

*H*ighlights

Ontario Labour Relations Board

Editors: Voy Stelmaszynski, Solicitor
Leonard Marvy, Solicitor

December 2011

ERC and CRC

Bernard Fishbein has been appointed Chair of the Education Relations Commission and the College Relations Commission for a one-year period, effective November 25, 2011

HOLIDAY SCHEDULE

The Holiday Schedule is attached.

CHANGES TO CONSTRUCTION CERTIFICATION PROCESS

Effective January 1, 2012, the Board is introducing new processes for resolving disputes in applications for certification in the construction industry. Please read the New Information Bulletin No. 9 (attached). Information Bulletin No. 6 is also attached, as it underwent necessary modifications.

Scope Notes

The following are scope notes of some of the decisions issued by the Ontario Labour Relations Board in November of this year. These decisions will appear in the November/ December issue of the OLRB Reports. The full text of recent OLRB decisions is now available on-line through the Canadian Legal Information Institute at www.canlii.org.

Employer – Interim Relief – Unfair Labour Practice – In this interim reinstatement application the three named responding parties argued that a temporary employee agency was the employer and consequently the Board had no

jurisdiction to issue an interim order against the responding parties – The Board found that the three responding parties were the employer for the purposes of the s. 98 application, and therefore it did not have to address the jurisdictional argument – In doing so, the Board made clear that the determination was for the purposes of the s. 98 only, not for the pending unfair labour practice or the application for certification – In reaching the conclusion that the three named entities were the employer for the interim relief application, the Board specifically rejected the argument made by the temporary employee agency that s. 74.3 of the *Employment Standards Act, 2000* rendered it the employer for the purposes of the Act – The Board reiterated a point most recently reviewed in *Alpine Construction (Windsor) Inc.* that the impact upon employees of a breach of the Act by an employer is to be determined on the basis of an assessment of objective facts rather than the subjective views of employees – Thus, the failure of the union to provide declarations from employees who said that they were chilled was not fatal to the application – Interim relief granted (one of two employees reinstated)

180 UNIVERSITY MANAGEMENT INC. AND/OR WESTBANK PROJECTS CORP. AND/OR PETERSON INVESTMENT GROUP INC., PETERSON INVESTMENT (SPRUCELAND) LTD.; RE UNIVERSAL WORKERS UNION, LIUNA LOCAL 183; RE MITCHISON ARTS AND LBM CONSTRUCTION SPECIALTIES; RE HUNT MANAGEMENT GROUPE SYNERGIE INC. CARRYING ON BUSINESS AS HUNT PERSONNEL; File No. 2259-11-M; Dated November 24, 2011; Panel: Ian Anderson (18 pages)

Certification Where Act Contravened – Intimidation and Coercion – Interference with Trade Union

– Application for certification brought without the requisite membership support – The applicant alleged that the employer engaged in conduct to intimidate the employees, interfere with the rights of the employees and interfere with the selection of the union – The union relied on three meetings held during the organizing drive – Two of these meetings were held by the president of the employer, who told the employees that he would not let anyone destroy the company, that subcontractors were available to do the work of the employees, and that if they were going to destroy the company, they should find work elsewhere – The Board found these two meetings to be a direct response to the employer discovering the union drive: these were captive audience meetings and the conduct of the company in those meetings was coercive, intimidating and threatening in a manner that would impair the ability of employees of average intelligence and fortitude to freely express their wishes to be unionized – The Board was not satisfied that the third meeting, held by a senior employee, was an action on behalf of the employer; however, the Board concluded that this meeting was an example of the impact of the earlier anti-union meetings in that employees would conclude that it was acceptable to use the company's premises, hold back employees from their work assignments, and lecture them against unionization – Ultimately, the Board found the union was unable to demonstrate that it had continued its organizing efforts after the violations of the Act occurred – There had been a five week gap between the last card signed and the captive audience meetings – Remedial certification will only be considered where the union is able to show a causal relationship between the employer's unfair labour practice activity and the union's inability to achieve support at the time the application was filed – Declaration granted – Application for certification dismissed

ALPINE CONSTRUCTION (WINDSOR) INC.; RE LIUNA, LOCAL 625; File Nos. 1828-10-R; 1829-10-U; Dated November 2, 2011; Panel: Lyle Kanee (15 pages)

Certification – Construction Industry – Status

– In this card-based application for certification, the parties had agreed some of the disputed employees had been dispatched to the work site by the employer and/or the union while others were hired locally – The employer was applying the terms of a pre-existing collective agreement

and argued that all of the employees were already covered by the cross-over provisions of that agreement – Since employees can only be in one bargaining unit at a time, they should not be able to vote to determine the bargaining agent in a different bargaining unit – The Union's position was that the employees were not covered by any collective agreement when working in that particular Board area and therefore the cross-over clause did not, and could not, create bargaining rights for them – The Union further argued that the application of the terms of another collective agreement to these employees did not equate to the Union having acquired bargaining rights – The Board held the dispatched employees were bound by the cross-over provisions of the existing collective agreement and their membership evidence was to be excluded – The employer was not obligated to apply the terms of the existing collective agreement to the locally hired employees and therefore these employees were eligible to vote – Matter continues

BRENNAN PAVING & CONSTRUCTION LTD.; RE LIUNA, ONTARIO PROVINCIAL DISTRICT COUNCIL; File No. 2090-10-R; Dated November 21, 2011; Panel: John D. Lewis (25 pages)

Employee – Employment Standards – Reprisal

– In cross-appeals of three decisions of an ESO, the threshold issue was whether the employees were holders of "religious office" and therefore excluded from the protections of the *Employment Standards Act* by virtue of s. 3(5)7 – The employer is a not for profit organization which exists to guide the observance of Orthodox Jewish Kosher dietary laws in Canada; the employees worked as 'Mashgiachim' kosher food inspectors – The Board held that while the 'Mashgiachim' is a religious position that does not determine whether these specific employees held a religious 'office' – There must be more to be a religious 'office holder' than mere characterization of such or that the functions or work that individual performs are significant or important to fulfill religious obligation or ritual – No evidence was tendered that the employees in question had any specific education, training, certification, or qualifications other than passing an interview and being Shomer Shabbat – Looking at other exemptions to provide context, the Board found that the essential feature of the holder of an 'office' is independence – The employees in this case did not have any greater independence than other non-religious food inspectors – The relationship in this case resembled a traditional

employer/employee relationship; the exemptions are to be construed narrowly – The Board held the employees were not religious office holders and therefore not exempt – Matter continues

KASHRUTH COUNCIL OF CANADA/LE CONSEIL CACHEROUT DU CANADA; RE MORLEY RAND, MICHAEL RAND AND DIRECTOR OF EMPLOYMENT STANDARDS; File Nos. 1624-10-ES; 1650-10-ES; 2368-10-ES; Dated November 8, 2011; Panel: Brian McLean (15 pages)

