



Talking Union is a bi-monthly newsletter highlighting matters of interest to the labour relations community. We welcome your questions and comments.

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NEW RULES AT THE OLRB

WHAT DO THEY MEAN?

Effective August 1, 1999, the Ontario Labour Relations Board is effecting new Rules of Procedure. These changes will significantly impact on parties appearing before the Board and affect proceedings under all of the following statutes:

- Labour Relations Act, 1995
- Colleges Collective Bargaining Act
- Occupational Health & Safety Act
- Smoking in the Workplace Act
- Environmental Protection Act
- Environmental Bill of Rights
- Public Sector Labour Relations Transition Act, 1997
- Employment Standards Act
- Crown Employees Collective Bargaining Act, 1993
- Hospital Labour Disputes Arbitration Act
- Public Service Act
- Education Act
- Fire Protection and Prevention Act, 1887

As well as new Rules, the Board has created 23 new Information Bulletins and published hundreds of new forms. The changes are intended to shift onto the parties some responsibilities formerly performed by the Board, such as forwarding notices and delivering documents. After August 1, 1999, the Board will not process applications or documents which do not comply with the new Rules.

The published Rules of Procedure at Appendix "A", include a list of the various forms and Information Bulletins and, at Appendix "B", provides 43 charts specifying exactly what documents are required to support each type of application or response. These are easily available through the Board's offices and, given the extent of the changes, unions should obtain and review copies. Some of the amendments are summarized here.

CONTROLLING AND EXPEDITING PROCEEDINGS:

Waiving Hearings or Rules - The changes emphasize the Board's power to control the proceedings before it. The Rules repeat the warnings that the Board may decide applications without further notice if the Rules have not been complied with or if no response has been received (R. 39, 40), and that parties will be prohibited at hearings from introducing evidence or material facts not properly filed in advance (R. 42). The Board maintains the discretion to relieve against the strict application of the Rules where appropriate (R. 44).

Expediting Hearings - With respect to certain types of applications under the PSLRTA, 1997, the Education Act, the CECBA, and urgent applications under the LRA, 1995, the Board assumes broad powers to consult with the parties, hold pre-hearing conferences, unilaterally cancel or abbreviate hearings, and take other measures designed to expedite the proceedings (R. 76, 77).

"FILE" AND "DELIVER":

Each party is responsible for "delivering" all of its required documents to the opposing party and other interested parties, for "filing" them with the Board, and for certifying that the delivery has occurred as required. "Day" means Monday to Friday and excludes holidays and any other day the Board is closed (R.1).

FILING:

Number of Copies - Normally, with certain specified exceptions, a party must file 5 copies of its application with the Board (R. 10).

Date of Filing - Except for some applications in the construction industry ("CI"), the date of filing is the date a document is **received by the Board between 8:30 a.m. and 5:00 p.m.** Contrary to previous practice, the date of registering mail with the Post Office no longer counts as the filing date, a major change for outside of Toronto. Filings received after 5:00 p.m. will be deemed to have been made on the next day (R. 12, 13).

Manner of Filing - Rules 16, 17 and 18 must be read together to determine how to file a pleading. As before, certain documents cannot be filed by fax: (i) applications, (ii) responses (except responses to certification, termination of bargaining rights, interim order and strike or lockout applications), (iii) membership evidence and (iv) evidence that employees do not wish to be represented by a trade union (R. 17). Rule 16 prohibits filing by e-mail or Registered Mail, but allows "any other manner" of filing, subject to these fax limitations. If a document is faxed, no additional copy should go by ordinary mail (R. 19).

Time Limits for Filing After Delivery - Filing with the Board must occur within a specified number of days after an application has been delivered to the opposing side or the application will be terminated (R. 15). In particular, (i) strike and lock-out applications must be filed not later than 1 day after delivery; (ii) certification, termination and interim order applications must be filed not later than 2 days

after delivery; and (iii) all other applications must be filed not later than 5 days after delivery (R. 14, 15).

DELIVERING:

Manner of Delivery - Applications, responses, requests concerning non-construction certifications and terminations, interim orders, strikes and lock-outs, applications under the PSLRA, 1997, and grievance referrals in the CI may be delivered to the other parties by (i) hand delivery, (ii) courier; (iii) facsimile transmission; (iv) any other way agreed by the parties (R. 20). All other applications, responses and other documents may also be delivered by regular mail (R. 21).

Date of Delivery - A document is delivered on the date it is received by the other party if before 5:00 p.m., or the next day if after 5.00 p.m. Documents delivered by regular mail are deemed delivered on the 5th day after the document was mailed (R. 23).

APPLICATIONS:

Delivery - R. 25 provides general information about the documents that must be delivered to the Responding Party to commence an application. In addition, specific Rules apply for certifications, terminations and CI grievance referrals. The filings always include the completed application form, a blank response form, the appropriate notice of the particular application, and any required Information Bulletins. Specific applications may have additional delivery requirements, as detailed in the specific Rules and in Appendix "B".

Filing - R. 26 and R. 32 specify the contents of applications filed with the Board, including identifying information and the particulars of the claim and the remedy. Filed applications must also include a certificate verifying the date and manner of delivery of the application to the responding party.

RESPONSES:

Obligatory Response - A person receiving an application must file a response with the Board within the time mandated in order to participate in the proceeding (R. 28).

