

HOW TO PRINCE EDWARD ISLAND | NON-CONSTRUCTION File An Unfair Labour Practice Complaint

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, Prince Edward Island 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 Prince Edward Island 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 Prince Edward Island Labour Act, the PEILRB 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 PEILRB 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 PEILRB and the Union) you are expected to take it up with the Union or go to the PEILRB 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 PEILRB 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 PEILRB 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.

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.

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 Prince Edward Island. If you have a problem with a Union's actions that your Employer cannot address with the Prince Edward Island Labour Relations Board and the Union, you are expected to take it up with the Union or go to the PEILRB on your own, or with a lawyer. Generally, Employees are discouraged from approaching their Employer regarding a Union's actions.

In Prince Edward Island, in some cases, generally during certification applications, if you provide the Employer with the necessary information, the Employer may file an Unfair Labour Practice Complaint based on the inappropriate behaviour; however in most cases the Employer cannot do so. It may also be able to provide you with the name of a lawyer you can contact to assist you with your own application. These situations are unusual so please read [Question #1](#) of our Prince Edward Island Unfair Labour Practices FAQs. In fact, print and read all nine of the ULP FAQs.

While there are sections of the Prince Edward Island Labour 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 excellent information and resources available to Employees from Unions.

GET THE FORMS

First, when you join a Union you sign over your right to represent yourself to them, you abrogate your rights to represent yourself. So, when you want to file an application before the PEILRB you have to actually apply for the right to represent yourself. You apply for "Intervenor Status" using a **Form 18**.

Then you will file an Unfair Labour Practice Complaint using a second Form called a **Form 11**. Both of these forms must be sworn before a notary or lawyer before filing them with the PEILRB.

Given the difficulty the average Employee may have with any legislation such as the Prince Edward Island Labour Act, take your time and complete the Form carefully.

Our "How To Guide" is only meant to address situations where you believe a Union has violated the Prince Edward Island Labour 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 forms are very straight forward and self explanatory. The Form 11 will require that you know which section of the Prince Edward Island Labour Act you are saying has been violated. We have included the Section 10 excerpts from the Prince Edward Island Labour Act at the end of this document.

If you have any questions or are confused by the process please contact one of our Employee Advisors from the [Contacts](#) section of our website.

TIMING THE FILING OF YOUR ULP COMPLAINT

As there is not set process for a employee filing a ULP in Prince Edward Island we recommend that you file your documents as soon as possible. Timing is particularly important if your complaint is in regard to a Union certification application because if the PEILRB finds merit in your complaint they may stop the certification application altogether.

In short, file your complaint as soon as you feel there has been a contravention of the Prince Edward Island Labour Act.

DELIVER YOUR FORMS

Documents can be filed by hand, registered mail, or prepaid courier. The official office hours of the PEILRB are 8:00 am to 4:30 pm Monday to Friday. Documents are deemed to have been received by the PEILRB on the date that they were sent by registered mail or prepaid courier.

The PEILRB will accept documents sent by facsimile, with the original to follow by prepaid courier, registered mail, or hand delivery. It is likely the PEILRB will want the original documents so be sure and keep copies for yourself.

You can find the address and contact information for the PEILRB on its [website](#).

WHAT HAPPENS NEXT?

After the PEILRB receives your complaint an officer of the PEILRB will likely contact you and begin an investigation into your claim. If the officer cannot affect settlement they may call a hearing to decide the matter.

If they find that your complaint is valid they can order a range of actions from making the union stop whatever it had been doing, to penalties against the Union.

If your complaint is in regard to a certification campaign the Board may throw out the application if they believe the Union committed an unfair Labour Practice while getting cards signed.

FORM 11
LABOUR RELATIONS BOARD (PRINCE EDWARD ISLAND)
UNFAIR LABOUR PRACTICE COMPLAINT

BETWEEN:

APPLICANT

AND:

RESPONDENT

1. The Complainant complains to the Board that the Respondent has violated section _____
the *Labour Act* as follows: _____

2. The persons or parties alleged to be aggrieved are as follows: _____

3. Name of Complainant _____
Address of Complainant for service _____

Name of Respondent _____
Address of Respondent _____

4. The following is a concise statement of the nature of each act or omission complained of:

5. State measures taken for resolution of the matters giving rise to the complaint: _____

6. State remedy requested: _____

I hereby declare that the statements made and information given herein are true in substance and in fact and I 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 by virtue of the *Evidence Act* R.S.P.E.I. 1988 Cap. E-11.

DECLARED by the _____)
before me at _____)
in the County of _____)
Province of _____)
this ____ day of _____ 20 ____ .)

A Commissioner for taking affidavits in the
Supreme Court

Complainant

Personal information on this form is collected under section 31(c) of Prince Edward Island's Freedom of Information & Protection of Privacy (FOIPP) Act as it relates directly to and is necessary for administering services under Prince Edward Island's Labour Act. If you have any questions about this collection of personal information, you may contact the Chief Executive Officer of the Labour Relations Board at 902

FORM 18
LABOUR RELATIONS BOARD (PRINCE EDWARD ISLAND)
INTERVENTION, ACCREDITATION OR
REVOCAION OF ACCREDITATION

BETWEEN:

.....APPLICANT

And

.....RESPONDENT

..... INTERVENERS
(Name of Intervenors)

in this proceeding.

1. The intervenors state:

(a) Address of Intervenors

(b) Address of Intervenors for Service

2. The intervener is a:
- * Trade Union
 - * An Employer
 - * A Council of Trade Unions
 - * An Employers' Organization
- (*Strike out the words not applicable)

that claims an interest in this application for the following reasons:

.....
.....

3. The intervener submits with this intervention the following documentary evidence in support of its claim to an interest in this proceeding:

.....

I/WE declare that the statements made and information given herein are true in substance and in fact, and that I/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 by virtue of the *Canada Evidence Act*.

DECLARED by the said)
before me at)
in the County of)
and Province of)
this day of)
20.....)
.....)
.....)

A Commissioner

Excerpts from the Labour Act regarding ULP's filing a against a Union

10(2) No employee, trade union or person acting on behalf of a trade union shall

- (a) interfere with the formation, selection or administration of an employers' organization or the representation of employers by an employers' organization, or by intimidation or any other kind of threat or action, seek to compel an employer to refrain from becoming or to cease to be a member, or officer or representative of an employers' organization;
- (b) except with the consent of the employer, attempt at the employers' place of employment during working hours to persuade an employee of the employer to join a trade union;
- (c) fail or refuse to bargain collectively in accordance with this Act;
- (d) call, authorize, counsel, procure, support, encourage or engage in a strike except as permitted by section 41;
- (e) 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 labour organization.