



Government of Bermuda

Ministry of Labour

Labour Relations Section

**PROCEDURAL GUIDELINES FOR CANCELLATION OF CERTIFICATION
PURSUANT TO THE TRADE UNION AND LABOUR RELATIONS
(CONSOLIDATION) ACT 2021**

Note: These Guidance Notes are subject to the provisions of the legislation and subject to change at any time.

1.0 PURPOSE
<ul style="list-style-type: none">▪ These guidance notes (“Notes”) provide timelines within which the Manager of the Labour Relations Section will endeavour to perform the steps required by the relevant sections of the <i>Trade Union and Labour Relations (Consolidation) Act 2021</i> in respect of applications for cancellation of union certification (the “Application”).▪ Further, these Notes prescribes the nature of the evidence in support of Applications which will be acceptable to the Manager.▪ These Notes are meant to create certainty within the Application process that the steps required by the Act and other relevant legislation will be effected in a consistent and timely manner and provide guidance for the stakeholders to the process.▪ It should be noted that the provisions in the <i>Trade Union and Labour Relations (Consolidation) Act 2021</i> regarding the cancellation of certification do not alter or amend the provisions of the Trade Union Act 1965 as it relates to a worker’s eligibility to vote in a ballot i.e. those who are subject to an agency shop agreement.▪ Any bargaining unit established after 1 June 2021 will be subject to the Agency Shop provisions in the Act and all eligible workers within the bargaining unit being subject to, and acting in accordance with, an Agency Shop agreement, will be considered “members” of the union, as that term is used in the Act, and as a result, will be considered eligible to vote in a ballot and form part of the 60% of the members’ needed to satisfy the requirements for an automatic cancellation of certification.
2.0 RELEVANCE
<ul style="list-style-type: none">▪ These Notes are relevant to all applications for cancellation of union certification.
3.0 LAW
<ul style="list-style-type: none">▪ <i>Trade Union and Labour Relations (Consolidation) Act 2021</i>



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- Referred to as “the Act” in these Notes.

4.0 APPLICATIONS FOR CANCELLATION OF CERTIFICATION

- Sections 57(1) and 57(2) of the Act provide for the Application process;
- Section 57(1) provides that a member in a bargaining unit may, at any time after the expiration of one year after a union has been certified in respect of that unit, make application in writing to the Manager for cancellation of the certification on the ground that 35% or more of the member’s in that unit no longer desire the union to act as their exclusive bargain agent;
- Section 57(2) requires the Application be accompanied by evidence substantiating the ground mentioned in section 57(1).

Guidance Notes:

The Manager will accept Applications that include the following:

- Clear description of the proposed bargaining unit;
- Statement that it is an Application for cancellation of the union certification;
- Statement that the number of members represents 35% or more of the members within the bargaining unit who no longer support the union as their exclusive bargaining agent;
- Statement of the estimated number of members in the bargaining unit;
- Evidence that the members representing 35% or more of the members within the bargaining unit did previously but no longer support the union. “Support” means that a worker was a card carrying member, contributing and paying toward membership of the union in order to receive union benefits and representation from the union. Such evidence of support may include evidence of current or previous membership of the respective union, written evidence of attendance at relevant union meetings and receipt of non-public written information;
- Signature of all members that no longer support the union as their exclusive bargaining agent.

Comments:



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- An Application may be submitted by 35% of those members who previously supported the union and who no longer support the union as their exclusive bargaining agent.

5.0 AFTER RECEIPT OF THE APPLICATION

- Once the Manager is satisfied that an Application meets the statutory requirements, section 57(3) of the Act requires the Manager to assist the union and employer to determine the appropriate bargaining unit taking into consideration express statutory factors;
- Section 57(4) provides that where the union and the employer are not able to agree on the determination within a reasonable period of time as allowed by the Manager, the Manager shall so advise the Minister and the Minister shall refer the issue to the Tribunal for determination.

Guidance Notes:

The Manager will within 10 days (calendar) of the date of an Application, render assistance to the union and the employer in determining the appropriate bargaining unit;

The Manager will allow 30 days within which the bargaining unit is to be determined, and, in the absence of exceptional circumstances, where no agreement is reached within 30 days, the Manager shall advise the Minister, who shall refer the matter to the Tribunal.

6.0 AUTOMATIC CANCELLATION OF CERTIFICATION

- Section 57(8) of the Act provides that the Manager shall cancel the certification of the union for that bargaining unit if he is satisfied that more than 60% of the members in that unit **do not** or **no longer support** the union as their exclusive bargaining agent.
- Automatic cancellation of the certification will determined once the Manager is satisfied that the Application meets the statutory requirements and the bargaining unit has been agreed or determined, further to sub-sections 57(1) to 57(4).



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Guidance Notes:

Where there is an Agency Shop agreement in place, all members within the bargaining unit are eligible to be considered as part of the 60% of the members who do not or no longer wish to have the union as their exclusive bargain agent.

Where there is no Agency Shop agreement in place, only those workers within the bargaining unit that previously supported (as that term is understood in these Notes), the union are eligible to be considered as part of the 60% of the members who do not or no longer wish to have the union as their exclusive bargain agent.

Accordingly, the Manager will satisfy him/herself that more than 60% of the members in the bargaining unit do not or no longer wish to have the union as their exclusive bargain agent on an application made under section 57(1) and executed by more than 60% of the eligible members in that bargaining unit.

7.0 THE BALLOT

- Section 57(5) of the Act provides that the Manager shall conduct a ballot of the members in the bargaining unit within 30 days, or such longer period as may be agreed by the parties in writing;
- Section 57(6) of the Act states that if it is shown that more than 50% of the members voting in the ballot do not support the union as their exclusive bargaining agent, the Manager shall cancel the certification of the union;
- Section 57(7) of the Act states that if it is shown that more than 50% of the members voting in the ballot support the union as their exclusive bargaining agent, the Manager reject the Application to cancel the certification of the union.
- Where there is an Agency Shop agreement in place, all members within the bargaining unit constitute those eligible to vote in the ballot.
- Where there is pursuant to the *Trade Union Act 1965* no Agency Shop agreement in place, only those workers within the bargaining unit that previously supported (as that term is understood in these Notes) the union constitute those eligible to vote in the ballot.
- The conduct of the ballot is set out in Schedule 1 of the Act.



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Guidance Notes:

The Manager will assist the union and the employer:

- to establish the date, time and venue for the ballot, taking into consideration availability of eligible members including shift schedules, days off, approved vacation time so that the date is fixed as best as possible for a time when all workers eligible to vote are available to vote; similarly, the length of time the ballot is open for casting of votes should be determined after consideration of availability of eligible members;
- to identify and communicate who will represent each stakeholder at the ballot;
- to determine sufficient notification of the time, date and venue for the ballot to be given to the workers eligible to vote, in any event, no less than 3 working days prior to the date fixed for the ballot;
- to understand the duties of the employer in respect of the ballot;
- to understand the standard of conduct during voting;
- determine and resolve any other pertinent information relating to the ballot.