

FAQS

NEW BRUNSWICK | 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, New Brunswick 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 New Brunswick Labour and Employment 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 New Brunswick Industrial Relations Act, the NBLEB 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 NBLEB 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 NBLEB and the Union) you are expected to take it up with the Union or go to the NBLEB 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 NBLEB may choose not to provide. The challenge you face is proving that a Union is committing illegal acts or committing unfair labour practices. Be prepared for the possibility that the NBLEB 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 NBLEBs 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.

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?

The New Brunswick Industrial Relations Act contains numerous provisions that prohibit inappropriate conduct by Unions and individuals acting on behalf of Unions toward individual employees.

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 New Brunswick Labour and Employment Board may refuse to find an Unfair Labour Practice has been committed. It will usually accept the membership evidence even if obtained as a result of the inappropriate behaviour.

- A Union may not force an employer to bargain with it even though another trade Union represents the employees.
- Unions are also not entitled to attempt to persuade employees, **at the employer'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.)
- A Union may not deny or suspend Union membership or expel a member from the trade Union for discriminatory reasons.
- A Union may not discipline or impose a penalty on a member for discriminatory reasons.
- A Union may not discriminate against a person because he or she testified in a proceeding under the New Brunswick Industrial Relations Act.
- A Union may not discriminate against a person because he or she disclosed, something he or she was required to disclose under the New Brunswick Industrial Relations Act.
- A Union may not discriminate against a person because he or she made an application or complaint under the New Brunswick Industrial Relations Act.
- A Union cannot threaten you, corner you, harass you, or otherwise bully you into signing a membership card - that is "Intimidation".
- The Union cannot tell you that if you do not sign you will lose your job.

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 New Brunswick Industrial Relations Act.

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

For example, unfortunately, Unions often use pressure and tell 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 make you think you are one of the last to sign; they also want you to 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. Organizers 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 card](#). If the Union uses this sort of tactic you should ask yourself what other lies they may tell 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 New Brunswick Labour and Employment 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 NBLEB 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 has given you correct information. If you have signed and later get information that concerns you, cancel your card immediately. See our Download for [cancelling a 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. NBLEB 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 NBLEB will decide on 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 NBLEB. 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 NBLEB. 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?

If this happens, you are entitled to file a “Statement of Desire” to signify to the New Brunswick Labour and Employment Board that you are opposed to the application. A “Statement of Desire” (Card Cancellation) has to be filed in a specific manner which can be found [here](#) on our website. 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 . Your Employer may also be able to use this information and file a ULP themselves.

In New Brunswick a card must be signed within three (3) calendar months prior to the month in which application is filed.

It is fraud for a Union to submit a card that you did not 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 NBLEB may take more serious

actions against the Union. At a minimum, the NBLEB should not count your card in the decision of whether or not the Union gets 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 “card fraud” work with your fellow Employees to gather the necessary evidence and submit it quickly.

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.

New Brunswick law is silent on when dues begin, but it is common practice that Unions do not collect dues until a first Collective Agreement is accepted or ratified by the members of the Union.

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.

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 did 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.

It is important to note that if a Union certification application is successful, you may be required to join the Union if a Collective Agreement is ratified (approved). It depends on the Collective Agreement that your Employer agrees to. Also if a collective agreement does not require you to join the Union, you will be free to join the Union at a later time.

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)?

LabourWatch provides a Form for employees covered by the New Brunswick Industrial 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. There may be New Brunswick Labour and Employment 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 NBLEB 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 Contacts section or [Contact us](#) at LabourWatch. The NBLEB website also has [Forms](#) available that cover 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 NBLEB ought to have known, of the incident leading to the complaint.

If your complaint is that your Union has disciplined, expelled or suspended you in a discriminatory manner, you may have to go through your Union's grievance or appeal process before you can make a complaint to the NBLEB. **If your Union won't let you use its grievance or appeal process**, you can make your complaint to the NBLEB and explain why you haven't first gone to your Union.

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

If the New Brunswick Labour and Employment Board upholds a complaint, it may order a remedy that is not aimed at punishing the party that committed an infraction, but rather at putting the complainant in the position they would have been in had the infraction not occurred.

Some of the other possible remedies, depending on the ULP complaint would be:

- If an individual committed the ULP, the individual is liable on summary conviction and can be fined up to \$100 for each day the offence continues.
- If a corporation or Union committed the ULP, it is liable on summary conviction and can be fined up to \$500 for each day the offence continues
- If it occurs during a certification drive, the NBLEB may throw out the certification application.
- They would require the Union to remove any discipline taken against a Union member.
- Require the Union to pay an Employee for any money lost because the trade Union did not follow the law.

Generally, the more serious the breach of the Act the more serious the penalty.