Certification – Constitutional Law – Construction Industry – The Labourers sought to certify a unit of construction workers employed by the Nipissing First Nation – The NFN responded with an assertion that the work was federally regulated – The Board examined the structure, hierarchy and reporting responsibilities of the NFN and agreed that the First Nation, when engaging workers in construction for the sole benefit of the reserve (in accordance with its delegated jurisdiction under the *Indian Act*, its by-laws, vision and mission), was federally regulated – Canvassing case law from several provincial labour boards, Courts of Appeal and the Supreme Court of Canada, the Board held that when the reserve employees performed construction work for the benefit of the reserve alone, they were engaged in the core function of reserve governance – First, the work is performed on the reserve, under the direction of the band council, for the collective benefit of band members residing on the reserve – Secondly, the *Indian Act* specifically delegates to the NFN the responsibility for intra-reserve maintenance of roads, bridges, etc., the expenditure of capital moneys for same, as well as the power to make by-laws with respect to such construction and maintenance – Finally, the work is completely integrated with other work done by the NFN within its governance function – Application dismissed

NIPISSING FIRST NATION; RE LIUNA, ONTARIO PROVINCIAL DISTRICT COUNCIL; RE UNION OF ONTARIO INDIANS; File Nos. 1129-10-R; 1308-10-U; Dated November 9, 2011; Panel: Diane L. Gee (23 pages)

Certification Where Act Contravened – Construction Industry – Intimidation and Coercion – Remedy – The Board found that the employer was influenced by his knowledge of union activity among his crew when he failed to return them to work following a work stoppage

beyond their control – When he spoke to employees individually, the employer sought to confirm that the employees had been in touch with the union, and asserted to the employees that they had quit their jobs and signed with the union – On the issue of remedy, the Board looked at allegations of employer support for the union, and options available to the Board in light of the union's inability to demonstrate an appearance of minimum employee support to warrant the holding of a vote – The Board found that the senior employee who contacted the union did so after he had severed his relationship with the employer; that is, he was acting on his own initiative against the employer's interests (and in support of the employees' interest) – The Board observed that since the union was unable to demonstrate 40% support on the date of application, no vote was ordered when the application for certification was first filed – Now, having found that the employer contravened the Act by threatening the job security of its employees and even terminating the employment of the original crew, and having determined that the union was unable to garner any additional support for its campaign, the Board decided that ordering a representation vote would be meaningless – No remedy short of remedial certification is sufficient to counter the employer's actions – Certificate ordered

VANDERWAL HOMES & COMMERCIAL GROUP; RE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 1946; File Nos. 0930-10-R; 0938-10-U; Dated November 24, 2011; Panel: Caroline Rowan (26 pages)

Court Proceedings

Final Offer Vote – First Contract Arbitration – Judicial Review – Natural Justice – Intervenor

– One employee and the employer sought judicial review of a series of Board decisions ordering the workplace parties to reach a first collective agreement through arbitration, and advising the Minister of Labour to cancel a last offer vote – The applicants argued variously that the Board was biased, denied natural justice, and its decisions were unreasonable or incorrect – On the issue of the intervention of the individual employee, the court held that while the duty of fairness would include the right for all interested parties to make submissions in the instant case, the employee's intervention was inappropriate: the dispute was between the employer and the union – On the Board's failure to entertain the employer's motion to dismiss the application for not having pled a *prima facie* case, the Court found the Board gave cogent reasons for adopting the procedure it did (even to the extent that the Board accepted the employer's version of events) – The Court equally found there were no grounds for the Vice-Chair to recuse himself – The Court refused to interfere with the Board's findings as to the appearance of a lack of success in bargaining – Finally, the Court found no fault in the Minister's actions, and held that the Board's opinion report to the Minister was not reviewable – Application dismissed

RAINBOW CONCRETE; RE MARK CORNER; RE ONTARIO (MINISTER OF LABOUR), OLRB, INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793; Board File Nos. 2904-09-U; 2905-09-FC; 3292-09-M (Court File Nos. 437/11; 559/10; 560/11); Dated November 28, 2011; Panel: Chapnik, Hoy and Hourigan JJ. (21 pages)

Certification – Construction Industry – Employer – Judicial Review

– The union sought judicial review of a Board decision that dismissed the union's application for certification when the union identified the incorrect employer as responding party – The Court found that the Board's finding was reasonable: the Board did not allow labour relations reality to be trumped by commercial form nor eclipsed by employer intentions; the Board's speculation on who the actual employer might be was not a finding of fact; while a finding of who the employer was might have been useful to the union, there was no obligation on the Board to make such a finding – Finally, there was no denial of natural justice – Application for judicial review dismissed

SNC-LAVALIN INC., SNC-LAVALIN GROUP INC. AND SNC-LAVALIN POWER ONTARIO INC. AND OLRB; RE LIUNA, ONTARIO PROVINCIAL DISTRICT COUNCIL; Board File Nos. 2442-07-R; 2936-07-R (Court File No. 482/10); Dated November 14, 2011; Panel: Brown R.S.J., Dambrot and Hoy JJ. (7 pages)

Judicial Review – Related Employer – SNC

Lavalin sought review of the reasonableness and adequacy of the Board's decision finding the applicant was the corporate vehicle used to carry on the construction and project management work previously carried on by two companies bound by a collective agreement many years prior – The Board had decided this case did not constitute an expansion of bargaining rights – The Board had also decided this was not a case where the Union had either abandoned its bargaining rights or unduly delayed in filing the application – The court held the Board's decision was reasonable: the nature of the work (industrial and commercial construction) is by its nature episodic, and discontinuous, and dependent on the award of contracts to the employer – Regarding the adequacy of the reasons given, the Court held the conclusions were reached in a logical fashion which permitted effective judicial review; the basis for the Board's decision was intelligible and the reasons were sufficient – Application dismissed

SNC-LAVALIN INC. AND SNC-LAVALIN ENGINEERING & CONSTRUCTION INC.; RE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 2486 AND OLRB; Board File No. 1405-03-R (Court File No 78/11); Dated November 16, 2011; Panel: Pardu J., Harvison Young J., and Mulligan J. (7 pages)

The decisions listed in this bulletin will be included in the publication Ontario Labour Relations Board Reports. Copies of advance drafts of the OLRB Reports are available for reference at the Ontario Workplace Tribunals Library, 7th Floor, 505 University Avenue, Toronto.

