

FAQS

FEDERAL AND TERRITORIES | CONSTRUCTION
Unfair Labour Practices

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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

ARE THERE 'ILLEGAL' THINGS A UNION OR EMPLOYER MUST NOT DO?

Yes, Federal labour law has rules that Unions, employers and employees must not break. When they do it is called an Unfair Labour Practice (ULP).

Unions may charge employers with Unfair Labour Practices during: Union organizing campaigns, decertifications and their ongoing relationship (for example during bargaining). Similarly, employers may charge unions with Unfair Labour Practices for certain things.

Some Union websites have good information about what employers might do in response to a Union organizing drive.

Employees, who feel that the employer has done something wrong, will find that the Union will almost always file the Unfair Labour Practice complaint for you. There are a number of things that an employer may not do during certification or decertification drives. Many are obvious: threats, intimidation, coercion, penalties, or promises. There are less obvious things that employers are not allowed to do, like interfere with or control the administration of a Union. The Union will provide significant help to employees who want to become or remain Unionized and will usually provide an expert or a lawyer to go to the Canada Industrial Relations Board for you. The Union pays the legal fees.

Unions have excellent staff, lawyers and websites funded by forced Union dues from unionized employees. LabourWatch does not attempt to duplicate the excellent information and resources available from Unions. See our [Links](#) section for links to Union websites.

While employers can charge a Union with a ULP for certain things, we do not deal with how that works at LabourWatch either. Employers have more resources than employees to help them deal with Union actions.

While there is no express prohibition in the Canada Labour Code, the CIRB has said that an application to decertify (get rid of) the Union "must be free from any employer influence in all respects". So, it is likely that the CIRB would find it to be an ULP if the employer assists employees to pursue their concerns with Union actions during a decertification campaign.

If you have Employment Standards or Human Rights complaints about your employer you can generally get some help from a government agency. At this time there is no "Employee Advisor or Ombudsman" funded by taxpayers or Union dues to help you

address concerns about a Union. If you have a problem with a Union's actions (that your employer cannot address with the CIRB and the Union) you are expected to take it up with the Union or go to the CIRB yourself, or with a lawyer. Generally, employees are discouraged from approaching their employer regarding their Union's conduct. See [What Things Might be an Unfair Labour Practice \(ULP\) by a Union?](#)

Our mandate, in advancing employee rights, is to provide information and resources which: Unions do not provide, employers may not be able to provide and the CIRB choose not to provide. The challenge you face is proving that a Union is doing illegal things or committing unfair labour practices. Be prepared for the possibility that the CIRB will allow Unions to do things to you that you might disagree with but may be lawful.

It is also generally true, that our labour laws and Labour Boards apply a different standard for what a Union may or may not do and what an employer may or may not do. Employees generally have the greatest free speech rights in comparison to Unions, and certainly greater than employers. In addition, while Unions can help pro-Union employees in many ways, employers can generally not assist Union-free oriented employees.

Federally regulated employers are not expressly prohibited from offering assistance to employees regarding their Union's conduct. But, as a result of CIRB decisions over the years, employers have many limits on their relationship with employees regarding unionization. However, employers must be very careful that the actions they take do not breach the provisions in the Canada Labour Code. Such provisions prohibit an employer from participating in or interfering with the formation or administration of a Union or the representation of employees by the Union. Offering to assist an employee who has concerns about the Union's actions may well be interference in the Union's representation of employees.

Regarding a Unfair Labour Practice (ULP) during a card certification drive, the CIRB does not expressly permit or prohibit an employer from filing a ULP on behalf of an employee. But the CIRB has stated that any "disquiet" an employer may have about undue influence or coercion employees may experience before signing a membership card should be brought to the CIRB's attention by the employees themselves. The CIRB will say that your employer is best advised to remain silent.

Employers can pursue Unfair Labour Practice Complaints against a Union on issues directly relevant to the employer. One example is interfering with employees at the workplace during working hours without the employer's consent. Another is where the Union requires an employer to terminate the employment of an employee because the employee is no longer a member of the Union.

