

Declaring Union Independence: **A GUIDE TO DECERTIFYING YOUR UNION**



**AMERICANS FOR
FAIR TREATMENT**

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It's true: you don't have many options when it comes to dealing with an out-of-touch or hostile union. Filing complaints or internal charges with unions are rarely successful because union officials ultimately decide for themselves whether they're meritorious. Employees dissatisfied with their union can take the powerful step of resigning their union membership, but the union may continue as the exclusive representative for employees regardless of how many union members resign.

“Decertification” is the process administered by the state or national labor board for removing your union as the exclusive representative. It begins and is overseen to completion by the labor board, and it typically involves an election that mirrors the initial union certification election. There are only certain windows of time during which you can begin the decertification process.

Before beginning this process, it's important to understand where it's headed and what it takes to be successful. Ultimately, you'll need to garner majority support of your colleagues and trust that they'll understand the long-term progress you're making by getting rid of your underperforming union.

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Take Care of Yourself and Your Workplace



It is important to best position yourself and your workplace for the decertification process. To do this, first, **resign your union membership**. If you remain a member of the union at the same time you're working against it, you may be in violation of your union's bylaws. This violation could subject you to "union discipline," including potential fines. But if you're not a union member, the union has no authority to prevent you from moving forward.

Second, if you've asked your employer about decertification or use significant work time or space to discuss decertification with your colleagues, you should stop. **The employer is not allowed to be involved in employees' efforts to decertify their union**, and it's best that they know nothing about it. Employer involvement could actually undo a successful decertification.



Identify the "Bargaining Unit"



The "bargaining unit" is the group of employees with whom the labor board grouped you at your workplace for purposes of unionization. You may be vaguely familiar with which positions are in your bargaining unit, especially if you've been heavily involved with your union. But to the rank-and-file, the labor board's decision may not be intuitive. Either way, you'll need detailed information about your bargaining unit, including exactly how many and which positions are listed as part of the bargaining unit.

The labor board initially decided which positions were included in the bargaining unit, and they did it by applying abstract legal principles, including a "community of interest" determination, to the specifics of your workplace. The result of the labor board's work is a list of position titles included in the bargaining unit, and likely a list of position titles excluded from the bargaining unit.

If this list is not immediately available or up-to-date, AFFT can help you. We usually start with the collective bargaining agreement. Within either the preamble or the "recognition" section, the parties may have identified the bargaining unit(s) covered by the agreement, and they may have even included a case number from the labor board when the bargaining unit was first created. We also look for a graduated salary schedule (sometimes referred to as "steps and lanes") because it may list all positions within the covered bargaining unit and give us a rough idea of the types of employees you're working with. We might be able to cross-reference this information with a staff directory and get a rough count of the employees in the bargaining unit.

If the collective bargaining agreement doesn't give us enough specifics—and they usually don't—we will file a public records request with the labor board to secure the list of positions within the bargaining unit as it was originally drawn out. This list might be decades-old, but it may be the best information available to you at this stage without inadvertently tipping off the union.

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Evaluate Your Chances



You don't want to venture into a decertification process unless you have a good chance of winning. AFFT can help you with this process, but you and your colleagues are really the experts on your workplace.

We will go through a list of employees in the bargaining unit with you to estimate how they would vote. **Although you can initiate a decertification election with just 30% support from the bargaining unit, you will ultimately need to win the election by just over 50% of those who vote.** The union has the incumbent advantage as well as full-time, paid organizers on staff, so you should expect to lose some of your support over time.

The best way to gauge your colleagues' interest in decertifying is to know whether they are union members. If you don't know whether your workplace is ready for a decertification campaign, spend the coming months engaging your colleagues, and give them the materials from our website that they need to resign their union membership. When resignations start to accumulate, decertification may become feasible.

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Look for the Open Window



You have certain windows of time in which to file your decertification paperwork with the labor board, and those windows open and close depending on the laws governing your workplace. Regardless of when that window opens, you'll want to calendar it and pace yourself to have the paperwork ready in time (and not too far in advance!).

Under most state labor laws, one window opens for a brief period shortly before expiration of the collective bargaining agreement. Another window may open after your collective bargaining agreement has been in place for several years. And still another window may open after the collective bargaining agreement has expired. We may be able to assist you in nailing down these dates.



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Collect Signatures from 30% of the Bargaining Unit



You'll eventually need to fill out a form and file it with the labor board, but the most important part of that form is an attachment they call a "showing of interest." It will **demonstrate to the labor board that you have the required level of support to initiate an election.**

Your showing of interest should take the form of a signed statement from at least 30% of the employees in your bargaining unit, depending on the law relevant to your workplace. **The union is not permitted to see who signed the showing of interest.**

From our experience, you'll want to collect these signatures using separate cards, something like this:

You'll need to turn in original, wet-ink signatures to the labor board, so be sure to guard these closely. If it takes some time to collect signatures, you'll also want to double back before submitting to the labor board to make sure your co-workers' information hasn't changed. You should go back and get new signed cards from those whose titles have changed, and you shouldn't count employees who've left their jobs entirely.

DECERTIFICATION INTEREST FORM

The undersigned is interested in decertifying [INSERT NAME OF UNION] as his/her exclusive representative for purposes of collective bargaining.

NAME

DATE

SIGNATURE

POSITION

Although 30% may be the minimum, gather as many signatures as you can. Some co-workers may quit their jobs in the interim, revoke their support, or turn out not to be in the bargaining unit in the first place. Additionally, if you can gather a majority of the bargaining unit, you may be able to convince the union to give up without an election.

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Engage the Labor Board



The next step will depend on the law governing your workplace, so we encourage employees to secure legal help prior to filing paperwork with the legal board. **Generally, you'll need to file one or more forms, along with original showing of interest cards.** You may also need to "serve" the union and the employer with copies of the form (but not showing of interest cards). Most labor boards get things moving toward an election pretty quickly after filing.



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