

KNOW YOUR UNION RIGHTS

# OLRA

THE ONTARIO LABOUR RELATIONS ACT

AN ORGANIZING GUIDE



**OPSEU**  
**SEFPO**

Ontario Public Service  
Employees Union  
Syndicat des employés de la  
fonction publique de l'Ontario



# YOU HAVE IMPORTANT RIGHTS UNDER THE ONTARIO LABOUR RELATIONS ACT

Joining a union is a legally protected right.

The Ontario Labour Relations Act (OLRA) governs the relationship between unions and employers in most Ontario workplaces. Among other things, it covers the process for bringing a union into a workplace (organizing) and negotiating a first contract (collective bargaining).

It defines your rights and responsibilities, and those of employers and unions.

It guarantees your right to join the union of your choice and to be an active member in that union.

Under the OLRA, it is illegal for your employer to penalize you or threaten you in any way for being involved in a union. It is also illegal for your employer to try to stop you from joining a union.

These rights are enforced by the Ontario Labour Relations Board (the Labour Board). It is a neutral tribunal that can impose penalties if the law is broken. OPSEU will make sure your rights are respected and protected if you join the union.

## **Your rights include:**

- The right to join and participate in the union of your choice.
- The right to exercise your union rights without discrimination or penalty from your employer.
- The freedom to organize a union at work (including on the employer's property) as long as you do it on your own time. Your own time means before or after work or on breaks.
- Confidentiality of your decision to join a union.
- Freedom to obtain union support from co-workers, on their own time (before or after work, or on breaks).
- Freedom to take part in the formation, selection and administration of a union.
- The right to file a complaint with the Labour Board if these rights are violated.
- Freedom to participate in Labour Board hearings.

## **CAN ANYONE JOIN A UNION?**

Not quite.

If your work primarily involves duties that are managerial or confidential to labour relations, you cannot belong to a union. The Labour Board is concerned about the work you do, not your job title.

### **These managerial duties might exclude you from being in the union:**

- Hiring and firing employees;
- Suspending or reprimanding employees;
- Approving employee vacations;

- Granting time off with pay;
- Assigning work to others;
- Changing work procedures;
- Resolving employee complaints;
- Granting wage increases or promotions;
- Heavy involvement in budgeting; and
- Regularly attending senior management meetings.

**These duties might be considered confidential to labour relations:**

- Maintaining employee personnel records;
- Preparing and/or filing letters of discipline, minutes of management meetings, or responses to employee complaints; and
- Predicting and/or analyzing the impact of changes to wages, benefits, and working conditions.

While most employees are eligible for union membership, some professionals are not (architects, land surveyors, dentists, lawyers and physicians).

This is general information. Please speak to a union organizer, in confidence, about your particular situation.

# ORGANIZING A UNION IS A THREE-STEP PROCESS

Apart from the construction industry, Ontario law says employees decide to unionize through a secret ballot vote. Here's how it works.

## 1. Signing cards

The Labour Board requires proof of support for unionizing before it will set up a vote. Under the law, at least 40 per cent of the new union group (bargaining unit) in the workplace must sign union membership cards. These cards are confidential by law. The union sends them to the Labour Board and the Labour Board returns them to the union. Your employer will never see these cards.

Signing a union card is your first step to gaining the right to collective bargaining and union protection.

## 2. Applying for certification

This is the technical part. Your union organizer will do this, in consultation with your workplace organizing committee, when it is clear that a large majority supports the union. The application goes to the Labour Board, and describes the size and makeup of the proposed bargaining unit. It asks the Board to set up a vote and it proposes time(s) and location(s) for polls.

A copy goes to your employer, who has two days to respond. Your employer may comment on the voting procedures, the bargaining unit and the number of people in it. Your employer cannot say it doesn't want employees to unionize. It must send the Labour Board and the union a list of employees in the bargaining unit. If the employer thinks the bargaining unit should be different, it must indicate which employees it thinks should be included and/or excluded.

The Labour Board gets the application and the union membership cards so it can verify that the union has at least 40 per cent support. If it is satisfied with the application, it organizes the vote, usually within seven days of the application.