At LabourWatch we hope this website and our Section on filing Unfair Labour Practice Complaints against Unions will help you understand how to file an Unfair Labour Practice against a Union. If you want to speak with an expert please see the [Contacts](#) section of the website to find a lawyer who may be able to help you.

WHAT THINGS MIGHT BE AN UNFAIR LABOUR PRACTICE (ULP) BY A UNION?

Intimidation and threats are closely related. They may range from threats of loss of jobs to threats of physical harm. Such conduct is not acceptable under the Canada Labour Code.

The Canada Industrial Relations Board usually allows some room when considering whether a Union has made inappropriate promises. For instance, Unions are generally expected to make promises of better working conditions. However, direct attempts to buy employee support (for example: promises of payments or other pay from the Union in return for joining the Union such as paying your card fee) may be an Unfair Labour Practice.

Some examples of what would be an Unfair Labour Practice:

- Telling an employee that they will lose their job once the Union is certified if the employee failed or refused to sign a Union membership card.
- Attempting to persuade employees, at the employee's place of work during working hours, to join, not join, or cease to be a member of a Union, without the employer's consent. (Consent would include an employer specifically authorizing such activities or failing to stop them when they become aware that they are taking place.) It is up to the employer to exercise its disciplinary powers to deal with employees who use paid time to work for, or against, the Union.
- Make an employer fire an employee because the employee has been expelled or suspended from membership in the Union (unless the reason for the expulsion is the employee's failure to pay Union dues).
- Expel or suspend an employee from membership in the Union or take disciplinary action against an employee by applying the Union's membership rules or discipline standards in a discriminatory way.
- Expel or suspend an employee from membership in the Union or take disciplinary action against an employee because the employee refused to break the Canada Labour Code sections relating to unionization.
- Union discrimination against a person because they disclosed or were about to disclose information they were required to disclose by law.
- Threaten you, corner you, harass you, or otherwise bully you into signing a membership card - that is "intimidation".

It is likely that the CIRB will investigate if the alleged inappropriate action actually influenced employees and made them change their minds about signing a card, or cancelling a card, etc. However, this is not a requirement. The CIRB has found it to be a ULP when a Union organizer threatened an employee with loss of the employee's job if the certification was successful. Despite the fact that the employee refused to sign a card, the CIRB found the Union organizer had committed a ULP.

In the "duty of fair representation" provision of the Canada Labour Code, section 37 provides that a Union that is the bargaining agent for a bargaining unit shall not act

in a manner that is arbitrary, discriminatory or in bad faith in the representation of any of the employees in the unit with respect to their rights under the collective agreement that is applicable to them. That said, breaching Section 37 is not a Unfair Labour Practice, and is dealt with differently. Information on Duty of Fair Representation (DFR) complaints can be found on the CIRB [website](#).

WHAT CAN I DO IF I BELIEVE THE UNION IS MISLEADING ME?

Unfortunately Unions are held to a different standard than Employers when it comes to an organizing drive. Compared to Unions or Employees, an Employer is limited in what it can say or do. A Union is allowed and even encouraged to convince Employees of the benefits of Union membership. Employees who oppose or support the Union can equally campaign to encourage their fellow Employees to join, not join or cancel their membership cards, though they too are bound by Canada Labour Code.

FACT: UNIONS VERY RARELY SIGN UP 100% OF EMPLOYEES.

For example, unfortunately Unions often pressure you by telling you that you are the last to sign and surely you don't want to be the last to sign. When an outside Union organizer or a fellow employee supporting the Union tells you this, you may want to confirm for yourself if other employees have signed. In particular, talk to other Employees and find out who else has been told they were the "only" Employee who had not signed. Unions often say this and it is almost never true. Rarely do 99%, let alone 100%, of all employees sign a card in a Union drive.

THE 'STACK OF CARDS' AND THE YOU'RE-THE-LAST-ONE TRICK.

Another tactic, according to what Union organizers tell LabourWatch, is to have a stack of cards or papers that the organizer claims are signed by other employees. Sometimes they make up cards or they have actual cards on the top of the pile and the rest are blank. They do this to try to make you think you are one of the last to sign; they also want to make you feel like you're "part of the crowd."

