

FAQS

MANITOBA | CONSTRUCTION
Unfair Labour Practices

TERMS OF USE

The LabourWatch web site and all materials provided by it are intended to provide information of general interest to the public.

They are not intended to offer legal or consulting advice. Accessing information or documents from the LabourWatch web site is not intended to create a solicitor-client relationship.

Although we try to ensure the information we provide is accurate, we cannot guarantee that it is complete, correct, or timely, and make no warranties of any kind. The information on this web site should be used in combination with appropriate professional advice obtained from a qualified professional who understands your particular situation.

Links to any other web site or reference to any product or service does not suggest or imply an endorsement or recommendation of those products, services or web sites (or the material contained on those web sites).

COPYRIGHT

The Canadian LabourWatch Association encourages the use of our content including copying, emailing and faxing as needed by users. There are no restrictions on the use of our FAQ's, any Downloads related to labour law proceedings, our Newsletters, etc. Any documents or materials housed on this web site that are the product of organizations other than LabourWatch may be viewed but further copying and distribution should only be done in accordance with copyright law.

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, Manitoba 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, decertification campaigns 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 Manitoba Labour 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 Manitoba Labour Relations Act, the MLRB 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 MLRB 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 MLRB and the Union) you are expected to take it up with the Union or go to the MLRB yourself, or with a lawyer. Generally, employees are discouraged from approaching their employer regarding their Union's conduct. See [What If The Union Uses A Card I Did Not Sign, Or That I Cancelled?](#) for more information.

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 MLRB may 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 MLRB 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 the MLRB 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.

Similarly, employers are prohibited from offering assistance to you if you have concerns with the Union's actions, and they cannot pay for lawyers, or provide you with the use of company lawyers. There is a risk that your employer's assistance could be viewed as an Unfair Labour Practice.

Under no circumstances can an employer raise the concerns of their employees regarding the Union's conduct. If the union has abandoned the employees, the employer can request that the MLRB investigate whether the union should no longer be the bargaining agent.

At LabourWatch we hope this website and our Section on filing [Unfair Labour Practice Complaints](#) against Unions will help you understand how and whether 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?

The Union cannot use intimidation, fraud or coercion, or the threat of a fine, in soliciting support for the Union.

The Union also cannot penalize a person for refusing to participate in an illegal strike, or force the employer to terminate the employment of an employee for any reason other than for failing to pay the required union dues, assessments and initiation fees.

The Union cannot apply its own membership rules in a discriminatory way. Having said all of that, the Manitoba Labour Relations Board gives a union a "reasonable opportunity to sell itself", and even significant exaggerations of facts or "half-truths" are not necessarily found to be unfair labour practices, if they didn't actually cause employees to sign membership cards when they otherwise would not have.

It is important to understand that there must be evidence that the inappropriate behaviour actually influenced employees and made them change their minds and support the Union (i.e. to: sign a card or not sign a card, cancel a card or not cancel a card, sign or not sign for decertification), or oppose another Union. If the Union's actions did not cause any employees to change their minds, the MLRB may refuse to find an Unfair Labour Practice has been committed and will usually refuse to reject the membership evidence obtained as a result of the inappropriate behaviour.

It is a ULP if the Union files a membership card after you told them not to. It is not clearly stated in Manitoba as a ULP, but it *could* result in the certification application being dismissed. It has not been tested, but it is unlikely that your employer could help you if you feel there has been "card fraud" like this.

Unions are also **not entitled to attempt to persuade employees, at their place of work** during working hours, to join, not join, or cease to be a member of a Union, **without the employer's consent**. This behaviour is not an Unfair Labour Practice; it is up to the employer to exercise its disciplinary powers to deal with employees who waste paid time soliciting for, or against, the Union.

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 the Manitoba Labour Relations Act.

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 Manitoba Labour Relations Board (MLB) 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 MLRB 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. MLRB 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?](#) below for more information on these topics), the MLRB 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 MLRB. 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 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 signed a card in an organizing campaign because of that information, the first thing you should do is cancel your Union card. After that, file an Unfair Labour Practice Complaint with the MLRB. See our Downloads section – [Cancellation of a Union Card](#) for a how-to description with forms.