Pending Court Proceedings

Case name & Court File No.	Board File No.	Status
C.W. Smith Crane Services v. IUOE Local 793 Divisional Court No. 513/11	3894-09-G	Pending
Erie St. Clair Community Care Divisional Court No. 504/11	0144-09-PS	Pending
Swift Railroad Contractors Divisional Court No. 400/11	0039-06-U 0139-06-R	Pending
René Gagné v. Algoma University College Faculty Divisional Court No. 11-1764 Ottawa	0460-10-U	Pending
Greater Essex County District S.B. Divisional Court No. 403/11	1004-08-M	Pending
Sanford Pensler, A Director of Korex Don Valley ULC et al v. CEP L. 132 et al Divisional Court No. 328/11	0598-10-ES	April 17, 2012
John McCredie v. OLRB et al Divisional Court No. 1890/11	1155-10-U	Pending
Classic POS Inc. Divisional Court No. 301/11	4059-10-ES	Pending
Ineke Sutherland o/a Designworks Divisional Court No. 238/11	4061-10-ES	Pending
Dr. Peter A. Khaiteer v. OLRB et al Divisional Court No. 213/11	0816-10-U 0817-10-U	Pending
Humber River Regional Hospital v. SEIU Divisional Court No. 101/11	1092-09-R 1132-09-R 1133-09-R	December 20, 2011
SNC-Lavalin Divisional Court No. 78/11	1405-03-R	Dismissed Nov. 16/11
Promark-Telecon Inc. v. Universal Workers Union, L. 183 Divisional Court No. 600/10	0745-09-R 0754-00-R 0765-09-R 0782-09-R	Pending
Dean Warren v. National Hockey League Divisional Court No. 587/10	2473-08-U	Pending
Richard Hotta (Proteus Craftworks) v. Mahamad Badiuzzaman, et al Divisional Court No. 613/10	1953-07-ES	Pending
Pharma Plus Drugmarts Divisional Court No. 551/10	0579-08-R 0580-08-R 1662-09-R	Granted Oct. 4/11, Seeking leave to appeal to C.A.
SNC-Lavalin Divisional Court No. 482/10	2442-07-R 2936-07-R	Dismissed Nov. 14/11
Mr. Shah Islam v. J. Ennis Fabrics Divisional Court No. 506/10	1786-09-ES	Pending
Greater Essex Catholic District S.B. Divisional Court No. 462/10	3122-04-G	Granted Oct. 7/11 Seeking leave to appeal to C.A.
Rainbow Concrete (Mark Corner) Divisional Court No. 437/10	2904-09-U 2905-09-FC 3292-09-M	Dismissed Nov. 28/11
John McKenney v. Upper Canada District S.B. Divisional Court No. 10-DV-1652 Ottawa	2687-08-U	Pending
Rainbow Concrete Divisional Court No. 856-10	3292-09-M	Dismissed Nov. 28/11
Dr. Peter A. Khaiteer v. OLRB et al	0290-08-U	Pending

Case name & Court File No.	Board File No.	Status
Divisional Court No. 383/10	0338-08-U	
Rainbow Concrete Divisional Court No. 850-10	2904-09-U 2905-09-FC	Dismissed Nov. 28/11
Independent Electricity System Operator v. Canadian Union of Skilled Workers, LIUNA et al Divisional Court No. 78/10 Court of Appeal No. C53992	3322-03-R 2118-04-R	Feb. 14 & 15, 2012
Pro Pipe Construction v. Norfab Metal and Machine Divisional Court No. 408/09	2574-04-R	Pending
Blue Mountain Resorts v. MOL Divisional Court No. 373/09 Court of Appeal No. C54427	1048-07-HS 0255-08-HS	Pending – C.A.
Roy Murad v. Les Aliments Mia Foods Divisional Court No. 291/09	1999-07-ES	Pending
Greater Essex County District School Board v. IBEW, Local 773 et al Divisional Court No. 212/09	1776-04-R et al	Nov. 9/11 – Reserved
Dr. Peter A. Khaiteer v. OLRB et al Divisional Court No. 431/08	4045-06-U et al	Pending
Comfort Hospitality Inc. o/a Days Inn v. Director Employment Standards et al Divisional Court No. 344/08	2573-07-ES	Pending
L.I.U.N.A. v. Barclay Construction et al Divisional Court No. 310/08	0837-06-R	Pending

Oct. 5th, 2011

NOTICE TO THE COMMUNITY

Please be advised that the Ontario Labour Relations Board will neither schedule nor hold hearings between **December 22, 2011 and January 3, 2012** inclusive. Matters of an urgent nature, however, may be scheduled on an expedited basis as determined by the Board, during this period. Applications will be processed in the usual manner on the dates that the Board is open for business, including: December 22, 23, 28, 29 and 30 2011.

Please note the hearing schedule for s. 133 grievance referrals over the holiday season.

Thank you for your attention to the above. Please have a safe and very happy Holiday Season.

DATE REFERRAL FILED	HEARING DATE
December 8 , 2011	January 4, 2012
December 9	January 4
December 12	January 5
December 13	January 5
December 14	January 6
December 15	January 6
December 16	January 9
December 19	January 9
December 20	January 10
December 21	January 11
December 22	January 12
December 23	January 13
December 28	January 13
December 29	January 16
December 30	January 16
January 3, 2012	January 17

**ONTARIO LABOUR RELATIONS BOARD
INFORMATION BULLETIN NO. 6**

**Certification of Trade Unions
in the Construction Industry
Vote-based (s. 8) or
Card-based (s. 128.1)**

This Information Bulletin describes the procedures that must be followed when a union applies, pursuant either to section 8, or to section 128.1 (but NOT BOTH), to represent employees in the construction industry. For information on the procedures that apply in certification applications outside of the construction industry, please refer to Information Bulletin No. 1 - Certification of Trade Unions.

It is important that the parties involved in a certification application read and comply with the directions in this Bulletin and the Board's Rules of Procedure. Failure to do so may result in the application or other materials not being processed by the Board.

For Vote-based certifications (s. 8) SEE Part A (pp. 1 - 8) and Part B (pp. 8 – 12)

If 40 percent or more of the employees in the bargaining unit proposed by the union appear to be members of the applicant union, the Board is required to conduct a representation vote. A vote is usually held five (5) days after the date on which the certification application is filed with the Board (the "Application Filing Date"), or the date on which the application is delivered to the employer (the "Delivery Date"), whichever is later. In limited circumstances the vote may be delayed one or more days.

For Card-based certifications (s. 128.1) SEE Part A (pp. 1 – 8) and Part C (pp. 12 - 13)

If the Board is satisfied that more than 55 percent of the employees in the bargaining unit are members of the trade union on the date the application was filed it may certify the trade union as bargaining agent or direct that a representation vote be taken. If the Board is satisfied that at least 40 percent but not more than 55 percent of the employees in the bargaining unit are members of the trade union on the application date, then it is required to conduct a representation vote. Where a vote is directed by the Board, it is usually held five (5) days after the Board directs that a representation vote be taken. In limited circumstances the vote may be delayed one or more days.

