

## 8 Union Organizing Response FAQs

written by Rory Lodge | October 18, 2013



Responding too forcefully to union organization activities at your workplace may not only get you into labour law trouble but alienate employees and drive them into the union's arms. But not responding forcefully *enough* may be even worse, especially when dealing with unions that are more interested in disrupting your business than promoting your employees' interests. Here are 8 FAQs to help you decide what to do when you see union organizers approaching your own employees.

### **Q 1. How Do Unions Get Established in a Workplace?**

**Answer:** To get the right to represent employees in collective bargaining, the union must get the support of a minimum percentage of employees in the group. This approval is what's called "certification."

### **Q 2. How Does Union Certification Work?**

**Answer:** Although procedures vary by jurisdiction, there are 2 basic methods of union certification:

**Secret ballot:** In BC, AB, SK, ON, NS and NL, once the union can demonstrate enough support, e.g., in Ontario, by getting at least 40% of employees in the bargaining unit to sign union cards, the government may order a vote by secret ballot that the union must win by majority, i.e., 50% + 1.

**Card certification:** In QC, NB, MB and PEI (and under federal labour law), certification may be achieved either by vote or automatically without a vote if the union gets a specific percentage of the employees in the bargaining unit to sign union cards.

### **Q 3. What, If Anything, Can Management Do During the Organization Process?**

**Answer:** The basic rule: Employers are allowed to participate in the union organizing process as long as they don't bully, harass, threaten, coerce or obstruct. Such transgressions are considered "unfair labour practices" that can result not just in fines and money damages but remedies that make it easier for the union to win certification.

### **Q4. What Kinds of Behaviour Can Get Us into Trouble?**

**Answer:** The easiest way to determine whether (and thus avoid) conduct that constitutes bullying, harassment, threats, coercion or obstruction, is to follow the acronym SPIT, where:

- **S is for SPY:** You can't engage in surveillance and other privacy intrusive activities to keep tabs on the organizing campaign such as conducting surreptitious surveillance of employees to see if they're engaging in union organizing; interrogating employees about their support for the union, e.g., asking them if they signed a union card; and/or telling or asking an employee to provide information about the activities of co-workers, e.g., listing the names of employees that attended union meetings.
- **P is for PROMISES:** You can't offer employees specific incentives to defeat the union. This includes not just bald promises of pay raises and other benefits but more subtle abuses of the purse strings like cynically implementing improvements after organizing begins as a political tactic designed purely to defeat the campaign. Another example: Alberta casino commits unfair labour practice by paying employee \$148,000 to cover his legal expenses in opposing a union merger [*Gateway Casinos G.P. Inc. (Re)*, [2010] A.L.R.B.D. No. 32, June 1, 2010];
- **I is for INTIMIDATION:** Discipline in reprisal for union organizing or support is the classic example of illegal intimidation. **Example:** Ontario steel screen manufacturer must reinstate 2 welders with excellent service records and no history of discipline whose firings were sudden, "totally unexpected" and clearly in reprisal for playing leading role in newly launched union organizing campaign [*Tate Andale Canada Inc.*, [1993] OLRB Rep. October 1019, Oct. 13, 1993]. Employees can be disciplined for union organizing activity that violates legitimate company policies, e.g., bans on harassing co-workers and customers. But be prepared for employees to raise their status as a union organizer to contest the discipline and don't proceed unless you're sure you have rock solid documentation to prove the discipline was legitimate; and
- **T is for THREATS:** Any threat to jobs—no matter how veiled or subtle—is not permitted, including failure to say anything to deny a threat. In fact, that example comes from a real case in which Wal-Mart's terse but powerful "no comment" response to a question about jobs was found to cross the line [*United*

*Steelworkers of America v. Wal-Mart Canada*, 1997 CanLII 15529 (ON. L.R.B.), Feb. 10, 1997]. Of course, unfair labour practices include not just threatening but actual elimination of jobs, seniority and other employment rights of workers in the bargaining unit after—and because—the union is certified, e.g., closing plants, relocating operations or contracting out work as a result of an anti-union animus. Realistically, though, because employers have a right to shut down operations, such claims are very hard to prove.

### **Q 5. Can We Communicate Management's Position to Employees?**

**Answer:** You have every right to let your employees know that you don't feel they need or would be well served by having an outside union represent them. You're also allowed to mention the disadvantages employees will incur if the union wins, including the costs of dues and the unfavourable personal experiences of other employees represented by the union. But what you can't do is threaten their jobs or talk about the things you'll do to them if the union is certified.

### **Q 6. Can We Tell Our Employees When the Union Is Lying?**

**Answer:** Yes but be very careful. You're not allowed to accuse union officials of deliberately lying or call them "liars" (unless you can absolutely prove the accusation is true). But what you are allowed to do is point out and correct *specific* misleading facts or statements the union makes. For example if the union guarantees raises, you can respond by telling employees that the things union promises during an organization drive are part of a political campaign, that all terms of employment will be subject to negotiation and that no union can *force* a company to grant a raise.

### **Q 7. Can We Poll Employees to See Where They Stand?**

**Answer:** Although you can't promise and grant concessions during the campaign to buy off employees, you are allowed to use a union organization drive as an occasion to poll your employees, identify their concerns and at least lay the groundwork for addressing them in the future. Such efforts may include not just better benefits but ways to improve fundamental employee communication, participation and complaint processes.

### **Q 8. What Can We Do If Union Representatives Engage in Harassment?**

**Answer:** While you can't obstruct the legitimate efforts of unions to organize your workforce, you can prevent them from engaging in disruptive activities *during work hours*. As a practical matter, you need to keep your cool if you find union organizers handing out pamphlets or gathering signatures on company grounds. Don't try to physically remove them or even call the cops. This will create an incident that earns you a reputation and a place on the union's website and hit list, union lawyers caution.

What *should* you do? Calmly explain that this is your private property—perhaps using a survey map for effect—and politely ask them to leave. This works more often than not. But if the organizers refuse to leave and the problem is serious, you should call the police as a last resort.

You can also report disruptive, organizing activity, harassment and threats to your province's labour relations board. The same is true of any *employees* who have complaints about union reps or co-workers to the labour board. Let employees file their own complaints with the Board without intervening. Give employees contact information but let them pursue the matter on their own with minimal help from you.

That way it won't look like you're driving the complaint process.