

#4: BOARD HEARINGS

I. INTRODUCTION

The Board recognizes that settlement of disputes in a timely fashion promotes good labour relations. Prompt and convenient hearings are critical to this objective. This Bulletin describes the Board's hearing procedures.

II. METHOD OF HEARINGS

Effective September 1, 2022, the Board will conduct some of its hearings in-person, and some of its hearings remotely ("Remote Proceedings") using the Zoom platform, in accordance with the scheduling presumptions described below. Hearings scheduled to proceed before that date will continue as Remote Proceedings, unless the Board directs otherwise.

Effective September 1, 2022, the following proceedings will be presumptively Remote Proceedings:

- Resolution Conferences;
- Case Management Meetings;
- Applications under section 145(2) of the *Code* (arbitration reviews);
- Any matters proceeding via agreed statement of facts and/or written argument alone, or where there is no *viva voce* evidence; and
- Appeals the Board conducts as the designated appeal body under the *Occupational Health and Safety Act* and the *Employment Standards Code*.

All proceedings not identified above will be presumptively scheduled as in-person proceedings.

Where all parties in a proceeding that is presumptively scheduled as an in-person proceeding would prefer that the matter proceed remotely, they may write to the Director of Settlement to confirm their agreement in this regard and request a Remote Proceeding.

In some cases, a party may seek to rebut the presumption that a matter proceed remotely or in-person. The process for doing so will be described in the scheduling letter, and may require a Case Management Meeting. A party seeking to rebut a scheduling presumption will need to put forward a clear and compelling rationale for doing so.

In all cases, the final decision about whether a matter proceeds in-person or remotely rests with the Board.

Procedures for Remote Proceedings

Remote Proceedings, including rules relating to documents and exhibits, are governed by the Board's [Guidelines for Remote Proceedings](#). Parties and participants are expected to comply with those Guidelines.

Procedures for In-Person Hearings

In-person hearings are conducted at the Board's offices in either Edmonton or Calgary. In exceptional circumstances, it may be possible for the Board to sit in other locations when it is more efficient or in the community's interest. *See: Section 9(1)*. Requests for alternate in-person hearing locations should be submitted to the Director of Settlement.

Parties introducing documents as exhibits must, unless otherwise directed by the Chair or vice-chair, bring to the hearing:

- one copy for the Board's file;
- one copy for the witness;
- one copy for each party; and
- one copy for each Board member.

When bringing copies of cases for argument, a party must, unless otherwise directed by the Chair or vice-chair, bring:

- one copy for each Board member; and
- one copy for each party.

An officer can assist a party in determining the number of copies to make. If a party does not bring the required number of documents, the Board may recess the hearing to enable the party to make the appropriate number of copies.

At the commencement of the hearing, the Chair of the hearing will circulate a document on which the parties are to list the following in clear and legible printing:

- the party's representative's full name and title;
- counsel's name, firm, and which party they represent;
- the name(s) and title of the representative's or counsel's advisor;
- the names of all witnesses intended to be called.

During or after the hearing, the Board may advise the parties of policies or case authority not raised but of importance to the matter. If the matters are of sufficient importance to the case, the Board normally gives parties a reasonable but brief period to respond in writing. In most cases, no further hearing is convened.

III. SCHEDULING OF HEARINGS

The Director of Settlement schedules hearings as soon as possible given the need for fairness. Scheduling may occur in consultation with the parties. *See: Rules of Procedure, Rule 22(1)(j).*

A conference call with the Officer, the Director of Settlement, the Chair, a vice-chair, or a panel may be used to resolve scheduling issues.

The Board's hearing schedule is available for viewing on the Internet at: <http://www.alrb.gov.ab.ca/hearings.html>. This schedule, updated weekly, identifies the date, time and matters for hearing. The hearing panel is identified but may change without notice. Scheduled hearings may be adjourned, rescheduled or cancelled with notice given only to affected parties.

IV. TYPES OF HEARINGS

The Board processes cases through both formal and informal hearings. Informal hearings are conducted by one or more Board members as one of the Board's dispute resolution options. *See: Sections 11, 12(2)(c).*

Formal hearings will usually involve two or more members sitting with a Chair or vice-chair. In some cases a Chair or vice-chair can sit alone. *See: Sections 9(1), 9(10), 9(11), 15(5).*

V. INFORMAL HEARINGS

Section 11 of the *Labour Relations Code* allows the Chair to appoint one or more Board Members to conduct an informal hearing or attempt to settle a dispute. Board Members are knowledgeable and experienced labour relations practitioners.

A Board Member assigned to a dispute decides what procedure he or she will follow. The Member may mediate the dispute and help the parties reach a settlement, conduct an informal hearing, or use a mixture of both approaches.

A Board Member hearing usually takes place in an informal setting. It may be at the workplace or at a convenient location other than the Board's offices. Procedure is not strict. Evidence may or may not be given under oath. The Board Member may give an opinion quickly or may decide to issue a report to the parties with recommendations for settlement. The report shall be restricted to the recommended settlement and shall not contain any evidence.

