

# Section 4: How Labour Organizes

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## Overview

In this section, you will learn:

- what the law requires workers to do to bargain collectively
- who may and may not become a union member
- the process and challenges involved in forming or joining a union
- why it is especially difficult to organize young workers
- the meaning of the following term: certification

## How do workers form a union?

How can individuals negotiate in a labour market with employers who have more power than they do? One option is to get organized and form an association, or a union, and give it the authority to negotiate on behalf of all workers. It's easier said than done.



### Hockey Star Wars Episode 2: Ted Lindsay and the Players' Pension Fund

*Prologue: Concerns players had about their salaries and working conditions were offset by the knowledge that they would retire with an NHL pension. The League told them that it was the best in professional sports but would give the players little information. The two players' representatives on the five-person Pension Society, Doug Harvey from the Montreal Canadiens and Ted Lindsay from Detroit, became suspicious.*

Since 1948, each NHL player had paid \$900 annually into his pension plan. The owners contributed \$600 per player, raised largely from the gate receipts of the All-Star game and a 25 cent extra charge on playoff tickets. In most years, money from these sources came close to covering the owners' total obligation and saved them from contributing much more from their own operating revenues. The players were never allowed to look at the Pension Society's books and had no idea about the real state of their pensions. Nor did they know that by February of 1957 the plan had a huge surplus of \$1,527,708, a surplus the owners would soon begin quietly distributing to themselves.

After one Pension Society meeting they found particularly frustrating, player representatives Harvey and Lindsay broke the NHL's biggest taboo. They told each other how much they were paid. They also spent hours calculating attendance figures, estimating

profits, and comparing them with the players' share. They concluded that the players who had been told by the owners that their team, indeed the entire League, was close to bankruptcy were not getting a fair return.

They were right! During the 1950s, every club, except the Blackhawks, routinely sold out their arenas. Even the Blackhawks always made at least \$1 million profit annually because they owned the arena. As one of the owners remarked, "We were absolutely coining it." Money was also starting to really flow in from radio and now television rights. During the 1956-57 season, when the average player's salary was \$8,000, the Maple Leafs and Canadiens each received \$331,000 for television and radio rights.

Lindsay didn't want to start a union but felt something had to be done. He began his campaign at the All-Star game in October 1956. During the pre-game skate he spoke briefly to one member of each team about forming a players' association. They met secretly after the game, found they all agreed, plotted a strategy, and returned to their clubs pledged to take action. Under intense secrecy they began asking for the support of their teammates and \$100 annual dues. Within four months they had signed up every player but one and had collected \$12,000. Lindsay announced the formation of the National Hockey League Players' Association at a press conference on February 12, 1957. It was no union: it had no legal right to represent or bargain for the players. But it was a start.

The League reacted with astonishment that the players might have any grievance. The next day in the dressing room the threats and attacks began. Lindsay was the main target. The Red Wings tried to discredit him with the other members of the Players' Association and the public. The team began by releasing false salary figures that indicated he earned more than twice what he actually did. When that didn't work, the Wings shocked the hockey world by trading Lindsay to Chicago claiming he had "outlived his usefulness" and "was over the hill." At the age of thirty-three, he was as fit and belligerent as ever, had finished the best scoring season of his career, and had just been named to the first All-Star team for the eighth time. This was only the beginning.

In September 1957, the NHL owners created an unprecedented 32 per cent changeover in team rosters through trades and the promotion of rookies. In Toronto, players had to sign a "loyalty pledge" to the team before they were given contracts. The League announced that it had just adopted a reform program, though none of the so-called reforms were ever introduced.

The Players' Association retaliated by accusing the NHL of failing to bargain in good faith. When the League did not respond, the players began the process of taking the League to court, claiming that since 1926 the owners had "monopolized and obtained complete domination and control and dictatorship" of hockey, which violated the law. In October it also applied to each NHL city for certification of the association as the players' legal bargaining unit — to become a union.

The owners then tried a new tactic. They confronted the players where they lived as a team and were most vulnerable — in the locker room. It all began to unravel in Ted Lindsay's old locker room in Detroit. Owner Bruce Norris and general manager Jack Adams told the players that Lindsay had betrayed them and was battling the owners for his own ends. The Players' Association would destroy the team and the League. On November 13, 1957, the Detroit players voted to withdraw from the Players' Association.

