

# Fighting a Union Campaign: What Employers Can and Can't Do

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If your organization is targeted by a union-organizing effort, take note. Both the National Labor Relations Act (NLRA) and the Taft-Hartley Act prohibit employers from discriminating against employees for participating in union activities.

Ultimately, whether you're targeted or not may depend more on your geographic location and industry than on actual working conditions. That's because many unions target specific areas or industries to gain momentum and credibility with workers. Then they try to negotiate a "model" compensation plan that they can use at other companies to attract new members.

Labor law gives your employees the right to join a union. Assuming you prefer to operate as a nonunion company, what are your rights?

You have the right to express your views in an effort to persuade your employees not to join a union, and you also have the right to run your business. Use and protect these rights by exercising caution and controlling your own behavior:

**Don't act emotionally or with a feeling of betrayal.** Make sure you have a thorough knowledge of the labor law rules and have expert help. Your own conventional wisdom won't suffice, nor will your own determination of what is fair, no matter how objective you think you are.

**Present your side and get the hearing you want** by following the game plan the law allows. It may appear too restrictive, but you clearly have weapons available. Despite labor law pitfalls and restrictions and the frustrations they may cause, you can emerge intact from a union's organizing campaign.

**Don't allow union organizers to harass your employees.** Union campaigns can't invade employee privacy.

Whatever route you choose (whether to accept the union or resist it), you can exercise your rights effectively. Make sure you do so systematically, lawfully and intelligently. Also, remember: Just because a union-organizing campaign is under way doesn't mean you have to relax discipline. You can hand out punishment for infractions of rules even to the most vocal of the union sympathizers as long as you can show that the sanctions are consistent with the way you handled similar situations before the organizing drive began.

## What Employers Can't Do

The following covers some activities that constitute unfair labor practices. Make sure that you don't:

- Discriminate in any way against any employee for participating in union activities. This prohibition applies

to all aspects of employee relations.

- Promise or grant benefits to your employees (such as wage increases, holidays, benefits or improvements in working conditions) to encourage them to abandon the union.
- Make threats based on employee support of the union, including threats of discharge, layoffs, plant closure or discontinuing current benefits.
- Interrogate your employees or prospective applicants concerning union-organizing activities.
- Prevent pro-union oral solicitation by employees during *nonworking hours* and *breaks*.
- Prohibit union insignia on shirts and jackets.
- Engage in surveillance of employees to determine their views on the union.
- Take a straw vote of employees as to whether they favor or don't favor the union, except in special circumstances and in accordance with legally mandated procedures designed to protect employees. (Consult your legal counsel.)

Although not necessarily unfair labor practices, the following conduct may result in invalidation of an election:

- Campaigning on *company time* and *premises* within 24 hours of an NLRB-scheduled election. Meetings held off-premises may take place under special circumstances.
- Reproducing and distributing official NLRB ballots and showing employees how to mark them.
- Discussing the union with employees in a supervisor's office, regardless of the noncoercive tenor of your remarks.
- Prohibiting distribution of union literature in nonwork areas during nonwork time, such as in the lunchroom during the lunch hour.
- Requiring employees to wear "Vote No" buttons in the plant or office.

## **What Employers Can Do**

You may hold meetings with your employees on company time and property to answer questions and discuss the company's position and unionization. Just make sure the meetings aren't held in a supervisor's office. Talk with employees at their own workstations or in a group meeting. You can also mail literature to the employees' homes, stating the company's position, but be careful what you say.

Here are some of the things you can say:

- Describe the good features of working for your company, such as existing benefits, job security and steady work.
- Remind them that signing union authorization cards doesn't mean they must vote for the union.
- Inform them of the disadvantages of belonging to a union, such as the possibility of strikes, serving on picket lines, paying dues, fines and assessments.
- Explain the meaning of the phrases "dues checkoff" and "union shop."
- Inform them of any prior experience you've had with unions and what facts you know about the particular union that's trying to organize them.
- Tell your employees how their wages and benefits compare with other unionized and nonunionized companies with less desirable packages.
- Disclose the names of known gangsters or other undesirable elements who may be or have been active in the union, provided this is accurate information that can be verified by official sources.
- Inform them that, insofar as their status with the company is concerned, they are free to join or not to join any organization they choose.
- Express the hope that your employees vote against this or any union.

A lawfully waged campaign may defeat an organizing drive. Violation of the rules of conduct, however, can result in invalidation of a company-won election or certification of a union that lost an election. It's important, therefore, that you seek legal advice promptly.

**Observation:** You don't have to bend over backward to cooperate with unions either. In a recent court of appeals decision, a company had refused to let union organizers post notices of their upcoming meetings on a company bulletin board. The NLRB ruled this discriminatory because the company had allowed other worker notices to be posted. However, the appeals court said the only notices previously allowed on the bulletin board were by employees selling cars and household goods, so it was not discriminatory to say "no" to union backers.

To take advantage of your right not to be cooperative with union organizers, don't allow your bulletin boards to become a general forum for workers. As the court noted, the company never posted notices for any type of meeting, so it wasn't discriminatory in preventing workers from posting union meeting notices.

**Caution:** If you try to pick and choose the meetings you think are worth publicizing and those that are not, you will have a hard time showing a judge that the rejection you gave to the union supporters was not discriminatory. Also, you must not seem to be designing a policy for bulletin boards or other communications channels that appears to target unions. Put a policy in place—and strictly adhere to it—when there's not a threat of unionization in the air, and it will stand you in good stead should the organizers later target your company.

## Why Employees Should Not Want a Union

Union membership is costly. In addition to monthly dues (averaging \$20–\$50), there can be periodic assessments ("voluntary") to such union organizations as COPE (Committee on Political Education). Dollars to COPE may go to support candidates with views diametrically opposed to a member's.

After the initial campaign all new employees who are required to join the union are obligated to pay an initiation fee, which can range from \$50 to \$200 in some unions.

Other factors:

- **Through strike assessments,** employees may have to financially support striking workers at other companies.
- **The union is an equalizer.** Under the union concept every employee is the same (except for seniority), thereby equating the poorest worker to the best.
- **The only real weapon the union has is to strike.** When that occurs, employees lose wages, which are usually never recovered, and employers are compelled to take extraordinary measures to continue operating.
- **Employees who participate in an "economic" strike** can be permanently replaced by their employer. The law allows the employer to continue to operate his business during a strike by using supervisors, nonstriking employees, volunteers and new employees.
- **Local union members often have little say** concerning their own employment. Usually, orders come from the national or local office of the union.
- **A union's primary interest is not in an employee** as an individual but rather as a source of income and power. Unions can, and sometimes do, bring with them strikes, bad feelings and even violence on occasion.
- **Employees can be adversely affected** by internal politics and external union problems with other companies and may even be required to picket at other companies.