### **3. Voting in the union**

It is important that everyone who supports the union turns up to vote. Signing cards gets you the vote, but only the ballots in the box determine whether you and your colleagues will have a union. If more than half the ballots in the box are marked YES for OPSEU, the Labour Board certifies OPSEU as your union. This obligates both the union (that's now you, with the help of union staff) and the employer to bargain in good faith to reach a collective agreement.

#### **What if there is a dispute?**

If there is a dispute about who should be in the bargaining unit or who should vote, the Labour Board can hold a certification hearing. This will take place after the vote. The Labour Board will issue a decision on matters in dispute. The vote may be counted, or the ballot box may be sealed, depending on the unresolved issues. If some individuals' right to vote is questioned (maybe it is unclear if they should be in the bargaining unit), their ballots may be segregated. Each segregated ballot is placed in a sealed unmarked envelope and put in a second envelope marked with the voter's name. If it is determined that a segregated ballot should be counted, it is removed from the envelopes and the Labour Board Officer mixes it in with the other ballots. The ballots are then counted, and confidentiality is maintained. If the ballot is not counted, it is destroyed by the Labour Board, unopened.

## **YOU ARE PROTECTED**

Once the union has applied for certification, if the majority of votes are YES your employer can no longer change your wage and benefits systems and working conditions. Changes to your terms of employment must now be made through the legally protected process of negotiation.

## AFTER CERTIFICATION

Once the Labour Board certifies the union, your employer must bargain with the representatives you elect, and the union speaks for you collectively. You and your co-workers go through a process called “demand setting” to determine your priorities for your first collective agreement. A member of OPSEU’s experienced staff will help you through this process.

## COMMON QUESTIONS ABOUT UNION ORGANIZING

### **Q. How does the Labour Board determine how many have signed union cards?**

**A.** The union sends the signed cards to the Labour Board with a copy of the application. These cards are confidential by law. They are returned to the union after the vote.

### **Q. Can the Board certify a union even if there is a dispute about whether someone is an employee?**

**A.** Yes. It often does.

### **Q. What kinds of things are illegal during an organizing campaign?**

**A.** Any action which interferes with an employee’s right to freely organize the union (on his or her own time) may be a violation of the law. An employer is prohibited from interfering with the selection, formation or administration of the union. Specifically, employers and those acting for them cannot:

- Terminate someone because he or she supports the union.
- Require someone to agree that he/she will not support the union.



- Make threats (“You’ll lose everything you have now”) or promises (“If you don’t support the union, you’ll get a raise”) to influence an employee’s decision about the union.
- Terminate or discriminate against a witness in an unfair labour complaint or threaten to do so.

An employer can express an opinion about the union if it “...does not use coercion, intimidation, threats, promises or undue influence.” Always check with your OPSEU organizer if you are concerned about employer statements or actions. Your employer should not ask you whether or not you support the union, nor if you have signed a union card. This is confidential. Your employer should not ask about your or co-workers’ involvement in a union campaign.

### **Q. What if the employer has done things against the Labour Relations Act and employees are afraid to join the union?**

**A.** If this has happened, the union will file an “unfair labour practice” complaint with the Labour Board. There are various remedies, depending on what has occurred. You should immediately discuss any negative action which you feel might be related to the union campaign and/or your support for the union with the OPSEU organizer.

### **Q. Why do employers often oppose unions?**

**A.** Unions speak up for workers. Unions make sure that people are treated fairly. Unions also force employers to obey the law - whether it is over health and safety, employment standards or human rights. Most workers don’t know all the rights they have under the law, and employers can take advantage of that. Unions know the law. Most workers don’t have the resources to stand up for the rights they know they have. Unions have those resources.

This booklet outlines some of the key elements of the OLRA as they apply to organizing. It contains general information only. Your union organizer can answer questions about how it applies in your particular workplace.

**You can see the entire Act at:**

[www.e-laws.gov.on.ca/html/statutes/english/elaws\\_statutes\\_95/01\\_e.htm](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_95/01_e.htm).





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