The materials that are required to file a certification application can be obtained from the Board at any time. The materials that are required for an employer to respond to an application for certification, or for an affected trade union to intervene in an application for certification, are delivered to them by the applicant union.

Parties to an application for certification are required to "deliver" to the other parties and "file" with the Board a variety of documents within a specified number of "days". The words "day", "deliver" and "file" are defined in the Board's Rules of Procedure to have very specific meanings. It is very important that you apply the following meanings to each of these words whenever they appear in this Bulletin.

- "Day" - does not include weekends, statutory holidays or any other day on which the Board is closed. (Rule 1.5)
- "Delivered" - Material is considered to be "delivered" on the day that it is actually received by the party to whom it is sent. (Rule 6.7) Where delivery is permitted and accomplished by facsimile transmission, the fax confirmation sheet should be retained by the sender in case delivery, or the time of delivery, is later challenged.
- "Filed" - *With the exception of the Application for Certification*, material is considered to have been "filed" with the Board on the date it is actually received by the Board provided that it is received between the hours of 8:30 a.m. and 5:00 p.m. on a day on which the Board is open. Materials received after 5:00 p.m. will be deemed to have been filed with the Board on the following business day. (Rules 3.4, 3.5 and 24.2)

PART A: Vote-based (s. 8) & Card-Based (128.1)

I. FILING AND DELIVERY OF THE CERTIFICATION APPLICATION

In order to apply for certification, a union must fulfill the following filing and delivery requirements.

1) Filing of Certification Application with the Board

The union must file the following materials with the Board by any means except Registered Mail, e-mail or facsimile transmission:

- (i) one (1) signed original and one (1) copy of the completed **Application for Certification, Construction Industry** (Form A-71);
- (ii) any **membership evidence** relating to the application. This evidence must be in writing and signed by each employee concerned, and it must indicate the date on which each signature was obtained;
- (iii) a **list of employees**, in alphabetical order, corresponding with the membership evidence filed; and
- (iv) a **Declaration Verifying Membership Evidence, Construction Industry** (Form A-74).

(Rules 6.2 and 25.1)

On the date the Board receives the Application for Certification, a Confirmation of Filing of Application for Certification, Construction Industry (Form B-59) is sent by the Board to the union by facsimile transmission. This letter confirms that the application has been filed with the Board, and provides the union with the Application Filing Date (see below) and Board File Number assigned to the application.

2) **Application Filing Date**

The Application Filing Date assigned to an application depends on the method used to file the application:

- (i) If the application is sent by Canada Post's Priority Courier Service, the Application Filing Date is the date on which the application was accepted by Canada Post.
- (ii) If the application is sent by any method other than Canada Post's Priority Courier Service, the Application Filing Date is the date on which the Board actually receives the application.

An applicant is required to set out the Application Filing Date in paragraph 4 of its application.

3) **Delivery of Construction Certification Package to Employer**

The union must deliver a Construction Certification Package to the employer no later than two (2) days after the Application Filing Date. The package may be delivered by hand delivery, facsimile transmission or Canada Post's Priority Courier Service.

The Construction Certification Package consists of the following materials arranged in the following order:

- (i) one **Notice to Employer of Application for Certification, Construction Industry** (Form C-32). The union must fill in its name and the employer's name on page 1 and the date on page 3 of the Notice before making the delivery;
- (ii) one completed **Application for Certification, Construction Industry** (Form A-71);
- (iii) one blank **Response to Application for Certification, Construction Industry** (Form A-72), including **Schedule A** (List of Employees);
- (iv) one blank **Intervention in Application for Certification, Construction Industry** (Form A-73);
- (v) one **Information Bulletin No. 6 - Certification of Trade Unions in the Construction Industry**;

- (vi) one **Information Bulletin No. 8 - Vote Arrangements in the Construction Industry**;
- (vii) one **Information Bulletin No. 9 - Resolving Disputes in Certification Applications in the Construction Industry**; and
- (viii) one copy of Part V of the **Board's Rules of Procedure**.

(Rule 25.3)

Note: The union is NOT to deliver to the employer a list of names of union members, evidence of their status as union members, or a copy of the Declaration Verifying Membership Evidence (Form A-74).

4) Delivery of Application to Affected Trade Unions

If the applicant union is aware of any trade union that claims to represent any employees who may be affected by the application, the applicant union must deliver the material listed below to the affected trade union. This material may be delivered by hand delivery, facsimile transmission or Canada Post's Priority Courier Service and must be received by the affected union(s), no later than two (2) days after the Application Filing Date.

- (i) one copy of the completed **Application for Certification, Construction Industry** (Form A-71);
- (ii) one blank **Intervention in Application for Certification, Construction Industry** (Form A-73);
- (iii) one **Information Bulletin No. 6 - Certification of Trade Unions in the Construction Industry**;
- (iv) one **Information Bulletin No. 8 - Vote Arrangements in the Construction Industry**;
- (v) one **Information Bulletin No. 9 - Resolving Disputes in Certification Applications in the Construction Industry**; and
- (vi) one copy of Part V of the **Board's Rules of Procedure**.

(Rules 24.1 and 25.4)

Applicant unions should make every effort to identify and notify affected trade unions as failure to do so may result in the vote being delayed.

5) Union Confirmation of Delivery(ies)

The union must file with the Board a Certificate of Delivery (Form A-75) verifying delivery to the employer and any affected trade union, no later than two (2) days after the Application Filing Date. The Certificate of Delivery may be filed by any means, including facsimile transmission, except e-mail or Registered Mail. Along with the Certificate of Delivery, unions that filed their applications using Canada Post's Priority Courier service must also file with the Board a copy of the postal receipt. (This is so that the Board can confirm the Application Filing Date.)

The union may request that it be permitted to make its delivery(ies) by an alternative means and/or request an extension of time for the delivery(ies).

(Rule 6.6)

If the applicant has not requested an extension of time and the Board does not receive a Certificate of Delivery confirming the union's delivery(ies) to the employer and any affected trade union(s) within two (2) days after the Application Filing Date, the matter may be terminated.

(Rule 24.3)

II. BOARD CONTACTS EMPLOYER TO CONFIRM THAT AN APPLICATION HAS BEEN FILED

On the day the Board receives the Certificate of Delivery, or the date the Certificate of Delivery indicates that the employer will receive the Construction Certification Package, whichever is later, the Board sends, by facsimile transmission, a Confirmation of Filing of Application for Certification, Construction Industry (Form B-59) to the employer and any affected trade union(s). This letter confirms that the application has been filed with the Board, provides the Application Filing Date, Delivery Date, and Board File Number, reiterates the employer's obligations as set out in the Notice to Employer of Application (Form C-32), and directs the employer to make and post copies of the Notice to Employees (Form C-33) and the Application for Certification (Form A-71).

