



This Guide has been written to give you general information about the processes of the Labour Board (the “Board”). This Guide is meant to be used as a resource only to help you understand your rights and responsibilities and the Board’s processes. It does not provide legal advice and it does not replace the various statutes.

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# Guide to the Labour Board

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## Contact Information

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## General Information about the Labour Board and the Hearing Process

For definitions of terms in this section, please see [Definitions](#).

The Labour Board is an independent body that is similar to a court. The Board handles applications, complaints and appeals relating to various workplace laws including the *Labour Standards Code*, the *Occupational Health and Safety Act*, and the *Trade Union Act*.

### Who we are

The [Chair, Vice-Chairs, and members](#) of the Labour Board are appointed, based on their knowledge and experience, by the Governor in Council. The Chair holds a full-time position and the Vice-Chairs and members serve on a part-time basis. Although members are selected with backgrounds in either management or labour, they swear to be impartial as part of their oath of office.

Generally, the Board sits with a neutral chair and an equal number of members from labour and management. In some cases the Chair or a Vice-Chair may sit alone. Hearings may be held either in-writing or in-person.

Labour Board staff will provide you with information. However, they do not give legal advice. For legal advice, you may wish to contact a lawyer.

### **Workplace Laws under the Board's Authority**

- [Trade Union Act](#) and [Trade Union Act Regulations](#)
- [Civil Service Collective Bargaining Act](#)
- [Highway Workers Collective Bargaining Act](#)
- [Teachers' Collective Bargaining Act](#) and [Teachers' Collective Bargaining Act Regulations](#)
- [Labour Standards Code](#) and [General Labour Standards Code Regulations](#) and [Minimum Wage Orders](#)
- [Occupational Health and Safety Act](#) and [Occupational Health and Safety Administrative Penalties Regulations](#) and [Occupational Health and Safety Appeal Panel Regulations](#)
- [Public Interest Disclosure of Wrongdoing Act](#) and [Public Interest Disclosure of Wrongdoing Regulations](#)
- [Labour Board Act](#)

### **Filing an appeal, complaint or application**

[Appeal, complaint, and application forms](#) are available on the Board's website or by calling the Board. Regular office hours are between 8:30 a.m. and 4:30 p.m.

Once the appeal/complaint/application has been received and reviewed by Board staff, a copy will be sent to the other parties. The Board will also send a letter acknowledging receipt. Incomplete forms may cause delays. Parties may also be asked at any time to give more information, and this information will be shared with the other parties. This could include written submissions which are statements from the parties explaining their case. The Board will set timelines to provide this additional information.

The Board may also give Intervenor status to other parties who have a legal reason to be involved in the case.

If you want to find out the status of your case, you may phone the Board's office. The time it takes to complete a case varies, depending partly on how complicated the issues are.

If your contact information changes at any time, you should contact the Board's office right away to provide your current address or telephone number.

### Case Management Conference

The Case Management Conference is a meeting (in person or by telephone) where decisions are made about how the case will be handled. It may be chaired by the Chair, Vice-Chair, or Board staff. If a party does not attend the conference, decisions could be made that affect them without their input. A Case Management Conference could last for an hour, or as much as half a day. Any agreements, decisions or rulings made at the Case Management Conference must be followed. For further information about Case Management Conferences, please see the [CMC Procedural Statement](#).

The types of decisions that may be made at the Case Management Conference include:

- Who the parties are,
- Whether anyone else should participate in the hearing (for example, Intervenors),
- What the parties agree and disagree about,
- Whether further information is needed,
- Whether mediation or settlement is an option,
- Whether an in-person or in-writing hearing is best, and
- Setting a hearing date(s).

### Other Options for Resolving Cases

Parties may agree to use a settlement conference or mediation to settle a case with the help of the Board or its staff instead of having a formal and costly hearing. If the matter does not get settled, a hearing will be held. The information shared during the mediation or settlement conference is confidential and cannot be raised at the hearing unless the parties agree.

### Hearings

#### Scheduling In-Person Hearings

Hearing dates are generally set during the Case Management Conference. Where no Case Management Conference takes place, the Board will contact the parties to set a date for the hearing. If the parties cannot agree on a date, the Board will set one. The Board normally sends out a Notice of Hearing at least two weeks before a hearing to confirm the date, time, and place. As long as notice of the hearing has been provided to all of the parties, the Board may carry out a hearing even if one of the parties is not present.

Hearings usually take place in Halifax or in Sydney. The Board will consider requests for hearings elsewhere in the Province if there are special circumstances.

Normally, hearing hours are between 9:30 a.m. and 4:30 p.m. Hearings are open to the public. Hearings are not recorded.

#### Adjournments

If you cannot attend your hearing, you must make a written request for an adjournment from the Board and state the reasons why you cannot attend. This should be done as far in advance of the scheduled hearing date as possible. Before you do this, you must ask the other party whether they'll agree to the adjournment and let the Board know whether they have agreed or not. The Board will decide whether to grant or to refuse your request. Adjournments should only be requested if something comes up that you did not expect or could not control, which makes it impossible for you to attend. If you cannot attend and do not advise the Board, or if an adjournment is not granted, the hearing may proceed on the scheduled hearing date, and your case will be decided by the Board at that time without your input.

#### Preparing for a Hearing

To prepare for a hearing you should collect your evidence. Evidence could include the details, background, and other material you want to present to the Board so that it may understand your case. You may use many kinds of information as evidence. Evidence could include testimony given by witnesses or documents that show what happened (like letters, payroll records, etc.).

The Board will accept more types of evidence than do courts, but will decide how much importance to give to it.

If you are preparing for a hearing yourself, you may look up policies, procedures, and decisions on the [Board's website](#). You may also want to make notes to help you argue your case. This could include questions for your witnesses and the other party's witnesses to help support your story.

**You must collect all of the information and documents you need to present your case at the hearing. The Board does not present the case for either you or the other party.**

### *Subpoenas*

#### *Witnesses*

Some witnesses may not want to testify at the hearing, or may have trouble getting time off work to come. The Board may help by issuing a subpoena if you do not have a lawyer to prepare one for you. A subpoena is a legal document that says the person must come to a hearing at a particular date, time, and place. Requests for subpoenas should be made at least three weeks in advance of a hearing.

#### *Requesting a subpoena for a witness*

- Apply in writing to the Board — you may deliver this by hand, by fax, by e-mail, or in the mail
- Include the name and address of each witness to be subpoenaed as well as the reasons why this witness is relevant.

You are responsible to have the subpoena served on the witness, including paying any costs and witness fees involved in serving the subpoena. You must bring the original subpoena to the hearing to show that it has been served properly. You must also bring the original affidavit of service. You may want to get legal advice on the cost of serving a subpoena and how to serve it properly. You may be able to get this information free by calling the [Legal Information Society of Nova Scotia](#) at 455-3135 or 1-800-665-9779.

#### *Obtaining documents that you do not have*

The Board may order a person to hand over documents that they have and that you need for the hearing by issuing a subpoena. The Board may order the person to send the original documents and may order them to send it directly to the Board's office or bring it to the hearing.

#### *Requesting a subpoena for a document*

Follow the same process as applying to subpoena a witness. Include the name and address of the person who has the document(s), list the document(s) you need, and why they are relevant to the case.

The other party may challenge the subpoena by claiming that the evidence is confidential or not relevant. The Board may not issue a subpoena if it does not think the evidence is relevant.

