

Stinson Leonard Street LLP

UNION AVOIDANCE CAMPAIGN SERVICES



Union Avoidance Campaign Service

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About the Firm

Stinson Leonard Street LLP provides sophisticated transactional and litigation services to clients ranging from individuals and privately held enterprises to national companies and international public corporations. We blend a collaborative environment with deep legal knowledge to deliver value on each matter and a rewarding experience to each client. Learn more about our attorneys, practice areas and 13 office locations at stinson.com.

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Union Organizing Campaign Do's and Don'ts

The following sets out some of the general “do’s” and “don’ts” an employer may wish to follow in the context of a union organizational campaign. The National Labor Relations Act (NLRA) generally prohibits employers from interfering with employees’ rights to self-organize, to form, join or assist labor organizations, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

The filing of a petition with the National Labor Relations Board (the “Board”) initiates a “laboratory period” which runs until the date of the election. In order to maintain “laboratory” conditions, employers must not only refrain from committing unfair labor practices, but must preserve those conditions which enable employees to cast uncoerced ballots representing their true desires on the union issue. If the employer engages in conduct which impairs the employees’ free choice, an election result favorable to an employer may be set aside and another election held. However, employers may, and should, use this time to educate their employees about unions in general, as well as the specific union that is targeting the employer’s workplace.

The Do's

- ☑ **Do listen** to information voluntarily given, but discourage disclosure of names of union advocates.
- ☑ **Do exercise** normal business prerogatives, but be prepared to justify any action which may have an adverse impact on a potential union supporter.
- ☑ **Do enforce** rules uniformly, without bias, and in accordance with customary practice, irrespective of an employee's activity in the union organizing campaign.
- ☑ **Do express** a preference to deal with the employees personally on a one to one basis, rather than settle grievances through a union or other outside agent.
- ☑ **Do remind** the employees the cost of representation through dues, initiation fees and assessments.
- ☑ **Do explain** that if the union obtains a "union shop" contract, employees must pay dues and initiation fees or risk discharge at the request of the union.
- ☑ **Do tell** employees that unions cannot guarantee change.
- ☑ **Do inform** employees that signing an authorization card or application for union membership does not require the employee to vote for the union in the election.
- ☑ **Do tell** employees that the election is by secret ballot.
- ☑ **Do tell** the employees, if an election takes place, it is important to vote. THE ELECTION WILL BE DETERMINED BY A MAJORITY OF THOSE WHO VOTE, NOT A MAJORITY OF THE WORKFORCE.
- ☑ **Do respond** to untrue or misleading statements by the union.
- ☑ **Do allow** anti-union petitions to be circulated, provided that the employer has not prepared or sponsored such petitions and that the union's right to circulate pro-union petitions is as similarly unrestricted.
- ☑ **Do distribute** reprints of articles containing information about the union, and identify the source and date of the information.
- ☑ **Do make** "captive audience" speeches to persuade employees, in a non-coercive fashion, to vote against the union, provided that the employer does not have an overly broad no-solicitation rule, and that such speeches are not made within 24 hours of the election.
- ☑ **Do exercise** the right to express opinions about unions, provided that no express or implied threats are made to employees in the process.
- ☑ **Do deny** non-employee organizers access to your facility, parking lot, or any other part of your premises, whether for oral solicitation or distribution of literature to employees unless organizers have no other adequate opportunity to contact employees.
- ☑ **Do explain** to employees that if elected the union does not mandate change. Rather, although the company will negotiate with the union, it does not have to agree to the union's terms.

The Don'ts

- Do not threaten** employees or engage in violence.
- Do not solicit** union affiliation (i.e. interrogation).
- Do not isolate** employees in situations which may be viewed as interrogation.
- Do not solicit** employee grievances with the promise (implied or express) that addressing the grievances is conditioned upon abandonment of union support.
- Do not call** employees into supervisor offices one by one and convey an anti-union message.
- Do not visit** employee homes individually to convey anti-union message.
- Do not inquire** about confidential union matters, such as meetings.
- Do not promise** (expressly or implied) rewards, wage increases, benefits increases, etc. in exchange for employees voting against the union.
- Do not make predictions** which may appear as threats or promises.
- Do not make use of informers** to discover union affiliation.
- Do not discharge** or otherwise discipline possible union advocates without real and well supported non-discriminatory reasons.
- Do not surveil** the employees or create the impression of surveillance. Avoid union meetings or parking cars near union meeting areas.
- Do not discipline** employees for misconduct when the employer has overlooked such conduct in the past.
- Do not offer promotions** in exchange for support or refusal to support the union.
- Do not pay** for time spent supporting the campaign effort.
- Do not make statements that mislead** potential voters into believing that the Board supports the employer.
- Do not alter** Board documents so that it appears that the Board supports the employer.
- Do not make speeches** to captive audiences within 24 hours of the election. In a mail ballot election it would be improper to make captive audience speeches within 24 hours of the mailing of the ballots.
- Do not prevent** an employee who presents himself/herself at the poll from casting at least a challenged ballot.
- Do not threaten** to shut down the business or move an operation if the union wins the election.
- Do not permit reduction** in workweeks and/or other benefits, or threaten to do so.
- Do not remove** or threaten to remove employee privileges.
- Do not transfer** employees because of their union affiliation or intentionally isolate union supporters.
- Do not suggest** that employees demand the return of their union authorization cards or assist employees in attempts to secure the return of authorization cards.
- Do not make changes** to terms and conditions of employment after a union petition has been filed with the National Labor Relations Board.