Three things can happen to a Board Member's report. First, the parties can reach a settlement without further Board action. Second, they can reach a settlement that involves adopting the Member's report as an order of the Board. In this case, the Board may confirm the report as an order of the Board itself. Third, on application by a party to the dispute, the Board may confirm the report as a decision of the Board or direct the matter proceed to hearing.

Other than the Board Member's report, the Board will not hear evidence about what happened at the informal hearing.

A Board Member that mediates or holds a non-binding hearing in a dispute will not sit as a Member of any panel that is assigned to adjudicate the dispute, unless all parties agree. *See: Rules of Procedure, Rule 29-33.*

VI. FORMAL HEARINGS

Formal hearings fall into several categories. These include regular hearings, certification and revocation hearings, urgent hearings and hearings with the Chair or a vice-chair sitting alone. In some cases, parties can make submissions to panels by conference call.

The Board usually provides written notice of hearings to all parties, but may provide verbal notice or notice by other means if it is satisfied that a party or person would not receive notice in the regular way. *See: Rules of Procedure, Rules 9 to 21.*

The special features of the various types of formal hearing are set out below.

Regular Hearings

The Director of Settlement schedules many contested applications directly to a regular hearing. *See: Information Bulletin 2.*

The Director of Settlement normally schedules regular hearings giving reasonable written notice. Affected employees usually receive notice of hearing by posting at the work site, or through another method directed by the Board.

Preliminary disputes can result in the delay or adjournment of a regular hearing. The Board urges the parties to use the services of the officer or a conference call with the Chair or vice-chair to resolve these matters before the hearing.

Certification and Revocation Applications

The Board must process certification and revocation applications as quickly as possible. When an application is received a hearing date is immediately set so that the hearing date can be posted at the worksite. *See: Section 34(3); Bulletins 8, 13.*

If a certification or revocation application is uncontested, the Board may cancel the hearing. The Board then decides the issue solely on the basis of the material before it. Where objections arise that affect the threshold support, the Board may conduct a vote and seal the ballot box, pending a later hearing on the objections. Objections dealing only with employee inclusions or exclusions are normally deferred to be dealt with at or after the vote. *See: Rules of Procedure, Rules 22(1)(m), 26; UFCW, Local 401 v. Freson Market Ltd. [1995] Alta. L.R.B.R. 491; Bulletin 14.*

[amended October, 2006]

Urgent Hearings

The Board schedules special hearings on urgent matters as soon as possible. The parties receive a minimum of four (4) hours notice for these hearings. *See: Bulletins 17, 18.*

Urgent hearings may be scheduled for:

- applications alleging illegal strikes or lockouts;
- applications involving picketing issues;

- certain applications involving votes;
- questions involving the duty of fair representation where delay may result in a substantial financial loss to a party; and
- other matters of demonstrable urgency.

Hearing with a Chair or Vice-Chair Alone

Section 9(10) of the *Code* enables the Chair or a vice-chair to sit alone to hear and decide or determine:

- whether a person is an employee (section 12(3)(b));
- whether an organization of employees is a trade union (section 12(3)(d));
- whether a group of employees is a unit appropriate for collective bargaining (section 12(3)(l));
- whether a person has applied for membership or has terminated the person's membership in a trade union (section 12(3)(m));
- whether a person is a member in good standing of a trade union (section 12(3)(n));
- whether a person is included in or excluded from a unit (section 12(3)(o));
- to order, summon and enforce the attendance of witnesses and compel them to give oral or written evidence and to produce documents and any other materials the Board considers necessary (section 14(2));
- questions with respect to a strike or lockout vote (section 76(4)); and
- an application to review an arbitration decision (section 145(2)).

In addition, under section 9(10)(b), the Chair or a vice-chair may sit alone to hear and decide a matter if the Chair is of the opinion that it is necessary to do so due to an emergency.

The Chair or a vice-chair sitting alone may also grant any order or directive within the Board's jurisdiction where all of the parties consent, or where, after a period of notice determined by the Board, none of the parties object: *see Section 9(11)*.

VII. PARTICIPATION IN BOARD HEARINGS

Only those directly affected by the matter, or their representatives, may normally participate in the hearing. Parties can represent themselves or use an agent or lawyer. *See: Rules of Procedure, Rule 5.1; Information Bulletin 2.*

If a person feels they are affected by a matter and have not been provided notice of the hearing, the person may apply in writing to the Board for status at the hearing. The Board will seek the views of the other parties to the matter and will decide the issue. If granted status, such parties are called intervenors.

Employees participating in a matter through a petition must have named a spokesperson. It is this person who receives any notices from the Board. This person must appear at any hearing on behalf of the petitioners.

If a party, having received notice, does not attend, the Board may proceed in the party's absence. *See: Section 12(2)(g)*.

VIII. CONDUCT AT HEARINGS

Board hearings are open to the public. Those who wish to observe Remote Proceedings should refer to and follow the process described in Part 6 of the Board's Guidelines for Remote Proceedings.