Support within the Association gradually slipped away, and Lindsay was forced to agree to the League's terms. On February 5, 1958, a week short of a year after it was formed, the National Hockey League Players' Association died. Everything important was left up to the goodwill of the owners, and though player-owner meetings continued, the players had no power.

No questions about the pension fund were ever answered.

Source: Adapted from *Net Worth: Exploding the Myths of Pro Hockey* by David Cruise and Alison Griffiths. Toronto: Penguin Books, 1991.

Episode 2 illustrates how getting started can be difficult. The NHL players were not at first trying to form a union. The original National Hockey League Players' Association (NHLPA) was a professional association. Membership was voluntary. Its purpose was to improve the communication between players and owners. It never had the power to negotiate a legally binding contract with the owners.

Canadian labour laws now give employees the right to form a union. **Certification** is the name given to the process by which employees obtain the legal right to bargain collectively with their employer through a trade union. Both federal and provincial labour laws define the process.

The law requires employers to negotiate with a trade union that has been certified by a labour relations board. The law also prohibits unions from exercising economic weapons such as a strike to acquire bargaining rights instead of using the certification process.

This was not always the case. In 1931 in Estevan, Saskatchewan, three miners were killed and 24 more persons injured in a battle between workers and the RCMP. The workers went on strike because mine owners would not recognize or negotiate with the union the workers had voted to form. Certification is now seen as a licensing process that gives a union the right to negotiate for the members of the bargaining unit. It is designed to help negotiations get underway and avoid confrontations like those in Estevan.

The law now restricts what both employers and unions can do while workers are deciding whether to form a union. It allows both sides to express their views. But use of any form of coercion, intimidation, threats, promises, or undue influence is considered to be an “unfair labour practice” and illegal. The employer cannot interfere with an employee’s right to join a trade union by threatening dismissal, reduction in wages, or plant closure or even asking about union activities. Those who may want to form a union are prohibited from using threats or intimidation on their fellow workers. The law is clear, but its application and enforcement are less certain.



## Activity 4.1

1. Summarize what the NHL owners did to block the formation of the Players’ Association.
2. Would each of these be considered an “unfair labour practice” by today’s standards as described in the last paragraph?

A union must prove that it has the support of a majority of the workers. Once certified, it has the exclusive right to represent all employees and negotiate all terms and conditions of employment for them. All employees covered by a collective agreement must pay dues to the union that negotiated it. Though workers who gain the benefits must pay dues, they are not required to become union members. Once certified, the union bargains for all workers whether they support the union or not. It must represent all employees fairly even though some employees may be opposed to belonging to it.

In Canada, governments appoint labour boards to apply labour laws and settle disputes. Labour boards can decertify a union if it is found to be negligent for not adequately representing its members or when a majority of employees no longer wish to be represented by it.



## Activity 4.2

In North America, there are four different ways of determining whether a majority of employees wish to be represented by a union:

- an election campaign certification system, which requires a trade union to convince at least 30% of employees to sign a membership or authorization card. A labour board

appointed by government to carry out its legislation validates the request and establishes a date, usually about two months after receiving it, when a secret ballot will be held. In that two-month period, both the union and employer campaign to influence the vote. The union must secure a majority to be certified; if it is not successful, no union may try to organize for 12 months.

- a card quick-vote system in which the union must convince at least 40 % of the workers to sign membership cards. A labour board then holds a vote by secret ballot, normally within five days of receiving the request for certification. The union is recognized if at least 50% vote for it.
- a card cooling-off period system, which relies primarily on the union submitting evidence that a majority of the workers are in favour. The application is followed by a brief period when the workers can file any change-of-heart petitions after which the union is certified without a vote if 50% remain in favour.
- a card-only system, which simply requires the union to get 50% of the workers to sign membership cards, which are then submitted to the labour board for verification. Once verified, the union is certified without a further vote.

In all cases, the union is not allowed to approach prospective members on company time to get membership cards signed. Signing up members is often done one at a time or in small groups away from the workplace without the knowledge of the employer.

1. Which of these four methods best describes what was done in the case of the hockey players' association?
2. Analyze both the advantages and disadvantages of each of these four methods from the point of view of the employer, the union, and the worker.
3. Which system do you think is best? Explain the reasons for your choice.



