



### INFORMATION BULLETIN

## Revocation of Bargaining Rights / Decertification under of the Trade Union Act

### What does revocation or decertification mean?

A trade union must be “certified” to have the legal right to represent a group of employees. Unions may be certified as a result of a Labour Board order, or by reaching a voluntary agreement with the employees’ employer. A certified union has the exclusive right to bargain collectively on behalf of the group of employees falling under the certification order or agreement.

Sometimes employees decide that they do not want a trade union to continue representing them. The *Trade Union Act* governs labour relations in most unionized Nova Scotian workplaces. The *Trade Union Act* gives the Board authority to “revoke” the order or agreement certifying the union as the employees’ bargaining agent. Effectively, the Board order that revokes the certification order or agreement reverses the certification. As a result, people frequently refer to the revocation process as “decertification”.

Employees, such as provincial civil servants, who work in workplaces governed by special legislation, should refer to the statutes that apply to their sectors for information about decertification. Decertification in federally regulated workplaces is governed by the *Canada Labour Code*.

### What is the Labour Board’s role in decertification?

Decertification is dealt with in s. 29 of the *Trade Union Act*. Section 29 places conditions that must be met before a bargaining agent may be decertified. The Board’s role is to satisfy itself that the conditions in s. 29 have been met. The Board usually orders a vote but not always. If the conditions are met, the Board revokes the certification. If the conditions are not met, the Board dismisses the application.

### Who can apply to decertify a bargaining agent?

A bargaining unit employee or group of employees may apply to decertify a bargaining agent. Employers may not apply to decertify a union, or be involved in a decertification application.

## How can employees apply to decertify a bargaining agent?

Applicants must fully complete and file a copy of Application Form 6 to apply to decertify a union. Form 6 may be accessed at [www.gov.ns.ca/lae/labourboard/forms](http://www.gov.ns.ca/lae/labourboard/forms). Paragraphs 10 and 11 of Form 6 are particularly important.

Paragraph 10 requires applicants to allege an acceptable reason why their union should be decertified. Section 29 of the *Trade Union Act* establishes two possible reasons that would permit the Board to decertify a trade union:

- A significant number of members of the certified trade union allege that it is not adequately fulfilling its responsibilities to the employees in the bargaining unit for which it is certified; **or**
- The union no longer represents a majority of the employees in the unit for which it was certified.

To complete paragraph 10, applicants must check-off which reason applies to the situation and write a brief statement explaining why the union should be decertified.

Paragraph 11 states that completed and signed Confidential Personal Statements must be attached to the application in support of the reason you have identified for the application in paragraph 10. The Confidential Personal Statements are statements to be provided by employees stating that they support the application and authorize the applicant to act as their representative. The Confidential Personal Statements must:

- be completed in full;
- be completed clearly signed and dated;
- be signed freely and voluntarily; and
- not be signed in the workplace or during a time when the employee signing is paid to work.

The form of Confidential Personal Statement should be provided using Form 6A attached to the application form. The form can be found at [www.gov.ns.ca/lae/labourboard/forms](http://www.gov.ns.ca/lae/labourboard/forms).

Incomplete Confidential Personal Statements may not be accepted by the Labour Board in support of the application.

Please note that petitions (list of signatures on one sheet of paper) are no longer accepted as evidence of employee wishes.

Employees may file their completed Form 6 and any supporting documents with the Labour Board at:

1601 Lower Water Street, Suite 304,  
PO Box 202,  
Halifax, NS,  
B3J 2M4.

## When can decertification applications be filed?

Decertification applications may only be filed

- Where a certification has been in place for at least 12 months and no collective agreement is in force; or
- During the last 3 months of a collective agreement in force for a term of up to 3 years; or
- If a collective agreement is in force for more than 3 years:
  - During the 34<sup>th</sup>, 35<sup>th</sup>, or 36<sup>th</sup> months of its operation, or
  - After it has been in force for more than 3 years, during the 3 months before the end of each year of its operation.

The periods noted above are referred to as “open-season”.

For further information on how the Board determines the “open season” decertification, the following Board decisions are relevant: [2021 NSLB 41 \(CanLII\) | MacDonald v United Food and Commercial Workers Union Canada, Local 864 | CanLII](#), and [2021 NSLB 40 \(CanLII\) | Worth v International Union of Operating Engineers, Local 721 | CanLII](#)

## What happens after I file my application?

Each case is different. However, the normal path for a decertification application is as follows:

1. Immediately after the application is filed, the Board provides notice of the application, and copies of the application, and any other supporting documents (except the Confidential Personal Statements), to the union and the employer. The Confidential Personal Statements are for Board Use Only however the Board may confirm the number of Confidential Personal Statements received with the application and the dates on which they were signed.
2. The employer will immediately post a notice of the application in the workplace so that employees are made aware of the application.
3. The employer will also be required to provide the Board with information about the employees in the bargaining unit within ten business days.
4. The union may file a Reply to the application within ten business days.
5. Any person, including an employee or trade union, who has an interest in the application can file a Notice of Intervention with the Board within ten days from the date that the employer posted the notice in the workplace.
6. After the employer has provided the employee information and the union has filed its reply, or the permitted filing periods have expired, the Board will review the application. If necessary, the Board may direct its staff to conduct a secret ballot vote. The ballots are not usually counted on the day of the vote.
7. If the parties agree that the vote count should determine whether the union is decertified, the Board will schedule a date and time to count the vote. If the parties do not agree the Board will establish a process (often including a hearing) that will permit it to decide whether the union should be decertified.

## **What should I do if someone applies to decertify my union?**

Decertification is a serious matter. Board staff members can give you information about the decertification process. However, they cannot give you advice about whether decertification is in your best interests.

The Board's vote gives you a chance to express your opinion about decertification. The vote is by secret ballot. It allows you to show whether you want to have your union decertified without having your personal feelings revealed to your co-workers, employer, or union.

You may also express your opinion by filing an intervention with the Board. Interventions are a written statement and are shared with the parties, so they are not anonymous. Interventions must be filed within ten business days of the date when your employer posts the Notice of the decertification application in your workplace.

## **What happens if the Board decertifies my bargaining agent?**

If the Board decertifies your bargaining agent, you work in a non-unionized workplace as of the effective date of the decertification. The collective agreement no longer applies to the workplace. Any outstanding grievances disappear. Each individual employee is responsible for negotiating the terms of his or her employment with the employer. Statutes such as the *Labour Standards Code*, establish the minimum rights and responsibilities of the employees and employer.

## **What if I just want to switch to another union?**

As an employee, you cannot simply switch unions. The new union must apply to be certified as your bargaining agent.

## **How can I get more information about decertification?**

You can get more information about decertification in the **Guide to the Labour Board** at

<https://novascotia.ca/lae/labourboard/procedures/documents/Guide-to-the-Labour-Board.pdf>

or by contacting the Labour Board at:

(902) 424-6730 in Halifax  
1 (877) 424-6730 Toll Free

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**This Information Bulletin is not intended to be legal advice. Decertification is an important matter which could have a significant affect on your workplace legal rights and obligations. The Labour Board encourages parties to become informed of their rights and obligations which may mean getting independent advice from qualified legal counsel.**