

HOW TO

NEWFOUNDLAND AND LABRADOR | 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

OVERVIEW

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. Also, unless the Labour Relations Board agrees, you cannot apply during a legal strike or lockout.

The open time periods are:

- 12 months after certification or 12 months after the union or company gave notice to the other to start bargaining (whichever is later), or
- If someone in your bargaining unit had already applied to decertify the union, you have to wait for 6 months after the date that the Labour Relations Board refused to decertify the union.

GET THE FORMS

You must make your application in writing and need to use a specific application form (Form 4).

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 Decertification Forms. In our opinion, petitions are easier to use.

COLLECTING EVIDENCE OF EMPLOYEE SUPPORT - HOW TO DECIDE BETWEEN A PETITION OR INDIVIDUAL DECERTIFICATION FORMS.

Using Individual Decertification Forms as evidence means you have one form for each person who supports the application. If the people you work with are worried about privacy the Individual Decertification Forms might be better than a petition.

TIP: If you are using the Individual Decertification Forms, print one page (3 forms per page) and pre-fill in the employer and union name, (don't forget the union Local number if there is one) before making copies. Then, when you cut the pages into three separate forms, you have made sure everyone has the correct employer and union information. Don't pre-fill any more than the union's name though, read more about Avoiding Mistakes on the next page.

Using a petition as evidence means that you can have many names on one page and you don't have to keep track of a lot of individual pieces of paper.

We have been told that people prefer a petition because seeing the other names shows that they have support for their decertification application, it motivates others to sign.

If you think that would be good, you may want to use a petition. But with other employee groups, privacy may be a big concern and some employees may not sign a petition because other employees might or will see their name and signature. The Individual Decertification Form will be better to use instead. The choice is yours.

Whether you use a Petition or the Individual Decertification Forms as evidence, make sure you avoid some mistakes that might help the union and the Labour Relations Board block your effort to become union-free.

AVOID MISTAKES

General Mistakes

To succeed, you may have to show that your employer wasn't involved in decertifying the union in ways that are not allowed. So, you should make sure that:

- It was not your employer's idea to start 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 employer.
- It is better to avoid using equipment at work such as computers, copiers and fax machines for your paperwork. It's a good idea that if you make copies at a store where you have to pay for them - keep all receipts as further proof that you did not use employer equipment. The union can accuse you of doing that as part of their effort to use a minor technicality to stop your application.

Application Support Form Mistakes

Whether you and your supporters chose to use the "one page per person" Individual Decertification Forms or the "many person per page" Petition, it is important to notice that same statement wording must be on whatever you use. If you make a mistake and, as an example, you are in a hurry and use a blank piece of paper instead of a copy of the petition page, the Board may refuse to accept that document as support evidence. There are some simple mistakes that you should not make.

- Anything people sign to support the application must have the wording that is at the top of the petition. You cannot use a blank page of signatures and just attach it, the Board will reject that. That is why the wording on our blank petition is identical to the wording on our blank Individual Decertification Forms.
- People who support your application should not sign an Individual Decertification Form or a Petition 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.

- As well as signing, they have to print their name so that it is easy to read. This is a recommendation not a rule.
- Every person who signs support evidence must write in the date while they are signing. You should not go back and get it later and you should not fill it in for them either before or after they sign.
- If the union has a Local number make sure to include it in the union name on anything you send to the Labour Relations Board, including support forms.
- If you are using petitions, number the pages that you use a format of page "1 of 5", then "2 of 5" and so on. If you have more than one petition in circulation this will become important.

BUILD SUPPORT

You should not use threats or promises or pressure to get fellow employees to sign whatever evidence of support you chose, Individual Decertification Form or a 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 more than 40% of your group sign a Card and you file your Application, there will hopefully be a secret ballot vote, supervised by the Labour Relations Board, where every employee in the group can vote in private. Not everyone who signs a Card will necessarily vote for decertification, but some who are reluctant to sign a Card 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 the names and signatures of at least 40% 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 your support evidence were given "freely" and "voluntarily."

