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# Staying Union-Free: We Can Do It

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## Employee Free Choice Act (EFCA)

- ✓ Introduced in Congress March 10, 2009
- ✓ Not good for NC, the company or YOU

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## EFCA

- ✓ **Forced Choice: Denies workers right to secret ballot election**
- ✓ **Forced Contract: Puts government in control of deciding pay, benefits and terms**
- ✓ **Forced Muzzle: Penalizes employers up to \$20,000 per ULP**

## Preparing for EFCA

- ✓ Communicating union-free message
- ✓ Knowing what is on our employees' minds
- ✓ Recognizing the organizing warning signs
- ✓ Rapid response to card signing
- ✓ Upgrading manager skills and communications

## State of Our State: North Carolina is. . .

- ✓ Least unionized state
- ✓ Least prepared to survive under EFCA

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## Union Wins

### Healthcare Industry

Highest Percentage of Union Wins 70%

All Industries Average 60%

SEIU and NC

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## Why Stay Union-Free?

- ✓ Employee Relations
- ✓ Patient Relations/Quality Care
- ✓ Retain Decision-making Authority
- ✓ Avoid Collective Bargaining
- ✓ Cost

## Employee Labor Rights

- ✓ To unionize or not to unionize
- ✓ To bargaining collectively through a rep they choose
- ✓ To engage in “concerted activity”



## Concerted Activity (does not require union involvement)

- ✓ 2 or more employees
- ✓ By 1 employee on behalf of others
- ✓ By 1 employee but concerns extend to others

## Concerted Activities

### Examples

- ✓ Objections to harassment
- ✓ Complaints about working conditions
- ✓ Refusal to work voluntary on-call

The following are examples of protected activities:

- Talking to co-workers in person or on the telephone to urge them to support the union;
- Signing a petition;
- Going as a group to talk to the supervisor or human resources office;
- Sending one member of the group to talk to the supervisor or human resources office;
- Staging a walkout or work stoppage to protest working conditions;
- Contacting employees of other employers to engage in a common cause; and
- Filing an unfair labor practice charge or other complaint with the NLRB or a state administrative agency (even if the charges prove to be false).

Employer's Guide to Union Organizing Campaigns (Wolters Kluwer 2007)

## Concerted Activities

### Does Not Protect

- ✓ Disparaging hospital services
- ✓ Disrupting work
- ✓ Stealing confidential information

## Supervisor and Manager Responsibilities

- ✓ Supervisors and managers must support the employer, not the union

This requires you to do everything legally, ethically, safely and professionally to maintain a union-free environment

- ✓ If you do not or cannot support this philosophy, notify HR within 24 hours

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## The Truth . . . about Union Victories

**Employees don't vote FOR unions  
They vote AGAINST management**

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## Unions Win By . . .

### . . . Capitalizing on Management's Failure to be a Good Employer

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## Unions Win by Emphasizing Management's

- ✓ Lack of fairness and consistency in policies and practices
- ✓ Lack of listening and engaging employees
- ✓ Lack of communication
- ✓ Lack of employee recognition
- ✓ Poor handling of safety issues
- ✓ Lack of good pay and benefits, including training
- ✓ Lack of trust, values, dignity, respect

## Why Employees Seek Union Representation

### 1. Poor supervision

- ✓ Inconsistent enforcement or administration of policies
- ✓ Play favorites
- ✓ Discipline without documentation
- ✓ Perception that discipline is unfair



## Why Employees Seek Union Representation

### 2. Poor communication by management

- ✓ Making changes that could adversely impact employees without adequately explaining rationale and consequences

## Why Employees Seek Union Representation

### 3. Perception that management does not value or respect employees

- ✓ Management talks down or does not treat employees with dignity and respect
- ✓ Lack of recognition and appreciation
- ✓ Perception that management has no desire to establish a meaningful and caring relationship

## Why Employees Seek Union Representation

4. Employees not feeling part of the team
  - ✓ Lack of employee participation

## Why Employees Seek Union Representation

5. Safety issues
6. Pay and/or benefits issues
7. Working condition issues (hours, shifts)
8. Fear of job security

### UNION VULNERABILITY SELF-TEST

- Do we treat employees with dignity and respect? Do we have a policy or practice that is either illegal or merely out of step?
- How do we recognize employee contributions and show appreciation?
- Do employees feel they have a voice in the workplace? How do we resolve complaints, problems and issues?
- What is the mechanism in place to monitor employee sentiment?
- How effective are our supervisors?
- How do we communicate and listen?
- Are we competitive in wages and benefits?
- Are we consistent in the administration of our policies?