### *Who comes to a hearing and where do they sit?*

**Board** - The Board members sit at the head table, with the Chair/Vice-Chair seated in the middle.

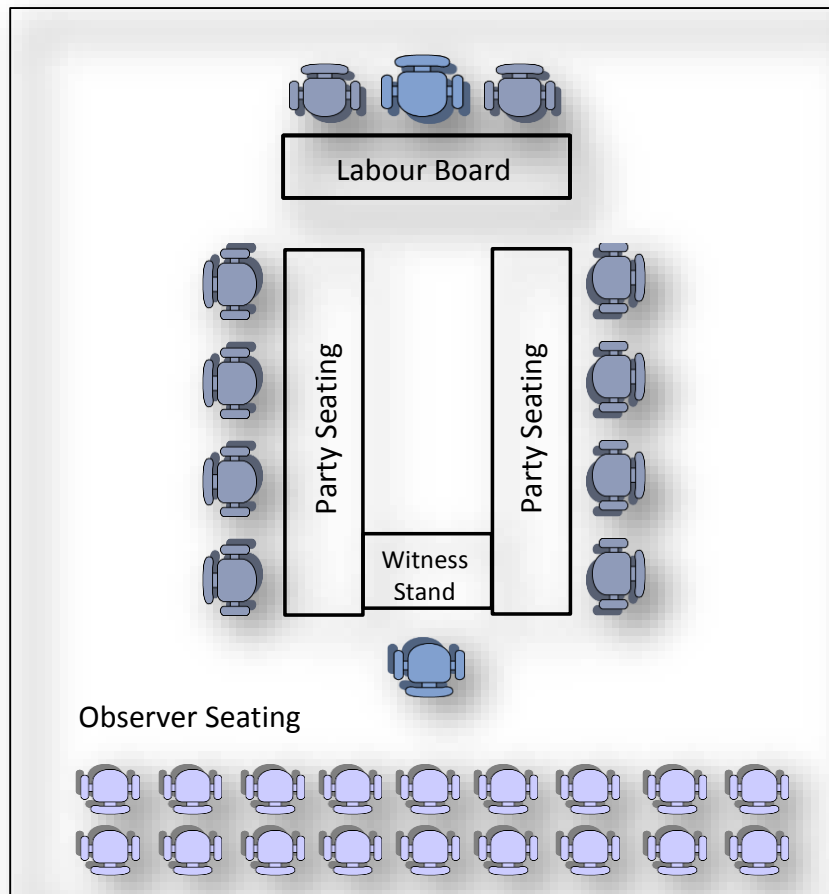
**Employer** - The employer sits on one side of the hearing room, across from the employee.

**Employee/Union** - The employee or union sits on the other side of the hearing room, across from the employer.

**Intervenor** - The Board may give intervenor status to other parties that have a legal reason to be involved in the hearing. Where they sit will depend on the case.

**Lawyers and Representatives** - Lawyers and representatives sit beside the parties they represent.





**Witnesses** - Witnesses sit at the witness stand when they give their testimony. The witness stand is generally directly across from the head table. Witnesses choose whether they will swear on a holy book or affirm to tell the truth before they give evidence. The Board will decide whether or not witnesses may stay in the hearing room when they are not testifying. If they stay, they sit with observers at the back of the room. If not, they wait in a waiting room until when they are needed.

**Observers** - The Board's hearings are open to the public. Observers sit in an area at the back of the hearing room.

*What happens at the hearing?*

Hearings usually run in this order:

- The Chair explains what will happen at the hearing.
- The parties make their opening statements which are a summary of the issues and the parties' positions, a summary of the evidence they will present and the outcome they are looking for. Usually, the party who filed the appeal, complaint, or application makes their opening statement first. They also present their case first once all of the opening statements are made.

- The parties give their evidence and call their witnesses. Witnesses swear an oath to tell the truth or make a solemn affirmation. All parties or those who represent them may cross-examine the witnesses. The Board may accept hearsay evidence; however, it relies less on this type of information. During the hearing, the Board may ask questions.
- The parties make their closing arguments explaining why they believe the Board should agree with their position. Usually the party who filed the appeal, complaint, or application goes first. The other party goes next, and finally the first party has an opportunity to respond to the other party's closing argument.
- The Chair closes the hearing.

### How long does the hearing take?

Most hearings are scheduled to last a full day, with short breaks mid-morning, mid-afternoon and for lunch. The parties may also ask the Chair for a brief break if needed. Some hearings will take longer than a full day; others may take only a half-day or less.

### Do I need a lawyer to represent me?

Each party may represent themselves at the hearing, or have a lawyer or someone else represent them. The Board will give you a fair hearing whether you represent yourself or have someone else represent you. The process can be complicated, and you may want to bring someone who understands the law to help you. This is not necessary, but may be valuable. The Board does not provide this help or pay the costs for it.

If you decide to hire a lawyer, your lawyer must notify the Board in writing that they will represent you. All further contact regarding the case will be through your lawyer and not you. Your lawyer should do this right away so that there are no delays.

**Board staff do NOT give legal advice.**

## Decision

The decision from a hearing is usually given in writing at a later date. The Board tries to have most decisions issued within three (3) months of the hearing. In some urgent cases, a decision will be given at the end of the hearing with reasons for the decision given later. The decision will be sent to all parties. Written decisions of the Board are a matter of public record and are also posted on online case law databases, for example <http://www.canlii.org/en/ns/>.

## Appeals of Board Decisions

Parties may ask the Board to reconsider decisions it has made under the *Trade Union Act*. Other decisions of the Board and those of the Review Officer (Duty of Fair Representation) are final and binding on all parties and not open to review by the Board. However, either party may appeal or request permission to appeal a decision to the courts. They may do this if they feel that the Board has applied the law incorrectly or has acted outside its authority. Deadlines to appeal may vary, so you should check with Board staff or the courts. You may want to get legal advice if you decide to file an appeal to the courts.

### TIPS FOR PARTICIPATING IN A HEARING

#### *General Guidelines:*

- You must be in the hearing room when the hearing is to start. Your Notice of Hearing will tell you when the hearing is to start. We suggest you come about 30 minutes early to find parking, sign in, find the hearing room, and deal with any delays like traffic and the weather.
- One person speaks at a time.
- All parties address one another with respect.
- Hearings at the Labour Board are less formal than a court hearing. Therefore, you may wear what you are comfortable in. You do not have to dress up.
- There is no food or drink allowed in the hearing room except water. Please do not chew gum in the hearing room.
- All cell phones, blackberries, and other electronic devices must be turned off.
- All parties are asked not to use scented products as the Board's offices are a scent-free environment.

#### *Be prepared:*

- Make a list of your key points.
- Make notes during the hearing to help you keep track of the issues.
- Make sure you have some response to each issue that comes up.
- You may research previous decisions of the Board at <http://novascotia.ca/lae/databases/> or at <http://www.canlii.org/en/ns/>

#### *Stay calm*

You are at the hearing to give evidence and show the Board that this evidence will lead it to find in your favor. Your job is to question the other party's evidence to make sure it is true and accurate. Presenting your questions and arguments logically and respectfully will help the Board understand them.

#### *Answer the Board's questions as directly as possible*

Take the time you need to look at your notes and think about what you need to say before you answer a question.

#### *Make written notes of what the other party and the witnesses say during the hearing*

Your notes will help you question the other party and the witnesses. The notes will give you something to refer to when you answer the other party's points as they give their evidence and, if you presented your case first, their closing arguments.

#### *Use your questions to uncover anything that is inconsistent or inaccurate in the testimony of the parties and witnesses*

The Board needs to believe that it can trust the evidence that is presented. You have a better chance of proving your case if you can show the Board that it can trust the evidence you give more than the evidence the other party is giving, including the evidence from their witnesses. You do not need to show that a party or their witness is lying. You simply need to show that the evidence that supports your case is more likely to be reliable than the evidence against you.

*Stay away from hearsay evidence as much as possible*

The Board does not give much weight to hearsay evidence. Hearsay evidence is either a statement given by a witness who did not see or hear the event in question, but heard about it from someone else, or a written statement given by a witness who is not at the hearing and so cannot be cross-examined. As a general rule, remember that evidence that cannot be tested by the Board or the other parties through questions or cross-examination will not be given as much weight in the Board's decision.

**Getting Related Information**

In addition to contacting the Labour Board, there are a number of agencies and government divisions that may provide information on workplace laws.

