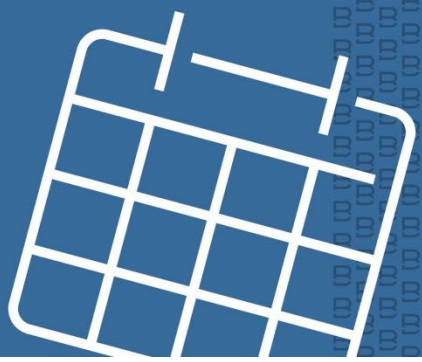
The Work Week

News from the Bassford Remele Labor & Employment Practice Group



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Union Organizing Activity: What Employers Need to Know

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The National Labor Relations Act ("NLRA") provides broad rights to employees wishing to form or join a union. Specifically, Section 7 of the NLRA establishes:

"Employees shall have the **right to self-organization, to form, join, or assist labor organizations,** to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection…"

This includes the right of employees to:

- Distribute union literature, wear union buttons t-shirts, or other insignia
- Solicit coworkers to sign union authorization cards, and
- Discuss the union with coworkers.

Given the permissibility of such employee activities, employers must be mindful in their response to union organizing activity in order to avoid engaging in any unfair labor practices or otherwise interfering unlawfully with employee organizing efforts.

Employers should consult legal counsel for advice at the first signs, signals, or rumblings of union organization, and should train their leaders, managers, and supervisors how to engage appropriately with employees during the organizing campaign.

It is important to emphasize that the employer cannot spy on, coercively question, threaten, or bribe employees regarding their union activity.

Remember the acronym "**TIPS**" – What employers **cannot** do during a union organizing campaign:

- **Threaten:** Managers and supervisors cannot threaten employees with adverse consequences or loss of benefits for supporting the union.

- **Interrogate:** Managers and supervisors cannot question employees about their union sympathies or support, activities, or voting intentions.

- **Promise:** Just as managers and supervisors cannot threaten worse circumstances based on unionization, they also cannot promise benefits to discourage union support.

- **Surveil/Spy:** Managers and supervisors cannot monitor or surveil employees' union activities. Attending union meetings, photographing employees distributing leaflets, reviewing security camera footage to identify union supporters, or instructing supervisors to report on which employees are wearing union buttons are all forms of unlawful surveillance.

So, is an employer entirely silenced during union organizing efforts? No, not exactly. Remember the acronym "**FOE**" – What managers **can** do during a union organizing campaign:

- **Facts:** Managers and supervisors can share factual information about the implications of unionization (e.g., cost of union dues, realities of the collective bargaining agreement negotiations process, details regarding the organization's current wages and benefits compared to market benchmarks, and the mechanics of the NLRB election process).

    - Facts must be presented without threats, promises, or coercion.

- **Opinions:** Managers and supervisors can express their personal opinion that they believe the organization would be better off without a union, provided the opinion is not accompanied by threats or promises.

- **Examples:** Managers and supervisors can share examples of negative outcomes at other unionized organizations — strikes, layoffs, benefit reductions, dues costs — as long as the examples are factual and presented without an implicit threat.

Even understanding the "TIPS" and "FOE" framework, navigating the appropriate balance between employee and employer rights during a union organizing campaign can be a tricky endeavor. Our Labor and Employment Practice Group is available to help your organization plot a course toward NLRA compliance.

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