

HOW TO NOVA SCOTIA | NON-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 basically means removing 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, the Nova Scotia Labour Board (NSLB) calls decertification "revocation", but it means the same thing - that you do not want the union to represent you in your working relationship with your employer.

TIME YOUR DECERTIFICATION

An Application to decertify a union is to be filed in an "open season". Those are:

If there is no Collective Agreement

- 12 months after certification of the union.

If there is a Collective Agreement

- Within the last 3 months of a collective agreement that is less than 3 years.
- If the collective agreement is for at least 36 months (3 years or more) also during the last 3 months of each year of the collective agreement after the second year (the 34th, 35th and 36th months - end of the 3rd year; the 46th, 47th and 48th months - end of the 4th year; the 58th, 59th and 60th months - end of the 5th year, etc.)

GET THE FORMS

You must make your Application in writing and need to use a Nova Scotia document - **Form 6**.

COLLECTING EVIDENCE OF EMPLOYEE SUPPORT

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.

You will need to collect the names and signatures of as many of your coworkers as possible. By the way, you may have to prove the signatures on your Petition were given "freely" and "voluntarily".

When you are filling in the top of the Petition write clearly and legibly. Make sure you have your employer's name and union's name and local number exactly right. Read about how you might be able to pre-fill in the "employee work address" section further down. Once you have this information filled out you can start making copies for people to use. Be sure everyone uses the same Petition with the same wording at the top and, make sure to read about how to complete the employee work address section, below.

If your coworkers are concerned about privacy you can either cover the signatures above each new signer, or you can use Individual Decertification Forms instead.

Using the Individual Decertification Forms as evidence means you have one form for each person who supports the Application. As stated above, 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 name of the union and your employer though, read more about avoiding mistakes in the next section.

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 work, after work or during a non-work day. 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.

Witness Signature - usually the person collecting support is the one who signs as the witness beside each employee signature.

AVOID MISTAKES

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

- It was not your employer's idea to unlawfully start the Application, your Application.
- The Applicants have not had unlawful discussions with anyone from management of your employer.
- 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.

BUILD SUPPORT

You should not use threats, promises or unlawful pressure to get fellow employees to sign whatever evidence of support you chose: Individual Decertification Forms or a Petition.

You should think of one or two good reasons why you believe the union should be decertified. A business-like and friendly approach works best. Not everyone who signs will necessarily vote for decertification, but some who are reluctant to sign may vote for decertification if there is a secret ballot vote.

The Nova Scotia Labour Board says that you must demonstrate that a "significant number of members of the trade union" allege that the union was not adequately fulfilling its responsibilities; or the union "no longer represents a majority of employees in the bargaining unit". The Labour Board has not clarified exactly what it means by a "significant number" but it is less than 50%+1

Whatever the reason or reasons your fellow employees want decertification, you should choose one or two of you to be the official Applicant, and the rest just need to sign a petition or each should sign a standard letter to support the application. The petition is usually the easiest though. By the way, you may have to prove the signatures on your petition were given "freely" and "voluntarily."

Make sure signatures, if gathered at your workplace, are not gathered during working hours. 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, and it is advisable to keep other signatures on the petition covered when someone is signing as employees are increasingly concerned about privacy and you may damage your chances of success if privacy is a concern of your co-workers. Make sure that each page of the petition includes the wording exactly as we have it on ours and be sure to include the name of the union, and the local, if there is one. In other words, if you fill a page, do not use a blank sheet of paper, every page has to have the same wording at the top.

PREPARE THE FORMS

Once you complete the Application Form 6, you will need to have a Commissioner of Oaths witness as the Applicant(s) 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 Nova Scotia.

If you have any questions about how to complete this form you can speak with one of LabourWatch's "Employee Advisor" law firms in Nova Scotia or contact LabourWatch by phone or email.

Nova Scotia labour law gives the Labour Board two options to use when deciding whether or not an Application to decertify should go to a vote or be rejected. There is no requirement for you to choose either "a" or "b" in Question #10 on Form 6. The Labour Board will decide which option is the right one for your situation.

QUESTION #10

The question offers two options. The first (Option "a"): a "significant number" of actual union Members feel or 'allege that the union is not adequately fulfilling its responsibilities to the employees in the bargaining unit'. Or the second (Option "b"): the 'union no longer represents a majority of the employees' - a majority of unionized employees (whether or not they are also actual union Members or not) want to decertify the union.

NOTE: The use of "members" and "employees" in (a) and only "employees" in (b) is very important.

Based on the wording in Nova Scotia law and these general labour law terms, union Member versus employee in the bargaining unit, the Applicant (and the unionized employees who support becoming union-free) need to have a clear understanding of who is and who is not an actual union Member if you want the Labour Board to choose Option "a" over Option "b".

To answer this question it is best to have a copy of your collective agreement. This is where you can find out if the union and the employer negotiated and agreed to a "forced union Membership clause" or a "voluntary union Membership clause".

Some collective agreements require that all unionized employees, known as members of the bargaining unit, must also become and remain actual Members of the union. Other collective agreements allow unionized employees (members of the bargaining unit) to join or not to join as actual union Members.

So, if your collective agreement has a voluntary Membership clause then option (a) may be a better or easier way to get a vote because you may not need as many signatures if not all unionized employees are also Members of the union. The law says only that a "significant number" of the union Members in your bargaining unit feel the union is not "fulfilling its responsibilities". (Note that the law says that this is related to not just the Members of the union but to all of the unionized employees.) So a smaller number of actual union Members can support an Application on behalf of a larger number of unionized employees, not all of whom may be actual union Members.