Campaign Overview

Communication, Participation and Recognition (CPR) – the foundation of your campaign strategy.

When a union files a representational petition, companies generally have only approximately two weeks to convince employees that union representation is a step in the wrong direction. While the foundation of an effective union-avoidance campaign is built through our Union Vulnerability Audit Program, it is essential for the employer to be prepared to wage an aggressive, persuasive and focused union-avoidance campaign at the first sign of union organizing. “CPR” – a program which focuses on: Communication; Participation; and Recognition serves as the basis for our campaign strategy. While the specific strategies of each campaign must be tailored to fit the unique situation of each employer, the general “CPR” principles can be applied in almost every organizational setting. The following is a summary of the strategies and tactics employed in our “CPR” union-avoidance program.

CPR Union Avoidance Program

INITIAL RESPONSE	Preliminary Information Collection
	Employer structure, personnel and operations information (most of this information would have been obtained as part of our Union Vulnerability Audit).
	Understanding the issues (most of this information would have been obtained as part of our Union Vulnerability Audit).
	Targeted reconnaissance concerning the specific Union at issue.
	Legal Overview
	Review the legal process with upper management and supervisors (Union Vulnerability Audit).
	Review “dos’ and don’ts” with upper management and supervisors (Union Vulnerability Audit).
	Initial Communications
	Letter to employees advising them that we know about the Union’s effort and reminding them of our position with respect to union representation. The initial letter also provides the employees with an overview of how we intend to respond to the Union’s organizing efforts.
	Truth About Authorization Cards Posting.
	Question and Answer boxes and website. The Q&A boxes and/or website provide employees with an opportunity to ask questions anonymously and otherwise participate in the campaign. Publishing all questions and answers allows the Company to be viewed as the trusted source of accurate and truthful information. We have an extensive data base which includes all of the questions and answers used during the campaigns we have handled over the last 20 years.
	National Labor Relations Board (“NLRB”)
	Commerce Questionnaire/Notice of Appearance/potential petition challenges.
	Communication with NLRB agent relating to potential resolution of any preliminary issues.
STRATEGY DEVELOPMENT	In-Depth Information Collection
	Review/update Audit results.
	Meetings with upper management and supervisors.
	One-on-one interviews with supervisors, including supervisory straw polling. Supervisor straw polling gives us the ability to both gauge potential union support and track the effectiveness of our campaign. It also provides insight into areas, departments or issues which require more focused attention.
	Campaign Strategy
	Summarize issues, real and perceived.
	Develop opposition plan and commence work on Statement of Position.
	Identify themes.
	Develop public relations plan.
	Develop campaign calendar.

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LEGAL MATTERS	Unit Description Issues
	Information gathering/assessment.
	Develop strategy for dealing with potential unit description issues.
	Excelsior List Issues
	Election Logistics
	Method
	Location
	Times
	Observers
CAMPAIGN	Planned Weekly Themes
	Communication, Participation and Recognition
	<ul style="list-style-type: none"> • Large group meetings.
	<ul style="list-style-type: none"> • Small group meetings.
	<ul style="list-style-type: none"> • One-on-one interaction.
	<ul style="list-style-type: none"> • Letters to employees' homes, postings, pay check stuffers, videos, email announcements, etc.
	Corrective Counter Measures
	Informal one-on-one interaction (supervisor floor presence).
	Address union and/or union supporter misinformation.
	End of the Week Assessment
	Feedback from upper management, supervisors and managers.
	Employee feedback (voluntary).
	Risk assessment.
Analyze straw poll results.	
Adjustments to campaign calendar.	
ELECTION	Logistics
	Training.
	Coordination.
	Interaction with NLRB
	Results
	Appeal/prepare for Union appeal.
	Evidentiary hearing (if necessary).

