

Tips For Responding To Union Organizing*



A merit shop employer should consult experienced labor counsel when it becomes aware of union organizing activity. Nothing in the checklist below constitutes legal advice or opinion. Nevertheless, the following are some important steps most employers should consider in union organizing situations.

Pre-Petition Contacts With the Union

- 1** The employer should NOT look at any union authorization cards signed by employees; the union may claim that the employer voluntarily waived its right to a secret ballot election conducted by the National Labor Relations Board (NLRB).
- 2** The employer should NOT discuss any labor contract proposals or any personnel benefits or policies of the firm with the union representative.
- 3** The employer should tell the union representative the following “magic words” and NOTHING MORE, and ask him or her to leave.

“I have good faith doubt that your union represents a majority of my employees in an appropriate bargaining unit. I insist on the holding of a properly conducted secret ballot election administered by the National Labor Relations Board before recognizing your union as their bargaining representative.”

- 4** Union organizers generally should not be entitled to gain access to a private jobsite, so long as access is restricted to outside solicitors on a non-discriminatory basis. There are exceptions to this rule, however, and contractors or subcontractors should consult with experienced labor counsel regarding any union access questions.

* Not legal advice or opinion. Employers should obtain such advice based on individual facts before communicating with employees on issues relating to unions.

- 1 Discuss with your senior management team **WHY** the union is attempting to organize employees, and exactly what organizing activity they are aware of to date. Chances are that some of them will know facts that the chief executive does not know.
- 2 Call a meeting of supervisors and others who exercise front-line authority for management, usually with labor counsel present, making sure **NOT** to include in the group any “borderline” non-supervisory staff, such as lead men or low-level working foremen who might conceivably be legally entitled to **INCLUSION** in the bargaining unit with other employees eligible to vote. Brief the supervisory group on the situation and find out what they know about it. In addition to group meetings, talk to supervisors individually to ascertain exactly what they know about the union activity.
- 3 State to all supervisors the company’s position with respect to the union drive. Let them know there is no need for the employees to be represented by a labor union if the management team does its job properly, and that the employer intends to make every legitimate effort to encourage employees **NOT** to sign union cards and to vote **AGAINST** the union if and when an election is held.
- 4 Explain legal “dos and don’ts” to both supervisors and the members of the senior management team. They should be told to immediately increase their personal contacts with the workers in their operations and **TO ENGAGE IN INFORMAL CONVERSATIONS WITH THEM AT EVERY OPPORTUNITY**. Once they have been properly briefed, supervisors should make a point of talking to everyone they supervise on at least a daily basis if possible. Ask them to keep you fully informed of anything they learn about the organizing attempts or of any changes in attitudes, indications of union coercion, employee huddles, rumors, etc.
- 5 Set up a method for the senior management team and supervisors to report regularly and promptly what they find out in their conversations with employees. All leads and tips should be immediately followed up in this “hot line” communication network.
- 6 After proper briefing by labor counsel, the employer should set up a series of small group meetings with employees during which a member of high-level management discusses the union organizational drive, and the reasons why the employees do not need a union.
- 7 These meetings should be followed by additional small group sessions, and with letters to the home and other communication vehicles (e.g., email, social media, posters, buttons, flyers, payroll stuffers, videos, displays, etc.) as deemed necessary and appropriate.
- 8 Representatives of management, at all levels, should meet regularly (at least once a week) during this period in order to determine how well the campaign is succeeding and the issues that need to be covered with employees during the remainder of the campaign.

Contact With the NLRB 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. Shortly thereafter, the employer should 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.

Role of ABC Chapter Staff

ABC staff should be familiar enough with the disadvantages of unionization and the NLRB election procedures to be able to answer the employer's most immediate questions. In this way, members can be prevented from making costly mistakes prior to obtaining counsel. Chapter staff should not purport to give legal advice, but should refer members to the chapter attorney or other competent labor counsel.

One final word of caution to chapter staff: Current law requires detailed public financial reports to be filed if anyone other than the employer or the employer's supervisors speaks directly to employees in order to "persuade" them on the subject of unions. Therefore, chapter staff normally should limit their activities to advising employer members as to what can be communicated by the employer itself.