The Labour Board, over the years, has never ruled that a "significant number" means a "majority" (at least 50% + 1). The Labour Board has never defined what a "significant number" of employees would be, but it has been less than a majority (50% + 1) in some Applications that were approved for a vote.

Option "b" requires a majority (at least 50% + 1) of all unionized employees, not just actual union Members to sign in support of the Application.

The issue of course is being certain about who is and who is not, at the time you apply, an actual union Member. Unionized employees do not always know whether or not they are actual union Members or not. It may be hard for you and your fellow signers to know for sure who is or is not currently in good standing as an actual union Member. Just because someone pays union dues does not mean, in law, that they are also an actual union Member. To be one,

a unionized employee must also have voluntarily signed a union Membership application (or been forced to sign one by the collective agreement) and been approved by the union for Membership.

Option "a"

If a "significant number" of actual union Members feel the union is "not adequately fulfilling its responsibilities to the employees" in the bargaining unit they can apply for a vote to decertify the union. The Labour Board does not define what a union's "responsibilities" are and has ruled that it is not the Board's role to evaluate whether or not the union is "fulfilling its responsibilities". If you apply based on how many signatures you collect from actual union Members and are hoping the Board will use this Option you only need to have reasons that appear sincerely held. You do not have to prove that your reasons are valid or make sense. But, if your reasons were not your sincerely held beliefs but were really ones that the employer gave to you to say or use, then your Application might fail for unlawful employer interference.

The ideal is to have an actual majority (and use Option "b") and avoid the potential that unions will seek hearings to challenge your Option "a" reasons.

Here are some sample reasons that might fit your situation or at least to get you thinking:

- We are losing work because we are unionized.
- The union promised in its drive to unionize us that they would also get us more work on unionized job sites but they have not.
- The union got the employer to agree to have us in the union's benefits plan and it is poorly run; or, the union's benefits plan is not very good.
- The union said it would get us bigger pay raises and they have not.
- The union is poorly run.
- We don't like what the union uses our union dues for.

You can come up with other reasons that fit your situation.

Option "b"

This is far the simplest method of decertification. If you can prove a majority (50% + 1) of the employees in your bargaining unit do not support the union it is less likely to force a hearing and try to have a legal fight over the Option "a" reasons union Members feel the union is not adequately fulfilling its responsibilities.

Keep in mind that getting 50% + 1 of the employees to sign support evidence is not going to decertify the union. There has to be a secret ballot vote to achieve that, so always get as many signers as you can to support your

decertification Application because that helps you know if you can also win the vote.

To properly complete your Application Form 6, you will need:

- The name, address and phone number of: the Applicant(s) (the person or people who will be the contact for the Labour Board), the union, and your employer.
- Approximate number of employees who work for your employer, whether they are in the union or not.
- Approximate number of employees 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 employer 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. The Board is looking for when the agreement ends and how long it is valid for.

DELIVER THE FORMS

You can send your decertification documents (your Application and Petition or IDF) by fax, hand-delivery, courier or even registered mail. We suggest the best way is by courier or hand-delivery.

But, whatever way you send them, make sure you send 3 copies (the original and 2 photocopies) and don't forget to keep a copy for your records.

CONCLUSION

Once the Nova Scotia Labour Board gets your Application, it'll contact the union and your employer to inform them about your Application. Unlike an Application to unionize you where who signs union cards is known only to the union and the Labour Board, decertifications are different. The Board will provide all of the names you gathered to the union. The union and the employer will send a reply to the Board.

Next, the Board will review your Application. They almost always look at the "voluntariness" of Applications. The Board may look to see if your employer was involved in any way and the union may well claim that the employer is behind it all. If the Board has concerns, your spokesperson will have to address them at a hearing.

Also, unions often claim employer interference and often drop such claims just before a hearing if, in the end, they have no good evidence to back up the claim. So, if you know you have kept your employer away from your work then don't let the union claims bother you and throw you off all of your hard work.

If the Board agrees your Application was voluntary, it was made at the right time and enough unionized employees (and/or members) support it, the Board will call a vote of all unionized employees. If a majority of employees vote for decertification, your Application will be successful and the union will be decertified.

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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_____ **Date:**

Your signature

 Witness signature

4. General nature of employer's business:

5. Approximate total number of employees of employer:

6. Detailed description of the unit:

7. Approximate number of employees in the unit:

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

9. If there is an existing collective agreement affecting employees in the proposed unit give date of last signing:

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

10. A statement of facts showing that
 - (a) a significant number of members of the certified trade union allege that the trade union is not adequately fulfilling its responsibilities to the employees in the bargaining unit for which it was certified; or
 - (b) the certified union no longer represents a majority of the employees in the unit for which it was certified.

11. A list of names and signatures of any employees in the unit who support this application is attached.Á

Á
I/WE _____ declare that the statements made and information given herein are true in substance and in fact and we 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 made by virtue of the Canada Evidence Act.

Declared by the said

_____ and _____

before me at _____ in the County of _____
this _____ day of _____, A.D. 20 _____

A Commissioner of the Supreme
Court of Nova Scotia

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

Note: Any employee, or group of employees, who has filed an Application of Revocation of Certification may attend at the hearing in person or by a representative. Any employee or representative who appears at the hearing will be required to testify or produce a witness or witnesses who will be able to testify, from his or their personal knowledge and observation as to (a) the circumstances concerning the origination of the material filed, and (b) the manner in which each of the signatures was obtained.