**PROVINCIAL SERVICES CONTACT INFORMATION**

Labour Standards Division  
<http://novascotia.ca/lae/labourstandards/>  
 1-888-315-0110 Toll free

Occupational Health and Safety Division  
<http://novascotia.ca/lae/ohs/>  
 1-800-952-2687 Toll free

Conciliation Services  
<http://novascotia.ca/lae/divisions/labourservices.asp>

Pension Regulation Division  
<http://novascotia.ca/lae/pensions/>

Apprenticeship Training and Skill Development  
<http://www.nsapprenticeship.ca/>  
 1-800-494-5651 Toll free

Nova Scotia Human Rights Commission  
<http://humanrights.gov.ns.ca/>  
 1-877-269-7699 Toll free

Workers' Compensation Board  
<http://www.wcb.ns.ca/>  
 Halifax 1-800-870-3331 Toll free  
 Sydney 1-800-880-0003 Toll free

Workers' Advisers Program  
<http://novascotia.ca/lae/wap/>  
 Halifax 1-800-774-4712 Toll free  
 Sydney 1-800-890-6786 Toll free

Workers' Compensation Appeals Tribunal  
<http://www.novascotia.ca/wcat/>  
 1-800-274-8281 Toll free

Legal Information Society of Nova Scotia  
<http://www.legalinfo.org/>  
 1-800-665-9779 Toll free

**FEDERAL SERVICES CONTACT INFORMATION**

Federal Labour Program  
<http://www.labour.gc.ca/>  
 1-800-641-4049 Toll free

Canada Industrial Relations Board  
<http://www.cirb-ccri.gc.ca/>  
 1-800-575-9696 Toll Free

Employment and Social Development Canada  
<http://www.esdc.gc.ca/>  
 1-800-622-6232 Toll Free

Canadian Human Rights Commission  
<http://www.chrc-ccdp.gc.ca/>  
 1-888-214-1090 Toll Free

## Applications and Complaints under the Trade Union Act

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For additional details, please see [General Information](#) about the Labour Board and the Hearing Process; for definitions of terms in this section, please see [Definitions](#).

### What the Trade Union Act Does

The *Trade Union Act* sets out the rules that regulate the relationships between unions and employers. There are also other acts that deal with these relationships, such as the *Civil Service Collective Bargaining Act*.

The *Trade Union Act*:

- Gives workers in Nova Scotia the right to belong to a trade union and take part in union activities.
- Gives employers the right to join an employers' organization and take part in its activities.
- Sets out rights and responsibilities for:
  - Employees who belong to unions or want to belong to them,
  - Unions, and
  - Employers.
- Sets out the responsibilities for:
  - Board members,
  - Arbitrators, and
  - Conciliation Officers.

In addition to the *Trade Union Act*, there are other laws that employers and unions must follow. Many unions and employers' associations also have rules and a constitution that govern what they do within their organizations.

### Employees Covered by the Trade Union Act

The *Trade Union Act* covers most employees who work in Nova Scotia and who belong to a union or are eligible to join one.

However, there are some exceptions. The *Trade Union Act* does not cover:

- Provincial civil servants, teachers and some other public employees, who are covered by specialized labour legislation. However, some aspects of the *Trade Union Act* apply to some of these employees.
- Employees whose workplace is regulated by the federal government, such as banks, airlines, and shipping companies.
- Anyone who is appointed to a job by an Order in Council, such as a person who is appointed to sit on the Labour Board.
- Anyone who does not meet the definition of "employee" under the *Trade Union Act*, such as a business owner or manager.

### *Powers of the Board under the Trade Union Act*

The Board does not typically deal with conciliation, grievance arbitration, negotiating a collective agreement, legal work stoppages, etc.

The *Trade Union Act* gives the Board the authority to investigate and decide on the following matters:

- **Application for certification** – A union applies to represent the employees at a workplace. The Board holds a representational vote to find out if the employees want to be represented by the union. If the majority wants the union, the union is certified and has the right to bargain for this bargaining unit. A bargaining unit may include all the employees in one or more job classifications or all the employees at a workplace or it may be a smaller group of employees who share a community of interest with each other.
- **Decertification or revocation** – Employees apply to end the union’s right to represent them. The Board usually orders a vote to let the employees decide. The vote is conducted by Board staff.
- **Accreditation** – An organization applies to represent a group of unionized employers in the construction industry.
- **Failure to bargain complaint** – A union or employer complains that a party refuses to meet, is improperly slowing down a collective bargaining process and/or NOT making a real effort to reach a collective agreement. They file a complaint with the Minister of Labour and Advanced Education. The Minister may ask the Board to resolve the complaint.
- **Unfair labour practice complaints** – A person or group complains about an unfair practice such as an employer firing an employee for trying to organize a union, or a union intimidating an employee into signing a union membership card.
- **First contract settlement application** – A union or an employer applies to the Labour Board for assistance in reaching a first collective agreement after certification of the union.
- **Illegal work stoppage or lockout complaints** – A union or an employer complains that the other party has stopped work illegally.
- **Duty of fair representation complaints** – A bargaining unit member complains that a union has acted in bad faith, in an arbitrary way or discriminated against them when it represented them. The duty of fair representation is usually concerned with the way a union handles a grievance. A union does NOT have to take a grievance to arbitration simply because that is what an employee wants.

For more details, see the [Information Sheet on Union Representation](#).

### The Collective Bargaining Process

Unions and employers usually negotiate wages, working hours, and working conditions. Because a union bargains with one voice for a group of employees, the process is called “collective bargaining.”

Steps during collective bargaining:

- The union and the employer negotiate to reach a tentative agreement.
- The union takes the agreement to the members.
- The agreement sets out the proposed terms and conditions of work and the relationship between the employer and the union.
- The members vote to accept or reject the agreement.

The agreement is called a “collective agreement.” Employers and unions may ask the Minister of Labour and Advanced Education for a conciliator to help them reach an agreement.

### *Failure to Bargain*

This is also called bargaining in bad faith. It happens when a party slows down, avoids, or stops the process of collective bargaining in an improper way, or does not try to agree in a reasonable way. When this happens, a party may file a complaint with the Minister of Labour and Advanced Education. The Minister may refer the complaint to the Board to take action.

### *First Contract Settlement*

First contract settlement is only available under Part I of the *Trade Union Act*. It is not available to the construction industry.

A newly-certified union or employer may apply to the Board for assistance in settling the first collective agreement. Conciliation sessions must be held before either party may make the application. After a party has applied for first contract settlement, the parties may agree on their own to have the agreement settled by an arbitrator. The arbitrator has 60 days to settle the contract. If the parties do not voluntarily choose arbitration, the Board will decide whether the collective agreement is to be settled by an arbitrator or the parties must return to conciliation. Either party may ask the Board to settle the first contract. In that situation, the Board must begin a hearing within 21 days of the party’s request, and settle the terms of the collective agreement within 45 days of starting the hearing.

Once a party has applied for first contract settlement, there cannot be a strike or lockout, and any ongoing strike or lockout must end.

### Labour Practices

#### *Fair Labour Practices by an Employer*

Employers can deal with employees who are not doing their jobs, for example, by disciplining them or ending their employment. However, the employer must have good reason or just cause

to take such an action. Employers have the right to communicate to employees any facts or opinions about their business as long as it does not intimidate or coerce an employee or interfere with their rights under the *Trade Union Act*.

Employers can also make any changes to the workplace they see as necessary to continue to operate the business. The Board may need to approve some of these changes. (See below.)

### **Freeze Periods that Protect Terms and Conditions of Employment**

There are two times when employers must get permission from the Board before they can change terms and conditions of work at a workplace:

- After a union has filed an application for certification, and
- After a union or employer has filed a notice to begin collective bargaining.

### **Unfair Labour Practices by an Employer**

The *Trade Union Act* gives employees and unions the right to take part in collective bargaining. If an employer does something to interfere with this process, the union or an employee may file a complaint with the Board. This is called an unfair labour practice complaint.

Some examples of unfair labour practices by an employer include:

- Interfering when employees are forming a union, or taking part in the process.
- Firing, suspending, transferring, or laying off an employee because they have joined a union or are about to become a member of one.
- Threatening an employee or promising them a benefit to keep them from joining a union.

### **Unfair Labour Practices by the Union**

The *Trade Union Act* also protects employers and employees from improper actions by unions. For example, an employer must agree before a union can recruit or organize employees at a workplace during working hours.

A union may not discriminate against employees when it deals with their membership in the union or when it disciplines members for something such as violating a bylaw. Unions may not punish or discipline members who refuse to do something that would violate the *Trade Union Act*.

The union must carry out its “duty of fair representation” as set out in the *Trade Union Act*.

### **Filing an Unfair Labour Practice Complaint**

Any person or organization may file a complaint with the Board if they believe that someone is doing something that takes away rights under the *Trade Union Act*. The complaint must explain the wrongdoing in writing, and must be filed with the Board within 90 days of when the wrongdoing took place.



