

COMMUNICATING WITH EMPLOYEES DURING A UNION ORGANIZING CAMPAIGN

KAREN FLEMING

When a manager or business owner becomes aware that a union organizing campaign is occurring in their workplace, a quick response is often required. However, employers need to be aware that the Labour Relations Code (Alberta) places limits on what they are permitted to say during this time.

The Code permits employers to express their views so long as they do not use coercion, intimidation, threats, promises or undue influence. Such conduct is considered to be an unfair labour practice. Where the Labour Relations Board finds that an employer has engaged in an unfair labour practice, it has a wide discretion to remedy the situation, including ordering that the practice be stopped; reinstating, with pay, employees suspended or discharged; and granting the union certification (subject to a vote by the affected employees). Employers must ensure that any communication they undertake in connection with a union organizing campaign falls within the limits set by the legislation.

In recognizing that employers are not generally in favour of unions, the Labour Relations Board has allowed employers to invite employees not to join a labour union, subject to the prohibitions against coercion, promises, undue influence, threats, and intimidation. However, both the substance of the message and the manner in which it is communicated will be examined to ascertain whether or not the message constitutes an unfair labour practice. Any statement made must be examined in its context and not in isolation. The cumulative effect of all statements made will also be examined.

The safest form of expression is in writing. This is perceived by the Labour Relations Board as being the form of communication least susceptible to use in a coercive manner. The use of written communications also avoids differing recollections as to what the message was. The "captive audience" situation where the employer convenes a meeting of employees in the workplace during work hours to address employees on the subject of their unionization is a very risky form of communication. The Labour Relations Board has shown a great willingness to carefully scrutinize the contents of what was said and readily infer promises or threats when captive audience meetings are held. Such a meeting is best avoided. If a meeting outside of work hours with voluntary attendance is held, it is best to read from a prepared script only. An even more hazardous means of expression for employers is to make statements directly to individual employees. This has been found to have an inherently coercive quality.

The subject matter of any communication must also be carefully chosen. Employers have been found to have committed an unfair labour practice where they respond in a heavy-handed and emotional manner without proper knowledge of what is or is not permissible or where they fail to understand the consequences of improper communication.

There are a number of subject matters best avoided because the Labour Relations Board has found that such communication may constitute an unfair labour practice. For example, it would be unwise to threaten a loss of jobs or benefits as a result of unionization. Likewise, no promises conditional upon employees remaining non-

2000, 10235 - 101 STREET
EDMONTON, AB T5J 3G1
PH: 780.423.3003

400 THE LOUGHEED BUILDING
604 1 STREET SW
CALGARY, AB T2P 1M7
PH: 403.260.8500

201, 5120 - 49TH STREET
YELLOWKNIFE, NT X1A 1P8
PH: 867.920.4542

www.fieldlaw.com

unionized should be made.

If you are an employer regulated by the Canada Labour Code, the rules for communicating with employees during a union organizing campaign are different than under Alberta legislation. The federal Labour Relations Board has taken a much harder line as to what constitutes an unfair labour practice and there are strict limits on the communications which may be undertaken.

In the event you are faced with a union organizing campaign, the substance of your communications with your employees as well as the manner in which communications are made may come under scrutiny. Therefore, it is important to communicate within the limits prescribed by the legislation and to avoid the use of promises, threats, coercion, intimidation or undue influence. Our office can assist you in advising how best to communicate with your employees at this important and delicate time without running afoul of the applicable labour legislation and the related case law in this area.

DISCLAIMER this article should not be interpreted as providing legal advice. Consult your legal adviser before acting on any of the information contained in it. Questions, comments, suggestions and address updates are most appreciated and should be directed to:

The Labour and Employment Group
Edmonton 780-423-3003
Calgary 403-260-8500

REPRINTS

Our policy is that readers may reprint an article or articles on the condition that credit is given to the author and the firm. Please advise us, by telephone or e-mail, of your intention to do so.