

A Pocket Guide to Dealing with Union Organizing

Introduction

ABC believes that merit shop contractors and their employees have the right to refrain from supporting union activities and to be free of unwarranted harassment, while acting in accordance with the law.

The Supreme Court's *Town and Country* ruling held that employers cannot discriminate against union organizers during the hiring process. However, merit shop employers still have the right to hire the most qualified applicants regardless of their union affiliation. Employers are **not required** to hire organizers, but only to apply hiring policies in a nondiscriminatory manner.

This pocket guide is intended as an outline on how to operate lawfully as an open shop employer. It is not intended as legal advice or opinion. If you need legal advice, contact an experienced labor attorney immediately.

Commonly Asked Questions

Must I 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.

Must I 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 considered important for the job.

Can I disqualify an applicant who puts false information on his/her application?

Based upon recent rulings from the National Labor Relations Board (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 policy. 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 he or she 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 accepted reasons for firing employees. You should, however, be prepared for a legal fight and you should train your supervisors to meticulously document performance problems and to be consistent in the handling of discipline.

Do Not Take Inappropriate Actions

- *Do not ask applicants about union membership either on a form or during an interview.*
- *Do not tell union applicants that no jobs are open while running a help wanted ad or hiring off the street.*
- *Do not hire non-union applicants with little experience for skilled jobs, despite the fact that qualified union applicants are available.*
- *Do not tell union applicants that interviews or written applications are required while hiring other applicants without them.*

When Contacted by a Union

- *Do not look at any material offered by the union, especially signed authorization cards.*
- *Do not discuss any labor contract proposals, employment benefits or personnel policies.*
- *Do not open a letter from a union, particularly if it is thick and may contain authorization cards.*
- *If such a letter is opened, do not look at the cards.*
- *Always have another member of management present as a witness when opening packages.*
- *Respond to the union in writing or in person by communicating, "I have a good faith doubt that your union represents an uncoerced majority of my employees in an appropriate bargaining unit and I insist on the holding of a properly conducted secret ballot election administered by the NLRB before recognizing your union as their bargaining representative."*

Communication Among Members of the Management Team

- The employer should identify all supervisory and non-supervisory staff to avoid improper communications with non-supervisory staff.
- The employer's top executives should share information with supervisory staff and identify why the union is trying to organize.
- The employer's top executives should clearly state their position to the management team and ultimately to all employees that a union is unnecessary at the company if the management team adequately meets the needs of employees and that the company will pursue legitimate means to discourage employees from signing cards and voting for a union.

- The employer's top executives should instruct supervisors to maintain their daily contacts with employees and observe changes in attitude, rumors, employee huddles, etc Any information about the organizing campaign should be handled in a coordinated way through top management.

Communication Between Supervisors and Employees

- Communications between supervisors and employees should occur in public places or work areas, **NOT** in any private management offices.
- Supervisors can tell employees that they disapprove of unions and union policies and should share any bad experiences with the unions they have had or heard about.
- Supervisors should share their views about the detrimental effect of unions in their area or on other companies.
- Supervisors should rebut union propaganda with facts about the company.
- Supervisors can tell employees they think the employees should vote "no" in an election.
- Supervisors should emphasize that the company does not have to give in to any economic demands by the unions it believes are not in the best interest of the company.
- Supervisors should also stress that union representation does not guarantee an increase in wages and benefits.

Remember These TIPS For Management

Management should **not discriminate** among employees based upon their union activity. In particular, management should not:

- **Threaten** to reduce benefits, terminate or otherwise retaliate against an employee for participating in union activities
- **Interrogate** employees as to whether they signed authorization cards, if they support the union or plan to sign an authorization card
- **Promise** wage or benefit increases, promotions or future benefits to employees for opposing the unions
- **Spy** on your employees—on or off the clock—to determine who is attending union meetings, signing cards or supporting the union

What Management Should Do

- After consulting legal counsel on what can and cannot be done during an organizing effort, hold meetings with employees and contact them by mail, payroll stuffers, or through other means (such as posters, flyers, buttons, etc.) to discuss the organizing campaign and why the employees do not need a union.
- Meet at least weekly to evaluate the company's response and to discover additional issues that need to be addressed with employees.

Emphasize the Positive in Your Company and the Benefits and Advantages Already Offered
Explain Why A Union is Not Needed

Reasons Why Employees Do Not Need a Union

- Unions are expensive.
- Individual needs are often sacrificed for some group objective.
- Unions can use strikes to try to force demands on employers; strikes often hurt employee earnings.
- 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, expulsion.
- Mandatory seniority may prevent hardworking, ambitious employees from moving forward.
- Employees may have less job security if employers become uncompetitive and lose work due to union wage demands, strikes or work rules

General Suggestions For A Satisfied Workforce

- Make your employees feel they are part of the team.
- Consistently apply clearly stated personnel policies and work rules consistently.
- Follow published progressive discipline procedures.
- Consider seniority as a factor in promotions or layoffs.
- Ensure that employees are aware that their wages and benefits are competitive.
- Ensure working conditions are safe and fair.
- Communicate potential for career advancement to employees.
- Train supervisors in personnel relations.
- Explain any increases in benefits costs to employees.
- Notify employees of changes in policies or procedures and ask for their input.
- Use positive reinforcement to achieve productivity.
- Be aware of and comply with all federal and state civil rights laws.
- Keep your promises such as bonuses, extra vacation days, etc.
- Recognize individual employees by sending get-well, sympathy and congratulatory cards.

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If your company is contacted by the National Labor Relations Board requesting information and scheduling a hearing, contact experienced labor counsel prior to completing any forms or discussing the case with a NLRB representative.