

Navigating Union Organizing and the Unionized Workplace: Understanding Organizing, Management Obligations and Collective Bargaining

Buchanan

Jill Lashay
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Presented to:



What is a Labor Union?

A labor union is an organization of workers dedicated to protecting their interests and improving wages, hours, and working conditions.

Core Function	Legal Framework	The Shift
To act as the exclusive bargaining representative for a group of employees (the "bargaining unit") in negotiations with management.	Governed primarily by the National Labor Relations Act (NLRA) in the private sector.	Moves the employer-employee relationship from an individual, "at-will" basis to a collective, contractual one.



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The Legal Framework: The National Labor Relations Act

Enacted in 1935, the NLRA is the cornerstone of private sector labor law in the US.

- Core Mission:** To protect employees' rights to organize and bargain collectively.
- Section 7 Rights:** Guarantees employees the right to:
 - Form, join, or assist a union.
 - Bargain collectively through representatives of their own choosing.
 - Engage in other "concerted activities" for mutual aid or protection.
 - It also grants the right to refrain from any of the above activities.
- Oversight:** Enforced by the National Labor Relations Board, which conducts union elections and investigates Unfair Labor Practices.



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Why Do Employees Unionize?

- Employees don't join unions just for more money. They organize when they feel disrespected, unheard, or powerless.
- Common Drivers:
 - Unfair Treatment: Inconsistent application of policies, favoritism.
 - Lack of Voice: Feeling that their concerns about safety, workload, or scheduling are ignored.
 - Job Security: Fear of arbitrary termination or unpredictable layoffs.
 - Economics: Stagnant wages, unaffordable benefits, or unpredictable hours.
 - Poor Supervision: Ineffective or abusive front-line managers are a leading cause of organizing drives.



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The Organizing Playbook: Step 1 - Initial Contact

It starts quietly. 🤫

- **The Spark:** An employee or group of employees contacts a union, or a union organizer contacts them.
- **Information Gathering:** The union researches the company's finances, structure, and potential vulnerabilities.
- **Secret Meetings:** Small, off-site meetings are held to gauge interest and identify potential leaders among the workforce.
- **Goal:** To determine if there is enough discontent to fuel a successful campaign.



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The Organizing Playbook: Step 2 - Building an Internal Committee

- The union identifies and trains employee leaders to be the face of the campaign.
- The Volunteer Organizing Committee (VOC): A group of respected employees who are passionate about unionizing.
 - Their Role:
 - Talk to coworkers and address their concerns.
 - Distribute union literature.
 - Gather signed union authorization cards.
- Management's View: This is often the first point at which the company may become aware of organizing activity.



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The Organizing Playbook: Step 3 - The Card Campaign

This is the critical "showing of interest" phase.

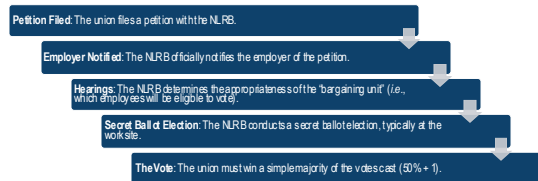
- | Union Authorization Cards | The Magic Number | The Real Goal |
|---|--|--|
| <ul style="list-style-type: none"> Employees sign cards stating they want the union to represent them for collective bargaining. | <ul style="list-style-type: none"> The union needs at least 30% of the potential bargaining unit to sign cards to petition the National Labor Relations Board (NLRB) for an election. | <ul style="list-style-type: none"> Most unions won't file a petition until they have 60-70% of employees signed up, as they expect support to erode during the employer's campaign. |



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The Organizing Playbook: Step 4 - The NLRB Petition & Election

Once enough cards are collected, the process becomes formal.



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The Organizing Playbook: Step 5 - Certification & The Duty to Bargain

If the union wins the election, the NLRB certifies it as the employees' exclusive bargaining representative.

- Certification: This legally obligates the employer to bargain in good faith with the union over wages, hours, and other terms and conditions of employment.
- The "Status Quo": Management generally cannot change any existing terms of employment without first notifying the union and bargaining over the changes.



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What Unionization Really Means

The fundamental relationship changes from managing individuals to administering a contract.

- **Loss of Flexibility:** Management's ability to act unilaterally is significantly curtailed. Decisions regarding pay, discipline, scheduling, and promotions are now governed by the contract.
- **"Just Cause" for Discipline:** The "at-will" employment standard is gone. All discipline and termination must be for "just cause" and is subject to challenge through a grievance procedure.
- **Third-Party Involvement:** The union becomes a constant presence in the workplace, representing employees in disputes and negotiations.



