



Aggressive Union Campaigns Are Coming: How Employers Should Respond

By Mark R. Busto

The percentage of American workers that are represented by unions has declined steadily from its peak in the 1940s. At that time, unions represented more than one-third of the eligible American work force. In the following decades, that number plummeted steadily to the point in the 1990s where well less than one-fifth of eligible workers were represented. However, the decline in union membership may reverse due to a recent split in the AFL-CIO that promises aggressive campaigns aimed at unionizing the modern workforce. This Note discusses the split's effect on union organizing campaigns, steps employers can take to avoid becoming a target of such campaigns, and what employers should do if they are targeted.

Aggressive organizing campaigns are on the way. Earlier this year, a group of unions formed the Change to Win Coalition with the goal of "rebirthing the union movement." The Coalition is comprised of seven unions, three of which have since split from the AFL-CIO over "fundamental difference in basic strategy." The three Coalition members that split are Service Employees International Union (SEIU), International Brotherhood of Teamsters (IBT), and United Food and Commercial Workers International (UFCW). The four Coalition members that are still affiliated with the AFL-CIO are United Farm Workers of America (UFW), United Brotherhood of Carpenters and Joiners of America (UBC), UNITE HERE, and Laborers' International Union of North America (LIUNA).

At its founding conference, which was held in late September, the Coalition indicated that its primary method for revitalizing the labor movement will be organizing, organizing, and more organizing. In fact, conference delegates adopted a constitution that devotes 75 percent of the Coalition's budget to organizing efforts. Instead of following the old method of organizing employer-by-employer or worksite-by-worksite, Coalition unions will aggressively attempt to organize entire industries and whole companies at a time. In response to the concerns of unions that remain affiliated with the AFL-CIO, the AFL-CIO has also increased its organizing efforts. The message to employers: Get ready for an onslaught of union organizing that is sure to come.

How to avoid being targeted by organizing campaigns. Employees do not seek union representation unless they are dissatisfied. Therefore, the single most important thing an employer can do to avoid being the target of a union organizing campaign is to adopt a "pro-employee" attitude. To this end, employers should enact progressive employee relations programs that educate employees about the organization's commitment (within available resources) to provide fair and competitive terms and conditions of employment, protect workers' rights, and respect the dignity of the work force. Some of the key components to an effective employee relations program include fairness and consistency, recognition of good employee performance, listening, attitude surveys, daily interaction with employees, and regular performance reviews. If your organization has an effective employee relations program, then your employees don't need unions and you can help them understand this - legally. Remember the old adage: management organizes employees, not unions.

What to do if your organization becomes the target of a union organizing campaign. If a union does target your organization for an organizing campaign, the most important rule is: *Don't go it alone!* There are legal consequences to actions you take in response to organizing campaigns that you most likely are not aware of. Although the list of do's and don'ts could go on indefinitely, following these "TIPS" will go a long way toward keeping your organization out of legal trouble:

- *No Threats* – You cannot threaten jobs losses, income reduction, or discontinuance of any privileges or benefits presently enjoyed. You also cannot use intimidating language that is designed (or could be interpreted as designed) to influence employees in the exercise of their right to belong, or not to belong, to a union.
- *No Interrogations* – You cannot ask employees about internal union matters (*e.g.*, meetings) or for their opinion about a union or its officers. You are also prohibited from asking employees how they intend to vote in an upcoming union election or whether they intend to work if there is a strike.
- *No Promises* – You cannot promise an employee a pay increase, promotion, benefit, or special favor to stay out of a union or vote against it.
- *No Spying* – You cannot monitor, or appear to monitor, employees to determine if they are participating in union activities, *e.g.*, parking across the street from a union meeting to watch the employees entering the meeting place. You are also prohibited from asking employees if they are going to attend a union meeting; or if they did, what happened at the meeting.

It is important to understand that the effect of your expressions and conduct during an organizing campaign are judged not in light of your intentions, but rather in the light of how they can be interpreted by the recipient. Therefore, you must be careful not only that you don't intend to threaten, interrogate, promise, or spy; but that your expressions and actions cannot be so interpreted. What is important is not what the speaker says, but what the listener hears.

That said, management must take the initiative to get its message out. Any silence caused by the fear of saying the wrong thing and getting slapped with an unfair labor practice will create an information vacuum that the union will fill. So, follow the "TIPS" outlined above and seek legal counsel. Your employees have a right to make an informed choice on the question of union representation after hearing your side of the issue, too.

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