



## INFORMATION CIRCULAR

*The following is one in a series of information circulars prepared by the administration staff of the CIRB. The circulars are designed to provide employees, trade unions and employers with general information and a clearer understanding of Board processes. This information circular is an informal tool and is not binding on the Board.*

### **No. 10—Applications for Revocation**

Under the *Canada Labour Code (Part I—Industrial Relations)* (the *Code*), employees have the right to join together and choose a union that will represent them and negotiate with their employer the determination of their wages and other terms and conditions of employment. By the same token, if a majority of these employees no longer wish to be represented by a union, they can apply to have the union's rights annulled. The process is called revocation, which is also referred to as decertification or cancellation of bargaining rights.

#### **The Revocation Process Simplified**

Any person who claims to represent a majority, that is, more than 50% of the employees in a bargaining unit, can apply to the Canada Industrial Relations Board (the Board), within specified timeframes, to have a certification order revoked. If the application is successful, the collective bargaining relationship between the union and the employer will be terminated and the employees will no longer be represented by a union.

#### **Who Can Apply?**

You can apply for revocation if you are represented by a union that is recognized as the bargaining agent to deal with your employer. You must be covered by the "scope of the bargaining unit," that is, you must occupy a position that is included in the bargaining unit and not "excluded" from that unit. If there is more than one bargaining unit or more than one union in your work place, you are only permitted to apply for the revocation of the bargaining rights of your own unit. You cannot file or participate in an application for revocation if you hold a managerial position.

#### **When Can an Application be Filed?**

The *Code* is very specific about the time period during which an application for revocation can be filed.

Where no collective agreement applicable to the bargaining unit is in force:

- at any time after a period of one year from the date of certification of the trade union. The *Code* stipulates, however, that the Board shall not revoke a certification unless it is satisfied that the bargaining agent has failed to make a reasonable effort to enter into a collective agreement. Consequently, an applicant filing an application for revocation in such circumstances must clearly demonstrate how the certified bargaining agent failed to make a reasonable effort in this regard.

Where a collective agreement is in force:

- if a collective agreement is for a **term of three years or fewer**, an application for revocation can be filed during the last three months of the collective agreement (or any time after the date the collective agreement expired until a new collective agreement is signed);
- if a collective agreement is for a **term greater than three years**, an application for revocation can be filed during the last three months of the third year, that is, during the 34th, 35th or 36th month of its operation, or during the last three months of any year thereafter;
- if the employer has **voluntarily recognized** the union, an application for revocation can be filed at any time during the first year of the term of a collective agreement. After the first year, the same timing rules as set out above apply.

Where there is a legal strike or lockout:

- an application for revocation cannot be filed during a legal strike or lockout, except in very limited circumstances with the consent of the Board.

## **Majority Support**

If you are applying to have your union's bargaining rights revoked, you must represent a majority, that is, more than 50% of the employees included in the bargaining unit. If not, your application will be rejected.

## **Evidence of Majority Support**

The *Code* requires that the applicant in a revocation file show evidence that more than 50% of the employees in the bargaining unit no longer wish to have the union represent them. This is done by filing individual confidential statements, signed by each employee whom the applicant claims to represent in the application. Each employee must have signed their statement less than six months before the date of filing of the application.

The individual confidential statements in support of a revocation application must clearly indicate the employee's wish to have the union's bargaining rights revoked, and must include the name of the union that is affected by the revocation application. The statement should also indicate that the employee authorizes the applicant, by name, to act on his or her behalf in the application for revocation. The Board will not accept petitions (list of signatures on one sheet of paper) as evidence of employee wishes.

In determining an application for revocation of bargaining rights, the Board may communicate with certain employees to validate the documents filed. It could also look at whether there was any employer involvement that would raise questions as to the voluntariness of the application. If there is the appearance of overt or tacit support or interference by the employer, the Board could invalidate the claimed support and dismiss the application for revocation. For example, if it is proven that management offered a reward or benefit for starting or continuing the revocation application, or if it is found that management threatened an employee for not supporting the application, the Board will dismiss the application. It is also prudent not to collect the employees' confidential statements on company time or at the work site.

### **Confidentiality of Employee Wishes**

In accordance with section 35 of the *Canada Industrial Relations Board Regulations, 2012*, information concerning an employee's wish to be represented by or not to be represented by a trade union is considered confidential and is not made known to the union, the employer, or the public. As such, the employees' confidential statements filed in support of a revocation application are not accessible to the other parties.

### **Where Can an Application for Revocation be Filed?**

An application for revocation may be filed at any of the [Board's regional offices](#). The application for revocation form is available on the Board's [website](#).

The application must be filed in person, sent by mail or by courier and must be accompanied by the original confidential employee statements and the applicant's statement attesting to the accuracy of the documents submitted to the Board.

The date of filing is the date that the application, the original confidential employee statements and the declaration attesting to the accuracy of the documents are received by the Board.

### **What Happens Next?**

Upon receipt of the application for revocation, the Board will notify the incumbent bargaining agent and the employer in writing. In this notice, the Board will instruct the employer to post the application in the workplace. It will also ask the employer to provide it with a list of employees in the bargaining unit, as of the date of the application, to allow the Board to determine whether a majority, that is, more than 50% of the affected employees, support the application. Finally, the Board will ask the union and the employer to file submissions outlining their position in response to the application, if applicable.

The Board will then appoint an industrial relations officer to gather factual background information pertaining to the application and to conduct an investigation regarding the employee support as well as any other submissions filed. The industrial relations officer may contact certain employees to verify the validity of the documents received in support of the application. The industrial relations officer will contact the parties to discuss any matter that may arise during the investigation.

Once all the necessary information is gathered, the industrial relations officer will send a letter to the parties, according to the Board's policy, advising that the file is being referred to the Board for determination. That letter clearly sets out, among other things, the description and

composition of the bargaining unit concerned, any position in dispute, as well as the list of relevant documents filed with the Board. The parties will then have 24 hours following the receipt of the letter to provide written comments to the industrial relations officer. The industrial relations officer submits a separate confidential report to the Board setting out the wishes of the employees.

### **Holding of a Representation Vote**

If the Board's investigation confirms that a majority of the employees included in the bargaining unit have supported an application for revocation, the Board usually orders a representation vote. This means that all employees in the bargaining unit have the opportunity to vote and determine whether or not the union will continue to represent them. The Board will designate a returning officer to conduct the vote; usually, the returning officer is the industrial relations officer assigned to the case.

The returning officer will consult with the parties regarding the arrangements for the conduct of the vote, and will require the employer to post in the workplace a Notice of Vote, which is prepared by the Board. Representation votes are usually conducted in person (by ballot box) at the employees' place of work during, before or after normal working hours.

Parties are entitled to be represented by scrutineers, whose responsibilities are to assist the returning officer in identifying voters and to help ensure that the vote is conducted in a fair and impartial manner. It is a secret ballot. The vote is usually counted immediately following the closing of the polls. The result is determined on the basis of the majority of those who vote.

In certain circumstances, the Board may issue a revocation order without conducting a representation vote. This would occur, for example, when the union confirms in writing that it does not oppose the application for revocation. In this case, unless the industrial relations officer uncovers evidence that an application for revocation is not supported by a majority of employees, the Board can revoke the certification for the unit concerned on the basis of the documentation on file.

### **After the Representation Vote**

Where the Board revokes the bargaining rights of a trade union, the collective agreement is terminated and the bargaining agent is no longer entitled to represent the employees in the bargaining unit. If the Board dismisses an application for revocation, no new application may be made for a period of six months from the date of the Board's decision. The Board generally will issue its decision to the parties in writing within a week of the vote.