

ARE YOU AFRAID OF EFCA? YOU SHOULD BE DEALING WITH THE NEW UNION ORGANIZING RULES UNDER EFCA

WHAT IS EFCA?

For months now we've heard about pending legislation in Washington called the *Employee Forced Free Choice Act* or EFCA. Its passage is now eminent in light of the recent election of Barack Obama and you should be afraid. What does EFCA mean to you as an employer? Simply put, it makes union organizing much easier and the likelihood that you will be unionized much greater. In fact, you may not even know there is a union organizing drive underway at your company before you are unionized.

As a result, you must be proactive rather than reactive and be prepared to face a dramatic increase in union organizing activities. This guide is intended as an outline on how to operate lawfully as an open shop employer in the face of EFCA and is not intended as legal advice.

EFCA does three basic things that put you at a competitive disadvantage in the union organizing arena:

- Secret ballot elections are eliminated and replaced with authorization cards.
- Your right to negotiate an initial agreement with a union is replaced with final and binding arbitration by a federal arbitrator.
- You will be subject to fines of \$20,000 per incident and required to defend often baseless unfair labor practices filed against you by the unions with the NLRB.

What is an Authorization Card?

An authorization card (A-Card) is a simple form that is used by unions to act as a ballot under EFCA to establish the selection of a union as the collective bargaining agent of your employees. They are usually collected behind the scenes without a clear understanding on the part of your employees as to what they are really signing. If a majority of your employees sign A-Cards, your company will be unionized. You will likely be unaware of the existence A-Card signing campaign. An example of an A-Card is below:

[A-Card Sample]

WHAT SHOULD I DO?

You should be proactive and act as if you have a union organizing campaign currently underway at your company. What that means is that you should develop a comprehensive action plan and meet with your supervisors (*be sure to determine who is considered a supervisor first*) to initiate that plan. Remember, you still enjoy the right of free speech and can communicate with your employees.

Once you have developed a comprehensive action plan, meet with your supervisors and:

- Provide them with information regarding the new EFCA procedures and the details regarding your action plan.
- Clearly state the position that a union is unnecessary and that the company will pursue all legitimate means to discourage employees from signing A-Cards.
- Instruct your supervisors to maintain increased daily contact with employees and observe changes in attitude, rumors, employee huddles, meetings, etc.
- Train your supervisors as to what they can and cannot do. Many of the "don'ts" are not intuitive - you must know the rules and interpretations used by the NLRB.

Your supervisors should be informed that communication with employees should:

- Occur in public places or work areas rather than in management offices.
- Advise employees that they disapprove of a union and share any bad experiences with the unions they have had or are aware of.
- Share their views about the detrimental effect of unions in the area and regarding other companies.
- Rebut anticipated propaganda with facts about the company.
- Express their opinion that they think the employees should not sign an A-Card.
- Stress that union representation does not guarantee wage or benefit increases.

You should be proactive in communicating with employees by:

- Meeting with employees, contact them by mail, provide payroll stuffers, posters, flyers, buttons, or other communications.
- Discussing the organizing campaign and why your employees do not need a union.
- Meeting regularly to evaluate the company's response and to discover additional issues that need to be addressed with employees.
- Emphasizing the Positive attributes and benefits offered by your company.
- Explain why a union is not needed.
- Distributing copies of ABC's "Don't Sign the Card" pocket card that is available in both English and Spanish.

Make every effort to promote a satisfied workforce by:

- Making your employees feel they are part of the company team.
- Applying all personnel policies and work rules consistently.
- Following published progressive discipline procedures.
- Considering seniority as a factor in promotions or layoffs
- Making certain employees are aware of their wage and benefit package and that they are not substandard.
- Safety is a paramount consideration.
- Insuring that employees are aware of their potential for career advancement.
- Supervisors should be trained in personnel relations.
- Explain any increases in benefits costs to employees.

- Notifying employees of any changes in policies or procedures and asking for their input.
- Using positive reinforcement to achieve productivity.
- Keep any promises relating to bonuses, extra vacation days, etc.
- Recognize individual employees by sending get-well, sympathy and congratulatory cards.
- Visiting employees at job sites to let them know you care.
- Always following up whenever you have dealings with an employee.

