

HOW TO NEW BRUNSWICK | CONSTRUCTION File An Unfair Labour Practice Complaint

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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

INTRODUCTION

At this time there is no "Employee Advisor or Ombudsman" funded by taxpayers or union dues to help you address concerns about a Union in the New Brunswick. If you have a problem with a Union's actions, that your Employer cannot address with the New Brunswick Labour and Employment Board 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 a Union's conduct.

Similarly, in New Brunswick, Employers are discouraged from offering assistance to you if you have concerns with the Union's actions. However, while Employers may not pay legal fees of the Employees, there are times that Unfair Labour Practices (ULP) against the Union could be raised by an Employer. These situations are unusual so please read [Question 1](#) of the New Brunswick Unfair Labour Practices FAQ in our Downloads section for more information. In fact, print and read all nine of the ULP FAQ's.

While there are many sections of the New Brunswick Industrial Relations Act about Unfair Labour Practices, most relate to the relationship between Employers and the Union. We will only address those between Employees and the Union. The Union will provide significant help to Employees who want to file a ULP against the Employer and LabourWatch does not attempt to duplicate the information and resources available from them.

Unions are prohibited from discriminating against a person in regard to employment or a term or condition of employment, or intimidating or coercing or imposing a monetary or other penalty on a person, because of a belief that he may testify in a proceeding under the New Brunswick Industrial Relations Act or because he has made or is about to make a disclosure that may be required of him in a proceeding under the New Brunswick Industrial Relations Act or because he has made an application or filed a complaint under the New Brunswick Industrial Relations Act or because he has participated or is about to participate in a proceeding under the legislation.

GET THE FORMS

The NBLEB has a Form specifically for Employees to file a ULP, as well as a Form to file, if, after getting a decision, you still feel the issue is not corrected. So, if you file a ULP using this package and the NBLEB issues a decision (for example) which instructs your Union it must return a fine you were forced to pay, but it does not, then you can file a second document.

In this package we will deal only with the initial filing as the second "failure to comply with terms of settlement" will follow a very similar path. That possible second filing requires a form we have not included in this "How To Guide". If you need it, you can find it on the Board's website [here](#).

Similarly, if you have made a request for Financial Statements from your Union and not received them it may be a ULP but it is dealt with on a different form. We have not included that form in this "How To Guide". If you need it, you can find it [here](#).

Given the difficulty the average Employee may have with any legislation such as the New Brunswick Industrial Relations Act and its associated sections, if you need help, please go to the [Contact](#) section of our website and get in touch with one of our Employee advisors.

Our "How To Guide" is only meant to address situations where you believe a Union has violated the New Brunswick Industrial Relations Act regarding a Union's conduct towards employees (it is trying to unionize) or with unionized Employees the Union actually represents.

COMPLETE THE FORMS

The first few sections of the Form are easy, requiring primarily names, addresses, phone and fax numbers. There is a section for "Counsel or Representative." If you feel that filing a ULP it is too complicated please contact one of the Employee Advisors in the Contacts section of our website.

Keep in mind that in the Form, you will be referred to as both "Complainant" and "Grievor".

It is a Unfair Labour Practice if a Union or other person seeks to influence the manner in which an employee may vote, by intimidation or coercion, in any vote taken under the New Brunswick Industrial Relations Act (such as a certification vote or strike vote).

The New Brunswick Industrial Relations Act contains numerous rules that prohibit

certain conduct by unions and individuals acting on behalf of unions toward individual employees. Conduct that is not allowed includes intimidation, coercion, threats of being fired or loss of employment, threats of fines or other penalties, undue influence, or any other means which is intended to make you become a Union Member or to stop you from becoming a Member.

Again, if you are not clear on how to complete the form, the NBLEB is very helpful. Do contact the NBLEB or contact one of our Employee Advisors in your area.

TIMING THE FILING OF YOUR ULP COMPLAINT

The NBLEB states that a ULP should be filed no later than 90 days from the date on which you knew, or in the opinion of the NBLEB ought to have known, of the incident leading to the complaint.

If you are already in a Union, depending on your particular Collective Agreement, you will likely be required to pursue the matter to the conclusion of the Grievance Process in your Union. If you have not had satisfaction after this process you have 90 days to file your ULP with the NBLEB.