### ***Duty of Fair Representation***

When a union is certified, it becomes the only party that can act on behalf of the employees in a bargaining unit. The *Trade Union Act* balances this with the duty of fair representation, which says that unions and union representatives may not represent the rights of members in a collective agreement in ways that are arbitrary, discriminatory, or in bad faith. Breaking the duty of fair representation is an unfair labour practice under the *Trade Union Act*.

For more details, see the [Information Sheet on Duty of Fair Representation](#).

### **Resolving Disagreements**

#### ***Grievance Arbitration***

Sometimes parties have disputes about the interpretation of their rights in collective agreements. Work must continue while the dispute is being resolved. A grievance process is used to resolve the dispute, and is usually set out in the collective agreement. The parties may file a grievance that explains their differences. If necessary, they may use an arbitration process. The parties may agree on an arbitrator or they may ask the Minister of Labour and Advanced Education to appoint one. The Board does not deal with grievance arbitration.

#### ***Legal Strikes and Lockouts***

If the parties in a collective bargaining process are not able to reach an agreement, certain steps must be followed before a legal strike or lockout can take place. For more information about these steps, please see the Department of Labour and Advanced Education's [conciliation services](#) website.

In collective bargaining, a legal strike or lockout is generally the last resort. The Board has little role in legal strikes or lockouts.

#### ***Illegal Strikes and Lockouts***

While a collective agreement is in force, employees are expected to work and the employer is expected to pay the employees and follow the terms of the agreement. Employees are not allowed to strike, and the employer is not allowed to lock the employees out while the agreement is in force. Strikes and lockouts are also not allowed if either party has applied to the Board for first contract settlement.

An employer, a union, or the employees in a workplace may sometimes disagree about work conditions, or take action that goes against the collective agreement. These disagreements may be solved by filing a grievance and, if necessary, having an arbitration hearing. An illegal strike or illegal work stoppage occurs when employees stop working while a collective agreement is in force or when first contract settlement has been applied for. An illegal lockout occurs when an employer stops employees from going on the work site while a collective agreement is in force or when first contract settlement has been applied for.

In either case, the union or employer may apply to the Board to have the other party stop the illegal action using a Cease and Desist Order. Staff of the Board immediately begins to try to find out what is causing the problem. If the Board decides that any party is violating the *Trade Union Act*, it may order them to stop the illegal action and return to work.

### Part II of the Trade Union Act (Construction)

Part II of *Trade Union Act* deals with labour relations in the construction industry, and contains separate procedures and definitions. The general rules of the *Trade Union Act* outlined above usually apply where there are no separate rules for the construction industry.

The construction industry is unique. Jobs tend to be short term. Skilled tradespeople move from project to project and often work for many employers and at many work sites around the province.

The process of becoming unionized and negotiating a collective agreement in Part II is different from the rules for other sectors in several ways, including that:

- A union's bargaining rights are based on a single craft or trade.
- Each craft or trade negotiates its own collective agreement.
- Unions are certified for either Cape Breton Island or Mainland Nova Scotia.
- The Board may certify a union using employee and union membership lists, rather than holding a certification vote.

### *Trades in the construction industry section of the Trade Union Act*

- Boilermakers, iron ship builders, forgers
- Bricklayers
- Carpenters
- Electricians
- Elevator constructors
- Sheet metal workers, roofers
- Heat and frost insulators
- Asbestos workers
- Bridge, structural and ornamental ironworkers
- Labourers
- Millwrights, machine erectors
- Operating engineers
- Painters and allied trades
- Plasterers, cement masons
- Plumbers, steamfitters and pipefitters, sprinkler installers, welders, HVAC/refrigeration technicians

### *Role of the Labour Board in the Construction Industry*

The Labour Board is set up to act quickly on matters like processing applications and complaints in the construction sector. The Board is often asked to decide:

- Whether a union can represent a group of tradespeople.
- Which union has the right to carry out certain duties on a construction work site.
- Whether a strike by a particular group of unionized workers is legal or illegal.
- Whether or not an action is an unfair labour practice.

### *Disputes over Jurisdiction*

A construction project may have one building trade on the site or several. It may use union or non-union workers depending on whether the contractors who have been hired are unionized. There are rules and practices that are understood between tradespersons and their employers about who should do which work assignments on a construction site. The union's constitution usually explains what type of work its members do—its "jurisdiction". For example, it is accepted practice that an electrician installs electrical fuse panels or that carpenters build the inside wall partitions on an apartment. However, when there are many unions on a large project, it may be necessary to define more clearly where the work of one union stops and that of another starts. When there are disagreements among the unions, a third party may need to decide who should do what work. There are several options to help a union settle such a disagreement:

- The parties may try to solve the problem on the work site with help from a labour relations specialist.
- The parties may hold a "mark-up meeting" to talk about which unions will do different parts of the construction work.
- The parties may refer the matter to an inter-union agency which is described in the "Plan for the Settlement of Jurisdictional Disputes in the Construction Industry, Including Procedural Rules and Regulations." The Plan is available from any building trade union or Council of Trade Unions.
- A party may refer the dispute to the Board. The Board will decide who will do the work as long as the Board has reasonable grounds to believe that the dispute could cause an illegal workstoppage on the project. Past practice is an important factor in deciding which union should do the work.

The Board usually follows the process below to deal with a dispute between unions on a construction site when the dispute is about which union has the right to do which jobs:

- Have a Board officer investigate the complaint right away.
- After an investigation, the Board may make a temporary order. The temporary order may or may NOT include reasons for the decision. One or more of the parties who made the complaint may appeal the temporary order and ask for a hearing.

Hearings are scheduled as soon as possible to avoid delays at the work site.

*For more details, see the [Information Sheet on Certification in the Construction Industry](#).*

## Filing an Application or Complaint

### *Complete the Form*

- You may print the form from the [Board's website](#).
- You may ask the Board staff to fax you a form or send one in the mail.

When you complete the form:

- Answer all of the questions. Use “n/a” if the question does not apply to you.
- Print rather than write, use a dark ink, and make sure you print clearly.
- Include a note on the form that tells us what you hope to get from making an application or complaint. You may include additional pages if you need more space than you have on the form.

Call or fax the Board’s office right away after you file your application or complaint if:

- Any of your contact information changes.
- You decide to have a lawyer represent you at the hearing.

### *Filing deadline*

The deadlines to file an application or complaint may vary based on the type of matter. Please check the *Trade Union Act* for specific deadlines for your situation.

The Board may extend the deadlines after hearing from all of the parties either in writing or in person. The deadlines will only be extended if there is a good reason for the extension. All requests to extend the deadlines must be made in writing to the Board.

## Appeals under the Labour Standards Code

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For additional details, please see [General Information](#) about the Labour Board and the Hearing Process; for definitions of terms in this section, please see [Definitions](#).

The *Labour Standards Code* establishes minimum employment standards, mainly for non-unionized workers. It deals with issues such as minimum wages, overtime, holidays and vacations, leaves from work, termination rights, etc. It also deals with the recruitment and hiring of temporary foreign workers. For more information, see the website of the [Labour Standards Division](#).

If you have a complaint about labour standards, the first step is to file a complaint with the Director of Labour Standards. An employee or in some cases an employer may file a complaint. Labour Standards staff tries to settle the complaint and, if necessary, carry out an investigation. If the complaint cannot be resolved, Labour Standards staff will send a written decision (a Director's Order) to both parties. If one of the parties disagrees with the Director's decision about the complaint, they may appeal to the Board. You may also appeal to the Board if there is no decision about your complaint after one month has passed from the date that a complaint was filed.

### Filing an Appeal

#### *Complete the Appeal Form*

- You may print the form from the [Board's website](#).
- You may ask the Board staff to fax you a form or send one in the mail.

When you complete the form:

- Answer all of the questions. Use n/a if the question does not apply to you.
- Print rather than write, use a dark ink, and make sure you print clearly
- Include a photocopy of the Director's decision that you are appealing with your form
- Include a note on the form that tells us what you hope to get from making an appeal. You may include additional pages if you need more space than you have on the form.

**IMPORTANT:** *If you are an Employer or Recruiter appealing an Order to pay, you must include with your appeal a certified cheque, money order or bank draft payable to the Labour Board in the gross amount of the of the Director's Order or \$2,000, whichever is less, or a bond in the full amount of the Director's Order.*

*This payment will be held in trust until a decision is reached.*

Call or fax the Board's office right away after you file your appeal if:

- Any of your contact information changes.
- You decide to have a lawyer represent you at the hearing.