LabourWatch suggests that you never sign a Union card just because fellow Employees or Union organizers tell you that you are the last to sign, that most have signed, or they show you stacks of cards. They are most likely not telling the truth. If you have signed a card after being told this you may want to cancel it right away. See our download about [how to cancel your union card](#). If the Union is going to use this sort of tactic you should ask yourself what other lies they may be telling and whether you can trust them with Union dues and your employment. Check into most everything a Union says before signing a card.

While such lies might be an Unfair Labour Practice – the misinformation "coerced" you into signing a card – it will be very hard to prove and in the end the Canada

Industrial Relations Board might say this kind of technique or "mere puffery" is allowed. It is best to first cancel any signed cards, then file a ULP and ensure all other Employees find out what you believe the Union might be doing. LabourWatch suggests you file the ULP because Canada needs more cases of Employees calling into question what Unions do in order to establish more case law on Union actions towards Employees.

Ask questions, talk to your fellow Employees, friends, and family, question and try to confirm the Union's claims. Find out what the Union has told other Employees.

MEMBERSHIP IS NOT MANDATORY - UNLESS THAT IS NEGOTIATED LATER

Remember, you are not required to sign a Union membership application or Union card. You are permitted to join the Union after they are certified (if they get certified).

Also, if your Employer gives in to a common Union demand to have a "forced membership" clause in the collective agreement, you will be a member whether you want to or not. A Union card or membership application tells the CIRB that you want the Union to represent you in your dealings with the Employer. ***It never means less than that***, so if you are unsure, don't sign.

If you believe that the Union is misleading you, the best thing to do would be to not sign a membership application or Union card until you are satisfied that the Union is giving you correct information. If you have signed and later get information that concerns you, cancel your card immediately – see our download about [how to cancel your union card](#).

UNIONS DON'T HAVE TO TELL YOU EVERYTHING

A Union is not required to give you all of the relevant information to help you make the decision to join or not join. CIRB decisions make it clear that it is your responsibility to have all your questions answered before you sign an application for Union membership. If you allege that the Union obtained membership cards through fraud (signing cards for employees who never agreed to sign or paying the legally required card fee) (see [What If The Union Uses A Card I Did Not Sign, Or That I Cancelled?](#) for more information on these topics), the CIRB will decide how to deal with those allegations. If you do allege that there were irregularities about how the Union obtained membership cards, you must present proof to the CIRB. It's not enough to simply make the allegations.

IF YOU'VE BEEN MISLED

If you find out that you have been misled, or have reason to feel you have been lied to it is very important that you act quickly – there may be little time to change your mind once you have signed a Union card. It could be used to get a vote on the Union or even a card certification (certification without a vote). If you feel the Union, or someone representing the Union has misled you, and that you to signed a card in an

organizing campaign because of that information, the first thing you should do is cancel your Union card and then file an Unfair Labour Practice Complaint with the CIRB. See our download about [how to cancel your union card](#).

WHAT IF THE UNION USES A CARD I DID NOT SIGN, OR THAT I CANCELLED?

It is fraud for a Union to submit a card that you did not personally sign, or a card that you told the Union you cancelled. It should result in your membership or Union card not being counted. In some cases, the Canada Industrial Relations Board may do more serious things to the Union. At a minimum the CIRB should not count your card in the decision of whether or not the Union gets a vote or gets a card certification (certification without a vote).

If there's been card fraud...

Given the very tight timelines involved in Union certification drives, by the time you realize what has happened it may be too late. If you believe there has been, what is known as "card fraud" work with your fellow Employees to gather the necessary evidence and quickly submit it.

The CIRB requires an Employee to sign a membership card and pay at least \$5 to the Union within the 6-month period before the day on which an application for certification is filed by the Union. An Employee can cancel a membership card **only up to the time the Union files the application**. A cancellation after the date of application is too late unless for some reason the Union withdraws their application for certification and files it again using your pre-cancelled Union card - which they must not do. The CIRB has held that the requirement of the \$5.00 payment is more than a "mere technicality". The CIRB has also held that where a Union organizer pays the fee for an Employee, there cannot be said to be valid evidence of membership (properly obtained Union cards).