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	Communication
	Implement communication strategy with employees.
	Implement communication strategy with management.
	Implement communication strategy with customers, vendors and the public.
POST-ELECTION MEASURES	Potential Hearing
	Develop Post-Election Plan
	Assessment of results.
	Develop post-election plan for remaining union-free or for dealing with the union.
	Implementation of plan.
	Ongoing monitoring of plan's implementation.

Sample 2 Week Campaign Calendar

Day 1	Day 2	Day 3
<ul style="list-style-type: none"> • Assessment <ul style="list-style-type: none"> ○ Analysis of Proposed Unit in Petition and Assess Bases for Objections ○ Commence work on Statement of Position ○ Confirm Substantive Issues Underlying the Reasons for Union's Interest in proposed/targeted unit • 1st Letter to Employees (petition filed, potential impact of proposed unit, election process, Company's stance) <ul style="list-style-type: none"> ○ Hard copy to homes ○ Email ○ Posted • Activate Website (describe particular proposed unit) • Establish Question Box 	<ul style="list-style-type: none"> • Complete Assessment • Review Opposition Strategy with Leadership Team • Employee Meetings (conduct on Day 3 if necessary) <ul style="list-style-type: none"> ○ Roster of Potential Speakers ○ Message (mirror content of 1st letter to homes) <ul style="list-style-type: none"> • Unit targeted in Petition – potential impact • Election Process • Company's Opposition • Monitor Question Box 	<ul style="list-style-type: none"> • Post and E-Deliver to Employees in the Proposed Unit the Notice of Petition for Election • Small Group Meetings (conduct on day 4 if necessary) <ul style="list-style-type: none"> ○ SLS train Leadership on Talking Points ○ Message the Themes from 1st Letter • SLS seek to enter into Stipulated Election Agreement via NLRB Agent if Appropriate • Monitor Question Box
Day 4	Days 5-7	Day 8
<ul style="list-style-type: none"> • Leadership Messaging to Employees (encourage not to take the Gamble; you know what you have now; you could end up with less) • SLS Poll Leadership with Tailored Accountability Assignments as to Employees Not Ranked as 1s • Monitor Question Box 	<ul style="list-style-type: none"> • SLS Continue to Poll Leadership with Tailored Accountability Assignments as to Employees Not Ranked as 1s • Monitor Question Box 	<ul style="list-style-type: none"> • 2nd Letter to Employees (Union Not the Answer, Union only an "Asker" – How Negotiations Work, Union Cannot Stop Change) <ul style="list-style-type: none"> ○ Hard copy to homes ○ Email ○ Posted • Statement of Position Due to NLRB (if no stipulated election agreement) <ul style="list-style-type: none"> ○ Articulate basis for challenges to proposed unit ○ Submit Initial List (expanded traditional <i>Excelsior</i> List, with subsequent final Voter List to be submitted two days after direction of election) <ul style="list-style-type: none"> • Alphabetized list in searchable table including full employee names, work locations, shifts and job classifications of all individuals in proposed unit • Submit electronically to Board and Union before noon on the day preceding the hearing • Monitor Question Box

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Day 9	Day 10	Days 11-12
<ul style="list-style-type: none"> • Attend NLRB Hearing on Propriety of Unit (if no stipulated election agreement) • Employee Meetings <ul style="list-style-type: none"> ○ Identify Potential Speakers ○ Message (mirror content of 2nd letter to homes) • Monitor Question Box 	<ul style="list-style-type: none"> • Summarize Total Benefits/Rewards & Collective Bargaining Gamble • Importance of Voting “No” • Leadership - Instill Point that Only Guarantee is Union Dues and that: <ul style="list-style-type: none"> ○ Union is Merely an “Asker” ○ Union Cannot Stop Change • Monitor Question Box • SLS meetings with Leadership to ensure Tailored Accountability Assignments Accomplished 	<ul style="list-style-type: none"> • Refine Final Meeting Outline • Dry Run 25th Hour Speech <ul style="list-style-type: none"> ○ Election Process—Importance of Voting “No” ○ Summary of Total Benefits/Rewards ○ Don’t Take Collective Bargaining Gamble • Finalize 3rd Letter to Employees (same themes) • Monitor Question Box
Days 12-13	Day 14	
<ul style="list-style-type: none"> • Send 3rd Letter—Include any inserts on benefits/rewards, broken paycheck <ul style="list-style-type: none"> ○ Hard copy to homes ○ Email ○ Post • Monitor Question Box 	<ul style="list-style-type: none"> • Final Meetings/25th Hour Speech (themes noted above) <ul style="list-style-type: none"> ○ “Thank You” for working together to accomplish what we have; for your patience during past two weeks ○ Monitor Question Box 	

Stinson Leonard Street Team

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