, the parties are advised, and invited to make submissions as to its adequacy at the hearing of the matter. In such cases, disclosure of the form and substance of the membership evidence will be made as required. The Board will attempt to make such disclosure prior to the date set for the hearing, but in any event will do so at the outset of the hearing and invite counsel to make submissions on the issue. The Board

*J.R. Mechanical
Ltd. (Re) IR-
067-98
(unreported
decision)*

does not disclose information as to the form or substance of membership evidence where it is satisfied that the evidence meets the requirements of the Act and Regulation.

Authenticity of Membership Evidence

To ensure the authenticity of membership evidence the Board compares the signatures contained on the membership applications with specimen signatures of affected employees contained on copies of existing employment records that are supplied by the employer.

Standard of Membership Evidence

The Act does not define ‘member’. A ‘member in good standing’ is defined as a member of a trade union “who is not excluded from membership in good standing under this Act”. The Board decides who is a member of a trade union and whether the evidence filed to establish membership is satisfactory; however, where the Board is satisfied that an employee has made a written application for membership in a trade union the expression ‘member’ or ‘member in good standing’ includes a person who has paid to the trade union on his own behalf at least \$1.00 as an initiation fee or dues to the union within the three month period immediately preceding the month in which the application is made.

Section 16(3) of the Act

Section 125(1) of Regulation 82-92

The Board must not consider a trade union’s own written eligibility rules for admission into membership if the trade union has an established practice of admitting persons without regard to these requirements.

Section 16(2) of the Act

Form of Membership Evidence

Evidence of membership in a trade union must be in writing, signed by the employee and filed not later than the terminal date set for the application. Proof of payment of an initiation fee or dues of at least \$1.00 must be included; this is usually in the form of a receipt. The receipt can be a separate document or it can form part of the written application.

Section 66(1) of Regulation 82-92

The Board does not accept oral evidence of membership in a trade union except to identify and substantiate the written evidence that has been filed.

Section 66(2) of Regulation 82-92

The membership evidence submitted on behalf of the applicant must be accompanied by a completed Declaration Concerning Membership Documents. If membership is filed prior to the terminal date and additional membership evidence is filed on or before the terminal date, an additional Declaration Concerning Membership Documents must be completed and filed to reflect the totality of the membership evidence that is filed by the terminal date.

In general industry the Declaration must be filed not later than two days following the terminal date. In construction industry the Declaration must be filed on or before the terminal date.

Section 7(1) & 87(1) of Regulation 82-92

Failure to file a proper Declaration Concerning Membership Documents may result in the dismissal of the application for certification.

George Wimpey Canada Ltd.(Re) 97 CLLC 220-061

The Board may extend the time for filing a Declaration Concerning Membership Documents where the other parties to the matter will not be prejudiced by the late filing.

Sufficiency of Membership Evidence

General Industry

In general industry, membership evidence is generally filed on behalf of employees who have applied for membership in the applicant trade union within the three-month period immediately preceding the month the application for certification is filed.

Membership evidence that is filed on behalf of these employees must be in writing and satisfy the Board as to its integrity. Ideally, it should consist of the following:

Fraser(Re) 85 CLLC 16,064 Hilton Canada and International Union of Operating Engineers, Local 946 1998 NBLEBD No. 36 upheld on Judicial Review [1998] N.B.J. No.506 & [1998] N.B.J. No. 517

- A written application for membership in the trade union that has been signed by the applicant employee,
- An original receipt or other confirmation of payment of an initiation fee, dues or other periodic payment to the trade union in the amount of at least one dollar. The receipt or other confirmation should be signed by the collector of the fee and countersigned by the applicant employee who must have paid the money on his own behalf.

When membership evidence departs in form from this ideal model, the party submitting this evidence will be called on by the Board to establish the sufficiency of the membership evidence filed.

The application for membership must indicate that the application is for admission into the applicant trade union. If a local applies for certification the membership evidence must indicate the local number. Evidence of membership in one local is not sufficient where another local applies for certification, unless there has been a transfer of membership, in which case evidence of transfer must be filed.

The application for membership and the receipt can be separate documents or can be combined into one document.

The application for membership should be signed and the initiation fee or one month's dues should be paid within the three-month period

Section 125(1) of Regulation 82-92

immediately preceding the month in which the application for certification is filed. Cards and fees gathered outside this period are referred to as ‘stale dated’ and generally will not be accepted by the Board.

The Board relies on the “best evidence” available and is therefore hesitant to accept photocopies of membership evidence submitted on behalf of new members.

The Board will reject photocopies of membership evidence except where it can be established that, through no fault of its own the trade union has lost the opportunity to file original applications for membership.

