

HOW TO FEDERAL AND TERRITORIES | CONSTRUCTION Decertify A Union - Full Decertification

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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 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 decertify your union. If you need help, go to our *Contacts* pages and get in touch with someone listed there. By the way, others may call decertification "revocation of bargaining rights" or "termination of bargaining rights."

TIME YOUR DECERTIFICATION

You can only apply to decertify the union during an open time period. Also, unless the Canada Industrial Relations Board agrees, you cannot apply during the first six months of a legal *strike* or *lockout*.

The open time periods are:

WHERE A COLLECTIVE AGREEMENT IS IN FORCE

- If the *Collective Agreement* is for 3 years duration, or less: during the last 3 months of the collective agreement.
- If the collective agreement is for greater than 3 years: during the last 3 months of the third year, during the last 3 months of each year thereafter, or during the last 3 months of the collective agreement.
- If the employer voluntarily recognized the union: at any time during the first year of the collective agreement (in addition to (a) and (b)) above.
- If a collective agreement is for 3 years or less and if the collective agreement has expired and if a new collective agreement has not been negotiated, a decertification application may be filed.

WHERE A COLLECTIVE AGREEMENT IS NOT IN FORCE

- If it has been 1 year since the union was certified by the CIRB.
- If a strike or lockout is occurring, you will need the permission of the CIRB.

GET THE FORMS

You must make your application in writing and need to use a specific form.

Because you need to prove most of your coworkers don't support the union, you need to collect their names and signatures. employees under the Canada Labour Code can use a petition form but must also have an individual letter for each employee who signs the petition. The letter must be confidential and "authorize the applicant to act on my behalf" and also say that "I do not want the *bargaining agent* to represent me in collective bargaining with my employer".

You can get copies of these forms along with a copy of these instructions in the [Downloads](#) section. Alternatively, [click here to view the form](#) for the Federal jurisdiction and the Territories.

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 company's idea to start the application, your application or the purpose of the application was not discussed with anyone from management of your company,
- 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, and
- you have not been led to believe your application will be funded in whole or in part by your company.

BUILD SUPPORT

You will need to collect the names and signatures of your coworkers and their individual letters. By the way, you may have to prove the signatures on your petition were given "freely" and "voluntarily" - the letters will help with this.

Make sure signatures are not be gathered during working hours; however, 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.

PREPARE THE FORMS

To properly complete your application, you will need:

- The name, address, and phone number of the applicant, your contact person, the union, and your employer.
- The date the union was certified and the certificate number, if known (check with the CIRB).
- Approximate number of employees in your *bargaining unit*.
- A description of your bargaining unit (see your collective agreement).
- The start date and expiry date of your collective agreement.

DELIVER THE FORMS

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

If you fax your documents to the CIRB, make sure you use a fax cover sheet with the following information:

- your name, address, phone and fax number;
- the address, phone and fax number of the CIRB office that you are sending them to;
- the date and time of your fax; and
- the fax number from where you are sending your documents (if different from your fax number).

CONCLUSION

Once the CIRB gets your application, it'll contact the union and your company to inform them about your application. If the union or the company have any concerns, they can send them to the CIRB.

Next, the CIRB will review your application. The CIRB almost always looks at the "voluntariness" of applications. It'll look to see if your company was involved in any way. If the CIRB has concerns, your spokesperson will have to address them at a hearing.

Generally, if no objections are received, the hearing can be canceled. But, if there is hearing the CIRB will contact you to find out how many witnesses you'll call and about how long they will each talk.

If the CIRB agrees your application was voluntary, it was made at the right time and enough employees support it, the CIRB will call a vote of all employees. If a majority (50% + 1) of employees, who actually vote, vote for decertification, your application will be successful and the union will be decertified.

As stated above, if the application is made a year after *certification* but before a collective agreement has been reached, it will examine whether the union has made "reasonable efforts" to reach a collective agreement, and not revoke the certificate unless it is satisfied that the union hasn't.