The Board also contacts the employer by telephone on the same day or the following day to again confirm that the application has been filed, clarify the employer's obligations, and advise a vote will normally take place five (5) days after the Application Filing Date or five (5) days after the date on which the employer received the Construction Certification Package, whichever is later.

III. EMPLOYER'S OBLIGATIONS

1) Post Application and Notice to Employees

Upon receipt of the Confirmation of Filing, the employer must make and IMMEDIATELY post copies of both the Application for Certification, Construction Industry (Form A-71) and the Notice to Employees of Application for Certification, Construction Industry (Form C-33). These documents are to be posted adjacent to one another in a sufficient number of locations so that they are likely to come to the attention of all persons affected by the application. The employer must then confirm to the Board that it has completed the postings by filing with the Board, by facsimile transmission, a completed Confirmation of Posting (Form A-76). The union must also, at the earliest opportunity, advise the Board as to whether the employer has completed the postings by filing with the Board, by facsimile transmission, a Confirmation of Posting.

The Notice to Employees of Application for Certification advises employees that a union is applying for certification and directs them to the adjacent Application for Certification for details. The Notice also notifies the employees that a secret ballot vote may be held five (5) days after the Application Filing Date (or on a later date), or the union may be certified without a vote. In addition, the Notice advises the employees of their rights, including the right to make statements to the Board about the application, and alerts them to look for future postings that will inform them of voter eligibility, the date, time and location of the vote, and the date and location of hearings, if any.

2) File and Deliver a Response

No later than two (2) days after it received the Construction Certification Package, the employer is required to deliver its response to the applicant union and file it with the Board. The response may be filed with the Board by any means, including facsimile transmission, except e-mail or Registered Mail. The response may be delivered to the union by hand delivery, Canada Post's Priority Courier Service, or facsimile transmission. One copy of the response should be filed with the Board if it is sent by facsimile transmission; otherwise one (1) signed original and one (1) copy must be filed.

The response consists of a Response to Application for Certification, Construction Industry (Form A-72) and Schedule A (List of Employees). For a s. 8 application, the list of employees assists the Board in determining which employees are eligible to vote. For a s. 128.1 application the list of employees assists the Board in determining the percentage of employees in the bargaining unit that are members of the trade union on the Application Filing Date. The employer must include on the list the names of all employees who were at work on the Application Filing Date who were performing work within the union's proposed bargaining unit and, if the employer is proposing a bargaining unit that is different from the union's, the names of employees who were at work on the Application Filing Date who were performing work within the employer's proposed unit.

3) **Delivery to Affected Trade Unions**

(a) **Affected Trade Union Identified by Applicant Union**

The employer is also required to deliver a copy of its response to any affected trade union identified by the union in paragraph 11 of the Application for Certification no later than two (2) days after it received the Construction Certification Package. The response may be delivered by hand delivery, Canada Post's Priority Courier Service, or facsimile transmission, and must consist of the Response to Application for Certification (Form A-72) and Schedule A (List of Employees).

(Rules 24.1 and 25.4)

(b) **Affected Trade Union Not Identified by Applicant Union**

The employer is required to deliver the documents listed below to any trade union that the employer is aware claims to represent an employee who may be affected by the application, which was not identified as an affected trade union by the applicant union. These documents may be delivered by hand delivery, Canada Post's Priority Courier Service, or facsimile transmission, and must be delivered no later than two (2) days after the employer received the Construction Certification Package.

- (i) one copy of the completed **Application for Certification, Construction Industry** (Form A-71);
- (ii) one copy of the completed **Response to Application for Certification, Construction Industry** (Form A-72), including **Schedule A** (List of Employees);
- (iii) one blank **Intervention in Application for Certification, Construction Industry** (Form A-73);
- (iv) one **Information Bulletin No. 6 - Certification of Trade Unions in the Construction Industry**;
- (v) one **Information Bulletin No. 8 - Vote Arrangements in the Construction Industry**;
- (vi) one **Information Bulletin No. 9 - Resolving Disputes in Certification Applications in the Construction Industry**; and
- (vii) one copy of Part V of the **Board's Rules of Procedure**.

IV. **AFFECTED TRADE UNION (IF ANY) FILES AND DELIVERS INTERVENTION**

If any affected trade union is notified of the application and wishes to participate in the proceedings, it must file an Intervention in Application for Certification, Construction Industry (Form A-73) with the Board and deliver a copy of it to both the applicant union and employer. The intervention must be received by the Board, the union, and the employer no later than two (2) days after the affected trade union received the application. The intervention may be filed with the Board by any means, including facsimile transmission, except e-mail or Registered Mail. It may be delivered to the union and employer by hand delivery, Canada Post's Priority Courier Service, or facsimile transmission. One copy of the intervention should be filed with the Board if it is filed by facsimile transmission; otherwise one (1) signed original and one (1) copy must be filed.

Note: A vote, if any, may be delayed by two days in cases where the affected trade union is first identified by the employer.

PART B: Vote based (s. 8) only

V. BOARD ORDERS THE VOTE

1) Vote Arrangements Determined

The Board's Vote Co-ordinator examines the vote arrangement proposals filed by the union and employer (and intervenor, if any) and sets the vote arrangements.

In setting the vote arrangements, the Co-ordinator considers the parties' submissions, the number of voters, the employees' regular working hours, and the cost to the Board. The Co-ordinator typically accommodates any agreed-upon arrangements, but if it is determined that they are unsuitable because they are too costly or do not adequately allow employees the opportunity to vote, or if there is no agreement, the Co-ordinator normally sets the arrangements without further consultation with the parties.

In the normal course, the vote takes place on the employer's premises and/or job site(s) five (5) days after the Application Filing Date or the date the application is delivered to the employer, whichever is later.

For more detailed information on vote arrangements, refer to Information Bulletin No. 8 - Vote Arrangements in the Construction Industry.

2) Voting Constituency Determined and Vote Ordered

The voting constituency is a description of the portion of the employer's workforce that is eligible to vote. The Board determines the appropriate voting constituency after considering the union's and employer's proposed bargaining units. If the statutory criteria for holding a vote are met, the Board orders that a vote be held among the employees in the voting constituency.

A Board decision ordering the vote and a Notice of Vote and of Case Management Hearing (Form B-60) is sent by facsimile transmission to the union and employer (and any intervenor). These documents set out the voting constituency, the date, time and place of the vote, directions concerning sealing the ballot box or segregating or counting the ballots where appropriate, and the date on which the Case Management Hearing, if required, will take place.