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 sign, or a card that you clearly and unequivocally cancelled. It should result in your membership or Union card not being counted. In some cases, the Manitoba Labour Relations Board may do more serious things to the Union. At a minimum the MLRB should not count your card in the decision of whether or not the Union gets an automatic certification without a vote. 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.

If you have signed a card, that signature is valid for whatever the Union's purposes for a period of 6 months. If the union withdraws its application for certification it can also reapply with your same card as long as your card is valid. If the union applies to the MLRB to certify your workplace after your card has expired it should not be counted, but it would be up to you to point this out to the MLRB.

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](#).

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

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 complaint.

As we have stated throughout this document, it is your responsibility to ask questions of the Union rep or organizer. You should ask about Dues, Initiation Fees, and any 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. You should find out as much as possible about how your signature on a Union Membership card can affect your future - especially one that removes your right to deal with your Employer directly. . 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.

The minimum compulsory check-off is required to be included in a collective agreement. Deduction of dues should not start until after the Union has been certified, and a collective agreement has been ratified.

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 is committing 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.

Regardless of what is in a collective agreement, the Act states that it is a ULP for a union to require an employer to terminate employment of an employee for expulsion or suspension from membership for any reason other than failure to pay periodic dues, assessments and initiation fees of the union.

Also, it is a ULP for a union to expel, suspend, or penalize a member for refusing to engage in an **illegal** strike. It is a ULP if they intimidate or coerce, or discriminate in regard to employment or union membership or penalize a person who does something they are required to do as outlined in the Manitoba Labour Relations Act.

The Union is allowed to have in its constitution discipline for attempted decertification or crossing a legal picket line, but the union cannot force the employer to terminate an employee.

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 Manitoba Labour Relations Act 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. While there may be a form available from the Manitoba Labour Relations Board, LabourWatch has provided you with a form for Manitoba, along with a set of instructions to help you file an [Unfair Labour Practice Complaint against a Union](#).

It sets out all the information you must complete when making a complaint. There may be MLRB information officers who should answer any questions you have. You may also want to contact a [Lawyer](#). At LabourWatch we are

very interested in learning about Employee concerns about Union conduct – please Contact us and tell us about your experience with a Union and the MLRB 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.

If you are complaining about the Union's method for gathering membership cards, an application can be filed in the same way a Union would file an application for certification. It should be filed within 2 days of the posting of an application for certification in the workplace. It is generally limited to objecting to the manner in which the union has solicited a person's union membership (fraud, intimidation or coercion, failure to give dues information).

The person filling out the application must sign it and have a statutory declaration witnessed (Form A). All documents filed at the MLRB must be provided in triplicate. They should be filed in person. The MLRB does not accept fax or e-mail filings. You do not have to serve other parties, as the MLRB does this.

If you are complaining about how the Union treated you while trying to get you to sign a card, that treatment would have to be quite severe. Whether or not the card was signed will often be how the MLRB views the claim of intimidation. (If you did not sign the card, how could you have been intimidated?) If you cannot get your card back, or the Union refuses to acknowledge your wish to get your card back, then you should file a ULP. At the very least, your complaint may serve to colour the MLRB 's perception of the union on any other outstanding or disputed issues relating to an organizing drive or certification.

A ULP could be filed if a union intimidates, coerces or discriminates against a person regarding employment, membership in a union. It would be a [ULP](#) if a Union imposes a penalty against a person for exercising rights under a statute (law), or you're penalized for doing something you are required to do by the Manitoba Labour Relations Act. Nasty behavior regarding a ratification vote could be the basis for a ULP, but crossing a picket line is not a statutorily protected activity, as long as the strike is legal.

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

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

The MLRB may throw out membership support, dismiss an application for certification, order a secret ballot vote, reinstate employment, pay for lost wages, issue "cease and desist" orders, and post notices of the decision in the workplace.

The MLRB may order the Union to pay up to \$2,000 even if there was no loss of wages; or take other measures to "rectify any situation" resulting from the ULP. Generally, the more serious the breach of the Act, the more serious the penalty.