This 90-day period generally starts from the last correspondence you receive from your Union.

If you are complaining 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.

If you are not yet in a Union, you will be expected to file your ULP as soon as possible.

DELIVER YOUR FORMS

You must deliver the forms to the NBLEB. You can deliver them by: hand, mail, registered mail, courier or fax.

Their address and contact information can be found [here](#).

Remember the 90-day limit stated above.

WHAT HAPPENS NEXT?

If the NBLEB 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(s) in the position they would have been 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;
- To require the Union to remove any discipline levied against a Union member;
- To require the Union to pay an Employee for any money lost because the Union did not follow the law.

PROVINCE OF NEW BRUNSWICK

FILE NO. _____



Industrial Relations Act
(R.S.N.B., c. I-4)

COMPLAINT OF UNFAIR PRACTICE
BEFORE THE LABOUR AND EMPLOYMENT BOARD

Between:

Complainant,

-and-

Respondent,

The complainant, pursuant to subsection 106(1) of the Act, complains that the grievor(s) named in paragraph 3 has (have) been dealt with by the respondent contrary to the provisions of section(s) _____

_____ of the Industrial Relations Act, and requests that (specify relevant section(s))

(state relief sought by grievor(s)).

The complainant states:

1. (a) Name of complainant:

(b) Address of complainant:

(c) Address for service:

2. (a) Name of respondent:

(b) Address of respondent:

(c) Address for service:

3. Name(s) and address(es) of grievor(s):

4. Name and address of any other person, trade union, council of trade unions or employers' organization that may be affected by the complaint:

5. The following is a concise statement of the nature of each act or omission complained of setting out the date (or the date on or about) the alleged violation, whether the violation is continuing, the name of the person committing the alleged act or omission (where an individual) or the name and position with the respondent of the person committing the alleged act or omission, and whether the alleged act or omission was committed by the person on his own behalf or on behalf of the respondent:

(a) particulars as set out above:

(b) particulars as to the nature of the alleged act or omission:

6. The following steps have been taken on behalf of the grievor(s) for the adjustment of the matters giving rise to the complaint (if none has been taken state the reason why):

7. The person, trade unions, council of trade unions or employers' organization set out above in paragraph 4 is affected by the complaint for the following reasons:

8. Particulars relevant to the relief claimed:

*9. Other relevant statements:

*10. Additional pages annexed or attached:

(a) Number of pages:

(b) Paragraph numbers of this form completed on the additional pages:

*11. In addition to the normal service of documents relating to this complaint, the complainant requests that copies be forwarded as follows (name and address):

Dated at _____, this _____ day of _____, 20_____.

(Signature and office)

(Signature and office)

N.B. This form must be completed and signed in accordance with provisions made in the Act and under the rules of the Board.

*Strike out if not applicable

Excerpts from the New Brunswick Labour Relations Act relating to ULP Complaints.

5(1) No trade union or council of trade unions, and no person acting on behalf of a trade union or council of trade unions, shall

- (a)* participate in, or interfere with, the formation, selection or administration of an employers' organization or the representation of an employer by an employers' organization or contribute financial or other support to an employers' organization, or
- (b)* impose any condition in a collective agreement or recognition agreement seeking to restrain or deprive an employer from exercising his rights under this Act to become or to refrain from becoming or to cease to be a member of an employers' organization.

5(2) No trade union or council of trade unions, and no person acting on behalf of a trade union or council of trade unions, shall seek by intimidation, by coercion, by the threat of dismissal or loss of employment, by the imposition of a pecuniary or other penalty, by undue influence, or by any other means, to compel or to induce an employee or other person to become or to refrain from becoming, or to cease to be, a member or officer of a trade union or council of trade unions, or to deprive an employee or other person of his rights under this Act.

5(3) No trade union or council of trade unions, and no person acting on behalf of a trade union or council of trade unions, shall

- (a)* discriminate against a person in regard to employment or a term or condition of employment, or
- (b)* intimidate or coerce or impose a pecuniary or other penalty on a person, because of a belief that he may testify in a proceeding under this Act or because he has made or is about to make a disclosure that may be required of him in a proceeding under this Act or because he has made an application or filed a complaint under this Act or because he has participated or is about to participate in a proceeding under this Act.