There is no smoking, eating or drinking (except water) allowed in the hearing room. Persons cannot use any electronic device in the hearing room during hearings without the Board's consent, and electronic devices must be turned off and kept out of sight during the hearing. "Electronic device" means any device capable of transmitting and/or recording data or audio, including smartphones, cellular telephones, cameras, video cameras or television equipment, audio recorders, computers, laptops, tablets, notebooks, personal digital assistants or other such devices. Legal counsel, instructing representatives of parties and self-represented parties are permitted to utilize electronic devices for the purpose of assisting in the presentation of their case to the Board, so long as the device is in silent mode, is not disruptive to the hearing, and is not used to record or photograph the proceedings. *See: Section 12(2)(g).*

IX. HEARING PROCEDURES

The formality of a Board hearing may vary with the nature of the application. However, the following points may help the parties to prepare for a hearing.

Opening Statements

The Board finds it helpful if the parties begin each hearing with a brief opening statement about the issues. An opening statement briefly describes the issue, the evidence and the remedy sought so as to alert the Board to the matters it will hear.

Exclusion of Witnesses

Parties may, at the start of a hearing, request the exclusion of witnesses from the hearing room. An exclusion order means that all scheduled and potential witnesses should leave the hearing room during the giving of evidence.

An exclusion order is given to preserve the integrity of each witness's independent testimony.

Excluded witnesses must not discuss evidence amongst themselves or with others who have been present in the hearing. While excluded the witness must not seek out or obtain, via telephone, electronic device or otherwise, information about the hearing from any person or from media reports.

An exclusion order normally allows each party to have one person remain in the room, if necessary, to instruct counsel.

Evidence

While not as formal, the Board is in some ways similar to a court. The Board takes evidence under affirmation and witnesses can be cross-examined. Evidence is presented to the Board

through an agreed statement of facts, agreed documents, or witness testimony. Documents that are agreed to by the parties or presented to a witness may be marked as exhibits. Under section 14(5) of the Code, the Board can accept any evidence it considers proper. See: *Retail Clerks Union Local 401 v. 4 Way Wholesale Ltd.* [1979] Alta. L.R.B. 79-053; *Gainers Inc. v. UFCW Local 280-P* [1986] Alta. L.R.B.R. 743; *IBEW Local 424 v. Canem System Ltd. et al.* [1987] Alta. L.R.B.R. 170 and [1987] Alta. L.R.B.R. 203; *Stuart Olson et al. v. Labourers, 92 & 1111 and Cement Masons' 924* [1990] Alta. L.R.B.R. 210; *Wayne Hamilton v. Edmonton Police Association* [1993] Alta. L.R.B.R. 515; *UFCW Local 401 et al. v. European Cheesecake Factory Ltd. et al.* [1994] Alta. L.R.B.R. 30; *Timeu Forest Products v. IWA Local 1-207* [1997] Alta. L.R.B. - September 11, 1997 - GE-02534. See: *Section 14(5)*.

Constitutional Issues

Parties intending to raise an argument based on the *Charter of Rights and Freedoms* or questioning the Board's constitutional jurisdiction must give 14 days' advance notice of that intention to the Board, other parties, the Minister of Justice and Attorney General of Alberta and the Attorney General of Canada. See: *Administrative Procedures and Jurisdiction Act*, RSA 2000, c A-3.

X. DECISION WITHOUT HEARING

In some cases, the Board processes and decides cases on the written material filed and without a formal hearing. If the persons affected do not object to an application, a hearing may not be necessary. The Board advises the parties where this is the case. The Board may also request written submissions from the parties.

XI. ADJOURNMENTS

Rules 34 and 37 describe the Board's power to grant adjournments.

Lawyers or agents seeking adjournments must assure the Board that they have their client's consent to do so. See: *Rules of Procedure, Rules 34(a), 37*.

Second and subsequent adjournments are normally not granted without compelling reasons.

In reviewing adjournment applications, the Board considers the following:

Adjournment by Consent

A party seeking an adjournment should first seek the consent of the other parties. If all parties agree, the requesting party advises the Director of Settlement. The Rules authorize the Director of Settlement to adjourn a hearing with consent. However, the Board reserves the right to deny a request for an adjournment even if all parties agree. See: *Rules of Procedure, Rule 22(1)(l)*.

Contested Adjournments

If the parties cannot agree, the party seeking an adjournment should advise the Director of Settlement and all other affected parties in writing as soon as possible. Wherever possible, the Board will try to hear adjournment applications in advance of the hearing date. This is to save the parties expense and inconvenience. The Board may use a conference call to hear the adjournment application.

Board-Ordered Adjournments

The Board reserves the right to adjourn any matter, with or without the agreement of the parties.

Adjournments Sine Die

When all parties agree to indefinitely adjourn a proceeding and no requests for rescheduling occur within six months, the proceeding will be considered withdrawn. *See: Rules of Procedure, Rule 37.*

See also:

Information Bulletins 1, 2, 3 and 5
Rules of Procedure

For further information or answers to any questions regarding this or any other Information Bulletin please contact:

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