

HOW TO BRITISH COLUMBIA | NON-CONSTRUCTION Decertify A Union - Partial Decertification

TERMS OF USE

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

They are not intended to offer legal or consulting advice. Accessing information or documents from the LabourWatch web site is not intended to create a solicitor-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 copyright law.

Employees, whether unionized or not, who want to be more informed, should refer fellow employees to this web site 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 and or non-Members they may represent.

For help, call LabourWatch TOLL-FREE at

1-888-652-2687

INTRODUCTION

Decertification means getting rid of a union. If a majority of employees no longer wish to be represented by a union, they can apply for a cancellation of the union's certification. However, you must carefully follow the rules of the BC Labour Relations Code and of the British Columbia Labour Relations Board - the "Labour Board".

Using our step by step instructions, you should be able to make an application that satisfies the rules. If you need help, go to our "Contacts" pages and get in touch with someone listed there.

In British Columbia, decertification is often called "cancellation of certification" or "revocation of bargaining rights". There are two types of decertification, with different forms and rules, Partial Decertification, and Full Decertification. Use this package if you are trying to decertify your entire bargaining unit - all of your unionized workplace or workplaces if your Collective Agreement covers more than one workplace. Use our Partial Decertification package in our Download section if you are only decertifying part of your bargaining unit or unionized workplace(s)

There are two types of Partial Decertification.

1 - **The First**, if your bargaining unit includes employees at several geographic locations, you may be able to decertify the union at only one location (or a number of locations but less than the whole bargaining unit).

You have a better chance of Partial Decertification if your location is independent of the other locations, particularly if the union "added" your group into an existing larger bargaining unit by what is called a "variance" of the certification. If that is the case, you are asking for a "variance" to get out, just like the union applied for a "variance" to get your group included.

2 - **The Second**, if your bargaining unit is at one geographic location, but includes different groups, for example office and sales employees are included in the same bargaining unit as the warehouse or plant employees. It is very difficult to obtain "partial decertification" in this situation.

For example, if the sales employees wanted to decertify from the rest of the

group, they would have to prove that they are a separate and distinct group from the other employees and that there is no "functional integration" with those other employees.

There are very few cases like this and you would probably have to get expert legal advice before attempting this kind of "partial decertification." It may be easier to persuade a majority of the whole bargaining unit to apply for a "full decertification."

If you want to decertify the whole bargaining unit, use our Full Decertification in the Download section.

TIMING YOUR "PARTIAL" DECERTIFICATION

You cannot apply for Partial Decertification until 10 months after the union was originally certified for your bargaining unit.

You cannot apply for Partial Decertification if the union has given "notice to bargain" to your employer or during the time that the union and the employer are in bargaining.

If a previous Decertification was refused by the Labour Board because your employer committed an unfair labour practice, you probably also have to wait another 10 months.

GET THE FORMS

You must make an application for decertification in writing so you must use two Labour Board forms: one "Form 142" and a number of "Form 142A" forms.

Each employee who supports your application must fill out a Form 142A and sign it, as proof that they support the application. Make sure that each form is dated and uses the correct, full name of the union and you employer.

You must collect a 142A from at least 45 per cent of the employees in the group that you want to decertify.

The organizer for your application completes a Form 142 and sends it to the Labour

Board along with all the original 142A forms. Keep copies of each though, for your records.

You must determine how many employees are in the bargaining unit that you wish to decertify. It is a good idea to have as many forms as possible, since there can often be a dispute about how many employees are included in the group, for example, an employee on maternity leave, or sick leave, or layoff usually counts. So, try to collect more than 45% in case there are issues with someone's employment status or 142A - this way you reduce the risk of the application being rejected because you had less than 45% because some were rejected.

You can get these forms from our decertification download or from the LRB web site under "Forms".

Remember to keep a copy of everything that you submit to the Labour Board for your records.

AVOIDING MISTAKES

The forms for decertification must be filled out fully and accurately.

