

Tips For Responding To Union Organizing*



When a merit shop employer becomes aware of union organizing activity, it is strongly recommended that the employer consult experienced labor counsel. Nothing in the checklist below constitutes legal advice or opinion. Nevertheless, the following are some additional important steps most employers should consider in union organizing situations¹:

Contacts with the Union

- 1 The employer should **NOT** look at any union authorization cards signed by employees, since the union may claim that the employer voluntarily waived its right to a secret ballot election conducted by the National Labor Relations Board.
- 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 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.”

¹ This list addresses union organizing under current law. As of this writing, major changes in labor law governing union organizing are under consideration by Congress that could significantly affect management’s responses.



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

Contacts with Employees

- 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 persons, 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, supervisors should be talked to individually to ascertain exactly what they know of 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 Both the supervisors and the members of the senior management team should be instructed as to the legal “dos and don’ts.” 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 meetings with employees in small groups 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, follow-up letters to the home and other communication vehicles (e.g., posters, buttons, flyers, payroll stuffers, movies, displays, etc.) deemed necessary and appropriate.
- 8 Representatives of management, at all levels, should meet regularly (at least once a week) with the entire workforce during this period in order to determine how well your campaign is succeeding and the issues that need to be covered with employees during the remainder of the campaign.

Contacts with the NLRB

Once the union has filed a petition with the NLRB, the NLRB will send the employer a letter stating a petition has been filed and requesting the employer **FURNISH CERTAIN INFORMATION** to the NLRB on government forms attached to the letter. After the employer receives this letter, it can expect to be contacted by the NLRB agent assigned to the case. That agent will want to ask questions regarding the petition and the employer's legal position with respect thereto.

BEFORE the legal case is discussed with the NLRB agent and **BEFORE** the employer fills out any NLRB information forms, the employer should get in touch with a labor lawyer. As for the hearing, the employer is entitled to a reasonable period of time to prepare for it, with the assistance of labor counsel. The employer's decision on these issues can have a direct bearing on whether a union comes into the business!

Role of ABC Chapter Staff

ABC staff should be familiar with the disadvantages of unionization and the NLRB election procedures, both of which are described above, 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 experienced labor attorneys.

ABC staff may be asked to speak directly to a member's employees on the reasons not to support a union. This request should not be taken lightly. First, the ABC staff must be knowledgeable about the legal and campaign issues involved in direct discussions with employees. Second, rules of the U.S Department of Labor require "persuaders" of employees to file burdensome financial reports concerning any agreements or arrangements of this type. For both of these reasons, most ABC staff find it's best if the chapter makes resources available that help the member's management team engage in its own communications with employees. (There are exceptions.) Alternatively, the ABC chapter should have referral contact information of labor lawyers and/or consultants that can advise the company on the best methods of employee communication.



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