The employer (and any intervenor) is also provided with a copy of the applicant's Declaration Verifying Membership Evidence (Form A-74) at this time.

3) Employer to Post Decision and Notice to Employees

Upon receipt, the employer must immediately post copies of the decision and the Notice of Vote and of Meeting adjacent to each of the earlier posted Notices to Employees of Application for Certification, Construction Industry. The employer must then confirm to the Board that it has completed the postings by filing with the Board by facsimile transmission a completed Confirmation of Posting (Form A-76). The union must also, at the earliest opportunity, advise the Board as to whether the employer has completed the postings by filing with the Board, by facsimile transmission, a Confirmation of Posting.

VI. PRE-VOTE CONSULTATION PROCESS

After the vote has been ordered but before it is held, a Board Officer normally contacts the parties in an effort to reach agreement on issues surrounding the vote, including: the bargaining unit description (if not determined by the Board in its decision directing the vote); the voters list, which is developed from the Schedule A (List of Employees) filed by the employer; the correct name of the employer; the status of the trade union; and the timeliness of the application.

Agreements reached by the parties during the pre-vote consultation process are confirmed by the Officer in writing and sent to the parties by facsimile transmission. In the interests of fairness and finality, parties cannot later raise issues about matters to which they have earlier agreed.

VII. VOTING DAY

1) Conduct of the Vote

The vote is conducted by a Board Officer. Individuals who have been selected by the parties to be scrutineers must arrive at the polling place 15 minutes in advance of the voting to receive instructions, examine the ballot box, and otherwise assist the Board Officer in the preparation of the polling place.

At the outset of the voting, each scrutineer is provided with a copy of the voters list (if any). They are asked to assist in the identification of voters and to mark voters' attendance on the list as they present themselves to the Officer to vote.

Scrutineers are advised that any questions asked by individuals regarding their eligibility to vote or any other matter should be directed to the Board Officer.

The names of any individuals whose eligibility to vote is challenged are marked as such on the voters list and their ballots are segregated. Individuals whose names do not appear on the voters list are permitted to vote and their ballots are also segregated.

Except in displacement applications, generic ballots that do not identify the union or employer by name are used. The names of the parties are set out in a Notice that is placed in every voting booth.

The scrutineers are given an opportunity to sign a Conduct of Vote form after the vote is completed. Signatories to this form certify that the balloting was fairly conducted, that all eligible voters were given an opportunity to cast their ballots in secret, and that the ballot box was protected in the interest of a fair and secret vote.

2) Further Settlement Discussions

On the day of the vote, the Officer who conducts the vote engages the parties in settlement discussions on any issues that remain in dispute. All agreements are recorded in writing.

The parties are asked to sign a Certification Worksheet which sets out their agreements, if any.

3) Counting the Ballots

Ballots may or may not be counted on the day of the vote, depending on the directions of the Board, the agreements of the parties, and the discretion of the Board Officer. It may be necessary in some circumstances to seal the ballot box until outstanding disputes have been resolved.

4) Report of Vote Provided and Posted

The Board Officer conducting the vote normally provides a copy of the Board Officer's Report of Vote to the parties on the day of the vote. This Report sets out whether the ballots were counted and, if so, the outcome of the vote, and explains that the parties and employees have five (5) days to file objections to the vote. Upon receipt, the employer is required to immediately post copies of the Report adjacent to each of the earlier posted Notices to Employees of Application for Certification, and then confirm that it has completed the posting by filing with the Board by facsimile transmission a Confirmation of Posting (Form A-76). The union must also, at the earliest opportunity, advise the Board as to whether the employer has completed the postings by filing with the Board, by facsimile transmission, a Confirmation of Posting.

VIII. AFTER THE VOTE

1) Statement of Representations

Any person who wishes to say something to the Board **concerning the vote** must file a statement of representations with the Board and deliver a copy of the statement to the union, the employer, and any affected trade union, whose names and addresses can be found on the Application for Certification (Form A-71). This statement may be filed by any means, including facsimile transmission, except e-mail or Registered Mail, and must be received by the Board and the other parties **no later than five (5) days after the day of the vote**. (The name and address of an affected trade union that was first identified by the employer will not be on the Application for Certification. The Board will send a copy of any representations it receives to such a union.)

(Rule 11.3)

Status Disputes

Submissions about challenges to any ballot that was cast and sealed, and the basic facts in support of the challenges, must be delivered to the other parties and filed with the Board within the same five (5) day period.

Any party wishing to file a response to the challenges may do so within a further five (5) days (that is, 12 days after the Board's decision ordering the vote).

Other Issues

If there are issues other than status disputes to be litigated in the application for certification, they must be fully pleaded **within fifteen (15) days of the initial date of the Board decision** (in the case of an application under section 128.1—card-based) or **fifteen (15) days of the date of the representation vote** (where one is held), in the case of an application under section 8 (vote-based). In either case, the submissions must include substantial particulars of the facts on which the party raising the issue(s) relies and a statement of the legal issues that party wishes to argue.

A Case Management Hearing will be scheduled before a panel of the Board to begin the adjudication of the dispute. There will be no Regional Certification Meeting.

PART C: Card-based (s. 128.1) only

Status Disputes

Where there is a dispute about the person listed (or not listed) on the employee list, the union will be directed by way of a Board decision to deliver to the employer and file with the Board, **no later than five (5) days from the date of the Board's decision**, a statement simply challenging any names on the Schedule A that normally accompanies the employer's Response. In the event the Union wishes to make additions to Schedule A, it may also do so but must include the reasons for such additions and all the basic facts upon which it relies (including, for example, *where* the individual sought to be added was working and *what* the individual was doing). The Board's decision will direct the employer to deliver to the union and file with the Board a statement of its position in reply to each of the union's challenges (including any of the union's proposed additions), together with reasons for such position and the basic facts upon which it relies, including at least where the individual was working and what the employer asserts the individual was doing) **within ten (10) days of that decision**. Together with this the employer is expected to produce copies of all relevant documents concerning the individuals in dispute (including payroll records, time sheets, invoices, cheques, etc). Within a further five (5) days (that is, **within fifteen (15) days of the Board's decision**), the Union must file its response to the Employer's position, together with any relevant documents that the union relies on. **Once the union has filed its statement of challenges and additions, neither party will be permitted to add to, or delete from, the list without agreement of the parties or leave of the Board.** A Case Management Hearing will be scheduled before a panel of the Board to begin the adjudication of the dispute. There will be no Regional Certification Meeting.

Other Issues

If there are issues other than status disputes to be litigated in the application for certification, they must be fully pleaded **within fifteen (15) days of the initial date of the Board decision** (in the case of an application under section 128.1—card-based) or **fifteen (15) days of the date of the representation vote** (where one is held), in the case of an application under section 8 (vote-based). In either case, the submissions must include substantial particulars of the facts on which the party raising the issue(s) relies and a statement of the legal issues that party wishes to argue.