Application For Revocation of Bargaining Rights (Decertification)

- Please type clearly. Attach extra pages if necessary.
- Employees wishing to have the bargaining rights of their union revoked should select a person to act as their spokesperson. This person is generally referred to as the "Applicant".

Applicant information (or name of lawyer or other representative, if applicable)

Name: _____
Address: _____
City/Town: _____ Province: _____ Postal Code: _____
Tel: _____ Fax: _____
Name of Spokesperson (if different from above): _____
Address: _____
City/Town: _____ Province: _____ Postal Code: _____
Tel: _____ Fax: _____

Canada Labour Code

Provision of the Canada Labour Code under which application is being made:

- Section 38 - Application to decertify union by majority of employees
- OR
- Section 38(3) - Application for order that union is not entitled to represent bargaining unit employees because union has not been certified by the Board
- OR
- Section 40(1) - Application to decertify union because certification was obtained by fraud

Union Information

Full Name: _____
Local Number: _____
Address: _____
City/Town: _____ Province: _____ Postal Code: _____
Tel: _____ Fax: _____
Name of Union Contact Person: _____

Apart from the union identified above, do you know of any other unions that have bargaining rights at your workplace? If yes, please list them (attached additional pages if necessary).

- Yes, _____
- No

Employer Information

Full Name: _____
Address: _____
City/Town: _____ Province: _____ Postal Code: _____
Tel: _____ Fax: _____
Name of Employer Contact Person: _____

What is the general nature of your Employer's business? (i.e. what product is produced or service provided?)

What is the address of the Employer's workplace(s) that are affected by this application?

- Same as above
- OR
- Other: _____

Facts, Dates and Reasons for Application

How many employees are in the bargaining unit you want to decertify? _____

Is your bargaining unit certified? Yes No

If yes, on what date was your bargaining unit was certified? _____

If not certified, is there a collective agreement? Yes No

If there is a collective agreement, what is its commencement date? _____

If there is a collective agreement, what is its termination date? _____

Please provide a description of the bargaining unit(s) that will be affected by this application:

Please state the grounds for making this application:

- The employees are not satisfied with the union's representation
or
- The employees believe the union has not been certified by the Board
or
- The employees believe the union gained its certification by fraud

Supporting Documents

Have you included a copy of the collective agreement (if there is one) with this application?

- Yes
- No

Have you included a SEPARATE & CONFIDENTIAL STATEMENT by EACH employee in the bargaining unit who wants to be decertified and authorizing the Applicant to act on their behalf?

- Yes
- No, we used a petition

Orders or Decision of Board

Has the Board made any decisions or orders relating to this decertification application?

- Not that I know of
- Yes

Request for Hearing

Are you asking the Board to hold a hearing?

- Not unless the Board thinks it is necessary
- Yes

Description of Order or Decision Sought

The order or decision you are seeking is:

- An order revoking the certification of the trade union as bargaining agent
or
- A declaration that the bargaining agent is not entitled to represent the employees of the bargaining unit (because of no certification by Board)
or
- An order revoking the certification of the trade union as bargaining agent due to evidence of fraud

Other Persons Who May Be Affected by this Application

Other employees may be affected by this application

- The Board should contact the union or employer for a list of employees in the bargaining unit and their name, address, telephone, and fax information as the Applicant does not have it.

Applicant Signature: _____ Date: _____

CONFIDENTIAL STATEMENT

Make copies of this page. Each Employee seeking to decertify the Union must separately and confidentially sign the statement below, no more than 6 months before the date you file your application with the CIRB.

cut here

Individual Decertification Form

This document indicates that I do not wish to be represented by, or be a member of:

(Write the full name of the Union, including the Local, if applicable)

As it relates to the following Employer:

(Write the full name of your Employer)

Further, I _____
(Print your name)

authorize the applicant(s) to act on my behalf in respect of an application for the revocation of bargaining rights stated above.

Signature: _____ Date: _____

cut here

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