

What Employers Can and Cannot Say About Unions

New York farm employees will have the right to organize in unions and collectively bargain under the [state's new farm labor law](#) that takes effect January 1, 2020. Farm employers need to understand that in an environment where employees may try to organize there are some special rules about what employers can and cannot say or do about unions. State and federal laws identify these activities as “unfair labor practices” and they may apply to employers, unions, or to employees. The [new law permitting farm employee unions](#) is a *state* law and will be administered by the [NY Public Employee Relations Board](#) (PERB). The new law has a clause in it that says: “It shall be an unfair labor practice for an agricultural employer to discourage union organization or to discourage an employee from participating in a union organizing drive, engaging in protected concerted activity, or otherwise exercising the rights guaranteed under this article.” It remains to be seen how strictly the state will interpret and enforce this clause.

Most unions are governed by a *federal* law called the [National Labor Relations Act](#) (NLRA). We won't know with certainty exactly how the state will administer the new state law until its been in place for a few years, but we can take some general guidance from how the federal law is administered. As always, this is general guidance for educational purposes, not specific legal advice. You should seek competent legal counsel if you have specific questions about union organizing activities and your management response to it.

Two acronyms, TIPS and FOE give employers general guidance about what they can and cannot say or do during a union organizing effort. Again, these are based on *federal* labor law.

T-I-P-S covers what employers cannot say or do:

- **T is for Threats.** Employers cannot threaten employees with consequences if they support or vote for the union. Employers can't discipline, terminate, reduce benefits, or take other adverse action against employees because they support a union.
- **I is for Interrogate.** Employers are not allowed to ask employees questions about the organizing effort, what they think about it, or

the names of employees who support the union or attend meetings.

- **P is for Promise.** Employers cannot promise pay increases, greater benefits, promotions or other valuable items in exchange for keeping the union out.
- **S is for Surveillance.** Using spies (whether employees or not), video cameras, or taking photos of people attending a union meeting are all banned as surveillance.
- Of course, farm employers have free speech rights under the [First Amendment to the U.S. Constitution](#). **F-O-E** outlines the things that employers can say during a union organizing effort.
- **F is for Facts.** Employers can share factual information about the union organizing process and potential collective bargaining process, and other matters such as union dues. They can talk about real, verifiable facts about the financial condition of the business and the industry and implications for employee compensation and benefits. They can also talk about how relationships between management and employees will change if a business becomes a union environment.
- **is for Opinions.** Employers can make clear their own personal opinions about a union, whether supportive or against. If an employer expresses an opposing opinion, it is important that it not be delivered as a threat. If an employer says to employees during the organizing process: “I’m not in favor of a union and I do not think it is the best thing for our business,” this may or may not be an unfair labor practice, depending on the context and whether it could be received as a threat. If the employer adds to this statement, “but I will respect the law,” then it would most likely not be an unfair labor practice.
- **E is for Examples.** Employers are allowed to share specific examples such as actual union contracts that have been negotiated, news reports of other union activities, or examples of current results from managers and employees working together directly.

It is important to note that the NY state farm labor law specifically identified a few other unfair labor practices:

- Farm employees or unions are not allowed to strike or otherwise slow down farm work.
- Farm employers are not allowed to “lockout” or prevent employees from working as a result of a contract dispute.

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