### ***Filing deadline***

You have 10 working days after you get the Director's Order from the Labour Standards office to file your appeal. Working days include Monday to Friday only, and do not include week-day holidays such as Labour Day or Good Friday.

The Board may extend the appeal deadlines after hearing from all of the parties either in writing or in person. The deadlines will only be extended if there is a good reason for the extension. All requests to extend the deadlines must be made in writing to the Board.

### **Other Options for Resolving Cases**

After you file your appeal, you have other options if you do not want to go to a hearing. You may settle your appeal or you may withdraw your appeal at any stage of the process. The Case Management Conference will help you to identify your options.

### ***If you want to settle your appeal***

You may get help to settle your appeal from the Board or its staff. Where the parties agree and want this service, the Board will act as a neutral party to assist in settling the appeal.

### ***If you want to withdraw your appeal***

You must notify the Board in writing as soon as possible to let it know you wish to withdraw your appeal. Any monies held in trust by the Board will be released.

### **After the Hearing**

#### ***How do I follow the Board's Order?***

If the Board orders you to pay an amount, you must make your payment to the Labour Board 'in trust' for the employee/worker. You must make your payment by certified cheque or money order, and make any lawful deductions that apply to the payment. For example, an employer who is ordered to pay unpaid wages to an employee would have to make tax, CPP, and other payroll deductions.

#### ***Who enforces the Board's Order?***

If you do not comply with the Board's Order, it will be enforced by the Labour Standards Division.

#### ***What if I want to appeal the Board's Order?***

Decisions of the Labour Board can be appealed to the Nova Scotia Court of Appeal.

## Appeals under the Occupational Health and Safety Act and under the Occupational Health and Safety Administrative Penalties Regulations

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*For additional details, please see [General Information](#) about the Labour Board and the Hearing Process; for definitions of terms in this section, please see [Definitions](#).*

*Note: The Department has consulted with stakeholders, and further changes to OHS Administrative Penalties Regulations and OHS Act are planned in the future.*

The *Occupational Health and Safety Act* (OHSA) is a law that protects the health and safety of employees in the workplace. The OHSA is based on the principle that all parties in a workplace, for example employees, employers, owners, and contractors, share the responsibility for the health and safety of persons at the workplace.

The Occupational Health and Safety Division of the Department of Labour and Advanced Education does inspections, investigates complaints and issues orders regarding health and safety in the workplace. Employees who feel that they have been treated unfairly by their employer or union because of an occupational health and safety issue may complain to the Division. The Division may also issue administrative penalties (fines) to employers and employees, and other workplace parties such as contractors, who have been found to violate the OHSA.

The Labour Board hears appeals of these decisions, orders and penalties issued by the Occupational Health and Safety Division.

### Filing an Appeal

You may file an appeal with the Labour Board after you get a written order and/or decision from the following:

- The Director of Occupational Health and Safety (OHS Director).
- An Occupational Health and Safety Officer (OHS Officer) about a discriminatory action claim.
- The Administrator (OHS Administrator) about an administrative penalty.

### Complete the Appeal Form

- You may print the form from the [Board's website](#).
- You may ask the Board staff to fax you a form or send one in the mail.

When you complete the form:

- Answer all of the questions. Use “n/a” if the question does not apply to you.
- Print rather than write, use a dark ink, and make sure you print clearly

- Include a photocopy of the OHS Officer/Director/Administrator's order that you are appealing with your form
- Give your reasons for the appeal.

Call or fax the Board's office right away after you file your appeal if:

- Any of your contact information changes.
- You decide to have a lawyer represent you at the hearing.

### ***Filing deadline***

You have 21 calendar days after you get the order and/or decision from the Occupational Health and Safety Division to file your appeal. The Labour Board does not have the authority to extend the 21-day limitation period.

### **Other Options for Resolving Cases**

After you file your appeal, you have other options if you do not want to go to a hearing. You may settle your appeal or you may withdraw your appeal at any stage of the process. The Case Management Conference will help you to identify your options.

#### ***If you want to settle your appeal***

You may get help to settle your appeal from the Board or its staff. Where the parties agree and want this service, the Board will act as a neutral party to assist in settling the appeal.

#### ***If you want to withdraw your appeal***

You must notify the Board in writing as soon as possible to let it know you wish to withdraw your appeal.

If you withdraw the appeal, you will also have to follow the Order of the OHS Director, Officer or Administrator and pay any amount that has been ordered, or take other action that has been ordered.

### **After the Hearing**

#### ***How do I follow the Board's Order?***

If the Board orders you to pay any outstanding wages or pay, for example relating to a discriminatory action appeal or work refusal, you should either make a payment directly to the employee and provide confirmation in writing to the OHS Officer originally involved in the case or contact the OHS Officer to discuss how to pay the Board's Order. You must comply with the order/decision and make the payment in the amount and within the timelines determined by the Board.



If the Board orders you to pay an amount in relation to an administrative penalty, you must make your payment payable to the Minister of Finance. You must make your payment by certified cheque or money order and send it to:

Accounts Receivable, CSU-Finance  
Department of Natural Resources  
PO Box 698  
Halifax, NS B3J 2T9

### ***What if I want to appeal the Board's Order?***

Decisions of the Labour Board can be appealed to the Nova Scotia Court of Appeal with permission of that Court. There are deadlines for filing appeals to the Nova Scotia Court of Appeal. More information on this process may be found on the Courts of Nova Scotia website at <http://www.courts.ns.ca>.

### ***Who enforces the Board's Order?***

If you do not comply with the Board's order for unpaid pay, it will be enforced by the OHS Director. The OHS Director may request the Director of Labour Standards to enforce a final decision or order of the Board. If you do not comply with the Board's order regarding payment of an administrative penalty, it will be enforced by the Nova Scotia Department of Finance.

## Complaints under the Public Interest Disclosure of Wrongdoing Act

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For additional details, please see [General Information](#) about the Labour Board and the Hearing Process; for definitions of terms in this section, please see [Definitions](#).

The *Public Interest Disclosure of Wrongdoing Act* gives government employees a way to report their concerns about problems in government, and protects them from any actions taken against them for making a report. These actions are commonly called reprisals.

A “reprisal” could be any of the following actions that you believe was taken against you because you asked for advice about a disclosure, made a disclosure or cooperated in an investigation of a disclosure:

- A disciplinary measure,
- A demotion,
- Termination of employment,
- Any measure that negatively affects an employee’s employment or working conditions, or
- A threat to do any of the above.

### Filing a Complaint

#### *Complete the Complaint Form*

- You may print the form from the [Board's website](#).
- You may ask the Board staff to fax you a form or send one in the mail.

When you complete the form:

- Answer all of the questions. Use n/a if the question does not apply to you.
- Print rather than write, use a dark ink, and make sure you print clearly
- Include details of the reprisal. You may also attach any document that you feel supports your complaint
- Include a note on the form that tells us what you hope to get from making the complaint. You may include additional pages if you need more space than you have on the form.

Call or fax the Board’s office right away after you file your complaint if:

- Any of your contact information changes.
- You decide to have a lawyer represent you at the hearing.

#### *Filing deadline*

You have six (6) months from the date of the alleged reprisal to file your complaint.

The Board may extend the filing deadline after hearing from all of the parties either in writing or in person. The deadlines will only be extended if there is a good reason for the extension. All requests to extend the deadline must be made in writing to the Board.

### **Other Options for Resolving Cases**

After you file your complaint, you have other options if you do not want to go to a hearing. You may settle your complaint or you may withdraw your complaint at any stage of the process. The Case Management Conference will help you to identify your options.

#### ***If you want to settle your complaint***

You may get help to settle your complaint from the Board or its staff. When the parties agree and want this service, the Board will act as a neutral third party to assist the employee and employer in settling the case.

#### ***If you want to withdraw your complaint***

You must notify the Board in writing as soon as possible to let it know you wish to withdraw your complaint.

### **After the Hearing**

#### ***Who enforces the Board's Order?***

If you do not comply with the Board's Order, it will be enforced by the Labour Standards Division.

#### ***What if I want to appeal the Board's Order?***

Decisions of the Labour Board can be appealed to the Nova Scotia Court of Appeal.