As mentioned above, people who support your application should not sign an Individual Decertification Form or a Petition 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

To properly complete your application form, you will need:

- The name, address and phone number of: the applicant, your contact person, the union and your employer.
- Approximate number of employees in your company and in your bargaining unit.
- The date the union was certified and the date the collective agreement was signed.
- A brief description about what kind of business your company is involved in.
- A description of your "bargaining unit" (see a copy of your collective agreement).
- Copies of the paragraphs in the collective agreement about its renewal and its term.
- Once you complete the application form, you will need to have a Commissioner of Oaths witness you sign the document. If you don't know where to find a Commissioner of Oaths, contact a lawyer since they are also Commissioners of Oaths in your province.

DELIVER THE FORMS

You can send your decertification documents, including your application and petition or support cards to the Newfoundland & Labrador Labour Relations Board by fax, hand-delivery, courier or even registered mail. If you send them by courier or mail remember to keep copies of everything for your records.

We feel that the best way is by fax because it is fast. It is always a good idea to keep a copy of the fax transmittal sheet that confirms that the fax was received by the Board.

The Board will notify your union and employer about your application but they will not share who signed the petition with them.

Newfoundland and Labrador Labour Relations Board

5th Floor, Beothuck Building
20 Crosbie Place
St. John's, NL, A1B 4J6

CONCLUSION

Once the Labour Relations Board gets your application, it will assign an Officer. They'll contact the union and your company to inform them about your application.

Next, the Officer will investigate your application. Officers almost always look at the "voluntariness" of applications. They'll look to see if your company was involved in any way. If the Officer has concerns, your spokesperson will have to address them at a hearing.

After the investigation, a report will be sent to you, the union and your company. If they have any concerns they can send their objections to the Board.

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 at least 40% of 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 CERTIFICATION
or TERMINATION OF BARGAINING RIGHTS**

- | | | |
|-----|---|--|
| (1) | Labour Relations Act | |
| (2) | Public Service Collective Bargaining Act | |
| (3) | Fishing Industry Collective Bargaining Act | |
| (4) | Teachers Collective Bargaining Act | |
| (5) | Interns and Residents Collective Bargaining Act | |

NB: The Applicant must indicate by 'x' the Act(s) under which the application is made.

I have read, understand and agree with the enclosed **DISCLOSURE OF PERSONAL INFORMATION (Openness and Privacy Policy) of the Labour Relations Board.**
(the agreement of a party is indicated by marking "x")

Between:

Applicant

AND

Respondent

The applicant states:

1. (a) Name of applicant: _____

- (b) Address/Telephone of applicant: _____

- (c) Name of respondent: _____

- (d) Address of respondent: _____

- (e) Name of employer of employees in the unit: _____

(f) Address/Fax # of employer of employees in the unit: _____

2. General nature of employer-s business: _____

3. Approximate total number of employees of employer: _____

4. Detailed description of the unit: _____

5. Approximate number of employees in the unit: _____

6. The date of the certification of the respondent as the bargaining agent of the employees in the unit: _____

7. (a) Is there an existing collective agreement affecting employees in the proposed unit? If so, give date of last signing: _____

Quote terms of such agreement relating to duration, renewal and termination: _____

(b) Has a collective agreement affecting employees in the proposed unit expired within the last three months? If so, when?

8. The specific grounds for the applicants belief and allegation that the bargaining agent has lost the support of a majority of the employees in the unit are as follows:

9. Made and signed on behalf of the applicant this _____ day of _____, 20__ by:

Signature _____

DECLARATION

I/We declare that the answers to the foregoing questions are true in substance and in fact and make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath, and by virtue of the *Canada Evidence Act*.

Severally declared by the said

and

(Signature)

before me at _____

in the District of _____

in the Province of Newfoundland and Labrador,

this _____ day of _____, 20__

(Signature)

(A Commissioner, etc.)

(To be declared before a Commissioner for taking affidavits or any other person authorized by law to administer an oath).

DISCLOSURE OF PERSONAL INFORMATION

Openness and Privacy Policy

The Labour Relations Board (“the Board”) is an independent quasi-judicial tribunal that operates very much like a court and has responsibilities under the *Labour Relations Act*; *Public Service Collective Bargaining Act*; *Fishing Industry Collective Bargaining Act*; *Teachers’ Collective Bargaining Act*; *Interns and Residents Collective Bargaining Act*; *Labour Standards Act*; *Occupational Health and Safety Act*; *Smoke-Free Environment Act, 2005* and *House of Assembly Accountability, Integrity and Administration Act*; and *Public Interest Disclosure and Whistleblower Protection Act*. This document outlines the Board’s policy on the openness of its processes and describes how it handles issues relating to privacy.