- You must use the full, correct name of the union
- You must have each employee date the 142A at the same time as it is signed.
- The application will fail if it is determined by the Board that it was promoted or assisted by the employer. Unions almost always claim the employer was involved even if they have no evidence.
- You should not approach fellow employees on employer premises during working hours-but lunch or coffee breaks is okay and of course, before or after work.
- You must not use an employer board room or employer photocopier and it is best not to use the employer e-mail system.
- The employer is not allowed to make promises or offer rewards if a decertification is successful.
- The employer cannot offer to pay legal fees on your behalf.
- You should avoid discussing your application with management and do it on your own.

If you need help, consult our web site or ask for advice from someone who does not work for your employer. You can ask a lawyer for legal advice, if necessary, but the lawyer should be aware that there is a controversy at the Labour Board as to whether any legal fees can be paid by your employer. Hopefully, the instructions on this web site are all that you will require.

BUILD SUPPORT

You should not use threats or promises or pressure to get fellow employees to sign a Form 142A. You should think of one or two good reasons why you believe the union should be decertified. A businesslike and friendly approach works best. Remember, once more than 45% of your group sign a 142A and you file your Application, there will hopefully be a secret ballot vote, supervised by the Labour Board, where every employee in the group can vote in private. Not everyone who signs a 142A will necessarily vote for decertification, but some who are reluctant to sign a one may vote for decertification in the secret ballot vote.

Check your collective agreement and read the section or definition about "bargaining unit." This is often called the "Recognition" clause, and is usually located near the beginning of the collective agreement. You will need to collect a Form 142A from at least 45% of the group mentioned in that definition.

You should also remember that it is quite likely that you will have to prove the signatures on the 142A's were given "freely" and "voluntarily."

As mentioned above, people who support your application should not sign a 142A when they are working - they must be on a break during work or do it before or after work. The reason is that you are supposed to be working. If the employer knows it is happening on working time and does nothing, the union might accuse the employer of supporting the decertification by "turning a blind eye" to your efforts during work time suggesting that the employer wants everyone to know they support the decertification campaign.

PREPARE THE FORMS

As mentioned above, each Form 142A must be signed and dated by the employee who supports your application. You must use the full, correct name and local number of the union. You can use the name on the collective agreement, or on the official Labour Board certification. If in doubt, phone the Labour Board and ask for the correct name.

After you have collected your signed form 142A's, you will fill out the form 142. The first thing you will be asked is to name yourself (or another supporter) as the "representative" for the employees seeking decertification. You can tick off a box if

you want your name to remain confidential.

The form then asks you for:

- The name, address and contact information for your employer and the union.
- The number of employees who have signed a 142A.
- The number of employees in the bargaining unit that you are applying to decertify.

You have to pay the Labour Board - c/o Minister of Finance a fee of \$100. Your employer cannot pay this for you.

The Form 142 asks for information about your bargaining unit. If you need help, you can ask the Labour Board for a copy of your collective agreement or your certification. It saves time if you partially complete the "blank" 142A's with ONLY the full, correct union name and local along with your employer's full and correct name before having them signed. This also makes sure that no one makes a mistake when they are completing their 142A. Do NOT fill out the date beforehand, this can cause problems when you submit the form to the Labour Board.

DELIVER THE FORMS

Once you have gathered form 142As from more than 45 per cent of your group, and you have filled out the form 142, you must take all the originals, and a copy of your collective agreement (if the union and the employer have negotiated one) to:

British Columbia Labour Relations Board

Suite 600, Oceanic Plaza 1066 West Hastings Street Vancouver, British Columbia V6E 3X1.

It is better to do this in person, although you can use regular mail or a courier. The advantage of going in person is that a Labour Board official may go over your form and you can correct any errors.

Your application must be made within 90 days of the date on your form 142As. The Labour Board will check the dates. An outdated form 142A will not count and you may have to ask that person to sign a new form.

