

# *The Saskatchewan Employment Act*

## *How does the process work to secure a Union in the Workplace?*

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### **I. JOINING OR FORMING A UNION**

In Canada, you have the Constitutional right to associate and belong to an organization. This includes a Union that represents workers in the workplace. In Saskatchewan, a Union can only represent the workers in a workplace if there is an Order from the Saskatchewan Labour Relations Board (the Board). The Order is a legal document with a specific file reference, requiring the Employer and the Union to bargain collectively in respect of those workers defined in the Order. Without an Order from the Board, there is no legal basis for the Union to represent the workers. Many Orders date back many years and unless cancelled by an Order of the Board, it remains in full force and effect.

The Board's Order determines the appropriate group of workers at the workplace(s) that can be represented and some workplaces have more than one Order or multiple Unions.

That Certification Order is unique to the organized workplace and confirms the certified union as legally responsible to represent all employees for the purposes of negotiating agreements, representing and enforcing the terms and conditions of their employment relationship and any other matters deemed appropriate by that union. A Union must be independent of the employer in order to qualify for a Certification Order under *The Saskatchewan Employment Act*. If the employees decide that they wish to form their own association, they must be careful not to invite or allow their employer to influence the organization of that association so as to have it viewed as not independent.

In considering a Certification Order request, the Board will determine if the bargaining unit is "appropriate." In other words, do the types of employees in the proposed unit have enough common interest that it would make sense for the purpose of collective bargaining with that employer, and does it comply with the legislation.

Before the issuance of a Certification Order, there are two distinct events that must occur;

- a. The Application, and
- b. The Vote

## II. THE APPLICATION

If employees decide that they wish to be represented by a trade union they have the right to participate in the creation of an **Application for Bargaining Rights of Change in Union Representation** (Form 2) to the Board. In doing so, the employees may either contact an established Union or form an employees association of their own. The application is advanced by the Union or employees association to the Board Registrar.

The application must contain '**support evidence**' that indicates the support of at least 45% of the employees in the proposed unit at the workplace(s).

This '**support evidence**' forms the basis of the application. Support evidence for an application is normally a document commonly referred to as a "support card" and that support card must be advanced to the Board with the application for certification. That card is NOT disclosed to anyone outside the Union, except for the Board Registrar or his designate. It is extremely confidential and maintains that status. There are a number of important aspects to the 'support evidence';

The evidence of support card **must be an original** and not a copy

There must be **a separate card for each person**

The signed support **card must be personally signed and dated.**

The cards must be signed no more than **90 days** prior to the application being filed with the Board.

Once filed with Board, the Board Registrar reviews the support evidence and the application. Again, the support evidence is kept confidential to insure the identity of the employee indicating support for the application, is not disclosed to the employer or to any other employees. The application, exclusive of the support evidence, is provided to the employer and if deemed necessary by the Board Registrar, any other Unions directly affected.

The certification application must contain the following information:

1. the legal name of the trade union or association (applicant)
  2. the name and address of the contact person for the trade union;
  3. the name and address of the employer;
  4. a description of the proposed bargaining unit the trade union is asking to represent.  
(The bargaining unit is a description of the group an/or occupations of the employees the union will be seeking to represent);
  5. an estimate of the number of employees currently in the proposed bargaining unit;
  6. an indication if there is any other union which might claim to represent the same group of employees;
  7. an indication if the applicant union is part of a national or international organization;
- and

a certified copy of the Constitution or Bylaws of the applicant trade union (unless one is already filed with the Board) or there are certification orders held by that trade union in the province of Saskatchewan.

The application for certification contains a statutory declaration, which means that it must be signed and sworn by the person representing the trade union, before a Commissioner

for Oaths in the Province of Saskatchewan, a Notary Public or a Justice of the Peace. In addition, there must be an original and two copies advanced to the Board.

Processing of the Application when filed:

An application is considered filed when a stamp from the Board is placed on the document. That stamp can be secured at the locations designated by the Executive Officer.

### **III. PROCESSING**

There are two types of situations which will determine the processing stream utilized by the Board;

#### **A. Uncontested**

#### **B. Contested**

When the application is filed, the Board Registrar or his/her designate will contact the Employer and advise them of the application. Depending on the Employer's response, that is to say, if the Employer does not object, the matter will be considered as Uncontested and processed.

If the Employer does raise objection indicating that it will be challenged either as to scope of the unit or upon other rationale, such as another Union being in the workplace thus potentially displacing the other union, etc., then the matter is processed by the Board as Contested. The Employer must file a Reply Form 18 stating the rationale for the objection and that document must be filed within the timeframe provided by the Board.

**Whether the matter is Uncontested or Contested**, the Board Registrar or his/her designate will make demands for disclosure of information relevant to the application. Providing that information is not dependant upon whether the application is contested or uncontested. As well, further information and contact can be made with employees or others as they relate to the application, to ensure the timely and accurate processing of the application. This includes any information and materials deemed relevant by the Board Registrar. Usually, the Employer is directed to provide a list of all employees and their occupations, including date of hire, in regard to the proposed bargaining unit. That information can be provided electronically or by facsimile, directly to the Registrar. In addition, full access to payroll and employee records shall be provided upon request and any information sought shall be disclosed to the Board Registrar.

It is important to not that this information is to be provided as quickly as possible. It is generally kept confidential until such time it is deemed releasable to the applicant Union by the Board Registrar. This may involve releasing the names of all employees and their contact information, to the applicant Union, or other information as to potential conflicts with other existing Orders of the Board.

Once the Board Registrar determines the statutory threshold of 45% is achieved, the matter is further processed by the Registrar in securing of an Order called **Direction for Vote**. That Order is issued by the Chair or Vice-Chair or a panel of the Board and is binding on the Registrar and all parties. The Vote must occur, and usually within a few days. The Vote can be conducted by the Registrar as a Poll Vote (PV) or a Mail-in-

Ballot (MiB) process, or combination of the two. The Vote is conducted under the strict supervision of the Board Registrar who operates under the authority of the Order so issued.

The Board Registrar will invite both the union and the employer to have a scrutineer present during the taking of the vote and the tabulation if so ordered.

Once the vote is completed through tabulation, there is an objection period of three days, and if no objection and no further issues have arisen, the matter will be placed before an *in camera* panel, without the need of a formal hearing.

In applications which are contested, the ballots may remain sealed until the Board has further determined the outstanding issues.

The Board may hear from the parties through written arguments and briefs of law or through a public hearing.

For inquiries, more information, please contact the Saskatchewan Labour Relations Board at (306) 787-2406 or see our website at [www.sasklabourrelationsboard.com](http://www.sasklabourrelationsboard.com).

Other possible resources:

For Unions: Saskatchewan Federation of Labour

Saskatchewan Provincial Building and Construction Trades Council

For Employers: The Law Society of Saskatchewan