### Activity 4.3

The certification process is particularly difficult where young workers are involved. The comments that follow are from workers who have tried to organize others. They illustrate some of these difficulties. Make a point-form summary of the reasons certification can be particularly difficult for young workers.

- **Jeff Small, 26, worked part-time for Zehrs (a Loblaws-owned chain in southwestern Ontario) in Ancaster for eight years while going to school.**

**Jeff:** Organizing young people is definitely difficult. It's pretty tough to tell a 20-year-old that he or she needs a pension or benefits. Most of them are just not concerned about

that stuff. Young people have a short-term way of looking at things. They want to know if next year they'll have an extra 50 cents in their pocket. They have to see a tangible gain from joining the union.

- **Julie Marentette, 34, is from the city of Windsor, where she worked for Zehrs. Her time is split between organizing for the union and working in the store where she has worked since she was 17.**

**Julie:** Younger people get looked down upon. I know that's the case in Zehrs. It might be their first job, and they get sucked in by this merit stuff the company uses.

**Jeff:** Actually, I think young people are prepared to get walked on. A 16-year-old pushing buggies isn't out there demanding respect for what he does. Their cares are totally different.

- **Rehya Zomparelli, 27, was working in a Loblaws store in Toronto when she got the call to organize for Local 1000A of the union.**

**Rehya:** In a plant, when you have full-time workers, that's their livelihood. They know they'll be there in 10 years. With young part-time retail workers, they're 18 or 19, and that probably is their future, but they don't realize it. That's a big part of why it's so hard to organize in retail.

**Julie:** When they start at Zehrs part-time, they think this is going to get them through college, and before they know it, 20 years have gone by.

**Rehya:** If anyone had told me 10 years ago that I'd still be working at Loblaws, I'd have said, "No way!" But here I am.

**Jeff:** Working in retail is looked down upon. Some of it has to do with the part-time nature of the work. The whole grocery business is run on part-timers. Yet, they're crucial in the stores. But if they don't think they have a real job, then they're not interested in having a real union.

**Julie:** The fear factor, which is huge, also keeps a lot of young people from joining unions. If you can get somebody to sit down with you for 40 minutes, then you're fine. You can explain how the process works: their card is secret; they can't be fired for union activity. Take away that strike issue; take away the enormous amount of union dues they think they're going to pay – then you're halfway there. Your job is to educate, and dispel the fear.

Source: Kilgour, Art. "Talking youth talking union: frontline organizers face the future." *Our Times*, vol. 17, no. 4, July/August 1998, pp. 25–31.



## Activity 4.4 – A Tale of Two Certifications

### Background

The following case studies of the McDonald's certifications in Quebec and British Columbia illustrate the nature of some of the difficulties of organizing young workers. Traditionally, about 75 per cent of workers in the restaurant sector are under 20, so certification drives in this sector make a good case study.

The attempt to unionize the McDonald's franchise in St. Hubert, Quebec, in 1997 was not the first. Two union drives, one in 1993 and one in 1994, failed to win support from a majority of employees at an outlet in Longueuil, Quebec, and in Orangeville, Ontario.

Read the three cases and the news article and answer the following questions.

1. Describe the similarities between what took place in Quebec and in Squamish, B.C.
2. Explain the reasons why the outcome in Squamish differed from the outcome in Quebec.
3. What power does the law in B.C. give employees to decertify a union?
4. Why did the employees at the Squamish McDonald's vote to decertify the union only 10 months after they had voted to certify it?

### St. Hubert, Quebec

On February 18, 1997, the employees of the franchise in St. Hubert, a Montreal suburb, filed their request for unionization with the Teamsters, an affiliate of the 480,000-member Quebec Federation of Labour. The Teamsters had the backing of 51 of the franchise's 62 employees. Some of the reasons for needing a union cited by the employees included "infernal pace of work, unpaid overtime, dangerous work and bad pay." A 30-year-old employee, for instance, explained that after six years at the outlet he still only made \$6.90 an hour, barely more than the minimum wage.

"McDonald's has unlimited financial power, so they slow the process down and drag it out, just buying time," says Martin Tremblay, who spearheaded the St. Hubert drive with two co-workers. But then, alleges Tremblay, management slashed the hours of pro-union workers and parachuted in about a dozen new workers to water down union support. "They shuttled some of us to other outlets and treated the new employees like gold," he says.

