

Do's & Don'ts When Faced With Union Handbilling Activity

Unions have once again stepped up handbilling activity. We have been asked to review some basic information concerning the “Do's and Don'ts” of responding to this activity.

Why is the Union Handbilling?

Many unions are under a great deal of pressure to unionize additional employers and thereby increase their membership base. Except in cases where employees reach out to the union, organizers typically handbill to gauge possible employee support at a non-union facility, to gather information about an employer to be used in future organizing efforts, and to develop relationships with employees who may potentially become “in-house” organizers. Handbilling is usually associated with a union effort to convince employees to sign “authorization cards” or some other written indication of support for union representation. Once a sufficient number of authorization cards are signed (the minimum is 30% of an appropriate employee “unit”) the union is able to petition the NLRB for an election to determine whether employees will unionize.

Immediate Employer Response

So long as the union organizer remains on public property and is not otherwise disruptive, the handbilling of employees is protected activity under the law. Because of the application of rules concerning certain “unfair labor practices”, employers should exercise caution in developing their response to handbilling activity. Labor counsel should be consulted. Several “rules of thumb” that should immediately come to mind include:

- **Do not directly interact with union organizers.** They will not tell you anything helpful and, as you have heard before, “everything you say can and will be used against you”. This rule includes your supervisors, who, as viewed by the NLRB, are “the employer” for purposes of evaluating conduct and speech with respect to unions.
- **Do not photograph or videotape handbilling activity.** Many direct and lingering observations of protected union activity are turned into allegations of unlawful “surveillance” undertaken by management. Surveillance can be a type of impermissible coercion under the labor laws. While you can and should observe conduct in the normal course of your comings and goings at work, be careful to avoid activity which makes it even appear as if you are going out of your way to document union activity.
- **Avoid direct questions of your employees.** For reasons similar to the above, it is inadvisable to ask your employees direct questions about union activity (e.g., did you receive a handbill?; how are employees reacting?; what is the organizer telling you?, etc.) . You can and should listen to any comments your employees make concerning the union organizing. If you are offered a copy of a handbill, you are free to take it. You are even free to make certain

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affirmative statements about the union which are likely to elicit a voluntary employee reaction. (e.g., “that union organizer has nothing useful to offer our people and I hope he’s not given the time of day”, etc.)

- **Avoid “voluntary recognition”.** Neither you nor your supervisors should accept any employee lists, cards with names on them, or other written materials concerning employees from anyone – including employees. Sometimes a union will attempt to dupe an employer into voluntarily accepting “proof” that the union has the majority support of employees. Where a union can maintain that an employer has accepted such proof, it will demand that the employer recognize it without an NLRB election.

The Employer’s Response

At least as important as avoiding an immediate misstep, is determining your response to handbilling activity. Many employers underestimate the potential for a full blown organization drive at their facility and for the time-consuming and expensive legal proceedings often associated with same. We advise that employers, at a minimum, consider the following:

- **Train your supervisors.** I have noted above just a few of the many challenges you and your supervisors may confront with respect to this issue. Even if a full-blown organization drive is not imminent, managers and supervisors in a non-union facility should have a baseline knowledge of the employment laws and human resource techniques critically important to successful management and maintenance of non-union status. We have developed and presented effective training programs which have educated managers and supervisors at many companies. These programs and related consulting work have helped numerous such companies maintain non-union status.

- **Communicate to your employees.** In most situations where handbilling is taking place, it is appropriate for an employer to communicate its opinion regarding unions and the many reasons why they should be rejected. There are many legal rules governing the proper expression of such management opinions as well as various techniques which should be considered to ensure that the message is properly received. Still, an assessment as to what should be communicated and how such communication should be accomplished is an important part of your response to handbilling.

- **Keep in touch.** We encourage you to contact our office with any questions you may have with respect to these matters or to discuss any assistance we can provide in their regard.

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