CONCLUSION

Once the Labour Board gets your application, it will check for mistakes. If everything is okay, they will accept your application and send a notice to the union and your employer, notifying them that a group of "Certain Employees" has applied for decertification. The union and the employer will be given time to make a written submission either opposing or supporting the application.

The notice from the Labour Board will schedule a hearing at the Board office within 10 days of your application. The Labour Board will also schedule a secret ballot vote of all employees, also to be held within 10 days.

It is important that you, or a representative of your group, attends at the Labour Board on the date of the hearing. If you cannot attend, you must phone the Labour Board and give a good reason why you cannot be there. If there is no opposition to your application at the hearing, the Labour Board will order the vote to proceed as scheduled, and to be counted.

If there is opposition to your application (for example, if the union complains that your employer improperly supported your application) then the Board will order that the vote proceed, but the ballot box will be sealed until the dispute is resolved. The Labour Board will ask the union, the employer, and you for written submissions and may even hold another hearing so that witnesses can be called and arguments can be made. The Labour Board will then review the objections - if it upholds the objections, your application will likely be dismissed; if the objections are overruled, then the vote will be counted. If the majority of employees who vote are in favour of decertification, the certification of the union will be "varied" under section 142 of the Labour Relations Code. If the majority vote to keep the union, or if there is a tie, the certification will not be changed.

One last important point: you must carefully read the "question" on the secret ballot, and inform your supporters accordingly. The ballot does NOT ask if you are in favour of decertification. Rather, it asks if you wish the union to remain as your certified bargaining agent. So the answer, if you are in favour of decertification, is "NO".

LABOUR RELATIONS CODE**BRITISH COLUMBIA
LABOUR RELATIONS BOARD****EMPLOYEE APPLICATION FOR PARTIAL DECERTIFICATION
(SECTION 142)**

Both Parts I and II must be completed. Part I will be kept confidential by the Board. Part II will be sent to the parties (the union and the employer).

- **PLEASE TYPE OR PRINT CLEARLY. ATTACH EXTRA PAGES IF NECESSARY.**
 - **EMPLOYEES WISHING TO HAVE THEIR UNION PARTIALLY DECERTIFIED SHOULD SELECT A PERSON TO ACT AS THEIR AUTHORIZED REPRESENTATIVE WITH THE BOARD.**
 - **EACH EMPLOYEE MUST COMPLETE AN INDIVIDUAL REVOCATION FORM 142A (ATTACHED).**
- *NOTE: THE REVOCATION FORMS MUST BE SIGNED WITHIN 90 DAYS BEFORE THE APPLICATION BEING FILED WITH THE LABOUR RELATIONS BOARD**
- **THE BOARD WILL KEEP THE NAMES OF EMPLOYEES CONFIDENTIAL.**

PART I**APPLICANT INFORMATION**

AUTHORIZED REPRESENTATIVE FOR THE EMPLOYEES SIGNING THE REVOCATIONS:

Name: _____

Do you consent to the Board releasing your name to the Employer and Union?

Yes No

Address: _____

Postal Code: _____

Work Telephone: _____ Home/Cell Telephone: _____ Fax: _____

Name of spokesperson (if different from above): _____

Do you consent to the Board releasing your name to the Employer and Union?

Yes No

Address (if different from above): _____

Postal Code: _____

Work Telephone: _____ Home/Cell Telephone: _____ Fax: _____

TRADE UNION INFORMATION

Full Name and Local of trade union: _____ Local Number: _____

Address: _____

Postal Code: _____ Telephone/Cell: _____ Fax: _____

Name of Union Contact Person: _____

EMPLOYER INFORMATION

Full name of employer: _____

Address: _____

Postal Code: _____ Telephone/Cell: _____ Fax: _____

Name of Employer Contact Person: _____

EMPLOYEE SUPPORT

Attach individual revocations signed by at least 45% of the employees in the group for which the application is being made (use Form 142A)