The membership evidence submitted on behalf of the applicant must be accompanied by a completed Declaration Concerning Membership Documents, generally referred to as Form 9. The Declaration must state the number of persons on whose behalf membership evidence has been filed and the number of persons whom the applicant states are employees in the bargaining unit. The Declaration 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.

Paragraph 3 of the Declaration is a confirmation that the persons whose names appear on the receipts for payment of the initiation fee or dues are the persons who actually collected the money and that the employee paid on his own behalf the amount shown on the receipt. The representative who signs the Declaration must have personal knowledge of this information or make inquiries from those involved in the organizational campaign, and must disclose any exceptions following the words EXCEPT IN THE FOLLOWING INSTANCES: which appear on the form.

Construction Industry

In the construction industry, membership in a trade union is tied to a trade or craft. Employees will often move from one workplace and employer to another and maintain membership in a single trade union. Where a trade union that represents construction employees files an application for certification often the membership evidence filed is on behalf of this type of long-term member.

In the case of a long-standing member of the trade union, the best source of membership evidence is the records of the trade union – often referred to as the “dues books”.

Trade union records will typically provide information on each member as follows:

J.R. Mechanical Ltd.(unreported decision) IR-067-98

Section 7(1) of Regulation 82-92

Section 7(3) of Regulation 82-92

- (i) Personal data,
- (ii) Date of initiation into membership,
- (iii) Periodic payment of dues.

The Board will accept photocopies of trade union records as evidence of continued membership in a trade union. Accompanying or included in these trade union records must be evidence of payment of at least one month's dues within the three-month period immediately preceding the month of the application for certification.

The Board requires that a written statement certifying the accuracy of the records accompany the trade union records. This statement must be signed by a responsible trade union official, and the original filed with the Board ordinarily by the terminal date. This statement must identify the trade union official by name and office, and specify that the official certifies the document to be an accurate extract from the records of the trade union. It should also indicate the date and place of signing of the statement. The trade union official is not required to have personal knowledge of the payment of dues on the part of each member of the trade union. The official can certify the accuracy of such records by reliance upon the ordinary processing of dues payments by union office staff.

A trade union that submits trade union records as evidence of continued membership must indicate at paragraph 3 of the Declaration Concerning Membership Documents the names of all those employees on whose behalf the trade union has submitted records as evidence of continued membership.

Unless the integrity of the trade union records/dues books are somehow cast into doubt the Board presumes that the records are an accurate reflection of reality.

Membership evidence filed on behalf of employees who became members of the trade union within the three-month period immediately preceding the month of the application for certification should be filed in the same form as that filed in general industry applications.

Improperly Obtained Membership Evidence

Membership evidence obtained as a result of intimidation, coercion, threat, misrepresentation or fraud may be discounted by the Board and may result in the dismissal of the application for certification.

Membership evidence must not be collected on the premises of the employer during the working hours of an employee, without the consent of the employer. An exception exists for employees who reside on land

*Fundy Masonry Ltd.(Re) 97
CLLC 220-041
Section 125(1)
of Regulation
82-92*

See Fundy Masonry Ltd.

See Fundy Masonry Ltd.

*Sections 5(2) &
106(8)(e) of the
Act*

Section 4(1) of

owned or controlled by their employer.

A party who wishes to allege at the hearing of the matter that membership evidence was improperly obtained should give notice of its intent by including particulars of the allegation in their Reply document, or by filing a 'notice of intention' prior to the hearing date. A 'notice of intention' should contain a concise statement of:

- The pertinent facts, actions or omissions which the party intends to rely on as constituting improper or irregular conduct;
- The time when and place where the alleged actions or omissions occurred;
- The names of the persons who engaged in or committed the alleged acts or omissions, but not the evidence by which the material facts, actions or omissions are to be proved;
- The section or sections of the Act containing the provisions which are alleged to have been violated.

A notice of intention should be filed promptly upon discovery of a violation of the Act otherwise the Board may decide not to allow the allegation to be raised at the hearing of the matter.

The Hearing

As a general rule, the Board does not allow cross-examination on the membership evidence or the Declaration Concerning Membership Documents and no person can be called as a witness to disclose information as to trade union membership, unless the Board consents.

Closing the File

Upon issuance of a Board Order and the closing of a file on certification, original membership cards still on file are returned to the trade union.

*the Act see
Section 4(2) of
the Act for
exception*

*Section 65(1) of
Regulation 82-
92*

*Section 65(2) of
Regulation 82-
92*

*Loch Lomond
Villa(Re)
[1992]
N.B.I.R.D.
No.16 upheld
on Judicial
Review 139
N.B.R..(2d)167.*