

What You Can and Can't Do When a Union Tries to Organize Your Employees



What would you do if union representatives tried to organize the employees at your site? Responding too forcefully may not only get you into labour law trouble, but could also alienate employees and drive them into the union's arms. But not responding forcefully enough may be even worse, especially if the union is more interested in disrupting your business than promoting your employees' interests. While each situation is different, leading labour lawyers suggest that there are eight basic do's and don'ts of responding to a union organizing campaign.

The 4 Things You *Can't* Do When Responding to Union Organizing

Employers are allowed to participate in the union organizing process, provided that they don't engage in what are known as "unfair labour practices." There are four types of actions you must avoid.

1. Spying

You're not allowed to engage in privacy intrusive activities to keep tabs on the organizing campaign. Examples:

- Conducting surreptitious surveillance of employees to see if they're engaging in union organizing.
- Interrogating employees about their support for the union, such as asking them if they signed a union card.
- Ordering or asking an employee to provide information about the activities of co-workers, such as listing the names of employees that attended union meetings.

2. Making Promises or Bribes

Another form of unfair labour practice is to 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.

3. Intimidation

Discipline in reprisal for union organizing or support is the classic example of illegal intimidation. However, discipline is appropriate when union organizing activity violates legitimate company policies, such as bans on harassing coworkers and customers. Other forms of conduct that may amount to intimidation even if well intentioned:

- Stepping up the number of high visibility visits by management officials in the days before the vote.
- Sending company officials to employees' homes or internal meetings.
- Cancelling planned wage or benefits increases in anticipation of unionization.

4. Making Threats

Pop Quiz: Three companies make the following statements:

Company A in its intranet bulletin board: "Signing the union petition may result in disciplinary action".

Company B in a notice to employees: "Although management expresses no position on the matter, it wants employees to understand that Company B may not be able to maintain all current positions if the union is certified".

Company C in response to being asked if unionization will result in store closings: "No comment."

Question: Which employer(s) committed an unfair labour practice?

Answer: All three. Any threat to jobs—no matter how veiled or subtle—is not permitted, including failure to say anything to deny a threat a la Company C. In fact, that example comes from a real case in which Walmart's terse but powerful "no comment" response to a question about jobs was found to cross the line [*United Steelworkers of America v. Walmart Canada*, 1997 CanLII 15529 (ON. L.R.B.), Feb. 10, 1997].

The 4 Things You *Can* Do in Responding to Union Organizing

Of course, not every form of employer participation in the union organization process constitutes an unfair labour practice. There are four basic things you can do without crossing the line, according to labour lawyers.

1. Communicating Your Position to Employees

You're allowed to communicate directly with employees to let them know that you don't feel they'd be well served by having a union represent them." Although you can't threaten their jobs or talk about the things you'll do to them, you can 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.

2. Correcting Union Misstatements

You're also allowed to correct any misleading facts or statements the union makes. For example, if the union guarantees raises, an employer 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. In Ontario and other provinces where certification votes must be held, you can also let employees know of their right to vote against the union even if they've signed a union card. You can also reassure employees that management has an open-door policy and is available to answer any and all questions about the unionization process.

3. Sounding Out Your Employees

Although you can't promise and grant concessions during the campaign to buy off employees, you can 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 improvements to employee communication, participation, and complaint processes.

4. Protecting Operations against Disruption

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," warns a Toronto lawyer. 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, the lawyer continues. 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. Employees can also file complaints to the board about the union's tactics or behaviour. But let employees file complaints on their own without your encouragement or intervention—other than offering information about how to contact the board or initiate the complaint process if employees request it. What you can't do is request or order the employee to complain.

Takeaway

Ideally, employers would stay out of the fray, allow the union to make its pitch, and trust its employees to make an informed decision on certification. But in the real world, many employers are unable to resist the temptation to influence the process. That's not automatically illegal. But as the 800-pound gorilla, employers must recognize and respect the labour law boundaries. Following the eight principles outlined above will go a long way in helping you avoid liability for unfair labour practices.