Communicate the reasons why employees do not need a union:

- Unions are expensive for employers and employees.
- Unions can call strikes in an effort to force demands on employers.
- Strikes can seriously affect employee earnings.
- Your work opportunities can be limited to a much smaller geographical area.
- You will be placed on the bottom of the union's seniority roster.
- You will not be guaranteed sufficient work hours to qualify for union benefits.
- Seniority may prevent hardworking, ambitious employees from moving forward based on their ability.
- You will work for the union rather than company as you currently do.

WHAT YOU SHOULD NOT DO

When communicating with your employees, you should not engage in the following activities:

- Threaten to reduce benefits, terminate or retaliate against an employee for participating in union activities.
- Interrogate employees as to whether they signed authorization cards, support the union or plan to sign an authorization card.
- Promise wage or benefit increases, promotions or future benefits to employees for opposing the union.
- Spy on your employees to determine who is attending union meetings, signing cards or supporting the union whether on or off the clock.

WHAT SHOULD I DO WHEN CONTACTED BY A UNION?

- Do not look at any material offered by a union.
- Do not discuss labor contract proposals, employment benefits or personnel policies.
- Do not sign any letter agreement or project agreement with a union.
- Make sure another member of management is present as a witness in connection with any contacts with union representatives.

If you are contacted by a union or suspect that a union is circulating A-Cards among your employees, you should call the Chapter Office at (610) 279-6666 or your labor counsel for advice on how you should proceed.

WHAT IS SALTING AND WHY SHOULD I BE CONCERNED ABOUT IT?

Salting is a practice where union officials or union members seek employment with open shop contractors for the purpose of organizing or harassing them from within. In light of EFCA you can anticipate an increase in union salting activities. Thus, you need to know how to address union job applicants when they apply for a job with your company. You have the right to hire the most qualified applicants regardless of their union affiliation. While you are not required to hire union organizers or members, you must apply your hiring policies in a uniform and nondiscriminatory manner.

COMMONLY ASKED QUESTIONS ABOUT SALTING

Must I hire a pro-union applicant?

No. You simply must not discriminate in your hiring decisions on the basis of union affiliation or support. The law does not require that union applicants be given preferential treatment.

Must I hire a union business agent?

The law provides that you cannot discriminate against union applicants on the basis of their union affiliation.

Can I ask applicants about their union affiliation?

No. There is no valid reason to ask applicants about their union affiliation.

What if an applicant tells me he or she is a union member without my asking?

That choice is up to the applicant. It should make no difference to you in your hiring practices. You should just follow your normal hiring practices and procedures.

Can I still hire the most qualified applicant?

Yes. It is helpful to have the qualifications you consider important for the job in writing and list the essential functions of the position before you begin the hiring process. You should then be prepared to support your decision with a written list of qualifications you considered important for the job in question.

Can I disqualify an applicant who puts false information on his/her application?

Yes. However this policy should be stated directly on the application and enforced consistently.

Can I discharge a union organizer?

Yes, but not because he or she is a union organizer. Once hired, any employee is subject to discipline, including discharge, because of poor performance or violations of company policies. You are only required to enforce your employment policies, including discipline, uniformly and consistently with all employees.

If I hire someone who turns out to be an unproductive worker, and he/she is a union salt, can I fire that employee?

Yes, as long as you are not firing an employee because of his/her union affiliation or activity. Poor performance or violations of company policy are accepted reasons for firing employees provided they are applied consistently and uniformly. You should train your supervisors to maintain detailed records regarding performance problems and be consistent in the handling of all discipline.

WHAT YOU SHOULD NOT ASK JOB APPLICANTS

- Don't ask about union membership either on a form or during an interview.
- Don't tell union applicants that no jobs are open while running a help wanted ad or hiring off the street.
- Don't hire open shop applicants with little experience for skilled jobs, despite the fact that qualified union applicants have applied for your skilled jobs.
- Don't tell union applicants that interviews or written applications are required while hiring other applicants without them.