Then a group of the new workers hired lawyer Guy Sirois to contest the drive ... Pro-union employees suspected that McDonald's hired Sirois. "There's no way I could afford him on my minimum wage," says Tremblay. Sirois, for his part, won't say how many workers he was representing, or who was footing the bill, which could run as high as \$300 an hour.

After a yearlong fight, the employees of St. Hubert got their accreditation. Well, in a manner of speaking, that is. In reality, they were out of a job! Less than 24 hours before the Friday morning shift was supposed to report to work, employees were told not to bother. The franchise's owners had already chained the doors closed, shutting down the restaurant

that was poised to make union history as the first-ever unionized McDonald's in North America.

The owners contended that low profit and a leaky roof had forced them to close their South Shore restaurant. Employees, however, noted steady traffic at the 17-year-old restaurant.

Sources: Huot, Christian. "Unionizing the impossible: a strong national campaign could open the door to unionization in the infamously anti-union McDonald's." *Canadian Dimension*, vol. 32(5), September/October 1998, pp. 24–26  
Verma, Sonia. "Would you like benefits with that? [McDonald's and a union drive at a St. Hubert, Quebec, franchise]." *This Magazine*, vol. 31(4), January/February 1998, p. 5; Verma, Sonia. "Mcbusted [McDonald's in St. Hubert, Quebec, and a proposed union]." *This Magazine*, vol. 31(5), March/April 1998, p. 44.

## Plateau Mont Royal, Quebec

The closure of a workplace during a successful union drive usually discourages other workers from even thinking about seeking unionization. But the St. Hubert experience didn't stop a second group of McDonald's workers, this time at the Plateau Mont Royal restaurant in central-east Montreal, from going ahead with their own certification effort with the Teamsters.

The St. Hubert closure incited more public indignation and media coverage in Quebec than had the year-long union drive itself. Overnight, the efforts of about 60 McDonald's workers to join a union had brought the whole issue of youth employment and unionization to the attention of the public – especially young people.

"Beforehand, not many youth (in Quebec) even knew about the existence of unions," says Genevieve Shields, 25, who helped organize workers at several Cineplex Odeon cinemas. "Since then, there has been a snowball effect. Now they see a lot of young faces on TV talking about unions."

A poll showed that 86 per cent of Quebecers had heard about the McDonald workers' union drive. Sixty-four per cent of all those polled supported the workers' efforts. That number rose to 72 per cent among those aged 18 to 34.

This time, the restaurant was right in the heart of Montreal, in one of the liveliest neighbourhoods: the Plateau Mont Royal. Though the closing down of the St. Hubert outlet had shaken the employees initially, the fight kept its momentum. Frederic Lavigne, a young Mont Royal employee, commented that the management had been literally waging "psychological warfare" on the employees. As in the case of St. Hubert, McDonald's Canada dispatched an "anti-union specialist" to keep up the pressure at the outlet. Lavigne explained that these "experts" pressured some employees to sign a form stating that they would not join the union.

The major obstacle this time seemed to be determining how many employees the McDonald's had at the time of the request for unionization. The union organizers claimed that they had signed up 80 per cent of the 42 employees. The problem was that as soon as the management had wind of the organizing fever, they started hiring frantically. Almost overnight, the restaurant totalled 93 employees. "Expansion project," the owner stated.

On February 22, 1999, 90 per cent of the outlet's 55 workers voted against certification. Rejean Lavigne, head of the Teamsters local behind the campaign, said almost all of the original employees who signed union cards in 1997 had quit and the new ones, some as young as 16, didn't want a union.

Source: Huot, Christian. "Unionizing the impossible: a strong national campaign could open the door to unionization in the infamously anti-union McDonald's." *Canadian Dimension*, vol. 32(5), September/October 1998, pp. 24–26.

## Squamish, British Columbia

The campaign to organize the Squamish McDonald's, situated a few kilometres south of the entrance to Whistler, B.C., began in the summer of 1998. Two Grade 12 students, Jennifer Wiebe, 17, and Tessa Lowinger, 16, went home and complained about poor working conditions on the job.

