

HOW TO MANITOBA | CONSTRUCTION Decertify A Union - Full Decertification

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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 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 may be able to 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, others may call decertification "revocation of bargaining rights" or "termination of bargaining rights."

TIMING YOUR DECERTIFICATION

You can only apply to decertify the union during an open time period. It is very important to find out the status of bargaining your first Collective Agreement, in order to find out when the first decertification window will open. This open time period varies under different conditions depending on when you are unionized, if you have a Collective Agreement, if you had or are in a Strike or Lock Out and a number of other variables. Look at the headings below and if you still have questions or speak with one of our .

YOU HAVE A COLLECTIVE AGREEMENT THAT HAS NOT EXPIRED.

If your Collective Agreement is for less than 18 months a decertification application may only be made from the 6th month through the 4th month before the Collective Agreement ends (referred to as the 2nd last 3 months of the agreement).

For example: If your Collective Agreement was for 18 months or less - January 1, 2002 until June 30, 2003, your only window for a decertification application would have been - Jan 1, 2003 until March 31, 2003

If your Collective Agreement is for more than 18 months (at least 18 months plus one day):

- An application may be made during the last 3 months before the anniversary

date of the collective agreement

- EXCEPT in the last year. You cannot make an application in the last 3 months - you can only apply from the 6th month to the 4th month before the Collective Agreement ends (referred to as the second last 3 months).

The most common length for Collective Agreements are 2, 3, or even 4+ years. For example: If your Collective Agreement was for 3 years or 36 months - January 1, 2002 until December 31, 2004, your 3 windows for a decertification application would have been:

- October 1, 2002 until December 31, 2002.
- October 1, 2003 until December 31, 2003
- July 1, 2004 until September 30, 2004

YOU HAVE A COLLECTIVE AGREEMENT THAT HAS EXPIRED

- An application may be made after 90 days from termination of the Collective Agreement, but a strike or lockout will close the window. (see Strike or Lockout, below)

NEW UNIONIZATION (CERTIFICATION) - WITHOUT A COLLECTIVE AGREEMENT

- 12 months after initial certification, maybe. The speed of negotiations and possibility of an imposed first collective agreement makes it unclear as to whether a decertification window will open after the Certification, and for how long. The reason it is unclear is that there are a lot of variables with a new Certification like the union or employer giving "notice to bargain", if there is a conciliation officer and for how long as well as the possibility of a "freeze" being placed by the Labour Board and some other things. The best rule would be that if you have just been certified and you feel that you want to get rid of the union (Decertify) then you should or speak with one of our .
- If the certification of the union was challenged in court, 12 months after the date that the Court's proceedings concluded.

NEW UNIONIZATION (CERTIFICATION) - WITH A COLLECTIVE AGREEMENT

The Labour Board may impose a first collective agreement where the employer and union cannot negotiate one. The Board may also impose a subsequent collective agreement after a strike or lockout of 60 days or more. There is no window at all during imposed agreements, which are usually in place for one year.

If your Collective Agreement is for less than 18 months a decertification application may only be made from the 6th month through the 4th month before the Collective Agreement ends (referred to as the 2nd last 3 months of the agreement).

For example: If your Collective Agreement was for 18 months or less - January 1, 2002 until June 30, 2003, your only window for a decertification application would have been - Jan 1, 2003 until March 31, 2003.

IF YOUR COLLECTIVE AGREEMENT IS FOR MORE THAN 18 MONTHS (AT LEAST 18 MONTHS PLUS ONE DAY):

- An application may be made during the last 3 months before the anniversary date of the collective agreement
- EXCEPT in the last year. You cannot make an application in the last 3 months - you can only apply from the 6th month to the 4th month before the Collective Agreement ends (referred to as the second last 3 months).

The most common length for Collective Agreements are 2, 3, or even 4+ years. For example: If your Collective Agreement was for 3 years or 36 months - January 1, 2002 until December 31, 2004, your 3 windows for a decertification application would have been:

- October 1, 2002 until December 31, 2002.
- October 1, 2003 until December 31, 2003
- July 1, 2004 until September 30, 2004

If the certification of the union was challenged in court, 12 months after the date that the Court's proceedings concluded.

