

New York Farm Labor Union Organizing

Presented by:
Joshua H. Viau
Telephone: (404) 240-4269
Email: jviau@fisherphillips.com

New York Farm Laborers Fair Labor Practice Act

As part of the FLFLPA, the State Employment Relations Act was amended to permit farm laborers to:

- Right to Organize (join unions) & Bargain Collectively
- Covered employees includes all farm laborers, except relatives
 - Includes foreign workers (H-2A) and undocumented farm laborers
- Card – Check – No Secret Ballot Elections in most cases

New York Farm Laborers Fair Labor Practice Act

As part of the FLFLPA, the State Employment Relations Act was amended to permit farm laborers to:

- Protections for Concerted Protected Activity
 - Engaging in meetings, discussions, etc. for purposes of collective bargaining or mutual aid or protection.
 - Any activity, discussion, or meeting directed at improving terms and conditions of employment
- No strikes, work stoppages, or slowdowns – NOT protected
- Interest Arbitration
 - If an agreement cannot be reached through negotiations (40 days), an agreement will be settled by an arbitrator

Unionization

- Starts with Selection of Union.
- 2 possible tracks:
 - “Dues Deduction Authorization” instead of election – Union needs support from majority of employees (> 50%).
 - Election – Union needs support from at least 30% of employees.
- Also, PERB has discretion to call an election whenever it determines that “that there is a question or controversy concerning the representation of employees.”



Collection of Dues Deduction Authorizations

- This is the “organizing drive”
- Unlike federal law
 - No time limit
 - No secret ballot
- Distribution of Dues Deduction Authorizations



What is a Dues Deduction Authorization?

Example:

DUES DEDUCTION AUTHORIZATION

I hereby authorize and direct _____
_____ to deduct from my pay an amount equal to the dues and initiation fees in the amounts fixed in accordance with the Bylaws of Local Union _____ and the Constitution of the International Brotherhood of Electrical Workers and to pay same to said Local Union in accordance with the terms of the bargaining agreement between the Employer and the Union.

This authorization is voluntarily made in order to pay my fair share of the Union's cost of representing me for the purposes of collective bargaining, and this authorization is not conditioned on my present or future membership in the Union.

This authorization shall be irrevocable for a period of one year from the date hereof or until the termination date of said agreement, whichever occurs sooner, without regard to whether I am a member of the Union during that period, and I agree that this authorization shall be automatically renewed and irrevocable for successive periods of one year unless revoked by written notice to you and the Union within the ten (10) day period prior to the anniversary of this authorization. I understand that under current law the payments covered by this authorization are not deductible as charitable contributions for federal income tax purposes.

Name (printed) Signature

Date Dept.....

WHAT EARLY WARNING SIGNS DO SUPERVISORS NEED TO KNOW ABOUT?

The Obvious:

- Pro-union literature
- Union t-shirts, stickers, buttons, etc.
- Authorization cards
- Presence of strangers
- Home visits by organizers
- Anti-company literature



WHY DO EMPLOYEES TURN TO UNIONS?

From our experience with migrant/H-2A workers on NY farms, they simply do not know what they are signing up for. Unions have at least created the impression of false promises and coercion.

Other reasons why employees may turn to unions:

- Pay is rarely a central issue
- Failure to solve employee problems
- Poor communications (up and down)
- Perception of unfair treatment (favoritism and inconsistency)
- Broken promises



What are my “wrongs”?

- Prohibited Unfair Labor Practices
 - Discourage union organizing
 - Discourage employee participation in an organizing drive
 - Discourage engaging in protected concerted activity
 - Discourage exercising rights under the law
 - Refused to bargain
 - Lockout
 - Refuse to continue terms of expired agreement until new agreement is negotiated

WRONGS

Avoid ULPs

- **You must avoid “TIPS”: Threats, Interrogations, Promises, Surveillance**
 - Employer should not **threaten** consequences from forming a union
 - Employer should not **interrogate** employees on their opinions or involvement with a union
 - Employer should not **promise** rewards for rejecting or opposing union
 - Employer can't engage in **surveillance** of union activity
 - No black-listing

