

HOW TO BRITISH COLUMBIA | CONSTRUCTION Decertify A Union - Full Decertification

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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)

TIMING YOUR "FULL" DECERTIFICATION

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

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 33" and a number of "Form 33A" forms.

Each employee who supports your application must fill out a Form 33A 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 33A 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 33 and sends it to the Labour Board along with all the original 33A 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 33A - 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 33A 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 33A. 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 33A 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 33A 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 33A 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 33A's were given "freely" and "voluntarily."

As mentioned above, people who support your application should not sign a 33A 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 33A 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 33A's, you will fill out the form 33. 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 33A.
- 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 33 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" 33A'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 33A. 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 33As from more than 45 per cent of your group, and you have filled out the form 33, 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 33As. The Labour Board will check the dates. An outdated form 33A 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 33 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".