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Proactive Strategies: Maintaining a Direct Relationship



Spotting the Signs



Lawful Responses



Making the Union Unnecessary



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HR's Obligation: Awareness & Lawful Response

Your primary goal is to foster a positive environment where employees see no need for a third party. If organizing begins, your secondary goal is to run a lawful campaign to educate employees.

Be Vigilant

- Understand and recognize the early warning signs.

Train Your Supervisors

- Front-line managers are your eyes, ears, and first line of defense. They must be trained on what to look for and how to respond lawfully.

Train Your Supervisors

- The NLRA strictly governs employer conduct during an organizing campaign. Violations can lead to unfair labor practice (ULP) charges and even rerun elections.



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Early Warning Signs of Organizing (Part 1)

Changes in workplace social patterns are a key indicator.

- **New Groups/Cliques:** Employees forming new, unusual social groups; conversations stopping when a manager approaches.
- **Union Language:** Use of terms like "grievance," "seniority," "just cause," or "bargaining unit."
- **Increased Questioning:** Employees suddenly asking probing questions about company policies, finances, or benefits.
- **Employee Spokesperson:** A new, informal leader emerges who speaks on behalf of other employees.



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Early Warning Signs of Organizing (Part 2)

- **Observable actions and materials.**
 - **Union Authorization Cards:** Any sign of card signing in non-work areas (e.g., parking lot, break room).
 - **Union Flyers/Handouts:** Distribution of union literature.
 - **Off-site Meetings:** An increase in employees gathering together after work.
 - **Unusual Inquiries:** A former employee or outside stranger asking for a list of employee names and addresses.



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The Lawful Employer Campaign: What You CAN Do (FOE)

Remember the TIPS acronym for what supervisors CANNOT do. Everything else is generally permissible. A better way to frame this is with the FOE acronym, which outlines what you CAN do.

FOE - You are free to share:

Facts

- Share factual information about the union, its track record, its finances (based on public LM2 reports), and the realities of collective bargaining (e.g., that it's a two-way street and employees could get more, the same, or less).

Opinions

- State the company's opinion that a union is not necessary and that you prefer to deal directly with employees.

Examples

- Share real-world examples and personal experiences with unionization at other locations or companies.



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Unlawful Employer Conduct: What You CANNOT Do (TIPS)

Violating these rules constitutes an Unfair Labor Practice (ULP). Remember TIPS:

Threaten

- You cannot threaten employees with adverse actions (e.g., closing the plant, job loss, loss of benefits) if they support the union.

Interrogate

- You cannot interrogate or question employees about their or their coworkers' union activities or sympathies.

Promise

- You cannot promise or grant benefits (e.g., raises, promotions) to employees to influence their vote against the union.

Spy

- You cannot engage in surveillance of union activities or create the impression that you are watching employees.



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Proactive Strategy 1: Positive Employee Relations

The best defense is a great offense. Create a workplace where a union is irrelevant.

- Competitive Wages & Benefits:** Regularly benchmark and ensure your compensation is fair for your industry and location.
- Recognition:** Genuinely recognize and reward good performance.
- Respect:** Treat every employee with dignity and respect, from the top down.
- Train Supervisors:** Invest heavily in leadership and communication training for front-line managers. They are the face of the company.



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Proactive Strategy 2: Effective Communication

Create an environment of trust through transparency and open dialogue.

- Open-Door Policy:** Have a real, credible open-door policy where employees feel safe raising concerns without fear of retaliation.
- Regular Communication:** Hold regular meetings to share business updates—both good and bad.
- Listen:** Implement and use genuine feedback mechanisms (e.g., surveys, suggestion boxes, roundtable discussions) and act on the feedback you receive.



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Proactive Strategy 3: Fair & Consistent Policies

Fairness is paramount.

- **Clear Policies:** Maintain a clear, comprehensive, and up-to-date employee handbook.
- **Consistent Enforcement:** Apply all rules and policies consistently and fairly to all employees. Nothing fuels a union drive faster than perceived favoritism.
- **Grievance Procedure:** Implement a formal, multi-step process for non-union employees to resolve complaints. This shows that a union is not needed to get a fair hearing.



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The Goal: Making a Union Unnecessary

- **Direct Relationship > Third-Party Representation**
- By focusing on these proactive strategies, you address the root causes of why employees seek a union in the first place. A positive, fair, and communicative workplace is the single most effective way to remain union-free.



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Life With a Contract: Managing the Unionized Workforce



The CBA is Your Rulebook



Grievances and Just Cause



The Role of Supervisors



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The Collective Bargaining Agreement (CBA)

The CBA is a legally binding contract between management and the union that governs all aspects of the employment relationship for the bargaining unit employees.