Employer's Guide to Union Organizing Campaigns (Wolters Kluwer 2007)

## Staying Union-Free: The Big Picture

**The Goal: Don't create a reason for employees to seek a union**

### **The Players**

- ✓ **First-line supervisors have the MOST important role**
  - **No. 1 source of information to employees**
  - **Responsible for developing work environment that encourages employee satisfaction and morale**

## ✓ Everyone

- Be a good communicator
- Listen to employees
- Talk about issues...don't avoid them
- Honestly and directly address concerns

Good communication between supervisors and employees will develop when the supervisor:

- **Is available.** A supervisor who is unapproachable, never around, or whose door is always closed does not promote open communication.
- **Encourages candor.** Employees must feel they can be honest about the way they perceive things.
- **Rewards initiative.** Employees should be credited for the helpful suggestions they make.
- **Compliments good work.** When employees do a job well, they should be complimented.
- **Is open to criticism.** Supervisors should listen to everything the employee has to say regardless of how critical (and perhaps untrue) the employee's statement may be.
- **Handles each situation seriously.** Supervisors should listen to each and every employee problem with respect.
- **Follows through.** Once the supervisor has gathered all the necessary information to respond to an employee's question, the supervisor should communicate the information to the employee in a prompt manner.
- **Keeps top management advised** so common questions and problems can be handled consistently.
- **Effectively listens** to what employees are saying and demonstrates an interest in employee concerns.

Employer's Guide to Union Organizing Campaigns (Wolters Kluwer 2007)

## Early Organizing Warning Signs

- ✓ Employee complaints change or increase
- ✓ Complaints by delegation, not individual
- ✓ Employees stop talking to you
- ✓ Employees who do not normally associate with each other, begin to do so
- ✓ Increase in inquiries about policies, pay, benefits, corrective actions

## Early Organizing Warning Signs

- ✓ Employees visit work areas they do not normally visit
- ✓ Argumentative questions during department meetings
- ✓ Union jargon appears in employee vocabulary
- ✓ Exit interview information reveals unpleasant work environment



## Early Organizing Warning Signs

- ✓ Increase in turnover
- ✓ Union flyers; anti-boss cartoons
- ✓ Potential salts in the applicant pool
- ✓ Rumors about union home visits, meeting
- ✓ Request for employee name/address list

# Not So Early Warning Sign – The Card

**UNION AUTHORIZATION AND REPRESENTATION CARD**  
UNDER THE NATIONAL LABOR RELATIONS ACT

Name of Employer ABC Company Employee or Badge # 23

Classified as a (please be specific) Employee Level 3

Full/PT Full Hours 40 Date of Hire 12/23/06 Dept 15

Home Address 111 Walnut Street

City Ourtown State NC Zip 11111 Phone (919) 555-1212

I designate the International Union of Dues Payers and Workers of America, AFL-CIO, as my bargaining representative, and to represent me for all purposes under the National Labor Relations Act with regard to: all conditions of my employment including pay, benefits, and grievances.