Number of signed revocation forms: _____

Number of employees in the group for which application is being made: _____

Total number of employees in the whole bargaining unit: _____

Signature of Authorized Representative: _____

Print name: _____

Position: _____

Date of signing: _____

LABOUR RELATIONS BOARD FEES

- APPLICATION/COMPLAINT MUST INCLUDE FEE OF \$100.00
- METHOD OF PAYMENT (CHECK ONE)
CREDIT CARD - MASTER CARD VISA CREDIT CARD NO:
EXPIRY DATE:

SIGNATURE: _____
- CHEQUE
 DEBIT CARD
 CHARGE TO PRE-APPROVED ACCOUNT
- PAYMENT (CHECK ONE)
 ENCLOSED
 TO BE SENT WITH ORIGINAL COPY AS APPLICATION/COMPLAINT SENT BY FAX
 CHARGED TO PRE-APPROVED ACCOUNT
- NOTE: FEE OF \$50.00 MUST ACCOMPANY REPLY TO APPLICATION/COMPLAINT
- NOTE: CREDIT CARD INFORMATION WILL BE DELETED BY THE BOARD PRIOR TO DISTRIBUTING THIS FORM TO THE PARTIES

04/2004

PART II

(This Part will be sent to the Union and the Employer)

The Board's policy regarding partial decertifications is set out in Board decision: *Certain Employees of White Spot Limited*, BCLRB No. B16/2001. * A summary of the threshold requirement and other relevant factors to be considered is attached to this form. Please review this summary before filling out the information in Part II.

* The full *White Spot* decision can be found on the LRB web site: www.lrb.bc.ca under "Decisions".

BARGAINING UNIT INFORMATION

Is your bargaining unit certified? _____

If no, is there a collective agreement? _____

Please enclose a copy of your current collective agreement if there is one.

Are the Union and Employer currently engaged in collective bargaining or involved in a strike or lockout? _____

If so, please provide details:

Please state the bargaining unit description and location where the employees affected by this application are working (see the certification* and/or the collective agreement).

* A copy of the certification can be obtained from the Labour Relations Board.

THRESHOLD REQUIREMENT

- The location or portion of the bargaining unit for which application is being made must meet the *IML* criteria for appropriateness (see *Island Medical Laboratories*, BCLRB No. B308/93, 19 CLRBR (2d) 161). * The *IML* criteria are:
 - (a) similarity in skills, interests, duties and working conditions;
 - (b) the physical and administrative structure of the employer;
 - (c) functional integration;
 - (d) geography.

* The full *IML* decision can be found on the LRB web site: www.lrb.bc.ca under: "Bulletins" - Trade Union Certification Process - Appropriateness (where there is a hyperlink to the full decision)

Describe the group of employees applying to be decertified:

Complete Section A or B below.

A. If the current Certification includes more than one employer location complete this section.

1. Does the decertification application include all employees at one of the employer's locations?

Yes No

2. If No, which employees does it include?

3. Do employees at this location sometimes work at the employer's other locations as well?

Yes No

4. Can employees at this location transfer to the employer's other locations? Yes No

5. Was this employer location varied into the original Certification? Yes No

B. If the current Certification includes one employer location only, complete this section.

1. Describe the employee classifications covered by this application.

2. Describe the employee classifications in the bargaining unit not covered by this application.

3. Is there an overlap between the work performed by the employees covered by this application and those employees not covered by this application? Yes No

4. If yes, describe how.

COMPLETE AND DELIVER TO: Registrar
Labour Relations Board
600 - 1066 West Hastings Street
Vancouver, BC
V6E 3X1
Tel: 604-660-1300 / Fax: 604-660-1892

IF THESE FORMS HAVE BEEN FAXED, THE ORIGINAL SIGNED COPIES MUST ALSO BE FORWARDED TO THE BOARD (LRB RULES).

