

Forms and Instructions
Application to Decertify a Union

Nova Scotia
(Non-Construction)

Table of Contents:

Overview 3
Timing your Decertification..... 3
Get the Forms 3
Avoid Mistakes..... 3
Gather Support..... 4
Prepare the Forms..... 4
Deliver the Forms..... 5
Conclusion..... 5

Terms of Use:

The LabourWatch web site and all materials provided by the Canadian LabourWatch Association are intended to provide information of general interest to the public.

They are not intended to offer legal or consulting advice and accessing information or documents from the LabourWatch web site is not intended to create a lawyer-client relationship.

Although we try to ensure the information we provide is accurate, we cannot guarantee that it is complete, correct, or timely, and make no warranties of any kind. The information on this web site should be used in combination with appropriate professional advice obtained from a qualified professional who understands your particular situation.

Links to any other web site or reference to any product or service does not suggest or imply an endorsement or recommendation of those products, services or web sites (or the material contained on those web sites).

Copyright:

The Canadian LabourWatch Association encourages the use of our content including copying, emailing and faxing as needed by users. There are no restrictions on the use of our FAQ's, any Downloads related to labour law proceedings, our Newsletters, etc.

Any documents or materials housed on this web site that are the product of organizations other than LabourWatch may be viewed but further copying and distribution should only be done in accordance with principles of copyright law.

Employees, whether unionized or not, who want to be more informed, should refer fellow Employees to this website and may certainly download, print, copy, transmit and distribute these materials to fellow Employees or any interested parties by any means whatsoever. You do not need to contact us for permission to do so.

Employers may do the same, for management training and communication purposes, whether within their organization or with other interested parties. In some situations, Employers may provide these materials to their Employees. However, we suggest, in the strongest possible terms, that you only do so in consultation with a labour lawyer who knows your individual situation.

Unions may do the same, for training and communication purposes, whether within their union or with other interested parties such as their Members.

Copyright © 2000 - 2007 Canadian LabourWatch Association

Overview

Decertification basically means getting rid of a union. It happens when a majority of employees no longer support the union or don't want the union to represent them. If you can prove this you can decertify the union. But, there are a few rules you need to follow.

Using our step-by-step instructions, you should be able to apply to decertify your union. If you need help, go to our "Contacts" pages and get in touch with someone listed there. By the way, the Nova Scotia Labour Relations Board (NSLRB) calls decertification "revocation", but it means the same thing - that you do not want the union to represent you in collective bargaining with your employer.

Timing your Decertification

You can only apply to decertify the union during an open time period. Those are:

- **If There is No Collective Agreement:**

12 months after certification, if no collective agreement has been negotiated;

- **If There is a Collective Agreement:**

Within the last 3 months of a collective agreement;

If the collective agreement is for a term of at least 36 months (3 years), also during the last 3 months of each year of the collective agreement after the second year (the 34th, 35th and 36th months; the 46th, 47th and 48th months; the 58th, 59th and 60th months, etc.).

Get the Forms

You must make your application in writing and need to use a specific application - Form 7. If you work in the construction industry then you should use a different set of Decertification instructions, with a different form. You can find them in our Downloads section.

In Nova Scotia, unlike some other provinces you actually have to give reasons for getting rid of your union, so one purpose of this form is to explain to the Nova Scotia Labour Board why you feel the union should be decertified. There could be a lot of reasons, or it might just be because most of you in the bargaining unit agree that the union should be decertified.

Avoid Mistakes

To succeed, you may have to show that your employer wasn't involved in decertifying the union. So, you should make sure that:

- It was not your employer's idea to start the application, your application or the purpose of the application was not discussed with anyone from management of your employer,
- No one from management offered anyone any reward or benefit for starting or continuing the application,
- No one from management threatened anyone, if they would not support the application,
- You have not been led to believe your application will be funded in whole or in part by your employer.

The Board may say, if you do not have a copy of your collective agreement that “close should be good enough” in completing these sections, but LabourWatch encourages you to get a copy of the applicable collective agreement to complete the above questions. We don’t think you should take a chance that your guesses were not “close” enough resulting in the dismissal of your application.

Gather Support

Whatever the reason or reasons your fellow employees want decertification, you should choose one or two of you to be the official Applicant, and the rest just need to sign a petition or each should sign a standard letter to support the application. The petition is usually the easiest though. By the way, you may have to prove the signatures on your petition were given “freely” and “voluntarily.”

Make sure signatures, if gathered at your workplace, are not gathered during working hours. They can be collected when you and the person signing are on break or before or after work. Also, make sure everyone who is signing the document is given a chance to read it first, and it is advisable to keep other signatures on the petition covered when someone is signing as employees are increasingly concerned about privacy and you may damage your chances of success if privacy is a concern of your co-workers.

Prepare the Forms

To properly complete your application form, you will need:

- The name, address and phone number of: the Applicant(s) (the person or people who will be the contact for the Labour Board), the union, and your employer.
- Approximate number of employees who work for your employer, whether they are in the union or not.
- Approximate number of employees in your bargaining unit.
- The date the union was certified and the date the collective agreement was signed.
- A brief description about what kind of business your employer is involved in.
- A description of your “bargaining unit” (see a copy of your collective agreement).
- Copies of the paragraphs in the collective agreement about its renewal and its term. The Board is looking for when the agreement ends and how long it is valid for.