STRIKE OR LOCK OUT

You cannot apply during the first 6 months of a legal strike or lockout. Also, after 6 months of that strike or lockout, you cannot apply unless the Board agrees.

The Labour Board may impose a first collective agreement where the employer and union cannot negotiate one. The Board may also impose a subsequent collective agreement after a strike or lockout of 60 days or more. There is no window at all during imposed agreements, which are usually in place for one year

GET THE FORMS

In Manitoba there are three things to be completed.

1. **Form "A" General Information Form.** You must make your application in writing with this Form. Only one of these is needed for the overall application to decertify the Union.
2. Either a **Form VIII or a Form IX.** It is most likely that you will need a Form VIII but there is a rare occasion called "Voluntary Recognition" that requires the use of a Form IX instead. If your union was voluntarily recognized, and your collective agreement has not been filed at the Labour Board, use the Form IX. Call the Labour Board if you are unsure of which applies to you
3. **A Petition.** This is used because you need to prove that 50% or more of your coworkers don't support the Union. To do this, you need to collect their

names and signatures. In our opinion, petitions are easier to use. We have included a Petition form with our Decertification Download. If you make your own, be sure that it includes the phrase.

- *"I authorize NAME to apply on my behalf to request that the Labour Board grant a vote to determine the wishes of the employees in the bargaining unit."*

If you do not know who is going to be the applicant before you start having co-workers sign a decertification petition, you are not specifically required to name a person, though if you don't the Union will almost certainly challenge your application and you will be required to explain to the MLRB why you had not named a specific person as "applicant" on your petition for some or all of the employees who signed it. In short, it is highly recommended that you name the specific person, by their name, who will be filing the application. Most jurisdictions in Canada do not make this extra requirement of employees who wish to apply for decertification. Finally, if you find you have to collect signatures at first without a specific person named, you may want to go back and collect those signatures again once you know who it is rather than fight with the union and the Labour Board in a hearing.

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 sign 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.

The organizer for your application then completes Form "A" and sends it to the Labour Board along with the completed Petition.

You can get these forms from our Decertification Download or from the Labour Board web site under "Forms". Some of the Forms without full instructions are available at the Manitoba Labour Relations Board website in our Links section.

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 Petition at the same time as it is signed and be sure and hide the names of the other people who have signed it.
- The application will fail if it is promoted or assisted by the employer.
- 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 a 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 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 the Petition. 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 you have 50 percent or more of your group sign, and you file your application, there will be a secret ballot vote, supervised by the Labour Board, where every Employee in the group can vote in private. Not everyone who signs will necessarily vote for Decertification, but by the same token, some who are reluctant to sign may vote for Decertification in the secret ballot.

You should assure Employees that if they sign the Petition or form, it will be confidential. You will not tell anyone who signed so as stated above, keep the other signatures hidden, and the Labour Board is required to protect the confidentiality of the signors.

The Union and fellow Employees who support the Union may use pressure tactics to oppose your efforts. However, the same rules apply to them - they cannot use threats or promises either. They will look for evidence that the Employer is helping you with your application as you gather support, so play by the rules!

PREPARE THE FORMS

To properly complete your application Form A, you will need to collect or prepare the following information:

- The name and address of the applicant, or your contact person, (if different than the applicant)
- The full name, address, and phone number of the union and your employer.
- A brief description about what kind of business your employer is involved in.
- A statement about why you think the union has lost support. It is usually stated simply - "The applicant approached the members of the bargaining unit and that a majority were willing to sign the petition."
- The start date and expiry date of your collective agreement.
- The Form VIII needs the "Certificate Number" for your certification, and the date it was filed. (You can get all this from the Labour Board).