Lowinger, who had worked at the local McDonald's for more than two years, said some managers berated teenaged employees for making mistakes. "I was taken out into the lobby and yelled at in front of customers and made to cry," she says.

Wiebe said she once became sick at work, but wasn't allowed to leave until the next shift arrived. "I wasn't well enough to even talk to the customers," she says. "And a lot of things were happening, not just to us." Employees had to find their own replacements if they called in sick, and there were several safety concerns, they say.

Lowinger's father, who supported his daughter, was also a member of the Canadian Auto Workers Union (CAW). He helped put the teens in touch with CAW's youth organizer, Ryan Krell. Three and half days later, on July 18, 1998, with Ryan's help, the teens signed up over 55 per cent of the staff of the Squamish McDonald's.

According to CAW officials, organizing in the service sector is an increasing trend because people are staying in these jobs much longer than in former years. They're discovering they want to have a say in their working conditions, wages, and benefits. Organizing creates more stability in their lives. This stability is key for young people who want to start their lives or even start a family.

B.C.'s labour laws allow for automatic certification when 55 per cent or more of workers have signed a union card, and they applied for certification at the B.C. Labour Relations Board. McDonald's and the franchise owner, Paul Savage, reacted by hiring new employees in an effort to break the union vote. Union lawyers stated that during one payroll period the number of restaurant employees grew from 74 to 104. The B.C. Labour Relations Board refused to recognize these employees since they were hired the same day the union applied for certification.

Then some of the teens that had originally joined the union changed their minds and hired a very expensive lawyer who argued that under the Infant's Act, persons under the age of 19 couldn't legally sign a contract. The question was how these teens were able to hire an expensive lawyer. This case was later withdrawn at the Labour Relations Board, and the union was certified on August 19. Because of the two Grade 12 students, the McDonald's fast food empire had its first unionized outlet in North America.

[Note: McDonald's franchises are certified in Sweden, the Netherlands, Germany, France, Italy, and Finland. Sectoral workers come under a master agreement in Europe that gives service workers a leg up in negotiating collective agreements. There is no similar legislation in North America.]

Unless employees subsequently voted for decertification, getting rid of the union was no simple matter in B.C. The franchise owner could always do what the Montreal McDonald's did when organized by the Teamsters: shut down. But that was not much of an option for the only McDonald's in Squamish.

Working conditions suddenly began to improve. Beginning August 19, "work was instantly heaven to go to. We got stereo systems in the staff room and the grill," Jen and Tessa said. "Everything that made our workplace unsafe was magically fixed or replaced. Management was being incredibly nice." Some employees asked Tessa and Jen to stop the union drive, saying that McDonald's had learned its lesson.

The months following the union's certification on August 19, 1998, were spent trying to negotiate an agreement with the company. Standard union issues such as workplace harassment, safety, and grievance procedures were resolved. But McDonald's and Savage refused to budge on pay increases (the average wage was \$7.50 an hour) and scheduling by seniority.

As it would turn out, the company would never have to sign a contract with its employees. Unions are often accused of forcing workers to vote for certification. But the law ensures, and experience proves, that workers are at least as free and able to decertify a union as they are to certify one.

Sources: Moore, Dene. "Teens take on fast food giant [Tessa Lowinger & Jennifer Wiebe of Squamish]." *The Canadian Press*, August 23, 1998; Briere, Elaine. "Labour deserves a break today...at McDonald's [Squamish activity may result in first collective agreement at a McDonald's franchise]." Originally printed in *Briarpatch Magazine*, vol. 28(1), February 1999, pp. 13–16. (Please visit their web site at [www.briarpatchmagazine.com](http://www.briarpatchmagazine.com))

## B.C. McDonald's staff votes to oust CAW

Robert Matas  
British Columbia Bureau, Vancouver

Employees at McDonald's in Squamish, B.C. – the only unionized McDonald's in North America – voted 45 to 26 yesterday to get rid of the union.

But Roger Crowther, the union's chief negotiator and national representative for the Canadian Auto Workers, said he was not surprised by the results. ...

He attributed the union's defeat to a significant turnover in staff and to efforts by McDonald's to respond to employees' complaints.

The vote results show the province's labour laws have to be changed, he added, saying it's wrong to allow a decertification vote before a new union has a chance to negotiate its first contract. ...