Signature John Doe

Print Name John Doe Date 4/9/09

## Card Signing

- ✓ Employees may not understand the legal consequences of signing
- ✓ Cards can be used to demand recognition without an election
- ✓ 30% of unit signs card, NLRB can order election

## Union Organizing Rights

- ✓ Employees can solicit (including card signing) during non-work time
- ✓ Employees can distribute materials during non-work time in non-work areas

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## Avoiding a ULP: Supervisor Do's and Don'ts

### NO TIPS

**T - Threaten**

**I - Interrogate**

**P - Promise**

**S - Spy**

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## Threaten reprisal or coercion

### Examples:

- ✓ To shut down facility
- ✓ To discontinue benefits
- ✓ Say voting for union is futile
- ✓ To fire or discipline employee for union activity

## Interrogate employees about unions

### Examples:

- ✓ Require applicant to disclose union membership
- ✓ Ask how employee feels about union
- ✓ Ask if employee attended union meeting
- ✓ Ask employee if s/he would vote for union or sign card
- ✓ Solicit grievances
- ✓ Ask employee to question peers and report back to you

## Promise good things if union fails

### Examples:

- ✓ Accelerate or make positive changes in wages, benefits, other terms
- ✓ Solicit or remedy grievances



## Surveillance

### Examples:

- ✓ Telling employee it's an open secret s/he supports union
- ✓ Photograph/video union activity
- ✓ Attend union meetings
  - Watch employees enter or exit union meetings
  - Tell employee you know who attends meetings
  - "We have our sources. . ."

### OTHER THINGS YOU CANNOT DO . . .

1. Promise or grant employees pay increases, promotions, improved working conditions, additional benefits, or special favors if they stay out of the union, do not sign an authorization card, or vote against the union.
2. Threaten employees with loss of jobs, reduction of income, or discontinuance of any privileges or benefits, or use any coercive or intimidating language to influence employees in the exercise of their rights to belong to or support a union (or to refrain from doing so).
3. Tell employees they would have received a wage increase or other benefits but for the start of the union campaign.
4. Threaten to or actually discharge, discipline, or lay off an employee because of activities on behalf of the union.
5. Threaten, through a third party, any of the above acts of interference.
6. Threaten to close down or to reduce operations if the union is voted in by employees.
7. Spy on union meetings. For example, attending a union organizing meeting or standing outside to watch employees entering or leaving would be improper.
8. Conduct yourself in a way which gives employees the impression that you are watching them to determine whether or not they are participating in union activities. For example, telling an employee that you understand they went to a union meeting would be improper.

## **MORE THINGS YOU CANNOT DO . . .**

9. Discriminate against employees who actively support the union by intentionally assigning them undesirable work.
10. Transfer employees because of their union activities or affiliation.
11. Engage in any activity that favors employees who oppose the union over employees who support the union.
12. Discipline employees who are supporting the union for an infraction that other employees are permitted to commit without being disciplined.
13. Make any work assignment for the purpose of causing an employee who has been active on behalf of the union to quit his or her job.
14. Take any action that is intended to impair the status of, or adversely affect, an employee's job or pay because of his or her activities on behalf of the union.
15. Intentionally assign work or transfer employees for the purpose of separating those you believe are interested in unionization from those who you believe are not interested in supporting the union.
16. Select employees to be laid off with the intention of curbing the union's strength or discouraging support for the union.
17. Ask employees about their personal opinions or the feelings of other employees concerning the union.
18. Ask employees whether they are for or against the union or how they intend to vote in the NLRB election.
19. Ask employees at time of employment, or thereafter, whether they belong to a union or have signed a union application or authorization card.
20. Ask employees about union activities, such as union meetings, the identity of union supporters, or the progress of a union organizing campaign. (Employees may, of their own accord, tell you of such matters. It is not an unfair labor practice to listen, but you must not ask questions to obtain additional information.)
21. Make the statement that management will not deal with the union or will only go through the motions of bargaining with the union.
22. Make the statement that present benefits will be reduced or taken away if the union is voted in.
23. Make the statement that employees will be discharged or disciplined if they are active on behalf of the union.
24. Urge employees to persuade others to oppose the union.
25. Give financial support or assistance to the union or its representatives

**MORE THINGS YOU CANNOT DO . . .**

26. Visit the homes of employees for the purpose of urging them to support or reject the union.
27. Call employees, individually or in small groups, into management offices or similar locations away from their normal work areas for private discussions concerning union matters. (It is not an unfair labor practice to hold large group meetings.)
28. Hold meetings with employees for the purpose of soliciting grievances and complaints, unless there has been a past practice of holding meetings for this purpose.
29. Sponsor or suggest a petition, or other written expression by employees, against the union, or encourage or take part in its circulation after being started by employees.
30. Solicit employees to request the return of union authorization cards they have signed. However, if employees ask whether they can get their cards back, you can advise them that if this is their desire, they should contact the person who solicited their signature.