When filing any application with the Newfoundland and Labrador Labour Relations Board, all information included in the application is provided to the other party or parties as respondents or interested parties. Further, such information may be referred to in any order or reasons issued by the Board at the conclusion of the matter, on the Board’s website and in print and online reporting services that may publish the Board’s decision.

This Bulletin does not apply to the confidentiality of union membership information provided to the Board.

The open court principle is significant in our legal system. In accordance with that principle, the Board conducts its oral hearings in public, save for exceptional circumstances. Because of its mandate and the nature of its proceedings, the Board maintains an open justice policy to foster transparency in its processes, accountability and fairness in its proceedings.

The Board’s website, policy circulars, information bulletins and other publications advise parties and the community that its hearings are open to the public. Parties that engage the Board’s services should be aware that they are embarking on a process that presumes a public airing of the dispute between them, including the public availability of decisions. Parties and their witnesses are subject to public scrutiny when giving evidence before the Board, and they are more likely to be truthful if their identities are known. Board decisions identify parties and their witnesses by name and may set out information about them that is relevant and necessary to the determination of the dispute.

At the same time, the Board acknowledges that in some instances mentioning an individual’s personal information during a hearing or in a written decision may affect that person’s life. Privacy concerns arise most frequently when some identifying aspects of a person’s life become public. These include information about an individual’s home address, personal email address, personal phone number, date of birth, financial details, SIN, driver’s licence number, or credit card or passport details. The Board endeavours to include such information only to the extent that is relevant and necessary for the determination of the dispute.

With advances in technology and the possibility of posting material electronically — including Board decisions — the Board recognizes that in some instances it may be appropriate to limit the concept of openness as it relates to the circumstances of individuals who are parties or witnesses in proceedings before it.

In exceptional circumstances, the Board departs from its open justice principles, and in doing so, the Board may grant requests to maintain the confidentiality of specific evidence and tailor its decisions to accommodate the protection of an individual’s privacy (including holding a hearing in private, sealing exhibits containing sensitive medical or personal information or protecting the identities of witnesses or third parties). An individual requesting to have personal information protected from a decision shall make their application to the Board and such application shall be made when they know or ought to know that their personal information could be included in a decision. The Board may grant such requests when they accord with applicable recognized legal principles.

The Board’s policy is consistent with the statement of the Heads of Federal Administrative Tribunals Forum (endorsed by the Council of Canadian Administrative Tribunals) and the principles found in the Protocol for the Use of Personal Information in Judgments approved by the Canadian Judicial Council.

Access to files

The Board provides parties with access to their files in accordance with the rules of natural justice.

The Board’s files are maintained only in paper format. They are available to the parties for consultation at the Board’s premises with appropriate notice. However, information protected by solicitor-client privilege is not available for

consultation.

The Board considers that the *Access to Information and Protection of Privacy Act*, does not apply to its files. However, the Board provides public access to its closed files in accordance with the open court principle.

Board files contain correspondence between the parties, and are available, after the file is closed, to the public for consultation at the Board's premises with appropriate notice. However, information such as an individual's home address, personal email address, personal phone number, date of birth, financial details, SIN, driver's licence number, or credit card or passport details is not available for consultation. Further, information protected by solicitor-client privilege is not available for consultation.

Access to decisions

The Board provides public access to its decisions in accordance with the open court principle.

Board decisions are available electronically on its website and it shares its decisions with CanLII – Canadian Legal Information Institute. In an effort to establish a balance between public access to its decisions and privacy concerns, the Board has taken measures to prevent Internet searches of full-text versions of decisions posted on its website. This was accomplished by using the "[web robot exclusion protocol](#)," which is recognized by Internet search engines (e.g., Google and Yahoo). As a result, an Internet search of a person's name will not yield any information from the full-text versions of decisions posted on the Board's website.

Individual Decertification Form

Read Carefully

By signing this, I am saying that: I do not support, I do not want to become a Member or do not want to remain a Member of and I do not want to be represented by:

_____ *(Write the full name of the union, including the Local number, if applicable)*

As it relates to the following employer:

_____ *(Write the full name of your employer)*

_____ *Full name (PRINT - do not write)*

_____ **Date:**

Your signature

 Witness signature

----- cut here -----

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 Witness signature