The union movement viewed its success in Squamish as a foot in the door of the world's largest employer of young workers. McDonald's has more than 15,000 outlets in North America and has effectively thwarted several union drives, ...

But the union's moment of glory in British Columbia did not last long. Before negotiations on a first contract began, a group of employees applied to decertify the union.

Under B.C. labour law, employees can request a decertification vote 10 months after a union is certified. The bid for decertification was launched a few days after the 10-month period passed, ...

McDonald's can often rely on staff turnover to make problems go away, Mark Thompson, a professor of industrial relations at the University of British Columbia, said in an interview. The company does not expect to keep its employees for long.

"They anticipate a high turnover. They hire young kids, it's not very good work, the pay is bad," he said.

Prof. Thompson said McDonald's fights vigorously against any attempt at unionization because low-wage teenage labour is fundamental to its business strategy.

The outcome of the vote in Squamish sends a strong message to those working in any low-skill, low-wage job, he said. It indicates the difficulties in trying to achieve better working conditions for those receiving minimum wage regardless of how prosperous the company is.

Vancouver lawyer Randy Karrdal, representing employees who sought decertification, said more than 40 employees endorsed the bid to have a decertification vote.

"Although many are new employees [about 20 of the 80 employees], the majority were at McDonald's last summer," he said. "They did not feel they had a fair chance (last summer) to say if they wanted a union," he said.

Source: Matas, Robert. "B.C. McDonald's staff votes to oust CAW." *The Globe and Mail*, July 3, 1999. Reprinted with permission from The Globe and Mail.

## Who can be a member of a union?



### Activity 4.5

Should all workers be able to form a union? Some argue that the individual's right to freedom of association is a constitutional right protected by Canada's Charter of Rights. Others argue that freedom of association may be limited where that is in the crucial best interests of the country.

What do you think?

1. Should all workers have the "right" to be a member of a union and bargain collectively?
2. If your answer is No, who should and who should not be able to be represented by a union? For example, should doctors, or lawyers, or police officers be able to join a union? Why or why not?

Although Canada's Charter of Rights guarantees the individual freedom of association, not everyone is entitled to be a member of a union. This privilege is reserved for "employees." For many years, the relationship of employer and employee was referred to as the law of Master and Servant. Although the term may appear outdated, to be considered an employee, the worker's relationship to the employer must conform to some of the characteristics associated with a master-servant relationship.

Four criteria used to help determine who is an employee are: control; ownership of tools and other property; chance of profit; risk of loss. Control refers to the freedom the individual has to determine what work will be done and when and how it will be done. An employee works primarily under the direction of someone else, whereas an employer includes any person who is an owner, proprietor, manager, superintendent, or overseer of any work or who directs or is responsible for the employment of another person. Employees usually do not own the property they use in their work nor are they partners or part owners of the business in which they work. They are paid a wage or salary and usually do not share in any profit. On the other hand, because they have not invested their own money, their risk is limited to the loss of their job. Although professionals such as doctors and lawyers may form many different types of work-related organizations, they may not be members of a union because they are considered to be self-employed.



## Activity 4.6: You Be the Judge

Read the following paragraph and then decide whether the volunteer fire fighters are employees and whether they should be allowed to become union members.

### **Teamsters, Chauffeurs, Warehousemen and Helpers Union, Local 880 and Corporation of the Town of Tecumseh (January 21, 1998)**

A union brought an application for certification for a bargaining unit consisting of volunteer fire fighters. The municipality maintained that the bargaining unit was inappropriate because the volunteer fire fighters were not “employees.” The municipality argued that, due to the lack of scheduled work and the Chief’s inability to determine if fire fighters will answer a call or participate in training and maintenance, they were not employees according to the Labour Relations Act. The union argued that the workers’ relationship resembled the typical work relationship in most ways. They received significant payment and benefits based on the amount of work done; they were recruited and trained through a formal process; and the Chief exercised power of direction and discipline.

Source: “Bargaining Unit for Volunteer Fire Fighters Inappropriate” originally published in *CLV Reports Public Service Review*, March 30, 1998. © 1998 Carswell, a Thomson Company, used with permission. For further information on this and other Carswell publications, visit <http://www.carswell.com/>.

## Glossary

**Certification:** A process by which employees obtain the legal right to bargain collectively with their employer through a trade union