Once you sign a Union membership card there is no set time limit on how long the Union can use it for, but you must have paid at least \$5.00 to the Union within a six-month period before the application for certification is filed with the CIRB. In most cases, the fee is paid at the time the card is signed and dated.

If someone else signed your name on the card without your permission, this is forgery, and it may also be appropriate to call the Police in addition to filing a ULP.

Where evidence of membership (Union cards) is argued before the CIRB it is their practice to investigate through confidential interviews conducted by their own investigating officers. Any irregularities are reported to the CIRB. The CIRB then evaluates whether or not the allegations might be true. If there is sufficient evidence of coercion, intimidation or fraud, the CIRB may dismiss the Union's application for certification. CIRB staff sometimes conducts spot checks of union cards by talking to

employees to see if cards were signed voluntarily and if initiation fees were paid properly.

I SIGNED A UNION CARD BUT THE UNION DID NOT TELL ME ABOUT DUES.

Depending upon the circumstances, if the Union has misled you about Union dues or promised that you do not have to pay Union dues, its' conduct may be an Unfair Labour Practice.

There is no requirement for the Union to tell you about dues. However, if the Union has misled you about Union dues, or told you that you will not have to pay Union dues - that may be an Unfair Labour Practice. You should ask the Union Representative about Dues, Initiation Fees, and Special Assessment Fees that might be payable.

Get as much information as possible. Do not sign a Union card when it is first given to you. You should make yourself knowledgeable about what it means to sign any document – especially one that removes your right to deal with your Employer directly. You should find out as much as possible about how your signature on a Union membership card can affect your future. You should ask questions of the Union representative or whoever is trying to get you to sign, and you should help others become knowledgeable about what you have learned.

If a Union is certified and a Collective Agreement is negotiated and ratified, you must pay Union dues. The Union can require your Employer to deduct your Union dues directly from your pay cheque. If you object to paying Union dues on religious grounds, the Canada Industrial Relations Board *may* order that you don't have to pay Union dues as long as an amount of money equal to your Union dues is deducted from your wages and paid to a registered charity mutually agreed to by you and the Union. This however can be very difficult to make happen due to how the Canada Labour Code is written and how the CIRB has applied the law.

I WAS TOLD THAT I WOULD LOSE MY JOB IF I DID NOT SIGN A UNION CARD.

No, that is not true. This is a threat and it is an Unfair Labour Practice for a Union Organizer to make this kind of threat.

If a Union becomes certified, it represents all Employees – not just the Employees who supported the Union during the certification drive. **Employees who do not sign a Union card or Membership Application cannot be punished, and you will not lose your job.** If a Union threatens that you will lose your job if you do not sign a Union card, the Union has committed an Unfair Labour Practice. The Union can exclude non-members from meetings about certain Union business and you will not be able to run for a Union office such as President of the Local, but they must represent you in every way regarding your employment and the provisions of the Collective Agreement.

The Canada Labour Code says that a Union cannot expel, suspend or discipline a member because that member refused to perform an act that is contrary to the Industrial Relations part of the Canada Labour Code. Under section 95(i), a Union cannot discriminate against a person with respect to employment, a term or condition of employment or membership in a Union, or intimidate or coerce a person or impose a financial or other penalty.

I WAS TOLD THAT THE INITIATION FEE WOULD GO UP AFTER THE UNION CERTIFIES.

If a Union tells you that the fee for becoming a Union member will be higher after they unionize your workplace, it would likely not be considered an Unfair Labour Practice as long as the Union does not break its own by-laws or constitution in doing so. The Union has sole power to decide its Dues, Fees, and Special Assessments including the right to raise them. This is why it is so important for you to obtain a copy of the Union's bylaws and constitution.

Before signing a Union card or any membership document, you should review the Union's by-laws and constitution. This should be your main source of information about how the Union will act. Reviewing these documents will give you the information to help you decide if signing a Union membership document is in your best interest.

A Union that, or a person who – acting on behalf of a Union, solicits support for an application for certification should provide an Employee with information about the amount payable, or reasonably expected to be payable, for any initiation fees and regular membership dues if the Employee asks for it. If you are not provided with this information, ask for it!