A Case Management Hearing will be scheduled before a panel of the Board to begin the adjudication of the dispute. There will be no Regional Certification Meeting.

For a further description of the adjudication of disputes in construction industry applications for certification, please read Information Bulletin No. 9: Resolving Disputes in Certification Applications in the Construction Industry (November 2011).

The Board issues written decisions, which may include the name and personal information about persons appearing before it. Decisions are available to the public from a variety of sources

(p. 12 of 13) (January 2012)

including the Ontario Workplace Tribunals Library, and over the internet at www.canlii.org, a free legal information data base. Some summaries and decisions may be found on the Board's website under *Highlights* and Recent Decisions of Interest at www.olrb.gov.on.ca.

Vote direction

Where the Board directs a vote, the Board's decision will have appended to it a vote arrangement sheet to be completed by each party. This document must be filed with the Board within two days of the date of the Decision.

The Board's Vote Co-ordinator examines the vote arrangement proposals filed by the union and employer (and intervenor, if any) and sets the vote arrangements.

In setting the vote arrangements, the Co-ordinator considers the parties' submissions, the number of voters, the employees' regular working hours, and the cost to the Board. The Co-ordinator typically accommodates any agreed-upon arrangements, but if it is determined that they are unsuitable because they are too costly or do not adequately allow employees the opportunity to vote, or if there is no agreement, the Co-ordinator normally sets the arrangements without further consultation with the parties.

In the normal course, the vote takes place on the employer's premises and/or job site(s) five (5) days after the Board's decision directing the vote or another date set by the Board.

For more detailed information on vote arrangements, refer to Information Bulletin No. 8 - Vote Arrangements in the Construction Industry.

IMPORTANT NOTE

IN ACCORDANCE WITH THE *ACCESSIBILITY FOR ONTARIANS WITH DISABILITIES ACT, 2005*, THE BOARD MAKES EVERY EFFORT TO ENSURE THAT ITS SERVICES ARE PROVIDED IN A MANNER THAT RESPECTS THE DIGNITY AND INDEPENDENCE OF PERSONS WITH DISABILITIES. PLEASE TELL THE BOARD IF YOU REQUIRE ANY ACCOMMODATION TO MEET YOUR INDIVIDUAL NEEDS.

**ONTARIO LABOUR RELATIONS BOARD
INFORMATION BULLETIN NO. 9**

Resolving Disputes in Certification Applications in the Construction Industry

This Information Bulletin describes how the Board deals with disputes of any sort, including “status disputes,” in the context of construction industry certification applications.

The Bulletin revokes and replaces Information Bulletin No. 9 (Status Disputes in Certification Applications in the Construction Industry, March 2010). For a description of the certification process in the construction industry, please also read Information Bulletin No. 6 (Certification of Trade Unions in the Construction Industry).

“Status disputes” typically involve a disagreement as to whether certain individuals:

- were employed by the responding party on the application date;
- performed work of the applicant trade union for a majority of their time on the application date;
- exercised managerial functions; or
- were dependent or independent contractors.

Status disputes arise in two ways. The first way is when the union elects to have its application dealt with under section 128.1 of the Act (card-based certification) and the parties cannot agree on whether certain individuals should be on the “employee list.” The second way is when the union elects to have its application dealt with under section 8 of the Act (vote-based certification) and the parties cannot agree on the “voters list” or, where the employer gives notice to the Board under section 8.1 of the Act (employer’s disagreement with union’s estimate of members in proposed bargaining unit), the parties cannot agree on whether certain individuals should be on the “section 8.1 list.”

Other disputes arise in a variety of ways and are set out in the response or subsequent correspondence of the parties. These can include the timeliness of the application, the proper identity of the employer, trade union status, bargaining unit appropriateness, conflict with a subsisting collective agreement, and other issues.

This Bulletin outlines the Board’s processes for resolving disputes in certification applications in the construction industry. It does not describe the Board’s procedures with respect to disputes in certification applications outside of the construction industry. Please refer to Information Bulletin No. 4 – Status Disputes in Certification Applications (Non-Construction) for information on those procedures.

I. IDENTIFICATION OF LEGAL AND FACTUAL ISSUES IN DISPUTE

Card-based: s. 128.1

Status Disputes

Where there is a dispute about the person listed (or not listed) on the employee list, the union will be directed by way of a Board decision to deliver to the employer and file with the Board, **no later than five (5) days from the date of the Board's decision**, a statement simply challenging any names on the Schedule A that normally accompanies the employer's Response. In the event the Union wishes to make additions to Schedule A, it may also do so but must include the reasons for such additions and all the basic facts upon which it relies (including, for example, *where* the individual sought to be added was working and *what* the individual was doing). The Board's decision will direct the employer to deliver to the union and file with the Board a statement of its position in reply to each of the union's challenges (including any of the union's proposed additions), together with reasons for such position and the basic facts upon which it relies, including at least where the individual was working and what the employer asserts the individual was doing) **within ten (10) days of that decision**. Together with this the employer is expected to produce copies of all relevant documents concerning the individuals in dispute (including payroll records, time sheets, invoices, cheques, etc). Within a further five (5) days (that is, **within fifteen (15) days of the Board's decision**), the Union must file its response to the Employer's position, with the reasons for such positions, including the facts upon which it relies (to the extent it has not already done so), together with any relevant documents that the union relies on. **Once the union has filed its statement of challenges and additions, neither party will be permitted to add to, or delete from, the list without agreement of the parties or leave of the Board.** A Case Management Hearing will be scheduled before a panel of the Board to begin the adjudication of the dispute. There will be no Regional Certification Meeting.

Vote-based: s.8

Status Disputes

Where there is a dispute about whether certain individuals should or should not be on the voters list and/or on the section 8.1 list, each party must identify in writing, no later than the conclusion of balloting on the day of the representation vote, those individuals whose inclusion on the list(s) it is challenging. Challenges to individual voters must be raised with the Labour Relations Officer conducting the vote before the individual casts his/her ballot. Challenges that are made after the conclusion of the balloting will not be considered except with leave of the Board. In addition, in the interests of fairness and finality, parties cannot raise issues about the list(s) to which they have earlier agreed.

Parties (including individual workers) are given **five (5) days after the vote** (that is, normally 7 days after the Board's decision directing the taking of the vote) in which to make submissions in writing about the vote. The reasons for challenges to any ballot that was cast and sealed, and the basic facts in support of the challenges, must be delivered to the other parties and filed with the

Board within **the same five (5) day period** (normally 7 days after the Board's decision directing the taking of the vote).