Question #10 - The question offers one of two options, either a “significant” number of the union members feel the union is “not adequately fulfilling its responsibilities” (Question 10 - option “a”), **or** the “majority” of the employees want to decertify the union (Question 10 - option “b”).

NOTE: The use of “members” in (a) and “employees” in (b) is very important.

To answer this question best you really must have a copy of your collective agreement. You should find out if your union has a “forced membership security clause”. Some collective agreements require that all unionized employees, known as members of the bargaining unit, also become and remain Members of the union. While some other collective agreements allow unionized employees (members of the bargaining unit) to join or not to join the union as actual union Members.

So, if your collective agreement has a forced Membership clause then option (a) is a better because you don’t need as many signatures. It says only that a “significant” number of the union Members in your bargaining unit feel the union is not “fulfilling its responsibilities”. The Board does not offer a clear definition of how many people are a “significant” number, though the Board has said in prior decisions that it can be less than a majority (50% + 1). How much less they have never been clear about to employees in Nova Scotia.

If your collective agreement has voluntary Membership then you had best choose option (b) and ensure that you have support evidence from a majority of employees (who may or may not be actual Members of the union). It may be hard for you and your fellow signers to know for sure who is or is not currently in good standing as a full union Member. If you have good information as to who is or is not a union Member then option (a) may still work.

If you choose option (b) and must prove a "majority" want to decertify the union, you can do this by getting more than half to either signed cards saying they want to decertify, or by signing a petition that says they want to decertify the union. Petitions are much easier, though you must make sure that other signatures are not visible to each successive signer as your fellow employees may expect privacy.

Once you complete the application form, you will need to have a Commissioner of Oaths witness as the Applicant(s) sign the document. If you don't know where to find a Commissioner of Oaths, contact a lawyer since they are also Commissioners of Oaths in Nova Scotia.

If you have any questions about how to complete this form you can speak with one of LabourWatch's "Employee Advisor" law firms in Nova Scotia.

Deliver the Forms

You can send your decertification documents (your application and petition) by fax, hand-delivery, courier or even registered mail. We suggest the best way is by courier or hand-delivery.

But, whatever way you send them, make sure you send 3 copies.

Conclusion

Once the Labour Relations Board gets your application, it'll contact the union and your employer to inform them about your application. The Labour Board will provide all of the names you gathered to the union. The union and the employer will send a reply to the Board.

Next, the Board will review your application. The Board almost always looks at the "voluntariness" of applications. The Board may look to see if your employer was involved in any way and the union may well claim that the employer is behind it all. If the Board has concerns, your spokesperson will have to address them at a hearing.

Also, unions often claim employer interference and usually only drop such claims just before a hearing if, in the end, they have no good evidence to back up the claim. So, if you know you have kept your employer away from your work then don't let the union claims bother you or throw you off all of your hard work.

If the Board agrees your application was voluntary, it was made at the right time and enough unionized employees (and/or members) support it, the Board will call a vote of all unionized employees. If a majority of them vote for decertification, your application will be successful and the union will be decertified.

The Trade Union Act

APPLICATION FOR REVOCATION OF CERTIFICATION BEFORE THE LABOUR RELATIONS BOARD (NOVA SCOTIA)

Between:

Applicant,

-and-

Respondent.
(trade union)

The applicant applies to the Labour Relations Board (Nova Scotia) to revoke the certification of _____
as bargain agent for a union of employees employed by _____

The applicant states:

1. Name(s) of applicant(s): _____

Address(es) of applicant: _____

2. Name of respondent: _____

Address: _____

3. Name of employer of employees in the unit: _____

Address: _____

4. General nature of employer's business: _____

5. Approximate total number of employees of employer: _____

6. Detailed description of the unit: _____

7. Approximate number of employees in the unit: _____

8. The date of the certification of the respondent as the bargaining agent of the employees in the unit: _____

9. If there is an existing collective agreement affecting employees in the proposed unit give date of last signing: _____

Quote terms of such agreement relating to duration, renewal and termination: _____

10. A statement of facts showing that:

- (a) a significant number of members of the certified trade union allege that the trade union is not adequately fulfilling its responsibilities to the employees in the bargaining unit for which it was certified; or
- (b) the certified union no longer represents a majority of the employees in the unit for which it was certified.

11. A list of names and signatures of any employees in the unit who support this application is attached.

I/We _____ declare that the statements made and information given herein are true in substance and in fact and make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath, and by virtue of the *Canada Evidence Act*.

Declared by the said

before me at _____

in the County of _____

this _____ day of _____, A.D. 19 _____

(Signature)

A Commissioner of the Supreme Court of Nova Scotia

(To be declared before a Commissioner for taking affidavits or any other person authorized by law to administer an oath.)

Note: Any employee, or group of employees, who has filed an Application for Revocation of Certification may attend at the hearing in person or by representative. Any employee or representative who appears at the hearing will be required to testify, or produce a witness or witnesses who will be able to testify, from his or their personal knowledge and observation as to (a) the circumstances concerning the origination of the material filed, and (b) the manner in which each of the signatures was obtained.

