

HOW TO NOVA SCOTIA | 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 Nova Scotia. If you have a problem with a Union's actions, that your Employer cannot address with the Nova Scotia Labour Relations Board and the Union, you are expected to take it up with the Union or go to the NSLRB yourself, or with a lawyer. Generally, Employees are discouraged from approaching their Employer regarding a Union's conduct.

Similarly, in Nova Scotia, 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 Nova Scotia Unfair Labour Practices FAQ in our Downloads section for more information. In fact, print and read all nine of the ULP FAQs.

While there are many sections of the Nova Scotia Trade Union 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.

GET THE FORMS

The NSLRB has a Form specifically for Employees to file a ULP, it is called a Form 16. We have included on with this download package.

Given the difficulty the average Employee may have with any legislation such as the Nova Scotia Trade Union Act and its associated sections, if you need help, please go to the [Contacts](#) 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 Nova Scotia Trade Union 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.

You will not be required to address Section 9 of the form, as the complaint that section refers to is for Unions versus Employers complaints.

In Nova Scotia, if you are already in a Union, you will be required to complete the internal grievance process for your Union, if there is one. Also, you will be required to file a copy of your collective agreement with your complaint.

If you are not in a Union, and for example your complaint is regarding Union conduct during a certification drive you will not be required to supply a collective agreement nor of course will you be required to grieve the complaint through the Union.

TIMING THE FILING OF YOUR ULP COMPLAINT

The NSLRB 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 NSLRB ought to have known, of the incident leading to the complaint.

As stated above, if you are already in a Union, the NSLRB you will required you to pursue the matter to the conclusion of the Grievance Process in your Union, if they have one. If you have not had satisfaction after this process, or you have heard nothing from the union for 6 months, you have 90 days to file your ULP with the NSLRB. This 90-day period generally starts from the last correspondence you receive from your Union, or from the end of the 6 months. Also, if your Union won't let you use its grievance or appeal process, you can make your complaint to the NSLRB and explain why you haven't first gone to your Union.

If you are not yet in a Union, you should file your ULP as soon as possible, particularly in the case of a certification drive. If your file a complaint about how the Union behaved the NSLRB may refuse their application, but if you wait too long and the Union is certified your complaint may not be heard.

DELIVER YOUR FORMS

If the NSLRB 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.

If the complaint is in regard to a certification drive the NSLRB may throw the drive out.

Further, the Nova Scotia Trade Union Act states specifically:

- in respect of a failure to comply with clause (f) or (h) of Section 54, by order, require a trade union to reinstate or admit an employee as a member of the trade union; and
- in respect of a failure to comply with clause (g), (h) or (i) of Section 54, by order, require a trade union to rescind any disciplinary action taken in respect of and pay compensation to any employee affected by the failure, not exceeding such sum as, in the opinion of the Board, is equivalent to any pecuniary or other penalty imposed on the employee by the trade union.

FORM 16
The Trade Union Act

**COMPLAINT OF UNFAIR LABOUR PRACTICE
BEFORE THE LABOUR BOARD**

1. (a) Name of Complainant:
(b) Address of Complainant:

2. (a) Name of Respondent:
(b) Address of Respondent:

3. (a) Name(s) of Aggrieved Person(s):

(b) Address(es) and telephone number(s) of Aggrieved Person(s):

4. (a) Nature of Complaint:

(b) Contrary to Section _____ Subsection _____ of the Trade
Union Act of Nova Scotia.

5. The Complainant has requested the Respondent to take the following action:

6. (a) The following steps have been taken on behalf of the person(s) aggrieved for the adjustment or settlement of the matters giving rise to the complaint:

(b) The degree of settlement or adjustment is as follows:

7. Date when the complainant learned of the action or circumstances giving rise to the complaint:

8. If the complaint alleges a breach of Section 54 (f) or (g) of the Act, please state:
 - (a) whether an internal grievance procedure has been established by the union:
 - (b) whether the internal grievance procedure has been used:
 - (c) if not, the reasons for not using the procedure:
 - (d) if the internal grievance procedure has been used, the results of the procedure. Give dates for the commencement of any grievance proceedings and of any decision or order.
9. Where the complaint alleges a breach of Section 53 (3)(g) or 54(a) or (b) of the Act, the consent of the Minister is attached.
10. Has this complaint been the subject of a grievance under any collective agreement grievance procedure?
11. A copy of any collective agreement binding upon the parties is enclosed.
12. The Complainant requests the Labour Board to: (remedy to be within the terms of Section 57 of the Act).

I/WE _____ declare that the statements made and information given herein are true in substance and in fact and we make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath, and made by virtue of the Canada Evidence Act.

Declared by the said

and

before me at _____ in the County of _____

this _____ day of _____, A.D. 20 _____

A Commissioner of the Supreme
Court of Nova Scotia

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

Excerpts from the Trade Union Act relating to Unfair Labour Practices by a Union.

54 No trade union and no person acting on behalf of a trade union shall:

- (a) seek to compel an employer to bargain collectively with the trade union if the trade union is not the bargaining agent for a bargaining unit that includes employees of the employer;
- (b) bargain collectively for the purpose of entering into a collective agreement or enter into a collective agreement with an employer in respect of a bargaining unit, if that trade union or person knows or, in the opinion of the Board, ought to know that another trade union is the bargaining agent for that bargaining unit;
- (c) participate in or interfere with the formation or administration of an employers' organization;
- (d) except with the consent of the employer of an employee, attempt, at an employee's place of employment during the working hours of the employee, to persuade the employee to become, to refrain from becoming or to cease to be a member of a trade union;
- (e) require an employer to terminate the employment of an employee because he has been expelled or suspended from membership in the trade union for a reason other than a failure to pay the periodic dues, assessments and initiation fees uniformly required to be paid by all members of the trade union as a condition of acquiring or retaining membership in the trade union;
- (f) expel or suspend an employee from membership in the trade union or deny membership in the trade union to any person by applying to him in a discriminatory manner the membership rules of the trade union;
- (g) take disciplinary action against or impose any form of penalty on an employee by applying to him in a discriminatory manner the standards of discipline of the trade union;
- (h) expel or suspend an employee from membership in the trade union or take disciplinary action against or impose any form of penalty on an employee by reason of his having refused to perform an act that is contrary to this Act; or
- (i) discriminate against a person in regard to employment, a term or condition of employment or membership in a trade union, or intimidate or coerce a person or impose a pecuniary or other penalty on a person, because he
 - (i) has testified or otherwise participated or may testify or otherwise participate in a proceeding under this Act,
 - (ii) has made or is about to make a disclosure that he may be required to make in a proceeding under this Act, or
 - (iii) has made an application or filed a complaint under this Act.

58 (1) No person shall seek by intimidation or coercion to compel a person to become or refrain from becoming or to cease to be a member of a trade union or an employers' organization.

(2) Nothing in this Act shall be deemed to deprive an employer of his freedom to express his views so long as he does not use coercion, intimidation, threats or undue influence.