- Supersedes Policy: The CBA overrides most company policies and handbooks for covered employees.
- The Four Corners: If it's not in the contract, it can be a source of dispute. Both sides must live by the agreement for its duration (typically 3-5 years).
- Read It! Every single manager and HR professional must know the contract inside and out.



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Key Articles in a Typical CBA

While every CBA is different, most contain articles covering:

- | | |
|----------------------------------|--|
| ▪ Union Security & Dues Checkoff | ▪ Seniority (for layoffs, recalls, promotions, etc.) |
| ▪ Management Rights | ▪ Grievance & Arbitration Procedure |
| ▪ Wages & Hours of Work | ▪ Discipline & Discharge ("Just Cause") |
| ▪ Overtime & Premium Pay | ▪ Health & Safety |
| ▪ Holidays & Vacations | |



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The Management Rights Clause

This is one of the most important clauses for the company.

- What it is: A specific clause that explicitly reserves certain rights for management to run the business.
- Typical Rights:
 - The right to hire, fire, and direct the workforce.
 - The right to determine the products to be manufactured and the methods of operation.
 - The right to set standards of quality and quantity.
- Why it Matters: Without a strong management rights clause, a union can argue that almost any operational decision must be bargained over.



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The Grievance & Arbitration Procedure

This is the formal process for resolving disputes over the interpretation or application of the CBA.

- Usually involves a multi-step process where a dispute ("grievance") is escalated through higher levels of management and union leadership.
- Typical Steps:
 - Verbal discussion with the immediate supervisor.
 - Written grievance submitted to HR Management.
 - Meeting between senior management and union leadership.
 - Binding Arbitration: If unresolved, the dispute is presented to a neutral, third-party arbitrator who makes a final and binding decision.



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Navigating Employee Discipline: "Just Cause"

The "at-will" standard is gone. You now operate under a "just cause" standard.

- | | |
|---|---|
| <ul style="list-style-type: none"> ▪ Was the employee forewarned of the consequences of their actions? ▪ Is the rule reasonably related to business efficiency and performance? ▪ Was an investigation conducted before discipline? ▪ Was the investigation fair and objective? | <ul style="list-style-type: none"> ▪ Was substantial evidence of guilt found? ▪ Are the rules applied consistently and without discrimination? ▪ Is the discipline reasonably related to the seriousness of the offense and the employee's record? |
|---|---|

Failure to meet these tests can result in an arbitrator overturning the discipline.



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The Role of the Union Steward

The union steward is a coworker elected by the union members to be their frontline representative.

- Their Role:
 - Investigate and file grievances.
 - Represent employees in disciplinary meetings (Weingarten Rights).
 - Monitor management for compliance with the CBA.
- A Dual Role: They are both a company employee and a union representative. They must be treated with respect, but also held to the same performance standards as any other employee when they are on the clock.



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Past Practice: The Unwritten Rules

- "Past practice" refers to a consistent response to a recurring situation over a period of time that is known and accepted by both parties.
- **The Danger:** Even if a practice is not written in the CBA, it can become a binding condition of employment if it's been in place long enough.
 - Example: If for years you've allowed employees to leave 10 minutes early on Fridays, you cannot suddenly start disciplining them for it without first bargaining with the union.
- **The Lesson:** Be intentional and consistent in your practices.



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Communicating with Unionized Employees

- Communication must be handled carefully.

Supervisors CAN

- Give work instructions, enforce safety rules, and communicate routine information.

Supervisors CANNOT

- Bargain directly with employees over wages or working conditions ("direct dealing") or handle formal grievances without involving the union.

- The Rule: All formal discussions about terms and conditions of employment must go through the designated union representatives.



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Best Practices for Front-Line Supervisors

Supervisors are the key to a successful labor-management relationship.

- Know the Contract: Make it their bible.
- Be Consistent: Apply rules and policies fairly to everyone.
- Document Everything: Create a clear, written record of all performance issues, disciplinary actions, and notable events.
- Communicate with HR: Never "go it alone." Involve HR before making any significant decisions regarding discipline or contract interpretation.
- Respect the Steward's Role: Foster a professional, problem-solving relationship with the union steward.



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Best Practices for HR

- Make sure supervisors are trained on the "do's and don'ts" of the CBA.
 - This should focus on key areas like handling grievances at the initial stage, applying discipline consistently, and avoiding Unfair Labor Practices.
- Maintain Open and Respectful Communication.
 - Establish a regular cadence of communication with union representatives.
 - Address small issues proactively before they escalate into formal grievances.
- Standardize the Grievance Procedure.
 - Ensure all steps are being followed as outlined in the CBA.



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Best Practices for HR (cont.)

