

**Engaging our Members**

**AND**

**Protecting our**

**Representation Rights**

**Collective Agreement Language**

**Introduction**

This bargaining language kit provides sample collective agreement language that supports:

* ongoing communication with our members
* clear language related to dues deduction and remittance
* provisions in the event there are legislative changes to union financial disclosure, dues deduction and/or remittance

This kit will assist bargaining teams to assess their current collective agreement language and provides sample language to draw from in order to strengthen collective agreements in these vital areas.

Unions are as strong as the strength of membership support. To strengthen our bargaining power and ability to influence through political action we need to maximize our ability to communicate directly with our members to increase participation and support.

**In this kit we look at....**

1. Member Contact Information
2. Orientation Sessions
3. Access to Work-Site
4. Bulletin Boards
5. Union dues deduction and remittance
6. Union release time
7. Language in response to potential legislation.

Appendix 1 is a checklist to assist bargaining teams to assess existing provisions and develop proposals for the next round of bargaining.

Appendix 2 is an overview of the legal issues related to union access to employee contact information.

# Area #1 Contact Information

**Context**

Contact information for employees in the bargaining unit (not just members) is essential to the democratic functioning of the union. The union’s access to contact information is required under law because the union has a statutory duty to represent all employees of the bargaining unit. If a union can’t communicate with the employees in the bargaining unit it cannot represent them. The union has a right to contact information for its membership, and the employer has an obligation to provide this employee information to the union. Enshrining this right and the format it is provided in the collective agreement will simplify the understanding of this right with the employer. If it is not in the collective agreement and there is a dispute, the parties will need to place the question before a labour board which costs both parties time, money and other resources.

**Sample Language**

**XX.01 Contact Information**

**The employer will provide to the union a list of all the employees in the bargaining unit. The list will include each person’s name, job title/classification, home mailing address, home telephone number (and other available personal telephone numbers, such as cellular numbers), work e-mail, and, if available, personal e-mail.**

**The list will also indicate the employee’s work site and employment status (such as full-time, part-time, temporary, seasonal, casual), and if the employee is on a leave of absence, the nature of the leave.**

**The employee contact list will be provided in an electronic spreadsheet to the union contact designated by the local executive on a quarterly basis.**

## Note to bargaining team

It is recommended to include language that requires the employer send a copy of the electronic contact spreadsheet to the union contact designated by the union and the CUPE national servicing representative.

Please ensure the listing of “status” types reflects the types of employment status as set out in your collective agreement.

Also, please refer to Appendix 2 for an overview of jurisprudence related to the union’s right to access members contact information from the employer.

# Area #2 Union Orientation Sessions

**Context**

Building a relationship with our members starts from the day they start work. Orientation sessions are important to sign up bargaining unit members to become local union members, collect contact information and orient the member to the benefits, rights and responsibility of the union and membership.

**Sample Language**

**XX.01 Potential Employees**

**During the interview process, the employer will advise potential employees that a union collective agreement is in effect and will inform them of the conditions of employment set out in the articles dealing with union security and dues.**

**XX.02 New Employees**

**On commencing employment in a position within the bargaining unit, the employee's immediate supervisor or other representative of the employer will introduce the new employee to their union steward or representative, as designated by the union.**

**The representative designated by the union will be given an opportunity to meet privately with each new employee during the first month of employment to acquaint them with the structure, benefits, and duties of union membership. A maximum of sixty minutes will be allowed for this purpose within regular working hours and without loss of pay for either employee.**

**XX.03 Orientation Sessions**

**Where the employer conducts staff orientation sessions, the union will be provided an hour during such session to make a presentation about membership in the union. The employer will leave the room during the union presentation.**

**The union will provide the employer with copies of materials used in such session and will not disparage the employer during the presentation.**

**XX.04 Notification of New Hires**

**The union shall be notified of the full name, position and employment status
(e.g. full-time, part-time, temporary, seasonal, casual), start date and work location of all employees hired into the bargaining unit prior to their first day of employment.**

**XX.05 Regular Staff Meetings**

**During any staff meeting, the union will be provided an opportunity to make union announcements.**

**On a** *[insert frequency i.e. monthly, quarterly]* **basis, the union will be provided an opportunity to hold a meeting with the employees in the bargaining unit at the conclusion of a staff meeting of the union’s choosing or meetings if needed in order to meet with all departments. One (1) hour at the end of each respective meeting will be allowed for this purpose, without loss of pay to those in attendance. Those employees outside of the bargaining unit will not be in the room during the union’s meeting.**

# Area #3 Access to Work-Site

**Context**

The ability to meet with our members in their workplace assists us in more direct and consistent contact with our members. Enshrining access to worksites is important.