If you cannot get these documents you should not sign a Union card. **Demand that the Union organizer give them to you first.** If they tell you that you have to sign a card first, consider what sort of Union you are joining.

WHAT CAN AN EMPLOYEE DO ABOUT A UNION UNFAIR LABOUR PRACTICE (ULP)?

In our [Downloads](#) section, LabourWatch provides a [form](#) for employees covered by the Canada Labour Code along with a set of instructions to help you file an Unfair Labour Practice Complaint against a Union. It sets out all the required information you must complete when making a complaint. There may be Canada Industrial Relations Board information officers who should answer any questions you have. At LabourWatch we are very interested in learning about Employee concerns about Union conduct – please call or email us (see [Contact Us](#)) and tell us about your experience with a Union and the CIRB if you file an Unfair Labour Practices Complaint.

If you believe that someone from the Union or acting on behalf of the Union has acted in a way that amounts to a ULP as described in Questions 2 - 7, you may file an Unfair Labour Practice Complaint against the Union. Get the filing instructions from our site and follow the instructions. If you are confused or do not understand anything make sure to speak with one of the Employee Advisors in our [Links](#) section or [Contact Us](#) at LabourWatch. The CIRB website also has an informational circular that covers this topic.

Complaints should be filed no later than 90 days from the date on which the complainant knew, or in the opinion of the CIRB ought to have known, of the incident leading to the complaint.

In those cases, the unionized Employee ("complainant" or "Grievor") must prove:

- That he or she has presented a grievance or appeal in accordance with any procedure established by the Union and to
- That the Union has dealt with it in an unsatisfactory manner – or –has not dealt with it within 6 months of the presentation.
- That the complaint is made to the CIRB within 90 days **after the first day on which the unionized Employee could make the complaint** in respect to conditions 1 and 2 above. If a complaint involves several alleged violations, it may be subject to different time limits. Complainants should make sure they comply with the appropriate time limits if they file a complaint.

Complaints may be filed at any office of the CIRB. The complaint may be sent by hand, by courier, by mail or by fax. The CIRB does not accept electronically delivered complaints at this time.

WHAT WOULD THE LABOUR BOARD DO ABOUT UNION UNFAIR LABOUR PRACTICE (ULP)?

If the Union is found guilty the Canada Industrial Relations Board has the authority to impose a wide range of penalties.

When a complaint containing sufficient information is filed, a Registrar of the CIRB will acknowledge receipt of the complaint and forward a copy to those persons who are affected, for example: an individual, a Union and/or an Employer. The Registrar will give these persons instructions for replying and a deadline to file their reply and later any responses to the replies of others. The Registrar usually appoints a labour relations officer, who will contact the parties to assist them in resolving the complaint. If the parties are unable to reach a settlement, the officer must refer the complaint to the CIRB for adjudication ("judging"). In complaints which remain unresolved, the officer will file a detailed report with the Vice Chair that will hear the case, decide, and then send a copy of the report to the parties. The report to the CIRB will not include any confidential information provided to the officer by any of the parties during the settlement attempts. If a complaint is not settled, the CIRB may schedule a hearing or decide based on written submissions. If they find that the Union acted illegally, but that the Union's conduct did not change or affect the outcome of a certification vote, the CIRB will generally not dismiss the Union's certification application.

- The Union can be ordered to reinstate someone to membership in the Union.
- The CIRB can order the Union to rescind any disciplinary action taken in respect of any Employee in contravention of the Canada Labour Code.
- Direct the Union to take other steps to correct the ULP.
- Dismiss the certification application.

Generally, the more serious the breach of the Canada Labour Code the more serious the penalty.

If the CIRB upholds a complaint, it may order a remedy that is not aimed at punishing the party which committed an infraction, but rather at putting the complainants in the position they would have been in had the infraction not occurred. The CIRB does not have the power to fine a party who has been found to be in violation of the Canada Labour Code.

It's not really possible to say what the penalty for any specific item or action would be. So much depends on the specific circumstances and context. For example, if the actions complained about had no real effect on the Employees' ability to express their wishes about being represented by a Union, then the penalty, if any, will tend to be less serious.