If you require further information please call the Board's Information Officer at 660 - 1304.

LABOUR RELATIONS CODE**BRITISH COLUMBIA
LABOUR RELATIONS BOARD****EMPLOYEE APPLICATION FOR PARTIAL DECERTIFICATION
(SECTION 142)****BEFORE YOU SIGN THIS FORM, PLEASE ENSURE:**

- *The Trade Union's full name and local (if applicable) is filled out*
- *The date is filled out by you*
- *Your name is printed clearly*
- *The Employer's name is filled out*

THIS FORM WILL NOT BE ACCEPTED UNLESS THESE REQUIREMENTS ARE MET AND THE FORM IS SIGNED AND DATED ON THE SAME DATE AND WITHIN 90 CALENDAR DAYS IMMEDIATELY BEFORE THE DATE ON WHICH THE PARTIAL DECERTIFICATION APPLICATION IS RECEIVED BY THE LABOUR RELATIONS BOARD.

(THE BOARD WILL KEEP NAMES OF EMPLOYEES CONFIDENTIAL)

I HEREBY WISH TO APPLY FOR PARTIAL CANCELLATION OF CERTIFICATION AND REVOCATION OF BARGAINING RIGHTS HELD BY MY UNION FOR THAT LOCATION OR PORTION OF THE BARGAINING UNIT WHERE I WORK:

NAME OF TRADE UNION **LOCAL NUMBER**
(The union's name and local (if applicable) must be filled out at the time of your signature)

NAME OF EMPLOYER

I UNDERSTAND THAT IF THE APPLICATION SUCCEEDS, THE UNION WILL CEASE TO BE MY EXCLUSIVE BARGAINING AGENT AND WILL NO LONGER REPRESENT ME IN COLLECTIVE BARGAINING. I HEREBY AUTHORIZE THE REPRESENTATIVE NAMED ON THE ACCOMPANYING APPLICATION TO ACT ON MY BEHALF IN THE PROCEEDINGS BEFORE THE LABOUR RELATIONS BOARD.

Print Your Name: _____ Signature: _____

Date: Day: _____ Month: _____ Year: _____
(The date must be completed by you at the time of your signature)

Print your complete address.

Street: _____ City: _____ Province: _____

Postal Code: _____ Phone/Cell Number: _____

Summary of *White Spot Limited*, BCLRB No. B16/2001 (with some additional explanations for the benefit of applicants)

Note: This summary is provided by the Board's Registry for informational purposes only and does not constitute a definitive interpretation of the White Spot decision. It also does not constitute legal advice. Applicants are encouraged to read the White Spot decision and other relevant decisions of the Board before filing their application and/or to consider seeking the advice and assistance of a labour lawyer or labour relations consultant.

Section 142 of the *Labour Relations Code* gives the Board the discretion to grant applications for partial decertification in appropriate circumstances. Applicants must meet a "threshold requirement" before the Board will consider granting such an application. If the applicants meet the threshold test, then the Board will consider exercising its discretion in favour of granting the application. However, even if the application meets the threshold requirement, the Board may decline to grant partial decertification due to a number of other relevant factors, discussed below.

Threshold Requirement

The threshold requirement is a two-part test. First, the applicants must demonstrate that, if the Board were to grant the application and allow the group to leave the bargaining unit, the unit remaining would continue to be appropriate for collective bargaining. (For example, seeking to remove a random group of employees who work in various departments or locations likely would not meet this part of the threshold test.) Second, the applicants must also demonstrate that a "rational and defensible line" can be drawn around the group leaving. (For example, seeking to remove the entire group of employees who work at a single location of a multi-location bargaining unit would be more likely to meet this part of the threshold test.)

In addition to this requirement, the applicants must be able to demonstrate that at least 45% of the employees in the group for which application is being made support the application. Evidence of this support must be presented by way of properly filled out revocation forms (Form 142A).

