



INFORMATION BULLETIN

Questions and Answers Regarding “Casual” Employees in the Bargaining Unit

This Information Bulletin provides answers to questions concerning the Labour Board’s approach to casual employees in certification proceedings (except Part II Construction).

Will casual employees be included in a bargaining unit?

This depends on the unit the union applies for. The union may apply for whatever unit it believes it has the support of and wants to represent. An employer who does not agree may challenge the appropriateness of casuals being included in the proposed unit. The Board retains its jurisdiction to determine if the unit is appropriate for the purposes of collective bargaining and will do so on a case by case basis.

What will the Board consider in deciding whether it is appropriate to include casuals?

This determination will be made, where the parties do not agree, based on the evidence and argument presented to the Board. The following non-exhaustive list of factors may be helpful to the parties:

- Views of the employer and union
- The nature and organization of the employer’s business
- Community of interest
- Proportion of casual/temporary employees in the total work force
- Functional integration of casuals in the work force
- Current practice and history of collective bargaining in the workplace or industry, in Nova Scotia or elsewhere
- The Board’s desire to avoid fragmentation

Some, or all, of these factors may be relevant to any particular application.

How will the Board determine membership support?

In determining whether the union has the required membership support, only those casuals who are working (i.e. “on shift”) on the date the application for certification is filed will be counted.

Which casual employees will have their vote counted?

A casual employee’s vote will only be counted if casuals are included in the bargaining unit (by agreement of the parties or order of the Board) and they meet the Board’s test. The Board will consider whether the casual employee has worked an average of 2 shifts per month in the 3 months prior to the date the application for certification is filed. However, the Board will retain flexibility in the application of this proposed test, depending on the parties’ views and the specific circumstances of any particular application. The parties will be expected to work with the Board Officer to try to resolve any issues.

Notwithstanding whether a casual employee’s vote is counted or not, if the Board certifies an “all employee” unit, all casuals will be included in the bargaining unit.

What will happen to the Board’s current policy relating to casual employees?

The current Board policy provides:

“Part-time employees who can demonstrate a regularity to their employment, even if it is only a few hours per week but is consistent week in and week out in a particular test period are considered included in a bargaining unit. Whereas casual employees are those non-scheduled employees who are called in to replace others who are on sick-leave, vacation, maternity-leave, etc. Regular part-time employees in the Hospital sector are required to work an average of two shifts or more per week in any given test period.”

(see <https://novascotia.ca/lae/labourboard/procedures/partcasual.asp>)

This policy will not be changed. This policy will still be necessary where casuals are not included in the bargaining unit, either because the union has not applied for casuals or the Board determines it inappropriate to include them. This policy, and the Board’s prior jurisprudence including [United Steelworker v Heather Hotel](#), will continue to be used to determine whether an employee is a “true” casual or whether the employee is regular part-time where casuals are not included in a bargaining unit.

Can existing bargaining units be amended to include casual employees?

The Board will consider applications by unions to amend units to include casuals. In accordance with the Board’s Amendment Policy (see <https://novascotia.ca/lae/labourboard/procedures/amendments.asp>) the Board will require

membership cards to accompany the Application. The Board may also decide to conduct a secret ballot vote.

This Information Bulletin is not intended to be legal advice. The Labour Board encourages parties to become informed of their rights and obligation which may mean getting independent legal advice from qualified legal counsel.