

Dealing with Union Organizing



Introduction

ABC believes merit shop contractors and their employees have the right to choose to remain union free, in accordance with the law.

This document is intended as an outline to help construction industry employers deal with the most common questions relating to union organizing. The answers are based on current labor laws. Labor laws can change at any time, so employers should seek professional legal advice to be sure that the specific responses discussed below remain valid. This document is not intended as legal advice or opinion. Should you need legal advice, contact an experienced labor attorney immediately.

Commonly Asked Questions About Union Card Signing

What are union authorization cards and what are they used for?

Authorization cards say that an employee authorizes a union to represent him or her in collective bargaining with the employer. Here is an example:

AUTHORIZATION FOR REPRESENTATION

I hereby designate this Union to act as my collective bargaining representative with my employer in all matters relating to my wages and other conditions of employment.

Date

Signature

Under current law, a union that gets enough cards signed can demand recognition by the employer or can petition for a secret ballot election by the National Labor Relations Board (NLRB).

What can management do to respond to union card signing activity?

Under current law, employers have the right of free speech. Management is allowed to talk to workers about union organizing activity and to oppose it. Employers have the right to persuade employees not to sign union authorization cards.

Is there anything management CANNOT say or do in a union organizing campaign?

Just remember “TIPS.” These are the things employers and their agents cannot say or do to employees during union organizing.

Owners, Managers and Supervisors Should Not:

“T” MEANS THREATEN. You cannot threaten individuals participating in union activities with reprisals, such as reducing employee benefits, firing the employee or retaliation of any kind, and, of course, you cannot take such reprisals.

“I” MEANS INTERROGATE. You cannot interrogate employees about whether they signed a union card, whether they are supporting the organizing activity, how they intend to vote or what they think about union representation.

“P” MEANS PROMISE. You cannot promise wage or benefit increases, promotions or any other future benefit to employees for opposing the union, nor can you give such benefits for this reason.

“S” MEANS SPY. You cannot spy on union activities to determine who is attending union meetings or who is signing union cards or supporting the union. This applies to both work time and non-work time, on and off the firm’s premises.

Definitions of unlawful threats, interrogation, promises, or spying are subject to highly complex legal rules and decisions that are too complicated and numerous to list here. Remember, that all of the circumstances surrounding a particular conversation or act are considered in determining whether it amounted to illegal threats, interrogation, promises or spying, and that implied threats or promises are just as illegal as direct ones.

Finally, employers should never **DISCRIMINATE** against employees based on their union activity.

What Should Employers Do?

Even before there is any sign of union organizing, it is vital for employers to train their entire management team on the proper responses to union organizing. In particular, managers need to be aware of the importance of early warning and quick response to any card signing union activity. Start by making sure managers understand why the company is non-union in the first place.

Know the Reasons Why Employees Do Not Need a Union

- Unions are expensive; employees often have to pay hundreds of dollars per year out of their paychecks in union dues, fees, fines, or assessments.
- Individual needs are often sacrificed for the group's needs and union work rules.
- Unions can use strikes to try to force demands on employers; strikes often hurt employee earnings.
- In the bargaining process, everything would be negotiable; employees can wind up with the same things they have now, or even less. Wages are normally frozen during bargaining.
- Favoritism, political favors and internal rivalries are common to unions and may lead to member dissatisfaction; remember, unions are "big business."
- Unions have a lot of control over members: fines, discipline and even expulsion.
- Mandatory seniority may prevent hardworking, ambitious employees from moving forward based on MERIT.
- Employees may have less job security if employers become uncompetitive and lose work due to union wage demands, strikes or work rules.
- Union journeymen requirements may force newly organized workers to the "back of the bench."

Create an Immediate Response Plan

- Before any union organizing starts (or, if it already has started, then as soon as possible), the employer's top executives should meet to create an emergency response plan. The plan should assign responsibility for communicating with employees, legal advice, information gathering and distribution of materials. It's also critical to address jobsite protection.
- Senior management, with advice of counsel, should meet with all supervisory personnel (be sure to know exactly who is or is not a "supervisor" under the law) to share the basic action plan; to review the legal "dos and don'ts;" to identify why the union is trying to organize; and to coordinate management's response.
- The employer's top executives should clearly state the reason for opposing the union while at the same time reaffirming compliance with the law (which protects the union's right to try to organize employees).
- The employer's top executives should instruct supervisors on the best way to communicate with employees on the subject of card signing. The basic message to communicate is: **"DON'T SIGN THE CARDS."**

What If a Union Files an Election Petition?

Under NLRB rules effective May 31, 2020, and subject to a pending lawsuit, a union seeking an election among an employer's employees is entitled to file a petition with the NLRB. The union is also required to deliver the petition to the employer. The employer should shortly thereafter receive a Notice of the Petition and a Notice of Hearing together with a statement of procedures from the NLRB. These documents require a **RAPID RESPONSE** and should **NOT** be ignored.

The employer is required to post an official NLRB Notice of the Petition for Election to employees soon after receiving the official NLRB Notice of Hearing.

Following receipt of the official NLRB Notice of Hearing, the employer is required to file a detailed Statement of Position regarding the union petition if the employer wants to request a hearing on any questions concerning representation. Failure to file the Statement of Position can result in waiving important rights to present evidence. The Statement of Position must be accompanied by a list of names of employees covered by the petition, and potential other employees who might be included in an appropriate bargaining unit, along with their location and shifts.

A pre-election hearing will normally be scheduled following receipt of the official NLRB Notice, absent special circumstances or a stipulated election agreement between the employer and the union.