5(4) Nothing in this section or in this Act shall be deemed to deprive a trade union, or a council of trade unions, or a person acting on behalf of a trade union or council of trade unions, of freedom to express its or his views so long as it or he does not exercise that freedom in a manner that is coercive, intimidating, threatening or intended to unduly influence any person.

6(1) No employer, employers' organization, trade union, council of trade unions, or other person shall use coercion or intimidation of any kind with a view to encouraging or discouraging membership in, or activity in or for, an employers'

6(2) No trade union, council of trade unions, employer, employers' organization, or other person shall use coercion or intimidation of any kind with a view to encouraging or discouraging membership in, or activity in or for, a trade union or council of trade unions.

6(3) No employer, employers' organization, trade union, council of trade unions, or other person shall seek to influence the manner in which an employee may vote, in any vote taken under this Act, by intimidation or coercion or by giving, or offering to give, money or any other valuable consideration.

6(4) No employers' organization, trade union, council of trade unions, or other person shall seek to influence the manner in which an employer may vote, in any vote taken under this Act, by intimidation or coercion.

6(6) No trade union or council of trade unions, and no person acting on behalf of a trade union or council of trade unions, shall, so long as another trade or council of trade unions continues to be entitled to represent the employees in a bargaining unit, bargain with or enter into a collective agreement with an employer or employers' organization on behalf of, or designed or intended to be binding upon, the employees in the bargaining unit or any of them, and, if entered into, any such agreement is void.

7(2) No trade union, and no person acting on behalf of the trade union, shall expel or suspend or impose a pecuniary or other penalty on a member of the trade union for the reason that the member refused to participate in or to continue to participate in a strike contrary to the provisions of this Act.

7(3) No council of trade unions, and no person acting on behalf of the council or of a trade union, shall expel or suspend or impose a pecuniary or other penalty on a member or affiliate of the council for the reason that the member or affiliate refused to participate in or to continue to participate in a strike contrary to the provisions of this Act.

8(2) Where a person is required by the terms of a collective agreement to be a member of a specified trade union, his membership or application for membership shall not be affected by any terms or conditions not applicable to other members.

8(3) No trade union that is party to or bound by a collective agreement, containing a provision mentioned in subsection (1), shall require the employer to discharge an employee where such employee has been expelled or suspended from membership, or denied membership in the trade union where

(a) the reason for expulsion, suspension or denial of membership is that the employee was or is a member of another trade

union, or has engaged in activity against the trade union or on behalf of another trade union, or

(b) the employee has been discriminated against by the trade union in the application of its membership rules in circumstances where the employee is qualified to engage in the trade or work and is otherwise eligible for membership.

8(5) A trade union or council of trade unions and the employer of the employees concerned shall not enter into a collective agreement that includes provisions requiring, as a condition of employment, membership in the trade union that is a party to or is bound by the agreement unless the trade union has established at the time it entered into or became bound by the agreement that not less than fifty-five per cent of the employees in the bargaining unit were members of such trade union, and any such provision entered into contrary to this subsection is void.

8(6) Subsection (5) does not apply

(a) where the trade union has been certified as the bargaining agent of the employees of the employer in the bargaining unit,

(b) where the trade union has been a party to or bound by a collective agreement with the employer for at least one year,

(c) where the employer becomes a member of an employers' organization that has entered into a collective agreement with the trade union or council of trade unions containing such a provision and agrees with the trade union or council of trade unions to be bound by such agreement, or

(d) where the employer and his employees in the bargaining unit are engaged in the construction industry.

8(7) Notwithstanding anything in this Act, where the parties to a collective agreement have included in it any of the provisions permitted by subsection (1), any of such provisions may be continued in effect during the period when the parties are bargaining with a view to the renewal or revision of the agreement or to the making of a new agreement.

50(2) No trade union or council of trade unions that has bargaining rights for employees of employers represented by an accredited employer's organization and no such employer, and no person acting on behalf of the employer, trade union or council of trade unions shall, so long as the accredited employers' organization continues to be entitled to represent the employers in a unit of employers, enter into any agreement or understanding, oral or written, which provides for the supply of employees during a legal strike or lock-out, and any such agreement or understanding, if entered into, is void and no such trade union or council of trade unions or person shall supply such employees to the employer.