

## TIPS FOR AVOIDING UNION AVOIDANCE PITFALLS

By Drew Lunt

[www.EmploymentLawHandbook.com](http://www.EmploymentLawHandbook.com)

For the uninitiated employer, union organization campaigns can be frustrating and perilous events. If you believe your employees are being targeted by a union or are embarking on a union organization campaign, you must act quickly to both prevent the influence of the union from growing and protect yourself from the potentially devastating effects of unlawful action.

When dealing with unions, there is a fine line between lawful union avoidance and illegal union discrimination. If you cross that line, you could find yourself subject to an order by the NLRB compelling you to bargain with the union even though your employees never voted for union representation. Once you are compelled to bargain with a union, virtually the only way out of the relationship is for your employees to vote the union out, something an employer cannot lawfully initiate or participate in. Below are some tips to help you in responding to a union campaign and help you avoid common pitfalls in union avoidance:

- 1) Do not threaten your employees in any manner with discipline or loss of wages or benefits because of their support for the union and do not threaten to close down your business or reduce wages or benefits if employees vote to be represented by the union.
- 2) Do not discipline any employee for their support for the union or their participation in the union campaign.
- 3) Do not ask your employees, either individually or collectively, about the union campaign, or their interest in affiliating with the union.
- 4) Do not change any terms or conditions of employment unless you can clearly establish that the decision to make the changes was made prior to your knowledge about the union campaign.
- 5) Do not promise your employees an increase in wages or improved or new benefits if they stop the union organizing campaign or stop associating with the union.
- 6) Do not prohibit employees from:
  - a. wearing union buttons, t-shirts, hats, etc., unless you have a justifiable business reason for doing so (this is an extremely rare exception and generally only applies to employees who are interacting with customers who may be adverse to the union paraphernalia).
  - b. talking about the union during time they are off the clock, including lunch and breaks.
  - c. talking about the union while they are on the clock, unless you have a company policy prohibiting all non-work-related conversations which is routinely enforced.
  - d. distributing written information about the union, unless you have a written company policy prohibiting all non-work-related distributions which is routinely enforced.

- 7) Train supervisors to ensure they do not do any of the prior items on this list. The actions of supervisors may be attributable to a company in general, regardless of whether their actions were sanctioned or not.
- 8) Contact an attorney experienced in union avoidance (This may seem a bit self-serving since I am an attorney who provides union avoidance services; however, this is one area I believe the benefits of hiring an attorney far exceed the costs. This is mainly because of the potentially permanent effects of a misstep in approaching the union campaign. A good attorney will tailor their union avoidance program to your needs and budget, and though they are never a guarantee of success, they will put you in a better position than going at it alone.)