Any party wishing to file a response to the challenges may do so within a further five (5) days (that is, 12 days after the Board's decision ordering the vote).

A Case Management Hearing will be scheduled before a panel of the Board to begin the adjudication of the dispute. There will be no Regional Certification Meeting.

Other Issues

If there are issues other than status disputes to be litigated in the application for certification, they must be fully pleaded **within fifteen (15) days of the initial date of the Board decision** (in the case of an application under section 128.1—card-based) or **fifteen (15) days of the date of the representation vote** (where one is held), in the case of an application under section 8 (vote-based). In either case, the submissions must include substantial particulars of the facts on which the party raising the issue(s) relies and a statement of the legal issues that party wishes to argue.

A Case Management Hearing will be scheduled before a panel of the Board to begin the adjudication of the dispute(s). There will be no Regional Certification Meeting.

II. MANDATORY PROVISION OF PARTICULARS AND DISCLOSURE OF DOCUMENTS

In the event that either party is not satisfied with the particulars or production furnished by the other party with respect to the status disputes or any other issues, within five (5) days of the receipt of the other party's last submission, each party is required to advise the other of all the documents it seeks to have produced and all of the additional factual particulars that it wishes to have pleaded. The other party is required to respond as fully and completely as possible **within five (5) days of receiving the request** (that is, within 20 days after the Board's decision). If a party objects to producing documents it must set out its reasons in writing and provide them to the other parties and the Board within that 5-day time frame.

III. SETTLEMENT DISCUSSIONS

While the Board will no longer be conducting Regional Certification Meetings, mediation still remains a significant component of the Board's process and the parties are encouraged to avail themselves of that process whenever it appears that settlement of some or all of the issues is possible, by contacting the Manager of Field Services. A settlement meeting with a Labour Relations Officer may be scheduled where appropriate. If a party seeks the assistance of a Board Officer to pursue partial or complete settlement discussions, the Board will accommodate that request. The purpose of such a meeting is to attempt to resolve, or at least narrow, the issues in dispute between the parties. Scheduling of settlement discussions will be undertaken independent of the scheduling of the Case Management Hearing, but the Case Management Hearing will not be delayed to make the settlement discussions/meetings possible.

Documents disclosed to a Labour Relations Officer prior to, or during, settlement discussions have not been filed with the Board and do not become evidence before the Board until formally entered into evidence at the Hearing.

IV. CASE MANAGEMENT HEARING

A Case Management Hearing will be held in Toronto. Notice of the time and date of the Case Management Hearing will be sent with the Confirmation of Filing. **A Case Management Hearing is not a pre-hearing conference.** It will generally be conducted by a panel of the Board **on the Wednesday of the fifth week after the date of the Board's initial decision.** The purpose of the Case Management Hearing is either to resolve as many issues in dispute as possible or to direct how they will be litigated before the Board in an appropriate and expeditious manner. Parties are expected to attend the Case Management Hearing with and ready to produce all relevant documents (if they have not already done so). Any further production issues should have already been raised and will be determined by the panel at the Case Management Hearing.

It is expected that in most cases the Case Management Hearing will be conducted in less than two hours, with the same panel conducting several hearings during the course of one day. However, lengthier Case Management Hearings may be scheduled by the Board where the circumstances warrant.

After hearing from the parties, the panel will determine the scheduling of the hearing on the merits, which may include the manner in which the hearing will be conducted, in what portions or segments, the number of days, the grouping and number of witnesses (if oral evidence is required) and any other procedural issues so that the scheduled hearing dates can be fully and efficiently utilized to determine the merits of the disputes.

The panel conducting the Case Management Hearing will also deal with as many substantive issues as it is able (including status disputes) when in the opinion of the Board no further evidence is necessary.

Following the Case Management Hearing, the panel will issue a decision outlining the determinations made and/or referring the matter to a hearing on the merits. **PARTIES AND THEIR COUNSEL WILL BE EXPECTED TO BRING THEIR CALENDARS AND COMMIT TO HEARING DATES AT THE CASE MANAGEMENT HEARING.**

In the unlikely event that any other procedural or production issues remain outstanding, the Case Management Hearing panel/decision shall direct each party to outline those issues in writing **within five (5) days of the Board's decision.** If the Board considers it necessary, it will schedule a further Case Management Hearing with the parties, most likely by telephone conference. The telephone conference (or, in rare circumstances, a further Case Management Hearing) will likely be conducted early in the morning or late in the afternoon. The Board shall issue a decision with respect to those issues prior to the scheduled hearing on the merits. No further preliminary or production issues may be raised without leave of the Board.

Parties are reminded that the Case Management Hearing is not a pre-hearing conference: Parties should attend prepared to deal with both procedural and substantive issues. The Board may determine both kinds of issues at the Case Management Hearing.

V. HEARING

The Registrar will set the date for the hearing and will normally schedule it to take place in Toronto. The hearing of the merits will not necessarily be conducted by the same panel that conducted the Case Management Hearing.

IMPORTANT NOTE

HEARINGS ARE OPEN TO THE PUBLIC UNLESS THE BOARD DECIDES THAT MATTERS INVOLVING PUBLIC SECURITY MAY BE DISCLOSED OR THAT DISCLOSURE OF FINANCIAL OR PERSONAL MATTERS WOULD BE DAMAGING TO ANY OF THE PARTIES OR WITNESSES. HEARINGS ARE NOT RECORDED AND NO TRANSCRIPTS ARE PRODUCED.

THE BOARD ISSUES WRITTEN DECISIONS, WHICH MAY INCLUDE THE NAME AND PERSONAL INFORMATION ABOUT PERSONS APPEARING BEFORE IT. DECISIONS ARE AVAILABLE TO THE PUBLIC FROM A VARIETY OF SOURCES INCLUDING THE ONTARIO LABOUR RELATIONS BOARD REPORTS, THE ONTARIO WORKPLACE TRIBUNALS LIBRARY, AND OVER THE INTERNET AT www.canlii.org, A FREE LEGAL INFORMATION DATABASE. SOME SUMMARIES AND DECISIONS MAY BE FOUND ON THE BOARD'S WEBSITE AND RECENT DECISIONS OF INTEREST AT www.olrb.gov.on.ca.

IN ACCORDANCE WITH THE *ACCESSIBILITY FOR ONTARIANS WITH DISABILITIES ACT, 2005*, THE BOARD MAKES EVERY EFFORT TO ENSURE THAT ITS SERVICES ARE PROVIDED IN A MANNER THAT RESPECTS THE DIGNITY AND INDEPENDENCE OF PERSONS WITH DISABILITIES. PLEASE TELL THE BOARD IF YOU REQUIRE ANY ACCOMMODATION TO MEET YOUR INDIVIDUAL NEEDS.