

TRADE UNION STATUS

INTRODUCTION

Only trade unions can represent employees and bargain collectively. Individuals, clubs or corporations cannot bargain collectively. This often makes it important to determine if an organization has trade union status. This policy discusses:

- the definition of a trade union;
- union structure;
- obtaining trade union status;
- losing trade union status;
- bargaining agent status; and
- when trade union status is important.

DEFINITION OF A TRADE UNION

The [Labour Relations Code](#) defines a trade union:

1(x) "trade union" means an organization of employees that has a written constitution, rules or bylaws and has as one of its objects the regulation of relations between employers and employees;

This definition contains three requirements:

1. A trade union must be **an organization of employees**. The definition calls for employees formally joining together. It contemplates a democratic organization run by employees for their benefit.
2. A union's governing documents **must be in writing**. This enables employees to understand the rules by which the union operates.
3. One of the organization's **objects must be "the regulation of relations between employers and employees."** The exact words are less important than having an objects clause that fits this general requirement. It distinguishes trade unions from social or benevolent organizations unsuited to carrying out trade union duties.

Union members adopt constitutions, bylaws or rules to govern their relations with each other. The union's "breath of life" is the adoption and ratification of the constitution by the founding members. The constitution binds members who join the organization later.

Trade unions are usually unincorporated. Some unions choose to incorporate as societies or non-profit corporations. Section 25 provides:

25(1) For the purposes of this Act, a trade union is capable of

- (a) prosecuting and being prosecuted, and
- (b) suing and being sued.

(2) A trade union and its acts shall not be deemed to be unlawful by reason only that one or more of its objects or purposes are in restraint of trade.

This limited legal personality means unions act (and be held responsible for acting) in their own name.

UNION STRUCTURE

Unions come in many forms. Some are small, local organizations. Others are large national or international organizations. Most large unions have a central “parent” body with branch organizations called “locals.” This gives the organization the strength of a large group while preserving local autonomy and control. Employees choose what form of unionization they prefer.

The parent-local relationship sometimes triggers questions. Usually, locals apply for certification and conduct collective bargaining. The [Code](#) does not prevent parent unions from obtaining certification. Whether a parent can hold a certification depends upon its constitution.

Most constitutions say a local’s existence depends upon a charter from the parent organization. This is not always so. Some locals exist even if they lose their charter. This depends upon their history and constitution. Similarly, a union usually does not lose its constitutional status or independence by affiliating with a parent union. Again this depends upon the constitutions in question.

Often a parent union creates an “instant local” by issuing a charter to a group of employees. Typically, the charter makes the parent constitution a part of the local constitution and binds the local to the parent’s model bylaws. The trade union status of such locals may depend on proper compliance with the parent union’s procedures for creating locals.

Typical clauses found in a parent-union constitution include:

- title of organization
- aims and objects
- membership
- offices and executive officers
- employees/staff
- finances and revenue
- conventions
- charges and discipline
- strikes and lockouts
- granting of charters and governing of locals
- local union bylaws
- local union autonomy
- affiliation and dissolution
- election procedures

OBTAINING TRADE UNION STATUS

Creating a new union requires that:

1. interested people draft a written constitution, bylaws or rules;
2. the constitution, bylaws or rules include a provision for dealing with the regulation of labour relations between employers and employees and a procedure for electing officers and calling meetings;
3. a meeting of employees approve the constitution, bylaws or rules;
4. employees attending the meeting take out membership in the trade union;
5. the members ratify the constitution, bylaws or rules; and
6. the members elect officers.

Trade union status does not require strict compliance with each step. Minor irregularities in the formation of the union may not harm its existence. Irregularities must go to the root of the organization's existence in order for it not to exist. There must be some real organization capable of collective bargaining and representing employees in at least some rudimentary sense. It cannot be a non-existent local.

LOSING TRADE UNION STATUS

The [Code](#) contemplates an orderly system of collective bargaining with employees represented by a reasonably defined and stable bargaining agent. Unions can, however, lose trade union status. Unions that become defunct, experience a fundamental change in their objects, or do not meet the requirements of the [Code](#) can lose their status. The evidence required to lose trade union status includes:

- failure to adopt the constitution by the founding members of the organization;
- no real body exists to carry out the duties of collective bargaining;
- no organization exists to provide representation for employees;
- going through the motions of following the formal requirements to set up a trade union but lacking substance in the constitution of the organization; or
- failure to meet statutory requirements.

BARGAINING AGENT STATUS

Many of the rights and responsibilities given to unions under the [Code](#) depend on unions being "bargaining agents". The [Code](#) defines that term:

1(b) "bargaining agent" means a trade union that acts on behalf of employees in collective bargaining or as a party to a collective agreement with an employer or employers' organization, whether or not the bargaining agent is a certified bargaining agent;

This definition requires unions to be "acting on behalf of employees." This means the union's authority must flow from the employees it claims to represent. Employees give this authority by becoming members, by ratifying collective agreements, or through the formal certification process.

WHEN TRADE UNION STATUS IS IMPORTANT

The question of a trade union's status often arises during the Board's processes. The most important times are:

- When the organization first files its constitutional documents. The Board's staff perform a preliminary check for the basic statutory requirements upon filing. See: [[Trade Union Filing Requirement, Chapter 33\(b\)](#)].
- When the organization applies for certification. If it is their first application, the officer investigates and makes a recommendation on the status issue. If the officer finds the union has status, the union only appears if there is an objection to this finding. See: [[Certification, Chapter 21](#)]. If they have been certified before, [Rule 25](#) deems them to be a trade union.
- If a party challenges the validity of a certification or collective agreement based on a lack of trade union or bargaining agent status.
- When a party questions a trade union's status in a proceeding before the Board.