- Uphold Management Rights.
 - Exercise these rights fairly and consistently. Don't be afraid to manage but ensure your actions do not violate the contract.
- Ensure Consistency in Application.
 - Apply all policies consistently.
 - Before acting, consider how similar situations have been handled in the past.
- Meticulously Document Everything.
 - Thorough documentation is the best defense in arbitration.
 - Focus on the "who, what, when, where, and why."
 - Do not include statements about individual's union status or activity.



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The Art of the Deal: Tips for Productive Collective Bargaining



Preparation is Key



Bargaining in Good Faith



Reaching a Win-Win Agreement



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The Goal of Collective Bargaining

- The goal is not to "win" or "beat" the union.
- The goal is to negotiate a fair, competitive, and sustainable collective bargaining agreement that allows the company to remain profitable and flexible while providing employees with fair wages and working conditions. A bad relationship can be more costly than the final contract.



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Preparing for Negotiations: Assembling Your Team

Choose your bargaining team carefully.

- **Chief Negotiator:** Usually a senior HR/Labor Relations professional or an outside attorney. This person runs the show.
- **Operations Representative:** A high-level manager who understands the day-to-day business and the operational impact of proposals.
- **Finance Representative:** Someone who can cost out proposals in real-time and explain the financial constraints of the business.
- **Note-Taker:** A critical role to keep a detailed record of all proposals and discussions.



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Preparing for Negotiations: Data & Proposals

Homework is 90% of the battle.

- **Gather data:**
 - Cost out your current CBA.
 - Benchmark wages and benefits against key competitors (both union and non-union).
 - Analyze grievance data to identify problem areas in the current contract.
 - Survey your supervisors to understand what contract changes would improve operations.
- **Draft Proposals:**
 - Prepare a full set of initial proposals.
 - Establish your bargaining strategy: What are your "must-haves," "nice-to-haves," and "giveaways?"



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The Duty to Bargain in “Good Faith”

- The NLRA requires both parties to bargain in good faith. This means you must:
 - Meet at reasonable times and places.
 - Exchange realistic proposals.
 - Genuinely attempt to reach an agreement.
- Provide information that is necessary and relevant for the union to bargain intelligently.
- Bad Faith Bargaining Includes: Surface bargaining (going through the motions with no intent to agree), imposing unlawful conditions, or refusing to provide requested information.



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At the Table: Effective Bargaining Techniques

- Set Ground Rules: Agree on logistics, scheduling, and communication protocols at the first meeting.
- Listen More, Talk Less: Understand the “why” behind the union’s proposals. What is the real issue they are trying to solve?
- Caucus Frequently: Use breaks to discuss proposals privately with your team before responding. Never disagree with your team members in front of the union.
- Keep Control of the Document: Always try to be the one drafting the language. It’s easier to edit your own document than to react to theirs.



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Moving Beyond Positions to Interests

- Don't get stuck in positional bargaining.
- Position: "We demand a 5% wage increase!" vs. "We will only offer 2%."
- Interest: The union's interest might be keeping up with inflation. Management's interest might be controlling fixed costs.
- The Solution: Explore creative solutions that meet both interests. Could you offer a smaller base wage increase but add a performance-based bonus? Or improve a different, less costly benefit? This is where win-win solutions are found.



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Reaching a Tentative Agreement & Ratification

- The Tentative Agreement (TA): Once all issues are resolved, both parties sign off on the new agreement. This is a "handshake deal."
- Ratification: The TA is not final until the bargaining unit employees vote to approve it.
- The Union's Role: The union bargaining committee must recommend the TA to its members and campaign for its passage.
- If it Fails: If the employees vote "no," the parties must return to the bargaining table.



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Building a Constructive Labor-Management Relationship

- The relationship doesn't end when bargaining does.
- Communicate Year-Round: Don't just talk when there's a problem or during negotiations.
- Labor-Management Committees: Establish joint committees to work collaboratively on issues like safety or productivity.
- Problem-Solving, Not Bickering: Treat grievances as opportunities to solve problems, not as battles to be won.
- Respect is a Two-Way Street: A foundation of mutual respect will make the next contract negotiation much smoother.



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Conclusion & Q&A

- Key Takeaways:
 - Be Proactive: The best way to manage unionization is to create a positive workplace where it's not needed.
 - Know the Law: Understand the rules of engagement for both organizing campaigns and contract administration.
 - Train Your Managers: Supervisors are your most critical asset in managing the day-to-day relationship.
 - Bargain Smart: Prepare thoroughly and focus on interests, not just positions, to achieve a sustainable and fair agreement.
- Questions?



Thank you.
Any Questions?



Jill M. Lashay, Esq.