Union access to all worksites during working hours will become even more vital if anti-union legislation that requires union to directly collect dues or acquire authorizations is passed.

**Sample Language**

**XX.01 Union Meetings**

**The employer will permit the use of its premises for the purpose of union meetings without cost to the union.**

**XX.02 Work Site Access**

**The representative designated by the union will be given access to work sites to meet with employees covered by this collective agreement during their meal and other scheduled breaks, whether paid or unpaid.**

# Area #4 Bulletin Boards

**Context**

Having a predictable space in the workplace for members to access posted notices and information assists in building the union profile in the workplace and is an important tool to share information. These bulletin boards need to be in highly visible locations and controlled by the union.

**Sample Language**

**XX.01 Union Bulletin Boards**

**The employer will provide a union bulletin board in each worksite. In multi-floor buildings, a union bulletin board will be located on each floor. These boards will be located in areas that are highly visible to employees.**

**The bulletin boards will be used solely for postings by the union. The boards will have a glass or other locking cover and the union will have the key.**

## Note to bargaining team

In workplaces that have digital/electronic message boards, language will need to be tabled related to union access including time allocation.

# Area #5 Union Dues Deduction and Remittance

**Context**

Anti-union legislation, such as we have seen in the U.S., seeks to make it harder for our members to automatically remit their dues. With the constant threat of some form of U.S.-style “right-to-work” law or “paycheque protection” being introduced it adds urgency for collective agreements to include strong dues deduction and remittance language. While negotiating such language might not protect unions from all anti-union legislation, entrenching collective agreement language to remit union dues is an important line of defense in protecting our members' rights and interests.

**Sample Language**

**XX.01 Union dues deduction and remittance**

**The employer will deduct union dues, initiation fees, and assessments as set by the union from each pay of all employees covered by this collective agreement.**

**Such deductions will be forwarded to the** *[Union Secretary-Treasurer or if on direct remittance or if the local wishes to move to direct remittance - National Secretary Treasurer of the Canadian Union of Public Employees]* **no later than the 10th day of the month following the one in which they were deducted.**

**XX.02 Dues Supporting Documentation**

**Along with the deductions, the Employer will provide:**

1. **a completed union dues remittance form, supplied the union, and**
2. **an electronic spreadsheet indicating the pay period covered by the deduction and the following information for all employees from whose wages the deductions have been made: name, employment status (such as full-time, part-time, temporary, casual), classification/job title, regular earnings, hours worked, and dues deducted.**

*[If your local is on direct remittance of dues to national add the full language. The employer will also send a copy of the union dues remittance form and spreadsheet to the Local Union Secretary-Treasurer]*

* 1. **Delay in Remitting**

**For any period of delay in remitting the sums listed in this article, the employer will pay the union interest at the rate of prime plus 2 per cent per month, or prorated if less than a month.**

* 1. **T-4 Slip**

**The employer will report the yearly amount of union dues paid by each employee on the employee’s T-4 slip or any other legal reporting requirement which replaces the requirement to report dues remitted on a T-4 slip in the future.**

# Area # 6 Union Release Time

**Context**

In order for local activists to fulfill their duties, unions have negotiated union release language. This language makes it possible for the union to be more responsive to our members, to enforce the collective agreement, receive training, attend schools, conferences and conventions and participate in other activities which build capacity within the union. We need to continue to strengthen this language knowing the pressures on locals is only increasing due to the current climate.

## Note to bargaining team

Please build on existing language to improve union release time provisions. Recommended considerations:

* If existing language has a cap on union leave/release, then the cap should be eliminated.
* Convert union leave/release to paid time where ever possible
* If existing language has a narrow definition of what union leave/release can be used for table language that expands it.