## DEFINITIONS

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**adjourn, adjournment** – delaying a hearing to reschedule it at a later time

**adjudicative board** – a body that acts like a court to deal with disputes. Government laws create adjudicative boards, like the Labour Board.

**affidavit** – a statement that is made in writing to be used as evidence. It is made by a person who is under oath or affirmation to a lawyer, a commissioner of oaths, or a notary public. An affidavit is treated as hearsay evidence unless the person who made the affidavit is at the hearing and may be cross-examined

**affirm** – to promise to tell the truth when testifying as a witness or making an affidavit

**affirmation** – a witness makes a solemn declaration in front of someone who has the authority to administer an oath

**appellant** – someone who files an appeal with the Labour Board

**applicant** – someone who files an application with the Labour Board

**application for accreditation** – an organization applies to represent a group of unionized employers in the construction industry

**application for certification** – a union applies to represent the employees at a workplace

**arbitrary representation** – actions or decisions made by the union when representing an employee that lack proper investigation or concern for the issue, or are reckless

**arbitration** – settling a dispute between labour and management by having a hearing where a neutral party or panel decides the outcome

**arbitration hearing** – a hearing conducted by a neutral person or panel to settle a dispute between two or more parties.

**arbitrator** – a neutral party or panel who hears each party's case in a dispute and makes a decision

**argument** – reasons you give to convince someone of something

**bargaining agent** – a union that is authorized by the Labour Board to bargain on behalf of employees in a bargaining unit or a person or organization that is authorized by the Labour Board to bargain on behalf of employers who are unionized

**bargaining in bad faith** – a union or employer refuses to bargain or improperly slows down a collective bargaining process or does not make a real effort to reach an agreement

**bargaining rights** – rights given to a trade union to represent a group of employees who work for a particular employer. These rights include negotiating with the employer about things such as wages, benefits, working conditions etc. or rights given to an employer's organization to represent a group of employers in the construction industry

**bargaining unit** – a group of employees who are represented by a union and who have the right to bargain collectively. A bargaining unit may include all the employees in one occupation or several occupations, or all the employees at one workplace

**burden of proof** – responsibility to show that your evidence supports your case and is more likely to be true than the other side's

**chair** – a person in charge of the Labour Board

**Cease and Desist Order** – an order from the Labour Board to have a party stop an illegal strike or lockout

**certified, certification, certifying** – a union is given the right by the Labour Board to act as the bargaining agent for a group of employees

**closing argument** – given after all the parties have given their evidence and cross-examined all the witnesses, the closing argument gives a summary of the evidence that you have made to the Board

at a hearing, shows how the law and the evidence prove that you are right and the other party is wrong, and states the decision you would like the Board to make

**collective agreement** – the agreement between a union and an employer that is reached through the process of collective bargaining. The agreement sets out the terms and conditions for work, including rates of pay and hours of work, benefits and other terms and conditions of employment

**collective bargaining** – the process of negotiation between a trade union and an employer to set wages, hours of work, and other working conditions

**common employer** – one person or one group of people who run two or more businesses. The businesses are “under common control and direction”, including directing the workforce

**community of interest** – a common interest or other similarities among employees that justify treating them as a group for collective bargaining purposes. Examples: work location, hours of work, working conditions, how employees are paid—hourly or salary.

**complainant** – someone who files a complaint with the Labour Board

**conciliation** – a process that involves a third party helping employers and unions reach a collective agreement when they are unable to do so through their bargaining

**conciliation officer** – a third party who helps employers and unions settle disputes and reach collective agreements, but has no authority to make decisions

**consider** – take into account when making a judgment or decision

**contest** – oppose, object to

**cross-examination** – questioning a witness in a hearing after the witness has testified. When you cross-examine the other party’s witnesses, you are trying to find out if a witness is telling the truth and to uncover any information that will help your case and weaken the other party’s case.

**decertification or revocation** – the union’s certification under the *Trade Union Act* is cancelled. The employees apply to the Labour Board to end a union’s right to represent them

**direct examination** – questioning your own witness. After your direct examination, the other party gets to cross-examine the witness

**discriminatory representation** – different representation because of characteristics that identify a person, such as their gender, race, religion, disability, sexual orientation, or because of favouritism

**disputes** – disagreements between employees, unions and management

**duty of fair representation** – the duty of a trade union to represent the rights of employees fairly in a bargaining unit under a collective agreement. Unions must not discriminate or act in bad faith or in an arbitrary manner when they represent employees

**employer’s organization** – an organization of employers that acts on their behalf to negotiate relationships between employers and unions

**evidence** – information, documents, and other things you present to the Board to prove that what you say is true. These may include such things as videotapes, records, affidavits, demonstrations, witnesses, and testimony from an expert

**exhibit** – a document or object that you give as evidence.

**failure to bargain** – a union or employer fails or refuses to bargain, improperly slows down a collective bargaining process or does not make a real effort to reach an agreement

**for just cause** – a good reason to take an action such as firing an employee

**frivolous** – a complaint, appeal, or application which clearly, at face value, has no potential to be successfully argued

**good faith bargaining** – both parties in a bargaining process make every reasonable effort to reach a collective agreement

**grievance** – a complaint or disagreement about the meaning of an article in the collective agreement, or the application of a collective agreement

**grievance arbitration** – settling a disagreement while a collective agreement is in place. A third party holds a hearing to decide the case

**hearsay evidence** – statements given by a witness who did not see or hear the event in question but heard it from someone else, or statements given in writing by a witness who is not at the hearing and so cannot be cross-examined. The Board does not give much weight to hearsay evidence

**in bad faith** – includes actions that are based on ill-will, hostility, or revenge toward a member of a bargaining unit

**in force** – in place and active

**illegal strike** – a strike by employees that goes against a collective agreement or the *Trade Union Act*

**illegal work stoppage** – employees stop work illegally or employer locks out employees illegally

**intervener** – a person or organization that is given permission by the Board to take part in a legal hearing

**jurisdiction** – the areas of law the Board has the authority to deal with.

**jurisdiction (union)** – the type of work a union’s members do, usually described in the union’s constitution

**lockout** – an employer stops work illegally and prevents employees from doing their work in order to pressure the union and employees to reach an agreement

**mark-up meeting** – a meeting held with a contractor and more than one construction trade union to decide which union will do certain work

**mediation** – a process for settling a dispute that is flexible, informal, and voluntary. In mediation, a neutral third party —the mediator —helps the parties work out a solution to their dispute. A successful mediation leads to a “settlement”

**motion** – a request made by a party to the Board at a hearing that asks the Board to order something. For example, a party might ask that the Board not accept a subpoena that was served incorrectly. A motion may be written or spoken at a hearing

**negotiation** – the act or process involved in discussing issues to reach an agreement

**notice to bargain** – a notice given by either the trade union or the employer to the other to start a collective bargaining process

**oath** – a statement a person makes to affirm or swear to tell the truth when giving testimony or making an affidavit

**open season** – a period of time when an application for certification or revocation may be made to the Labour Board, usually the last three months of a collective agreement. In a longer collective agreement, there are several open season periods

**opening statement** – what you say at the beginning of a hearing, before you give your evidence, to explain the issues in the dispute and summarize what evidence you will give to support your case.

The Board does not use what you say in your opening statement as evidence

**Order in Council** – a decree that is legally enforceable by the executive branch of government

**party** – a person or group that is part of a legal proceeding

**preliminary motion** – a request made to the Board before a hearing starts, that deals with introductory issues such as a late filing of an appeal or application.

