

MANITOBA LABOUR BOARD

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MANITOBA LABOUR BOARD
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APPOINTMENT OF CONCILIATORS AND GRIEVANCE MEDIATION

Manitoba Labour Board List of Conciliators and Mediators

In accordance with Sections 68.1 and 129.1 of *The Labour Relations Act C.C.S.M. c. L10* (the “Act”), the Manitoba Labour Board (the “Board”) maintains a list of conciliators and grievance mediators who are willing to act in this capacity and have displayed qualities and experience that make them suitable for such an appointment.

When establishing its list, which is available on the Board’s website, the Board engaged in a consultative process with representatives of employers and employees. The list reflects the consensus reached through this consultative process.

Appointment of a Conciliator

Subsection 67(1) of the *Act* provides that the Board shall appoint a conciliator in the following circumstances:

Appointment of a Conciliator

67(1) The board shall appoint a conciliator to confer with parties engaged in collective bargaining if

- (a) the minister requests the board to appoint a conciliator; or
- (b) a notice to commence collective bargaining has been given under this Act and
 - (i) collective bargaining has not commenced within the time prescribed by this Act or collective bargaining has commenced, and
 - (ii) either party requests the board in writing to appoint a conciliator to confer with the parties to assist them to conclude a collective agreement or a renewal or revision of a collective agreement, and the request is accompanied by a statement of the difficulties, if any, that have been encountered before the commencement or in the course of collective bargaining.

To initiate a request for the appointment of a conciliator in accordance with Subsection 67(1)(b) of the *Act*, a party is required to file an Application. In the Application, the initiating party must confirm that the preconditions for requesting the appointment have been met. In addition, a statement of the difficulties encountered before, or in the course of, collective bargaining must be included with the Application. The Application must be accompanied by a Statutory Declaration on Form “A”.

Notice of Filing the Application shall be provided to the other party or parties and they shall be given two (2) business days to file a Reply.

Pursuant to Subsection 67(1.3) of the *Act*, individuals are not eligible to act as a conciliator in a matter if they have:

- (a) a pecuniary interest in the matter; or
- (b) acted as solicitor, counsel or agent for a party to the matter in the one-year period before the appointment, unless the parties agree to the appointment.

In addition, the Board shall provide each party an opportunity to veto one conciliator from the Board's list. The Applicant shall advise the Board if it wishes to exercise its veto at the time of filing the Application. The responding party shall be afforded the opportunity to veto one individual from the Board's list of conciliators, which should be indicated in its Reply to the Application.

In accordance with Subsection 68(6) of the *Act*, each party to conciliation shall pay one-half of the remuneration and expenses of a conciliator appointed under Subsection 67(1)(b).

Appointment of a Grievance Mediator

The Board may appoint a grievance mediator under Subsection 129(1) or 130(5)(c) of the *Act*.

Subsection 129(1) states:

Appointment of grievance mediator

129(1) Where a difference exists between the parties to a collective agreement concerning its meaning, application or alleged violation, the board may, on the joint application of the parties, appoint a grievance mediator to assist the parties in resolving the difference.

In accordance with this provision, parties may file a joint Application for the appointment of a grievance mediator. The Application should include a copy of the collective agreement, the grievance, and any responses thereto.

Subsection 130(5)(c) applies to expedited arbitration referrals filed in accordance with Section 130 of the *Act*. Specifically, Subsection 130(5)(c) provides:

Functions of board

130(5) Where a grievance is referred to the board in accordance with this section, the board

...

- (c) may, if the board considers it appropriate and the parties both agree, appoint a grievance mediator to assist the parties in settling the grievance before the hearing.

When seeking the appointment of a grievance mediator in accordance with Subsection 130(5) of the *Act*, the Applicant shall make that request when filing the expedited arbitration Application. The Applicant should advise if they wish to veto a grievance mediator from the list at that time.

The Board will provide notice of filing to the Respondent and direct that they advise if they agree to the appointment of a grievance mediator. If the Respondent is agreeable to the appointment of a grievance mediator, they may also veto an individual from the Board's list. Following receipt of the Respondent's correspondence, the Board will proceed to appoint a grievance mediator if it is satisfied that the statutory requirements have been met.

Pursuant to Subsection 129(1.2) of the *Act*, individuals are not eligible to act as a grievance mediator in a matter if they have:

- (a) a pecuniary interest in the matter; or
- (b) acted as solicitor, counsel or agent for a party to the matter in the one-year period before the appointment, unless the parties agree to the appointment.

In accordance with Subsection 129.2 of the *Act*, each party to grievance mediation shall pay one-half of the remuneration and expenses of a grievance mediator appointed under Section 129 or 130.