

MANITOBA LABOUR BOARD

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MANITOBA LABOUR BOARD RULES OF PROCEDURE - ESSENTIAL SERVICES

SECTION 30 – Determination and Maintenance of Essential Services

These rules only apply to Applications for the maintenance of essential services or review of an essential services agreement

30.1 “Days” in this section is calendar days, unless otherwise specified. When a time limit for filing a document, or for doing anything else, expires on a weekend or on a holiday, the time limit is extended to the following regular business day.

Determining if essential services agreement is required

30.2 If an employer and the bargaining agent do not enter into an agreement within 180 days before the expiry of the term of the collective agreement as to whether an essential services agreement is required, either party may commence a proceeding before the Board by completing and filing a written application on the form acceptable to the Board, along with any other information required by the Board in support [the “Determination Application”), including a copy of the current Collective Bargaining Agreement.

30.3 Rules 30.5 through to Rule 30.7 shall apply when a party files a Determination Application.

Commencement of Application for the maintenance of essential services

30.4 If an employer and the bargaining agent do not enter into an agreement within 90 days before the expiry of the term of the collective agreement, either party may commence a proceeding before the Board by completing and filing by completing and filing a written application on the form acceptable to the Board and any other information required by the Board in support [the “Application Package”), including a copy of the current Collective Bargaining Agreement.

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Serving the other party

30.5 A party commencing an application for the maintenance of essential services shall serve a copy of the Application Package on the Respondent prior to filing with the Board and shall file with a Board a Declaration of Service.

Sufficiency of application for the maintenance of essential services

30.6 Upon receiving an Application Package, the Board, or its delegate, shall consider whether it complies with the Act, these Rules, and is sufficiently particularized to inform the Board and the affected persons of its substance. Notwithstanding any other information required by the Act, these Rules or the Board, an application for the maintenance of essential services must be complete and include the information required in the Application Package. The Board shall not accept an application that fails to provide the required information or that has not been served on the Respondent. The Board shall notify the parties of an incomplete application and advise what needs to be filed for it to be accepted.

Settlement Efforts

30.7 Once an Application Package has been accepted, pursuant to section 140(6) of the Act, the Board may appoint a Board representative, a member or other person(s) to assist the parties with the settlement or narrowing of the issues in dispute.

Reply to application for the maintenance of essential services

30.8 Within three working days of the Application being accepted by the Board, the Respondent shall file with the Board a reply to the Application. The Respondent, along with any other information required by the Board in support [the “Reply Package”].

Sufficiency of Reply Package

30.9 Upon receiving a Reply Package, the Board or its delegate shall consider whether it complies with the Act and these Rules and is sufficiently particularized to inform the Board and other parties of its substance. Where a reply is insufficient, the Registrar may

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1. direct that any failure to comply with the Act or these Rules be rectified before the reply can be considered as filed with the Board;
2. direct that further facts or details of the position which the party is taking be provided; or
3. prescribe time limits for compliance with any direction given under this sub-rule.

30.10 A party affected by an application for the maintenance of essential services who fails to comply with this section may not make representations in respect of the application without the Board's permission, and the Board may dispose of the Application without notice to that party.

No response

30.11 No party may file a response to a reply.

Case Management Conference

30.12 On the working day following the deadline for the filing of the Reply a case management conference shall be scheduled to set hearing dates and prescribe time limits. The hearing shall be scheduled to start before the 14th day from the date the Application was accepted by the Board.

Hearing

30.13 Where in any proceeding the Board considers it necessary to hear oral evidence and/or argument, the Board shall set the time, date and place for a hearing and shall give notice of the hearing to all parties concerned.

30.14 Where a party who has been given notice of a hearing fails to attend before the Board in accordance with the notice, the Board may proceed with the hearing and dispose of the matter in the absence of that party.

Adjournments

30.15 Extensions of time in this section will be restricted to exceptional circumstances. For clarity, the availability of a party or of counsel is not an exceptional circumstance.

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Decisions

30.16 All decisions and orders of the Board in proceedings under this section shall be in writing and in such form as the Board determines. The Board shall notify all parties to a proceeding of its decision or order and shall make all of them available for publication.

Request for review

30.17 A party who files an Application for review of an order pursuant to section 94.3(12) of the Act must include all information that is required in the proper application form, and delivering and filing any other documents required by these Rules.

Substantial interference

30.18 A party who files an Application requesting a finding that the agreement substantially interferes with collective bargaining, pursuant to section 94.5(1) of the Act must include all information that is required in the proper application form, and delivering and filing any other documents required by these Rules.

Administration

30.19 The forms listed in this section, or a written application providing the same information in substantially the same order as sought on the form, shall be filed with the board in order to commence the specified proceedings.

30.20 The Board may set the forms and notices to be used in its cases and may change those forms and notices from time to time.

30.20 The Board may also require a person to provide any further information, document or thing that the Board considers may be relevant to a case and to do so before or during a hearing.

30.21 The Board may propose mediation or further mediation, and may mediate differences between the parties with the consent of the parties, at any stage in the proceedings. If mediation is not successful, the Board retains the power to determine the differences in the Application.

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- 30.22 In order to expedite proceedings, the Board may, on such terms as either considers advisable, consult with the parties, conduct a pre-hearing conference, shorten or lengthen any time period, change any filing or delivery requirement, schedule a hearing, if any, on short notice, or cancel such hearing, or make or cause to be made such examination of records or other inquiries as either considers necessary in the circumstances.
- 30.23 Where the Board is satisfied that a case or part of a case can be decided on the basis of the material before it and having regard to the need for expedition in labour relations matters, the Board may decide an application by limiting the parties' opportunities to present their evidence or to make their submissions, or without a hearing.