DELIVER THE FORMS

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

The Board requires that any application for termination of bargaining (whether it be for a construction or non-construction matter) must be filed in triplicate - 3 copies. Don't forget to keep a copy of everything for yourself too.

Manitoba Labour Board

500-175 Hargrave Street Winnipeg, Manitoba, Canada R3C 3R8 Phone: (204) 945-3783
Facsimile: (204) 945-1296

CONCLUSION

Once the Labour Relations Board gets your Application, they will contact the union and your employer to inform them about the Application. If the union or the employer have any concerns, they can send them to the Board.

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



MANITOBA LABOUR BOARD

Suite 500, 5th Floor – 175 Hargrave Street, Winnipeg, Manitoba, Canada R3C 3R8

T 204 945-2089 F 204 945-1296

www.manitoba.ca/labour/labbrd

FORM A: Memorandum of General Information Required on all Proceedings

THE LABOUR RELATIONS ACT

Short Style of Proceedings: Name of Employer: _____

Name of Union: _____

Type of Proceedings: (Certification, Unfair Labour Practice, Revocation, etc.)

Attached documents filed on behalf of _____

by _____ of _____
(Address) (Telephone No.) (FAX Number)

Office held by person filing documents: _____

Interest or status of party on whose behalf documents are filed: _____
(Employer, Intervenor, Applicant for Certification, etc.)

Brief statement of business affected employer: _____

Address of Employer: _____
(Telephone No.) (FAX Number)

Particulars of other parties directly affected (where not named above):

Name	Address	In what way interested
CANADA: PROVINCE OF MANITOBA: TO WIT:	I of the in the Province of do solemnly declare	of

- 1. I am _____ of the above-named and have a personal knowledge of the facts set forth in the attached hereto except where they are stated to be upon information and belief.
- *(Strike out where not applicable) *2. The facts set forth in the _____ attached hereto are true.
- *3. where stated to be upon information and belief they are to the best of my knowledge true in substance and fact and I have shown the source of my information.

And I make this solemn declaration knowing that it is of the same force and affect as if made under oath and by virtue of "The Evidence Act".

SOLEMNLY DECLARED before me at the City (Town) _____
of _____, in the Province of _____,
this _____ day of _____, 20____

A Commissioner of Oaths
My commission expires _____

Signature



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FORM IX: Application for Termination of Bargaining Rights

THE LABOUR RELATIONS ACT

Case No. _____

/LRA _____

Applicant,

- and -

Bargaining Agent,

- and -

Employer.

TO THE MANITOBA LABOUR BOARD:

The above-named Applicant hereby applies to you to terminate the bargaining rights of the above-named Bargaining Agent for a unit described in an agreement dated _____ 20____, between the Employer and the said Bargaining Agent as follows:

The said agreement was made on _____ day of _____, 20____, between the Employer and the Bargaining Agent and provides that it should remain in force until _____ 20____.

There are now _____ employees in the unit affected by the agreement.

The specific grounds for the Applicant’s belief that the said union has lost the support of the majority of the employees in the said unit are as follows:

The following corroborative documentary proof is submitted in support of this application.

Dated at _____ this _____ day of _____, 20____.

Applicant

Form A to be filed herewith



MANITOBA LABOUR BOARD

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T 204 945-2089 F 204 945-1296

www.manitoba.ca/labour/labbrd

FORM VIII: Application for Cancellation of Certification

THE LABOUR RELATIONS ACT

Applicant,

-and-

Certified Bargaining Agent,

-and-

Employer,

TO THE MANITOBA LABOUR BOARD:

The above-named Applicant hereby applies to you to cancel the certification of the above-named Bargaining Agent for a unit of the Employer's employees described as:

The Certificate No. MLB- , which cancellation is now sought was issued by the Board on the day of , 20 .

There are now employees in the unit for which the said Bargaining Agent was certified.

The specific grounds for the Applicant's belief and allegation that the Bargaining Agent has lost the support of a majority of the employees in the unit are as follows:

The following corroborative documentary proof is submitted in support of this application.

Applicant

Form A to be filed herewith