**punitive damages** – compensation such as money that covers more than the cost of out of pocket expenses

**quasi-judicial** – refers to a person or body of people who have the authority to make legal decisions, similar to a judge or court of justice

**rebuttal** – the response one party gives after the other party makes its closing arguments. Only one party may give a rebuttal, and that is the party that presents its case first. If you give a rebuttal, you may challenge any new evidence that the other party gave in its closing arguments

- recognized agent** – a person who receives official correspondence on behalf of a business or company. The *Corporations Registration Act* allows you to serve a recognized agent with a document such as a subpoena
- re-examine or re-direct** – questioning your witness again after the other party has cross-examined that witness about new evidence that came up during the cross-examination
- representational vote** – the vote that the Labour Board holds to find out if the employees want to be represented by a union
- respondent** – the party who has an appeal or complaint filed against them
- revocation or decertification** – the union’s certification under the *Trade Union Act* is cancelled. The employees apply to the Labour Board to end a union’s right to represent them
- rules of evidence** – rules about whether a person making a legal decision will be given evidence to consider. The rules deal with what evidence may be given, when and how it may be given, and what purpose that evidence will serve
- sector** – the *Trade Union Act* sets out areas of the construction industry as sectors, such as house building and road building
- stay**- a postponement
- subpoena** – an order that requires a person to show up at a particular time and place to testify or provide documents at a hearing
- successor employer** – an employer who buys, leases, or receives the transfer of a business , and must follow the collective agreement or certification that is already in place
- successor rights** – keeping bargaining rights when a business changes hands
- testimony** – evidence that a witness tells the Board at a hearing under oath or affirmation
- transcript** – a word-for-word record of what was said at a hearing. Board hearings are usually not recorded or transcribed.
- trial de novo** – a hearing or trial where the Board hears all evidence as if it were new and decides on the facts and law as if there had been no earlier decision
- tripartite panel** – a hearing panel with a neutral chair and two Board members, one from the management and one from the labour side
- under common control and direction** – two or more businesses that are run by one person or one group of people
- unfair labour practice** – a practice that interferes with the rights that are provided by the *Trade Union Act* for collective bargaining, such as an employer firing an employee for trying to organize a union, or a union intimidating an employee because the employee made an application to decertify a union
- union, trade union** – an organization of employees whose purpose is to negotiate wages and working conditions with an employer. A trade union has a written constitution, rules, and by laws
- vexatious** – a complaint, appeal, or application which has been made for no good purpose, can lead to no possible good, or has been made in bad faith
- voluntary recognition** – a formal agreement between an employer and a union that is filed with the Minister that recognizes the union as the only bargaining agent for a unit of employees of the employer. Voluntary recognition usually works the same as certification
- wildcat strike** – an illegal strike that is not approved by the union and that violates the collective agreement or *Trade Union Act*
- witness** – a person who knows something about a case and is called to a hearing to provide information under oath or affirmation
- written authorization** – an employer in the commercial and industrial construction sector may give written authorization to the Nova Scotia Construction Labour Relations Association (NSCLRA) to bargain collectively on its behalf

## APPENDICES

- *Information Sheet on Union Representation*
- *Information Sheet on Duty of Fair Representation*
- *Information Sheet on Certification in the Construction Industry*



## INFORMATION SHEET ON UNION REPRESENTATION

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### a) Setting Up a Trade Union

A “trade union” or “union” is an organization whose purpose must include representing employees as a group (a bargaining unit) when they bargain with an employer. There must be at least two employees in a bargaining unit. The union must show the Board that it has:

- A constitution,
- Elected officers,
- Evidence of union membership, and
- Resolutions that have been properly passed that give the union representative the right to file an application to be certified as a bargaining agent.

A new union must also have a copy of meeting minutes to show that it has adopted a constitution and elected officers, and that employees have signed membership cards.

When employees decide they want to join a union, they may set up their own independent union or ask an established union to represent them. Many established unions are made up of locals across Nova Scotia and North America. A trade union must be independent of the employer to be certified under the *Trade Union Act*. Employees who form their own union must be careful NOT to invite their employer or allow the employer to have a say in how the union is organized.

You may find information about unions and locals on the internet and in the yellow pages of the phone book.

### b) How Unions Gain the Right to Bargain for Employees

There are two ways a union becomes the bargaining agent for a group of employees:

1. Certification – The union applies to the Board for an order that certifies the union as the employees’ bargaining agent.
2. Voluntary recognition – The employer signs an agreement with the union that recognizes the union as the employees’ bargaining agent. Once it is filed with the Minister of Labour and Advanced Education, it NORMALLY has the same effect as a certification order.

### c) Applying for Certification

Once a union has filed for certification, the Board reviews the application to make sure that there are no errors, it is signed, and the necessary documents are attached. Once the application is complete, a staff member from the Board delivers a copy to the employer. The staff member explains the certification process to the employer and gets information from them, including an employee list. The list is used for the representational vote. The employer must immediately post the Board’s notices to let the employees know:

- That an application has been filed,
- That a representational vote will take place, and
- When and where the vote will take place. Normally, the vote takes place at the work site(s).

The union becomes the bargaining agent if the representational vote shows that at least 50 per cent +1 of the employees who would make up the bargaining unit want the union to represent them.

During the entire process, the only people who know the names of the individuals who signed union cards are the union officials and the Board. The Board will NOT tell the employer, or any other person, at any time ever, the names of those who signed union cards.

### d) Holding a Representational Vote

The Board normally conducts representational votes by secret ballot, at the work site(s), during regular working hours. A Returning Officer from the Board conducts the vote, usually within five working days of when the Board received the application. The union and the employer each appoint a scrutineer. The

scrutineer's role is to observe the vote, to see that it is fair and proper, and that the employees are identified when they vote. To make sure neither the employer nor the union interferes in the vote, scrutineers should NOT talk to employees who are voting.

Representational votes occur in the following way:

- There is no proxy voting. Each employee must cast their own ballot during the voting times listed on the Board's notices. Failure to do so will result in missing their chance to vote. Voters are asked for their name, then given a ballot and instructions. For questions about the process, they may check the Board's notices at the work site or talk to the Returning Officer. Voters mark their ballot in a private area.
- Ballots are placed in a sealed ballot box.
- The Returning Officer asks the scrutineers to agree on the number of employees who voted and sign the papers provided by the Board to confirm this.
- The sealed ballot box goes to the Board's office. The votes are counted once all disagreements around the application are settled.

The Board also has the power to deal with complaints about voting being improperly influenced, for example where someone is intimidated to vote a certain way.

#### **e) Settling Disagreements About the Application**

Sometimes the union and the employer do not agree on who should be part of the bargaining unit. For example, they may disagree on whether a person deals with confidential information about labour relations, or has management responsibilities, or shares a community of interest with the other employees in a bargaining unit. The Board will settle these disagreements before the votes are counted.

#### **f) Why the voter's name is on the white envelope**

In Nova Scotia, the Board uses a two-envelope voting process to:

- Give each person who is affected by the union's application a chance to mark a ballot, and
- Allow the Board to remove the ballots of voters who will not qualify to be members of the bargaining unit before the votes are counted. These ballots are destroyed without being opened. The ballots of voters who qualify to be in the bargaining unit are then opened and the vote is counted by Board staff in the presence of all scrutineers.

#### **g) Who is not Included in a Bargaining Unit**

Employees will not be included if they:

- Work as a manager or supervisor and take part in hiring, firing, or disciplining employees;
- Have confidential information about labour relations;
- Are working as medical doctors, architects, dentists, lawyers, and engineers who are qualified to practice in Nova Scotia; or
- Do not have a community of interest with the other employees in the bargaining unit.

#### **h) Who is Included in the Bargaining Unit**

A union that applies to represent a group of employees will describe the workers it wants to include in the bargaining unit. For example, it may include "... all employees who work as mechanics, apprentices, and administrative office employees ..."

The employer may disagree. For example, the employer may feel that the administrative office employees should not be included because they deal with confidential information about labour relations or because they lack a community of interest with the mechanics.

The Board may also investigate to find out if the employees that the union has listed all have a community of interest—which means they have similar jobs or working conditions, or jobs that are related to each other.

The Board may decide that all employees belong in the bargaining unit or they may decide that NOT all the employees share a community of interest. In the example that was used in the previous paragraph, the Board may decide that administrative office employees do NOT share a community of interest with mechanics and apprentices.

Some workplaces, such as hospitals or universities have more than one bargaining unit. To decide if employees share a community of interest the Board looks at:

- The kind of work they do,
- Their training and skills,
- Where they work,
- How they are paid, and
- Working conditions

If the employer and the union do NOT agree on who is in the bargaining unit, the Board decides who is in. The Board may hold a hearing to make that decision.

#### **i) How the Representational Vote Is Counted**

Once the bargaining unit is set, the Board needs to know that at least 40 per cent of the employees who would be part of that bargaining unit are signed up as members of the union in good standing. If the number is less than 40 per cent, the application is turned down and the vote is not counted. If the number is more than 40 per cent, the Board counts the ballots. If the count shows that more than 50 per cent of voters who qualify to be in the bargaining unit want the union to represent them, the union will be certified.

