

**YOUR RIGHT TO ACCESS
MEMBERSHIP CONTACT INFORMATION
&
COLLECTIVE AGREEMENT LANGUAGE

STRONGER TOGETHER**

November 2018

CONTACT INFORMATION

CONTEXT

Contact information for employees in the bargaining unit (not just members) is essential to the democratic functioning of the union and 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 can't 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 into 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 provides the employer to 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 reflect 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.

APPENDIX 1

CONTACT LIST COLLECTIVE AGREEMENT LANGUAGE

ASSESSMENT CHECK-LIST

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

MEMBER CONTACT INFORMATION LANGUAGE

- **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 provided, so it can easily be transfer into a data base** (refer to 1.XX.01)

APPENDIX 2

UNION ACCESS TO EMPLOYEE CONTACT INFORMATION

BELOW IS AN OVERVIEW OF THE LEGAL ISSUES RELATED TO 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 union members, *as well as any non-members*, as long as they are in the bargaining unit represented by 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. The Union should always go to the Labour Boards which 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

FEDERAL JURISDICTION

In ***Bernard v. Canada, 2014*** the Supreme Court of Canada recently 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).

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 endorses the approach already taken by labour boards across the country. In addition to **Bernard**, you may want to refer to labour board decisions in your particular province (or at the federal level, if your workplace is federally regulated). Most of the cases listed below can be accessed online at www.canlii.org, a free online legal database. The CanLII links are provided, below.

JURISDICTION	DECISION NAME	KEY PARAS/PGS.
Federal	<i>Bernard v. Canada (Attorney General), 2014</i> (http://canlii.ca/t/g2zxf)	Paras. 24-29, 32-33 & 37-41
	<i>TELUS Advanced Communications (Re), 2008</i> (http://canlii.ca/t/28qpx) <ul style="list-style-type: none">• Discusses email addresses	Para. 20
Ontario	<i>Millcroft Inn Limited, 2000</i> (http://canlii.ca/t/690c)	Paras. 17-32
	<i>Ottawa-Carleton District School Board, 2001</i> (http://canlii.ca/t/6r5h) <ul style="list-style-type: none">• Discusses email addresses	Paras. 23-28