# Area #7 Language in Response to Potential Legislation

**Context**

We have seen financial disclosure legislation tabled federally and in some provinces. We should anticipate that this will emerge again. If such legislation passes ever into law, locals will be forced to spend time and resources tracking detailed financial expenditures and completing government documents for the information to be uploaded to a public website. Other legislative initiatives could require collecting dues and/or authorizations directly from members. This will require increased union time and may need additional disclosure of information from the employer to expedite the process.

**Sample Language**

**XX.01 Information Related to Legislative Disclosure**

**The employer will provide information to the union that will assist it to fulfill any legislative disclosure requirements. The information will be provided in writing within 10 working days of the union requesting any such information.**

**XX.02 Leave with Pay for Compliance with Union Legal Disclosure Requirements**

**The employer will grant leave with pay for a member designated by the union to complete the reports needed to comply with any federal or provincial legislation that requires disclosure of union finances or other affairs.**

**XX.03 Disclosure and Leave with Pay for Dues Collection and Authorizations**

**In the event that legislation is enacted that alters the current dues deduction or remittance language as set out in this collective agreement or existing legislation, the employer will provide:**

1. **an electronic spreadsheet indicating the pay period covered by the deduction and the following information for all employees in the bargaining unit: name, employment status (such as full-time, part-time, temporary, seasonal, casual), classification/job title, branch, worksite, regular earnings, work schedule and total hours worked. The spreadsheet will be sent to the union’s local secretary-treasurer and national servicing representative, within 10 days of each pay period.**
2. **paid union leave and access to the workplace during working hours for the union to meet with each employee in the bargaining unit in order to collect dues and authorizations.**

# Appendix 1 Fairness Language Assessment Check-list

**Area #1 Member Contact Information**

* **Regular updated information from the employer** (refer to 1.XX.01)
* **Clear indication of what information is to be provided ensuring personal
mailing addresses and phone is included** (refer to 1.XX.01)
* **Format of how information is provide so it can easily be transfer into a data base** (refer to 1.XX.01)

**Area #2 Orientation Sessions**

* **Notification of potential employees that a union collective agreement is in effect** (refer to 2.XX.01)
* **Introduction of new employee to their steward/union representative**(refer to 2.XX.02)
* **Paid time for a new employee to meet with their steward/union representative** (refer to 2.XX.02)
* **Time for union at employer orientation sessions** (refer to 2.XX.03)
* **Notifications of new hires** (refer to 2.XX.04)
* **Union time at regular staff meetings** (refer to 2.XX.05)

**Area #3 Access to Work-Site**

o **Use of employer facilities and premises to hold union meetings (**refer to 3.XX.01)

o **Access to meet with employees in the bargaining unit during their meal and other scheduled break (**refer to 3.XX.02)

**Area #4 Bulletin Boards**

o **Bulletin board provide by employer in highly visible locations** (refer to 4.XX.01)

o **Union ability to post on bulletin without going through a process that curtails union ability to post** (refer to 4.XX.01)

**Area #5 Union Dues Deduction and Remittance**

* **Dues deduction language** (refer to 5.XX.01)
* **Dues remittance language setting out who it is to be remitted to and what supporting documentation is required** (refer to 5.XX.02 and 5.XX.02)
* **Interest on delayed remittance** (refer to 5.XX.03)
* **Union dues reflected on T-4** (refer to 5.XX.04)

**Area #6 Union Release Time**

* **Flexible union leave language** (refer to Note to bargaining team)

**Area #7 Language in Response to Potential Legislation**

* **Disclosure of documentation needed to fulfill legislative disclosure requirements** (refer to 7.XX.01)
* **Leave with Pay for Compliance with Union Legal Disclosure Requirements**(refer to 7.XX.02)
* **Disclosure and Leave with Pay for Dues Collection and Authorizations**(refer to 7.XX.03)

# Appendix 2 Union Access to Employee Contact Information

This is an overview of the legal issues related to union access to employee contact information. The case law is clear that once a union is certified to represent a bargaining unit, the union has an obligation to fairly represent all employees within the unit. To fulfill this duty it must be able to communicate directly with all bargaining unit employees. This includes all members of the bargaining unit whether or not they have paid a membership fee to join the union.