#### **j) Changing Certification Orders**

A union or an employer can change a certification by applying to amend it. If the Board approves the amendment it may:

- Change the bargaining unit to include job classifications, or remove some job classifications from it.
- Issue an order that lets people know the new name of the employer or union.

#### **k) Decertifying the Union**

If the employees no longer want their union to represent them, they may apply to decertify or revoke the union. Generally a union is certified for at least one year. The only time employees may decertify a union is during what is known as an “open season” —which is usually the last three months of a collective agreement. In a longer collective agreement, there are several open-season periods. If the union has been certified for at least one year and there is no collective agreement, employees may file to decertify it at any time.

Employees wishing to decertify must complete an application form and follow a procedure. Only employees can take part in an application to decertify. If the Board finds that the employer started the process or supported the application, it may decide to not allow the decertification.

#### **l) Continuing Bargaining Rights when a Business Changes Hands**

Bargaining rights may continue when an employer sells, leases, or transfers a business or part of a business. The union and the new employer usually keep the collective agreement. This is called successor rights, and it means that the new employer, the successor employer, must follow the same collective agreement. If the employer or union has any issues that they cannot work out in this new relationship, they may ask the Board to look at the evidence. The Board may:

- Order that the new employer must follow the collective agreement.
- Order that the new employer does not have to follow the collective agreement.
- Make changes to the collective agreement.
- Change the certification order.
- Decide which employees come under which agreement. This may happen when the new employer has more than one collective agreement, with one or more unions.

- Decide which union or unions should represent which employees. This happens when the new employer has a collective agreement with more than one union.

**m) Working with Businesses that Are Related**

Two or more businesses may be run by one person or one group of people. A union may apply to the Board to protect a collective agreement by having a collection of businesses declared to be a common employer. A union that asks for this remedy must also apply for successor rights. The employer is called a “common employer” if the businesses are “under common control and direction”, including directing the workforce.

The Board may rule that businesses have a common employer if:

- There has been a reorganization or a merger, or
- An employer is doing business through a related company to avoid following the collective agreement or the collective bargaining process.

The *Trade Union Act* gives the Board the authority to make sure that the employees keep their rights when an employer or common employer reorganizes.

## INFORMATION SHEET ON DUTY OF FAIR REPRESENTATION

For the employees' purposes, the union has control of the grievance process. Many collective agreements give the union the right to decide whether a grievance even gets filed. The union decides:

- Whether to withdraw a grievance,
- Whether to take a grievance to arbitration,
- Whether to settle a grievance,
- What the settlement terms will be if a grievance is settled.

Employees are responsible for protecting their own interests. If they have a dispute with their employer, they must use the collective agreement process to protect those interests. They also must co-operate with the union throughout the grievance process. The duty of fair representation requires the union to review each grievance carefully, including considering how important the issue is for both the employee and the bargaining unit. If the employee's interests and the bargaining unit's interests conflict, the union's priority must be the bargaining unit's interests.

Employees may file a duty of fair representation complaint with the Board if they believe that their union has NOT dealt with a grievance fairly. There are several steps an employee must take before they file a duty of fair representation complaint. They must:

- Use all of the appeal processes the union has to offer;
- File their complaint within the *Trade Union Act* time period;
- Take steps to reduce their losses while they wait for their complaint to be dealt with (for example, they must look for new work if they have been terminated);
- Follow the grievance process in their collective agreement.

The duty of fair representation complaint process may include:

- An investigation,
- A review of the complaint – there are two possible levels of review,
- Meetings to settle the complaint,
- A formal hearing into the complaint.

However, the Board may refuse to hear a complaint because:

- It is frivolous,
- It is vexatious;
- There are reasons that make it not worthy of a hearing

The Board can resolve a complaint about fair representation in many ways, including:

- Helping the parties to settle the complaint;
- Extending deadlines contained in the collective agreement;
- Ordering the union to send a grievance to arbitration;
- Ordering the union, union representative, employer, or another person to stop doing, or correct the action the employee complained about.

The duty of fair representation applies to workplaces covered by the following acts:

- Part 1 of the *Trade Union Act* (non-construction),
- The *Civil Service Collective Bargaining Act*,
- The *Highway Workers' Collective Bargaining Act*.

The duty of fair representation does not apply to employees working in the construction business. The *Trade Union Act* duty of fair representation also does not apply to federally regulated industries such as interprovincial transport. Employees in those industries should refer to the *Canada Labour Code* for the duty of fair representation provisions that apply to their employment situations.

## INFORMATION SHEET ON CERTIFICATION IN THE CONSTRUCTION INDUSTRY

### 1. Accreditation and Certification

#### i. Accredited Organizations of Employers

In Nova Scotia, unionized construction employers may form an organization to bargain with a union or group of unions. This process is called accreditation. The Nova Scotia Construction Labour Relations Association Limited (NSCLRA) is accredited under the *Trade Union Act* to bargain on behalf of employers who meet the following criteria:

- They work in the industrial and commercial sector,
- They are unionized, and
- They negotiate with unions that are either certified or have voluntary recognition.

The NSCLRA acts for these employers on both mainland Nova Scotia and Cape Breton Island. The NSCLRA can negotiate collective agreements with individual unions in the building trade or with a council of trade unions. However, these negotiations cover work that is carried out in the commercial and industrial sectors of the construction industry ONLY. Any employer doing construction work in an accredited sector has the right to join the accredited organization of employers.

#### ii. Councils of Trade Unions

A group of building trade unions may form a council of building trades to act as a coordinating body. It may do a number of things, including negotiate collective agreements with the NSCLRA and employers in other sectors. Neither of the councils in Nova Scotia is certified—the Mainland Nova Scotia Building and Construction Trades Council or the Cape Breton Island Building Trades Council. However, both have years of experience helping their member unions informally in the bargaining process.

The NSCLRA and the construction trades negotiate the collective agreements for members who work in the commercial and industrial sectors ONLY. For example, a group of employees may become certified by a construction industry trade union while the employees are working in the commercial and industrial sector. However, if their employer's work changes to building houses, roads, or sewers, tunnels, and water mains, then the union and employer have to negotiate their own collective agreements for work in each of these areas.

### 2. Regions in the Construction Industry

Normally, collective agreements for individual trades are negotiated separately for Cape Breton Island and Mainland Nova Scotia.

### 3. Certifying a Union in the Construction Industry

In the construction industry, a union may be authorized to act as bargaining agent for a group of employees using one of three processes: certification, voluntary recognition, or written authorization.

**Certification – (This process is different from certifying a union under Part I.)** The union must file the same documents that are described in the [Information Sheet on Union Representation](#). The employer receives the application from the Board by certified mail rather than in person and must do two things right away:

- Post the Notices on their property and work sites to let the employees know that an application has been made. The employer CANNOT challenge the application at this time.
- Send the Board a list of the names of the employees who were working on the construction site in the trade on the date of application. This date is important. The list includes ONLY those who were working IN the construction industry AT that trade ON that day. The employer has five days to file the list of names with the Board. If this does NOT happen, the Board will usually issue an order that certifies the union as the bargaining agent for this group of tradespeople.

The Board will take one of three steps after it receives the employer's list of employees:

1. It will order a representational vote if between 35 and 50 per cent of the employees from the bargaining unit have signed union cards.
2. It may certify the union if more than 50 per cent of the employees from the bargaining unit have signed union cards.
3. It will dismiss the application if fewer than 35 per cent of the employees from the bargaining unit have signed union cards.

The employer or the union may contest the application once the Board has issued its order. However, the employer may NOT contest the union's application during the first stage, when the Board is processing the application.

The union or the employer has ten days from when they receive an order to ask for a review. A review usually includes a hearing.

**Voluntary recognition** – The employer or union may file a Voluntary Recognition Agreement with the Minister. That agreement is a formal announcement that the employer recognizes only that union as the bargaining agent for employees in that trade. Voluntary recognition usually has the same effect as certification.

**Written authorization** – An employer in the industrial and commercial sector may give written authorization to the NSCLRA to bargain collectively on their behalf with a particular union.

#### 4. Effect of Certification

When an employer doing construction in an accredited sector (commercial and industrial) becomes certified by a union, it must follow the collective agreement negotiated by the accredited organization (NSCLRA) and the union.