Delivery - Before, or at the same time as, filing its response with the Board, the responding party must deliver a copy of the response to the applicant and any other affected party (R. 28), that is, by 2 days after delivery of certification or termination applications (R. 74), by the day of the hearing in a s. 133 referral (R.163), by the terminal date if one is set by the Board, or by 10 days after delivery for all other applications. The contents of the Response are specified in R. 30 and, when filed, the Response must include a certificate of delivery (R.30, 32).

ONGOING OBLIGATIONS:

Delivering all Filings - A key change is Rule 33. Now, a party filing **any** document or correspondence with the Board **must at the same time deliver a copy** of the document or correspondence to all other parties. The copy filed with the Board must include a statement of the details of the delivery, i.e., the names and titles of the persons to whom the documents were delivered and "precise information" regarding the date, time and method of delivery.

The only documents excluded from R. 33 are documents disclosing whether a person supports or does not support a trade union (R. 34).

Pre-Hearing Document Disclosure - Another change which will have a major impact on practising before the Board is R. 36. Each party must now file with the Board not later than **10 days before the first date of hearing, 3 copies of all documents upon which it will be relying** and, at the same time, must deliver copies to each other party!

NEW RULES & THE CONSTRUCTION INDUSTRY

As always, the Rules for CI proceedings are a little different, accommodating the special circumstances which exist in that industry. Some of the highlights follow.

GRIEVANCE REFERRALS:

Fee Schedule - Previously, the Board arbitrated grievances in the CI for a nominal payment. The new Rules will impose substantial user fees, once these are confirmed. R. 144 requires payment of the following fees, plus GST: \$200.00 to file a referral, \$200.00 to respond, \$500.00 by each party for a hearing. The filing fees must be paid by certified cheque, credit card, or money order, at the time of first filing the referral, and by 10:30a.m. on the day of the hearing. Parties who do not pay cannot proceed or participate, and the Act allows the Board to order the non-participating party to pay the fees incurred if the proceeding party is successful.

Filings - R. 154 to 157 dictate the documents required to be delivered and filed in a s. 133 referral, including a notice to the employer, a form previously forwarded by the Board. Designated and/or accredited bargaining agents must be named in the referral form and the form must be delivered to the employer before, or at the same time as, it is filed with the Board. Responding Parties have 5 days to file a Request for Hearing, with the appropriate fee, which form must be forwarded to the Union (R. 158, 159), although no Response is required until 9:30a.m. on the day of the hearing.

No Hearing - Where no one responds, the Board may decide, on the basis of the Applicant's undisputed facts, to grant the remedies sought without a hearing, or to hear only the quantum of

damages (R. 160-162). The Board may expedite proceedings under R.76 and 77 (e.g., pre-hearing conferences, limit the evidence, cause examination of records, etc.) when arbitrating under s. 133 (R. 164).

Application of New Rules - The new Rules, minus the fee schedule, will apply to those grievances filed after August 1, 1999. The fee schedule will come into force after it is confirmed by Regulation, possibly also in August.

CERTIFICATIONS AND TERMINATIONS:

Filing and Delivery - In the CI, R. 127 to 142 replace the ordinary certification and termination rules. In the CI, these applications may be delivered to the opposing party by fax, as well as by priority courier, hand delivery, or other agreed manner (R. 128). The applicant has 2 days after the date of filing to effect delivery on the employer and to then file its Certificate of Delivery with the Board.

Date of Application - The date the Board receives the application, or the date on which it is sent by priority courier, is the date of the application (R. 129).

Contents - With certification proceedings, the number of documents to deliver to the employer has increased and includes several Information Bulletins (R. 133). Similarly, in termination applications, the objecting employees must deliver a number of documents to the trade union, preferably to "the senior union official responsible for the bargaining unit" (R. 139, 140). Responding Parties to both certifications and terminations have 2 days to file their responses and other required documentation, the contents of which are outlined in the Rules (R. 135, 141).

Non-Construction Employers - R. 142 requires that, where the termination application is under s. 127.2 of the Act and seeks to terminate ICI bargaining rights held with a non-construction employer, the applicant must give notice to the designated bargaining agents.

What do these changes mean to the unions and their representatives? The largest impact will be increased paperwork when initiating an application and considerably more preparation and disclosure well in advance of any hearings. The new Rules appear to put an end to the days of exchanging documents and facts in the cafeteria on hearing day!

WHAT'S NEW?

At Koskie Minsky:

New Litigation Lawyer: Nancy Kryzanowski

Communications' Facilities: Do you want your copy of "TALKING

UNION" by e-mail? Or by facsimile transmission? Please let us know by e-mailing or faxing Elizabeth Mitchell (fax #416-977-3316; emitchell@koskieminsky.com).

In The Legislature:

New Minister of Labour: Chris Stockwell, Conservative MPP for Etobicoke Centre. Stockwell has been in politics since 1982. As Speaker of the House from 1996 to 1999, he made several decisions unpopular with his own party. Since his appointment to Cabinet, Stockwell has been quoted as saying he wants to "mend fences" and "create a better relationship" with the labour relations community. Time will tell! (See Toronto Star articles, July 12 and 23, 1999.)

At The OLRB:

New Rules, Forms and Information Bulletins, effective August 1, 1999. Highlighted in this issue of TALKING UNION. Copies available from the Board at 505 University Avenue, 2nd Floor, Toronto, or by calling the Board's Coordinator of Client Services, Esther Foorer, at (416) 326-7474. (Not yet available by e-mail.)