



## Employee Relations: Are You at Risk for an Organizing Campaign?

by Nicole A. Flynn and K. C. Hortop

As lawyers, we spend a lot of time advising our clients on matters relating to hiring and firing. As employers, you devote a significant amount of your time (and money) adapting to the latest changes in the law. But over time, one facet of labor and employment law has remained largely unchanged – the arena of employee relations. Although the art of good employee relations has remained unchanged, it deserves just as much of your attention as the latest changes to FMLA and other employment laws, because neglecting employee relations could be an invitation for unionization.

### Why Do Workers Seek Out Unions?

Historically, employees have sought out unions for a number of reasons. Consistently though, unfair and harsh treatment by supervisors is usually at the top of the list. Employees have looked to unions when they perceive unfair treatment or inconsistent discipline, when their supervisors are showing favoritism among the workforce, or when they are being subjected to inappropriate language or treatment, particularly in front of other employees.

Perhaps surprisingly, most employees do not seek out unions because of wages and benefits, at least if their wages and benefits are in the general ballpark of comparable employers. Employees look to unions for a myriad of reasons. For example, they may seek out unions in search of greater job security. When employees sense their jobs are at risk, they might find a greater sense of security in numbers.

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Employees also look to unions to help remedy safety concerns that are neglected by management or when their employers do not demonstrate respect for seniority. Often, employees who do not feel part of their employer – who do not feel a part of the overall mission and objectives – seek to belong to unions.

### **Hints of Union Organizing Activity**

Although unions may not be organizing as openly as they once were, you can bet that with the advent of the Employee Free Choice Act (EFCA), unions have been hard at work. After all, if EFCA passes, unions may no longer need to operate a public campaign – they may be able to do most of their organizing before you ever catch wind of it. Unions have been actively pushing for the passage of EFCA and preparing for massive organizing campaigns. As employers, you should be preparing for the same.

Often, there are warning signs that an organizing campaign may be on the horizon. As employers, you should be on the lookout for new and emerging leaders or employees getting an abnormal amount of attention from their coworkers. If Joe Smith suddenly befriends various people to whom he previously paid little attention, Joe might be up to something. Are Joe and his “new” friends suddenly engaging in activities after hours? Do they stop talking when a supervisor approaches? Have employees been talking to strangers near company property either before or after work? Have employees been taking notes or writing down names? Have you noticed increased complaints about long standing issues?

In addition to the more subtle signs addressed above, you should be on the lookout for authorization cards, union flyers, notices of informal employee meetings off-site, rumors of people showing up at employees’ homes, rumors of employees being followed and other abnormal activities. If you observe any of these activities, there may be cause for concern and you should immediately contact your trusted labor lawyer. If left untreated, union organizing can be contagious. Remember though, the law prohibits you from engaging in surveillance or from creating the impression that you are surveilling employees’ union activities.

### **How Can You Protect Yourself?**

Fortunately, there are a number of actions you can take to reduce your company’s chances of facing a union organizing campaign. First, companies can conduct an internal audit designed to identify and correct areas of vulnerability. The audit can be as in-depth or as basic as the situation warrants, but should always include an examination of the company’s front-line supervisors. For example, you may consider whether your supervisors are consistently enforcing the company’s rules across the board: does one supervisor suspend employees who are caught sleeping on the job while another supervisor terminates them for the same offense? Are employees repeatedly complaining about a specific supervisor? In addition to a supervisory review, an audit also might include a comparison of the company’s wages and benefits practices with area standards, a review of previous internally filed complaints, civil rights charges, workers’ compensation claims, etc., to identify potential areas of weakness; and perhaps even a confidential employee survey to identify the practices that cause employees concern.

There are also a number of simple, straightforward measures that you can take to maintain healthy labor relations:

- Establish and consistently enforce written work rules;
- Establish a written policy addressing the company’s position on unionization and explaining why a third party is unnecessary;
- Consider establishing a no-solicitation policy and a policy related to use of company equipment that you can and will enforce (union organizing can be done quickly and effectively through e-mail);
- Use handbooks or other written communication tools to brag about the wages and benefits your company offers;
- Get employees involved in their employment – ask their opinion about policies, practices, etc.;
- Encourage employee participation in company operations and activities;

- Develop an open-door policy and keep the door open;
- Consider a grievance procedure that allows employees to voice complaints and have an opportunity to be heard;
- Establish safety committees to help ensure a safe and healthy work environment;
- Treat employees with respect; and most importantly
- Train your supervisors.

The last item on the list bears some explanation. Many of the reasons that employees seek out unionization stem from the actions or inactions of their supervisors. Thus, it bears repeating: train your supervisors. Train them on your work rules and your policies. Train them on responding to employee questions and complaints. Train them on discrimination and harassment in the workplace. Train them on the company's position on unionization and to identify potential organizing activity. Well-trained supervisors can be your best anti-union tool. Eastman & Smith attorneys are available to assist you with supervisor training.

Many of the above suggestions for improving employee relations are inexpensive and easy to implement. In contrast, contesting a union organizing campaign can be extremely time consuming and expensive. As a wise man once said, "a little bit of prevention goes a long way." Thus, at a minimum, employers are encouraged to evaluate their vulnerability, examine their current policies and practices, and to train their supervisors on good employee relations.



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