Union access to employee contact information is necessary to ensure that a union is able to meet its statutory obligation of representing employees. Therefore, a union must be given access to this information and has as much right to it as does the employer. It should be made available to the union upon a simple request to the employer.

**Should unions still negotiate collective agreement language requiring the employer to give the union employee contact information?**

Enshrining the union’s right to employee contact information into the collective agreement is important because it clarifies and simplifies the understanding of this right with the employer. If it is not in the collective agreement and there is a dispute, the parties will need to place the question before the labour board which costs both parties time, money and other resources.

**What type of information does the union need?**

The union needs, and is entitled to, updated information about the employees its represents, that is, information on how to contact all bargaining unit employees (not only union members) names, addresses and telephone numbers.

**What about email addresses?**

An employer *may* be required to provide email addresses unless it provides a sound business purpose for its refusal to provide the information. However, it won’t necessarily be required if the employer has provided information requested by the union that is sufficient to permit it to readily contact bargaining unit employees. One of the labour relations objectives underlying why employers are required to provide unions with employee contact information is so that the union and the employer will be on an equal playing field. Granting the union access to contact information already available to the employer fulfills this objective. Therefore, an important consideration is whether the employer already collects employee email addresses. If the employer has this information, the union is entitled to it as well.

Email doesn’t yet have the same status as names, addresses and phone numbers which *must* be provided to the union, when requested. This will likely change in the near future as email becomes a primary point of contact for many people. Recent decisions have started to add email addresses to the information to which a union is entitled – see *Viking Air Limited, Aysa, Pharm Inc., and Ottawa Carleton District School Board*, below.

**When does the union need to contact bargaining unit employees?**

The union must communicate with employees to formulate bargaining positions. It must communicate with them throughout the course of bargaining to keep them informed. And it must communicate with them so that they can participate in a ratification or strike vote.

The union must communicate with employees outside the bargaining process as well, for example, to explore the merits of pursuing a grievance, to conduct an investigation, to contact and interview witnesses, to pursue grievances through the grievance and arbitration procedures. All of this is part of the union’s statutory duty of fair representation.

**What about employees’ privacy?**

The employees’ privacy rights are already technically compromised by the employer having details of their names, addresses and telephone numbers. The union’s acquisition of the same information does not constitute any further or different compromise of privacy rights. Labour Board jurisprudence has established that it is no less legitimate for the union to have this information, than for the employer to have it.

Employers will often say that they can’t provide the information because of ‘privacy legislation’ or ‘privacy rights’. Privacy legislation does **not** prevent disclosure of this information as long as the union’s reason for wanting this information is consistent with the purpose for which it was originally collected. Therefore, if the union’s purpose is to administer the employment relationship and to represent the interests of the employees, the privacy exception applies.

Privacy Commissioners sometimes take a different view and this can be problematic. However, a recent decision by the Supreme Court of Canada which looked at the issue of employee privacy has ruled in favour of the approach taken by the Labour Boards. Labour Boards will invariably uphold the union’s need for contact information in order to meet our statutory obligations of representation.

**What if the employer refuses to provide the information?**

Consult your national representative regarding taking the matter to the Labour Relations Board. The Labour Board will order the employer to provide the information.

**What *exactly* does the law say?**

The section below on case law discusses the recent decision from the Supreme Court of Canada in *Bernard* and Labour Board decisions in various jurisdictions which have interpreted a union’s statutory obligations and have determined that unions must have access to employee contact information in order to represent them. You can use the list of decisions to find quotes to assure any employer who refuses to provide this information that the law *will* require the information to be produced.

However, if you have any questions about a particular situation, contact your national representative, who will be able to assist.

**The Case Law**

In ***Bernard v. Canada*,** ***2014*** the Supreme Court of Canada upheld a decision by the Public Service Labour Relations Board that it was an unfair labour practice for an employer to refuse to share employee home contact information with a union, including mailing addresses and telephone numbers of all employees in the bargaining unit (union members and Rand Formula employees alike). This decisionendorses the approach already taken by labour boards across the country. And, because it is a decision of the Supreme Court of Canada – it applies in every jurisdiction.