Depending on whether a pre-election hearing is necessary, the NLRB typically will schedule the election within several weeks following receipt of the official NLRB Notice of the Petition.

IT IS STRONGLY RECOMMENDED THAT EMPLOYERS OBTAIN EXPERIENCED LABOR COUNSEL TO ADVISE THEM IMMEDIATELY UPON RECEIVING A UNION PETITION (BEFORE RESPONDING TO ANY REQUESTS FOR INFORMATION FROM THE UNION OR THE NLRB). Most ABC chapters have relationships with labor attorneys to whom they can refer members, though members are under no obligation to use ABC's referral.

Encourage Contacts Between Supervisors and Employees

In response to a card signing campaign, it is vital for all levels of management, from the owner to the front-line supervisor, to communicate with employees and to explain why it is a mistake for employees to sign union authorization cards. In sample communications, managers/supervisors should:

- tell employees that they disapprove of unions and union policies and should share any bad experiences with unions they have had or heard about;
- share their views about the bad effects of unions on other companies;
- rebut union propaganda with positive facts about the company;
- tell employees they think it's best to not sign union authorization cards; and
- explain how unions cost employees money, and why union promises of higher wages and benefits often do not come true.

Owners, Managers and Supervisors Should:

- hold small group meetings with employees (after getting professional counsel on what can legally be said), contact them by mail, payroll stuffers or other communications (such as email, social media, videos, posters, flyers, buttons, etc.) to discuss the organizing campaign and why the employees do not need a union;
- meet regularly with the entire management team to evaluate the company's response and to discover additional issues that need to be addressed with employees;
- emphasize the positives in your company and the benefits and advantages of working union free; and
- be careful to avoid unlawful discrimination against union supporters or otherwise interfering with their protected organizational rights, in accordance with applicable law.

Dealing with Union Salting

Sometimes union organizers known as “salts” actually apply for jobs with an employer, openly announcing that they intend to organize for the union while working. The U.S. Supreme Court has held that even paid union organizers must be treated like any other job applicant, without discrimination. It is important for employers and hiring personnel to be aware of the basic rules of salting, which can be an important part of union organizing and also can lead to litigation and heavy costs for the employer.

Do I have to hire a pro-union applicant?

No. You simply must not discriminate on the basis of union affiliation or support. The law does not require that union applicants be given preferential treatment.

Do I have to hire a paid union business agent?

No. The law only says that you must not discriminate against applicants on the basis of their union affiliation.

Should I ask applicants about their union affiliation?

No. There is no good reason to ask applicants about their union affiliation.

What if an applicant tells me he or she is a union member without my asking?

That choice is up to the applicant. It should make no difference to your hiring practices. Just follow your normal hiring practices.

Can I still hire the most qualified applicant?

Yes. It is helpful to have the qualifications you consider important for the job in writing and to list the essential functions of the position. Be prepared to support your decision with a written list of qualifications you consider important to the job.

Can I disqualify an applicant who puts false information on the application?

Based on recent rulings from the NLRB and the courts, **the answer may depend on the particular type of information that is falsified.** Labor counsel should be consulted before taking action against an applicant in this circumstance.

Can I discharge a union organizer?

Yes, but not because he or she is a union organizer. Once hired, any employee is subject to discipline, including discharge, because of poor performance or violations of company policies. Therefore, your employment policies, including progressive discipline, should be enforced consistently with all employees.

If I hire someone who turns out to be an unproductive worker, and who also happens to be a union organizer, can I fire that employee?

Yes, as long as you are not firing an employee because of his or her union activity. Poor performance or violations of company policy are acceptable reasons for firing employees. However, you should be prepared for a legal fight and you should train your supervisors to meticulously document performance problems and consistently handle discipline.

Do not:

- ask applicants about union membership either on a form or during an interview;
- tell union applicants that no jobs are open while running a help wanted ad or while attempting to fill a position;
- hire non-union applicants with little experience for skilled jobs, despite the fact that qualified union applicants are available;
- tell union applicants that interviews or written applications are required while hiring other applicants without them; and
- establish discriminatory hiring policies designed to “screen out” union organizers; legitimate, non-discriminatory hiring policies should be applied consistently.

Protecting the Jobsite

Sometimes unions engage in jobsite disruptions as part of their organizing efforts. It is important for employers and their project managers to be aware of the following ways to protect their jobsites.

KNOW YOUR PROPERTY RIGHTS. Whenever picketing or other union jobsite disruption is threatened, an employer representative onsite should know what the company’s rights are: What are the property lines? Who has control over the property? Is the property posted against trespassing? Who can enforce these rights?

KNOW WHEN TO NOTIFY POLICE. Managers should know when to notify the local police department that picketing is, or soon will be, in progress, and request police protection.

MAINTAIN INCIDENT REPORTS AND LOGS. Maintain a detailed log of all events on the picket line. Incident reports also should include detailed eyewitness accounts of what has happened.

BE CAREFUL WITH CAMERAS. Have a camera or video camera available at any place where the picket line threatens the jobsite (mass picketing, improper gate, blocking entrances or trespassing). But be careful not to film lawful, peaceful organizing activity, because this could be construed as unlawful surveillance (depending on the circumstances). Get prior guidance from counsel so that cameras are used properly.

DELIVERIES. Make arrangements for deliveries to be made by suppliers that will cross picket lines.

SECURITY. Consider some type of private security arrangement in the event that it may become necessary to combat vandalism or unlawful intrusions.

SEPARATE GATES. Always consider setting up separate gates for neutral employers, employees and suppliers. If a union pickets a neutral employer entrance, there may be an unlawful secondary boycott that can be stopped by the NLRB.

