



Labour BOARD

Nova Scotia

DISCUSSION DOCUMENT

A Review of the Labour Board's Policy on Casual Employees

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Written Submissions Due By: January 31, 2018

Send Submissions To:

Labour Board (Nova Scotia)

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INTRODUCTION

In 2011, the Labour Board announced plans to review its policy on casual employees. In 2015, the Board reconfirmed its plans to review its policy on casual employees.

The Board's current default position is that casual employees - as described by the Labour Board policy and its jurisprudence - are not included in bargaining units unless the parties agree to their inclusion. When an application is made to the Labour Board for an "all employee" unit; (i.e. including casuals), the Board has said it will consider that application on a case by case basis. To date, the Board has certified casuals by consent, but has not had to render a decision including casuals where both parties did not consent.

STAKEHOLDER QUESTIONS

The Board is seeking your input in relation to its current policy and practice of excluding casuals (in the absence of consent) from bargaining units.

The Board seeks your input on the following questions:

1. Is the current presumption against the inclusion of casuals appropriate?
2. If not, should "all employee" units be the preferred /default bargaining unit?
3. If the presumption should be changed to include casuals, how should the Board determine membership support and voting eligibility of casual employees in the event that it finds it appropriate to include casuals?
 - i. Is it appropriate to consider "employment" and being "on shift" as one and the same for casuals?
 - ii. If so, is the "double date" rule (i.e. working on the date of application and the date of the vote) adequate to determine employee wishes?
 - iii. Is the "snap shot" rule (i.e. working on the date of the vote) more appropriate to determine employee wishes?
 - iv. Are there more appropriate criteria to demonstrate employee status (such as a sufficient workplace connection/ongoing monetary

interest demonstrated through a history of work) rather than actually being on shift which the Board should consider?

4. The [Labour Board policy](http://novascotia.ca/lac/labourboard/procedures/partcasual.asp) (<http://novascotia.ca/lac/labourboard/procedures/partcasual.asp>) and case law currently differentiates between a “regular part time” employee and a “casual employee” based on several criteria including having a regular schedule (vs. call in); whether there is a “regularity and continuity” of employment; the option of refusing assignments; and the number of hours in a test period.
 - i. Are these appropriate criteria?
 - ii. If an employee has a demonstrated work history over a given test period (demonstrating a sufficient workplace connection/ongoing monetary interest), should s/he be considered “regular part time” (or some other new category) even though there may be other “casual” indicia i.e. no regular schedule and no guarantee of hours (which may be hallmarks of precarious employment)?
5. Are there any industry specific considerations the Board should consider?
6. Are there other issues/questions the Board should be considering?
7. Is further consultation necessary?