

HOW TO FEDERAL AND TERRITORIES | NON-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 apply to the Canada Industrial Relations Board 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 CIRB agrees, you cannot apply during 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. After the first year of the collective agreement, the timing rules set out in (a) and (b) above apply.
- 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, and if the Board is satisfied that the Union has not made reasonable efforts to reach a collective agreement.

GET THE FORMS

You must make your application in writing and provide certain information. Because the Board does not provide a Form for employees to use, LabourWatch provides one for you to use.

Because you need to prove most of your coworkers don't support the Union, you need to collect their names and signatures. Use a petition form or individual employee letters. In our opinion, petitions are easier to use and have been allowed by the CIRB in the past. The wording of the law suggests that individual letters are required. Until the CIRB says otherwise, you should be able to use either method based on what is best for your situation.

Some decertifications may be affected by people seeing who else has signed the petition while in other workplaces confidentiality may be important to employees.

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 employer's idea to start the application and that management was not involved with the application.
- 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 company.

Finally, if you can, try to get more signatures on your Petition or Individual Decertification Forms than the minimum of 50% + 1. Many things could happen to affect whether or not you have the right numbers. For example, there is always a possibility that someone resigns or is fired the day before your application goes in that you may not even know about. Finally, the more support you have on paper when applying the better chance you have of winning a vote, if you get to have one.

GATHER SUPPORT

You will need to collect the names and signatures from the unionized employees in the bargaining unit who support decertifying the union. Employees should be signing off on the fact that they no longer want the Union to represent them and that they authorize you to bring an application for decertification on their behalf. You will have to collect signatures from employees totalling at least 50% + 1 of the bargaining unit. By the way, you may have to prove the signatures on your petition were given "freely" and "voluntarily."

When planning to gather signatures, you may want to consider a standard union approach: gather first from fellow employees who you know or who you think want to decertify the Union, then ask employees who you think could go either way or you just don't know. You may want to leave the Shop Stewards, Bargaining Committee members and other known Union supporters until last or not approach them at all if you can at least get a vote without talking to them. Union supporters and the Union will have time to campaign to keep the Union before any vote.

Make sure signatures are not being 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.

The signatures you gather in support of your decertification application are only good for **six months** so if you do not get your application filed before then you may have to go back and get the Petition or individual Forms re-signed.

PREPARE THE FORMS

To properly complete your application form to become union-free, you will need to collect or prepare the following information:

- 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.
- Information about any orders or decisions made by the CIRB relating to the decertification application.

DELIVER THE FORMS

You can send your decertification documents (your application and petition) by fax, hand-delivery, courier or registered mail. But, the best way is by fax in order to establish the date and time of your application. If you apply by fax, you **MUST** also send originals of your application, and your petition and/or application letters to the Regional Office of the Canada Industrial Relations Board (CIRB) that looks after your part of Canada. You may also want to call the Board to ask what office to submit to. Do not use your employer's 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.
- The fax number from where you are sending your documents (if different from your fax number).
- 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 employer to inform them about your application. If the Union or the employer have any concerns, they can send them to the Board. Unions quite often write the Board to say that there is or might be employer involvement. In the end they will have to provide some evidence or try to get the Board to hold a hearing and ask employee and employer witnesses questions under oath.

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

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

If the Board agrees your application was voluntary, it was made at the right time and enough employees support it, the Board will call a vote of all employees. If a majority

of employees vote for decertification, your application will be successful and the Union will be decertified.



APPLICATION FOR REVOCATION OF BARGAINING RIGHTS (DECERTIFICATION)

- Employees wishing to have the bargaining rights of their union revoked should select a person to act as their spokesperson. This person will be referred to as the “applicant.”
- Please consult Information Circular 10–10 (Application for Revocation) for more detailed information on the requirements related to an application for revocation of bargaining rights.

Applicant Information

NAME OF APPLICANT: _____

ADDRESS: _____

CITY/TOWN: _____ PROVINCE: _____ POSTAL CODE: _____

TELEPHONE NUMBER: _____ FAX: _____

NAME OF COUNSEL AND LAW FIRM, if applicable: _____

ADDRESS: _____

CITY/TOWN: _____ PROVINCE: _____ POSTAL CODE: _____

TELEPHONE NUMBER: _____ FAX: _____

Canada Labour Code

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

- Section 38(1)—Application to decertify union
- Section 38(3)—Application for order that union is not entitled to represent bargaining unit employees (voluntarily recognized union)
- Section 40(1)—Application to decertify union because certification was obtained by fraud
- Section 41(1)—Application to decertify a Council of trade unions

Trade Union Information

FULL NAME OF UNION: _____

LOCAL NUMBER: _____

ADDRESS: _____

CITY/TOWN: _____ PROVINCE: _____ POSTAL CODE: _____

TELEPHONE NUMBER: _____ FAX: _____

NAME OF UNION REPRESENTATIVE: _____

TITLE OF UNION REPRESENTATIVE: _____

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 (attach additional pages if necessary).

Yes _____

No _____

Employer Information

LEGAL NAME OF THE EMPLOYER: _____

ADDRESS: _____

CITY/TOWN: _____ PROVINCE: _____ POSTAL CODE: _____

TELEPHONE NUMBER: _____ FAX: _____

NAME OF EMPLOYER REPRESENTATIVE: _____

TITLE OF EMPLOYER REPRESENTATIVE: _____

What is the general nature of your employer's business?

What is the address of the employer's workplace(s) that are affected by this application (if different from above)?

ADDRESS: _____

CITY/TOWN: _____ PROVINCE: _____ POSTAL CODE: _____

TELEPHONE NUMBER: _____ FAX: _____

Facts

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 certified? _____

If not certified, is there a collective agreement in force? 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:

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 AND CONFIDENTIAL STATEMENT by EACH employee in the bargaining unit indicating that he or she no longer wishes to be represented by the union and authorizing the applicant to act on his or her behalf.

Yes

No, we used a petition

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 voluntarily recognized bargaining agent is not entitled to represent the employees of the bargaining unit

or

an order revoking the certification of the trade union as bargaining agent due to evidence of fraud

Applicant Signature

Date

The personal information provided on this form is collected solely for the purpose of administering the *Canada Labour Code* and may be accessed by contacting the Board. The information may appear in the Board's written reasons for decision which may be posted in full on the Board's Website.

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

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)

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Signature: _____ Date: _____

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Signature: _____ Date: _____