Ms. Bernard was a Rand Formula employee at the Canada Revenue Agency who opposed her employer disclosing her home address and telephone number to the union that was her bargaining agent. At the Public Service Labour Relations Board, she argued that it was sufficient if the union had her work contact information, and that it was a breach of her privacy for her home contact information to be given to the union.

The Supreme Court of Canada held that the Board’s reasons for requiring the employer to provide the union with employee home contact information were “clearly justified”.

The Board’s reasons were twofold:

1. The union needs an effective means of contacting employees quickly and easily in order to discharge its duty of fair representation. Workplace contact information is not sufficient for a number of reasons, since it is inappropriate for a union to use employer facilities to conduct union business, the ability of employers to monitor/control communications at work, and the lack of privacy in workplace communications.
2. The union should be on an equal playing field with respect to information relevant to the collective bargaining relationship. To the extent that an employer has information which is of value to the union in representing employees, the union is entitled to it. Since unionized workplaces involve a tripartite employer-union-employee relationship, it does not further compromise employee privacy where the union has access to employee information already available to the employer.

The Court also endorsed the Board’s finding that disclosing employee home contact information to the union did not violate the federal *Privacy Act.* There is an exception in the *Privacy Act* (and other privacy legislation across the country) to the ban on disclosing personal information where the disclosure is for a use consistent with the original purpose for which the information was collected. The Board had held that the purpose for which the union wanted this information (to represent the interests of the employees) was consistent with the purpose for which it was originally collected, namely, the administration of the employment relationship.

The Court also ruled that the provision of home contact information was neither forced association nor an unlawful search and therefore did not violate the *Canadian Charter of Rights and Freedoms*.

**Board Decisions by Jurisdiction**

The ***Bernard*** decision arose in the federal jurisdiction. However, as an SCC decision it can be relied upon everywhere.In addition to ***Bernard***, you may want to refer to labour board decisions in your province. Most of the cases listed below can be accessed online at [www.canlii.org,](http://www.canlii.org/) a free online legal database. The CanLII links are provided, below.

|  |  |  |
| --- | --- | --- |
| **Jurisdiction**  | **Decision Name**  | **Key paras/pgs.**  |
|  | *Bernard v. Canada (Attorney General), 2014* [(http://canlii.ca/t/g2zxf)](http://canlii.ca/t/g2zxf)   | Paras. 24-29, 32-33 & 37-41   Para. 20 |
| Federal |
|  | *TELUS Advanced Communications (Re)*, 2008 [(http://canlii.ca/t/28qpx)](http://canlii.ca/t/28qpx)   Discusses email addresses |
| Ontario  | *Millcroft Inn Limited, 2000* [(http://canlii.ca/t/690c)](http://canlii.ca/t/690c)  *Ottawa-Carleton District School Board, 2001* [(http://canlii.ca/t/6r5h)](http://canlii.ca/t/6r5h)   Discusses email addresses  | Paras. 17-32   Paras. 23-28  |
| Manitoba  | *Buhler Manufacturing, 2007* [(http://canlii.ca/t/fxhjp)](http://canlii.ca/t/fxhjp)  | Pg. 16  |
| Alberta  | *UFCW, Local 401 v. Economic Development Edmonton,* [2002] Alta. L.R.B.R. 161.*Aysa Pharm Inc, 2012*[(http://canlii.ca/t/frmn5)](http://canlii.ca/t/frmn5)  Disclosed email addresses  | Paras. 14-27   Paras. 89-99  |
| British Columbia  | *Hudson's Bay Co. and U.F.C.W., Local 1518, 2004* [(http://canlii.ca/t/1hjv5)](http://canlii.ca/t/1hjv5)  *P. Sun's Enterprises (Vancouver) Ltd. (Re), 2003*  [(http://canlii.ca/t/20qkr)](http://canlii.ca/t/20qkr) *Viking Air Limited, 2012* [**(**http://canlii.ca/t/fr4gd)](http://canlii.ca/t/fr4gd)   Disclosed email addresses  | Paras. 31-33    Paras. 12-23    Paras. 8-11  |

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