

VOLUNTARY RECOGNITION

INTRODUCTION

A union can become the exclusive bargaining agent for a group of employees in two ways. It can successfully complete the certification process. See: [[Certification, Chapter 21](#)]. A union can also be voluntarily recognized by an employer. See: [[Sections 42-44](#)]. This is commonly referred to as “having a VR”. This chapter explains the process of voluntary recognition and discusses some of the issues surrounding it. This policy discusses:

- the nature and purpose of voluntary recognition;
- the process and implications of voluntary recognition;
- ending a voluntary recognition; and
- common issues surrounding voluntary recognition.

THE NATURE AND PURPOSE OF VOLUNTARY RECOGNITION

The voluntary recognition of a trade union by an employer as the exclusive bargaining agent for a group of employees is a common and legitimate practice. This process may replace (or serve as a precursor to) the Board-administered certification process. There are several advantages to establishing a bargaining relationship through voluntary recognition:

- **Speed and cost:** The parties need only draft an agreement whereby the employer recognizes the union as the exclusive bargaining agent for a unit of employees. This may be useful for short-term projects where certification may take too long.
- **Spirit of cooperation:** The cooperation inherent in voluntary recognition may persist during the negotiation of a collective agreement.
- **Bargaining unit flexibility:** Parties to a voluntary recognition agreement are not bound by the Board’s bargaining unit preferences and may tailor their unit to their needs. For example, the Board generally certifies craft-based units in the construction industry. A voluntary recognition agreement may create a single all-employees unit.

There are also some disadvantages to a VR:

- **Sweetheart deals:** Voluntary recognition often raises suspicion that the union has a sweetheart deal with the employer. [Section 148](#) prohibits employer influence or domination of trade unions because this may impair the union’s fitness to represent the interests of employees. [Section 133\(1\)](#) allows the Board to void any

collective agreement if it determines that the trade union is influenced or dominated by the employer.

- **Trade union status:** Unions entering into VRs do not have to establish that they are trade unions (as defined in [Section 1\(x\)](#)). It may later discover that it does not meet the requirements of Code. This could be most inconvenient if this was discovered when the union sought to file a complaint with the Labour Board, prevent a raid, or call a lawful strike.

PROCESS AND IMPLICATIONS

The process of establishing a voluntary recognition is fairly straight forward:

1. **Employee support:** The Board has stated in several decisions that a union must be acting on behalf of employees in a real representational capacity before approaching an employer regarding a VR. This can occur in a number of ways. For example, the union may ask some employees to become members. A union may also determine that many employees are already its members, as often happens in the construction industry. The employees' support of the union is normally confirmed once an agreement has been negotiated through a ratification vote.
2. **VR agreement:** The employer and union may take the formal step of signing an agreement wherein the employer recognizes the union as the exclusive bargaining agent for a unit of employees prior to bargaining. More commonly, the employer simply begins bargaining with a union.
3. **Collective bargaining:** The employer and union commence collective bargaining. Normally, this agreement is subject to a ratification vote. A successful ratification is considered an important—but not the only—sign of employee agreement to being represented by the union. Once an agreement is signed, it creates a time bar to certification applications by rival unions. See: [[Section 37\(2\)\(d\) and \(e\)](#) and [37\(3\)](#)].
4. **Enforcement of agreement:** Once an agreement is concluded, the union then enforces the collective agreement on behalf of employees. This may entail filing grievances, making unfair labour practice complaints, etc.
5. **Renewal of agreement:** When the term of a collective agreement draws to an end, one party normally serves the other with notice to commence bargaining for a replacement agreement as per [Section 59](#) of the Code. The Code also speaks to ending a voluntary recognition agreement (see below)

ENDING A VOLUNTARY RECOGNITION

A voluntary recognition can be terminated in several ways:

- **Employer initiated:** [Section 43\(1\)](#) requires an employer to notify a union at least 6 months before the expiry date of a collective agreement if the employer intends to terminate the voluntary recognition and refuse to bargain collectively. In this case, [Section 43\(2\)](#) allows the union to apply for certification regardless of time bar created by the collective agreement.
- **Employee initiated:** Division 8 of the Code addresses revocation applications. [Section 50\(b\)](#) provides that employees may apply to revoke the bargaining rights of a voluntarily recognized union. The application would need to meet the requirements outlined in [Sections 51-53](#).
- **Union initiated:** A rival union may file a certification application (i.e., raid) for a unit of employees covered by a voluntary recognition agreement during one of the open periods outlined in [Section 37](#). A rival union could also file a certification application at any time if it believed a voluntarily recognized union did not have the necessary representational capacity.

COMMON ISSUES

One recurring question regarding voluntary recognition is that of employee representation and bargaining agent status. That is to say, did the union that was voluntarily recognized have the right to conclude such an agreement with the employer? The right to represent employees necessarily flows from a choice to support the union by the employees.

The [Labour Relations Code](#) allows employers to bargain with voluntarily recognized unions. Section 42 states:

42 Subject to this Act, an employer has the right to bargain collectively with a voluntarily recognized trade union acting on behalf of the employer's employees or a unit of them.

Section 42 connotes the union has been chosen by employees. In *Sheet Metal Workers' International 8 v. Sheet Metal Contractors of Alberta* [1988] Alta.L.R.B.R. 350, the Board stated:

When a Union approaches an employer with a request to bargaining it is claiming to be, and asking to be recognized as, the bargaining agents for the employees. This means it is claiming to represent those employees and to have their support for its acting in that role. When the employer accepts the Union's request it is accepting the proposition that the Union has that degree of support. This support is usually confirmed, after the initial round of bargaining, by the ratification of a collective agreement.

This reflects that [Section 21\(1\)](#) of the Code gives employees the right to be members of a trade union. This choice belongs to employees, not employers or trade unions. For a voluntary recognition to be valid, the employees must therefore choose the bargaining agent and do so in a manner that is free of employer influence. See: [[Section 148](#)]. Voluntary recognition is not a way for a union or an employer to circumvent this choice.

It is not acceptable for a union with no support from employees to approach an employer and offer to conclude a collective agreement on behalf of the employer's employees. See: [*Sie-Mac Pipeline Contractors Ltd.* [1991] Alta.L.R.B.R. 847]. Even a subsequent ratification of the collective agreement by the employees may not cure this defect because seeing an employer conclude a collective agreement with a union may have a coercive effect on employees contrary to [Sections 148\(1\)\(a\)\(i\)](#) and [149\(b\)](#).

Similarly, it is not acceptable for an employer to approach a union with a voluntary recognition offer when the union does not enjoy support from its employees. See: [*Vertex Construction Services* [1999] Alta.L.R.B.R. 183]. Again, even a subsequent ratification may not cure this defect because of the coercive effect of the employer's approval of the bargaining agent.