Other Relevant Factors

If the application does not meet the threshold requirement, it will be dismissed. If the application does meet the threshold test, the Board will go on to consider a number of other relevant factors in deciding whether to grant the application. These include two factors which

the Board will weigh in the balance against the wishes of the applicant employees. The first is the impact of granting the application on the collective agreement rights and other interests (such as opportunities for transfers and career advancement) of the employees remaining in the bargaining unit. The second is whether there will be a destabilizing effect on the union's collective bargaining relationship with the employer. Where relevant, the Board will also consider other matters such as the timing or context of the application; any allegations of improper interference by the employer or another person; whether it is a disguised raid application; and the difficulty of decertifying the unit as a whole. Further details about these factors can be found in the *White Spot* decision.

Overall Approach

The Board's current policy on partial decertification gives increased recognition to the wishes of employees to decertify than has been the case in the past. In practical terms, an application will more likely be granted where an entire group of employees at one location seeks to leave a multi-location bargaining unit. However, partial decertification remains a limited rather than a routine solution to problems in the bargaining unit. Even in the case of multi-location certifications, functional integration between the group and the rest of the bargaining unit or other considerations may mean an application will not be granted. The Board may encourage applicants and their union to make use of its mediation facilities to attempt to resolve the dispute or difficulty which gave rise to the application.

Effect of Partial Decertification

The effect of partial decertification, where granted, is to remove a group of employees from the bargaining unit. Those employees are no longer covered by the collective agreement or represented by the union (although the employees remaining in the bargaining unit continue to be so covered and so represented). The employees are generally not able to seek representation from a different union and instead carry on as non-unionized employees of their employer.

**LABOUR RELATIONS CODE
BRITISH COLUMBIA
LABOUR RELATIONS BOARD**

**EMPLOYEE APPLICATION FOR PARTIAL DECERTIFICATION
(SECTION 142)**

BEFORE YOU SIGN THIS FORM, PLEASE ENSURE:

- *The Trade Union's full name and local (if applicable) is filled out*
- *The date is filled out by you*
- *Your name is printed clearly*
- *The Employer's name is filled out*

THIS FORM WILL NOT BE ACCEPTED UNLESS THESE REQUIREMENTS ARE MET AND THE FORM IS SIGNED AND DATED ON THE SAME DATE AND WITHIN 90 CALENDAR DAYS IMMEDIATELY BEFORE THE DATE ON WHICH THE PARTIAL DECERTIFICATION APPLICATION IS RECEIVED BY THE LABOUR RELATIONS BOARD.

(THE BOARD WILL KEEP NAMES OF EMPLOYEES CONFIDENTIAL)

I HEREBY WISH TO APPLY FOR PARTIAL CANCELLATION OF CERTIFICATION AND REVOCATION OF BARGAINING RIGHTS HELD BY MY UNION FOR THAT LOCATION OR PORTION OF THE BARGAINING UNIT WHERE I WORK:

_____ LOCAL NUMBER _____
NAME OF TRADE UNION **LOCAL NUMBER**
(The union's name and local (if applicable) must be filled out at the time of your signature)

NAME OF EMPLOYER

I UNDERSTAND THAT IF THE APPLICATION SUCCEEDS, THE UNION WILL CEASE TO BE MY EXCLUSIVE BARGAINING AGENT AND WILL NO LONGER REPRESENT ME IN COLLECTIVE BARGAINING. I HEREBY AUTHORIZE THE REPRESENTATIVE NAMED ON THE ACCOMPANYING APPLICATION TO ACT ON MY BEHALF IN THE PROCEEDINGS BEFORE THE LABOUR RELATIONS BOARD.

Print Your Name: _____ Signature: _____

Date: Day: _____ Month: _____ Year: _____
(The date must be completed by you at the time of your signature)

Print your complete address.

Street: _____ City: _____ Province: _____

Postal Code: _____ Phone/Cell Number: _____