Donald P. Wilson, Total Victory! (LRI 2<sup>nd</sup> Ed. 1997)

## Supervisor Do's

### FOE

- F - Facts:** You can give employees facts regarding unions and union expectations for its members
- O - Opinion:** You can share your own personal opinions about unions
- E - Examples:** You can give examples of situations regarding union organizing and contract negotiations

## More Supervisor Do's – Tell employees. . .

- 1. You believe that it is better for employees and the company to deal directly with one another, not through a union.**
- 2. Unions are a big business. They cost money to join. They run their business by dues, fines, fees and assessments from members.**

## More Supervisor Do's – Remind Employees. . .

3. Of the benefits and wages they presently enjoy without paying union dues.
4. There is no guarantee employees would get any more pay or benefits in a union contract – they might get less.
5. That they have the right not to talk to union organizers.

### **MORE THINGS YOU CAN DO. . .**

1. Tell employees that you (or any other member of management) are always willing to discuss any subject that is of interest to them, and they do not need to pay a union representative to speak on their behalf.
2. Tell employees that management prefers to deal with them personally and directly, rather than through an outside organization, a third party, or a stranger.
3. Tell employees that the union must be given the opportunity to be present whenever a grievance is settled, even if an employee wants to present their own grievance directly to the employer, and the settlement must be consistent with the union contract.
4. Tell employees about the wages and benefits they presently enjoy, and remind them these wages and benefits are provided voluntarily, without a union. (Avoid veiled promises of increased benefits or threats of loss of present or future benefits.)
5. Tell employees how their wages, benefits, and working conditions compare with those provided by comparable employers, whether unionized or not. (An excellent comparison would be with a union contract negotiated by the union seeking representation that shows lower wages and fewer benefits than you presently provide. Make sure you have all the facts and that your facts are accurate.)

## **MORE THINGS YOU CAN DO. . .**

6. Tell employees about the disadvantages that may result from belonging to the union, such as the expense of dues, fines, and assessments. If helpful, multiply the amount of monthly union dues by 12 to show employees how much per year they would pay.
7. Tell employees that, no matter what the union may promise, it cannot guarantee any changes in wages, benefits, or working conditions.
8. Tell employees that no union can make a company agree to anything it does not believe is right, or pay any more than it believes is fair. (Avoid any implication that management would not bargain in good faith or would arbitrarily refuse to consider a union's demands.)
9. Tell employees about any personal experience you may have had with unions.
10. Tell employees anything you may know about any union or its officers. (There are many published reports concerning union corruption. It is legal to show these to voters.)
11. Tell employees about any untrue or misleading statements or arguments made by a union organizer or by a union handbill or through any medium of union propaganda. You can always give employees the correct facts.
12. Tell employees your opinion about union policies and union leaders, even in derogatory terms.
13. Tell employees they are free to join or not to join any organization, without prejudice to their employment status.
14. Tell employees that signing a union authorization card or application for membership does not mean they must vote for the union if there is an election.
15. Lay off, discipline, and discharge employees, so long as such action follows customary practice and is done without regard to union membership, activity, or sympathy.
16. Make job and work assignments, including assignments of overtime, so long as this is done without reference to the employee's participation or non-participation in union activities.
17. Enforce employee rules impartially and in accordance with customary action, irrespective of the employee's activity for or against the union.
18. Tell employees that you respect their right to do as they see fit, but you prefer not to have a union.
19. Tell employees that you hope they will not sign union authorization cards.

Donald P. Wilson, Total Victory! (LRI 2<sup>nd</sup> Ed. 1997)