WRONGS

Avoid ULPs

- Other potential ULPs
 - Refusals to bargain
 - Refusing to discuss grievances with representatives
 - Retaliating against employees for participating in the process
 - Refusing to continue terms of an expired contract until a new one is negotiated

Right of Free Speech

Remember the “FOE” – Facts, Opinions, Experiences

- Employer can share facts like “once you vote to become part of a union, we will not longer be able to talk about things like wages and other employment issues – that will all be negotiated by the union.”
- Employer can explain that once a union is established, everyone has to pay union dues. Worker’s don’t have to join the union, but all workers must pay union dues. If they refuse, they will have to leave.
- Supervisors need to be trained in “TIPS” and what they can and cannot say because employers will be responsible for what they say and do as well.

Property Rights

Can you ban Union Organizers from visiting farm laborers at the labor camp / employer provided housing?

- It could be considered an unfair labor practice (ULP) if visiting the labor camp is the only reasonable form of access to the workers – no “other available channels”.
- You can be charged with a ULP even in the absence of a union or organizing activity.
- If the organizers are not invited by any resident worker and they come to worker housing anyway, you may be able to tell them to leave.
 - PERB has not ruled on this issue, and the FLFLPA does not expressly grant unions the right to enter worker housing.
 - Kicking organizers off your property could be allowed, but it’s a risk.

STEPS YOU SHOULD TAKE NOW

- Assess how your workers would vote – NO INTERROGATION
- Do your employees trust and respect the supervisor?
- Educate the workers on what it means to sign a union card
- Train your supervisors on TIPS
- Train your supervisors that unions are elected when employees don't trust
- Train your supervisors not to use fear / intimidation
- Owners should be present and look for opportunities to interact now – once a union is there it's too late

If you get a letter (petition) from PERB, it may be too late – be proactive!

PERB typically will not send anything to the employer/the farm until the Union has submitted a petition.

- This petition will be the first notice and letter from PERB
- By submitting a petition, the Union is representing that it has obtained signed cards from over 50% of its proposed bargaining unit (the workforce, e.g., “all agricultural employees”) OR over 30% (but then there is an election)
- Unions work behind the scenes—often without the farm’s knowledge—to recruit workers.
 - In recent cases, UFW actually got workers to sign cards at the border during the immigration process.

Immediate Action Items if you get a Petition

- Know your response deadline: **8 calendar days** from the day you receive the Petition in the mail, unless the Notice says otherwise, or unless PERB agrees to an extension.
 - Missing this deadline can result in all allegations in the Petition being “deemed to be true” and preclude you from contesting the proposed unit.
- Obtain counsel: Although you can choose to handle responding yourself, you may miss the opportunity to preserve key legal arguments.
 - The union will likely be represented by sophisticated counsel.
 - Having an attorney on your side to navigate the complex PERB rules will help you comply with the law while advancing all applicable good faith defenses and arguments – to avoid getting blindsided by the union.

More Post-Petition Action Items

- Gather documents: The Notice will explain what PERB expects in your initial response, including:
 - Employee list
 - Under the February 15 Amendments, failure to timely provide the required employee lists shall preclude an employer from contesting the appropriateness of the proposed unit.
 - Your H-2A work contracts, or any other applicable work contract that you may have with any workers in the proposed bargaining unit
 - Response brief / Statement of position
 - Offer of proof
 - Any other evidence—affidavits, signed statements from workers, etc.
 - But be careful to comply with the law to avoid an Unfair Labor Charge.
 - Consult an attorney before attempting to speak to workers about unionization

WHAT IS THE MOST IMPORTANT THING TO REMEMBER FROM TODAY?

The simplest way to maintain your union-free status is to consistently practice **positive employee relations** and **educate your workers before union organizers speak to them.**







Joshua H. Viau

Partner

jviau@fisherphillips.com

404.240.4269



Disclaimer

This presentation is for educational purposes only. Statements of the presenter do not represent opinions or advice of any organization that sponsors or promotes this educational presentation.

This presentation should not be considered legal advice, or substitute for legal counsel. Participants are advised to speak with experienced counsel about their own practices and procedures, or the specific facts of a case or controversy.