

LEGISLATIVE INTERPRETATIONS

Topic: JHSC – Representatives	Issued by: V.P., WorkSafe Services
Statute: Occupational Health & Safety Act	Date Issued: September 7, 2001
Section: 14(3)	Date Revised:

14(3) A committee shall consist of equal representation from both the employer and the employees, and the employer shall designate his representative or representatives and the employees shall designate their representative or representatives.

Questions:

How are JHSC employee representatives selected in the following circumstances?

- Employee representatives of a JHSC in a non-unionized workplace.
- Employee representatives of a JHSC in a unionized workplace.
- Employee representatives of a JHSC in a workplace that has both unionized and non-unionized employees?

Can an employee representative have supervisor (employer) responsibilities as defined in the *Act*?

Answers:

The legislation permits enough latitude to enable the parties to work out arrangements to meet the needs of the workplace. Where there is an issue with respect to membership on the Committee and the parties oblige WorkSafeNB to make a decision, WorkSafeNB will make the determination in relation to the following criteria:

1. Employee representatives of a JHSC in a non-unionized workplace.

If none of the employees are represented by a union, the employee representatives are to be selected by the employees in that workplace.

2. Employee representatives of a JHSC in a unionized workplace.

If the workers are represented by one or more unions, the worker representatives are to be selected according to the procedures established or agreed on by the union or unions;

3. Employee representatives of a JHSC in a workplace that has both unionized and non-unionized employees?

If some of the employees are represented by one or more unions and some are not represented by a union, the employee representatives are to be selected in accordance with paragraphs (1) and (2) in equitable proportion to their relative numbers and relative risks to health and safety;

4. Can an employee representative have supervisor (employer) responsibilities as defined in the *Act*?

The key to a functioning JHSC is having employee and employer representatives who are appointed or elected by the group they represent. If employees choose an employee with some supervisory duties and this person is agreed to by the other employees, then this person is permitted to represent the employees. If the employees appoint or elect someone with some supervisory duties and there is a complaint made to WorkSafeNB, the Health and Safety Officer will review the matter. In reviewing the matter, the Health and Safety Officer will consider the level of supervisory duties and the amount of time spent in those supervisory duties in determining whether that person is eligible to represent employees. Where, in the opinion of the Officer, the employee representative's supervisory duties are of a nature or duration that meet the definition of employer, then that representative will not be eligible to represent the employees on the JHSC.

Additional Provisions

If the employees do not make their own selection after being given the opportunity under paragraphs (1) to (3), the employer may seek out and assign persons to act as employee representatives.

Where the employer and employees cannot agree on the size of the committee, as required by Section 14(4) of the *OHS Act*, the Chief Compliance Officer may establish its size.