

Cornell Cooperative Extension
Lake Ontario Fruit Program



Talking to Your Employees About Unions: The Dos and Don'ts

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A photograph of a red tractor with a trailer in a vineyard. The tractor is red with a white canopy. A person is sitting in the driver's seat, and another person is standing on the back of the tractor. The tractor is pulling a trailer with a white seat on it. The vineyard has many rows of grapevines supported by metal stakes. The background is a dense forest of tall trees under a blue sky with some clouds.

T-I-P-S

- What employers (including your supervisors) cannot say or do.
- But, don't let this stop you from talking with your employees. You should be sharing your opinions with employees.

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.



Before speaking with workers, define your *union philosophy* –a clear, concise statement that describes your position about unions on your farm.

Employer's Goals

- Keep labor costs low
- Protect profits
- Autonomy
- Restrictions on hiring
- Tension
- Shifting employer-employee relationships

Employee's Goals

- Maximize earnings
- Safe & healthy working and living environment
- Sense of belonging
- Being treated fairly and honestly
- Respect

F-O-E covers what employers (including supervisors) *can* say and do under SERA

F stands for FACTS – Using facts to make your case for/against unionization.

- Facts are known or can be proven to be true
 - “Union dues are a fee deducted from members’ earnings. For example, the United Farm Workers (UFW) collects 3% of members’ wages in dues.”¹
 - “Dues pay for some services that don’t benefit you directly. For example, dues are used to pay union leader’s salaries, for legislative lobbying, legal services, new organizing, contributions to political campaigns, advertising, administrative costs, and strike funds.”²
 - “Unions make promises but can’t guarantee anything. The terms and conditions of employment are negotiated with employers in a collective bargaining agreement.”
 - “A union’s health care and pension plans are only as sound as its finances. For example, the USDOL has declared that the UFW’s pension is in ‘critical status’” (underfunded).³

F-O-E covers what employers (including supervisors) *can* say and do under SERA

O stands for OPINIONS – employers and supervisors can share their opinions about unions and union membership.

- “Being unionized will make it hard to resolve problems and disagreements quickly and easily.”
- “Being unionized can create tension on the farm. We want everyone to feel like they belong and work together, and a union may get in the way of that.”

E stands for EXPERIENCES – employers and supervisors can describe experiences with unions.

- “Unionized farmworkers don’t always have good experiences. For example, in 2021 two agricultural businesses in California decertified (fired) the UFW.”⁴

References

1. Rural Migration News (2019) “UFW and FLOC: Income and members.” Rural Migration News, retrieved from <https://migration.ucdavis.edu/rmn/blog/post/?id=2369>.
2. McRobert, Megan (2021) “Union dues explained.” Unit, retrieved from <https://guide.unitworkers.com/union-dues-explained/#:~:text=Megan%20McRobert,let's%20break%20down%20the%20basics>.
3. Kasler, Dale (2021) “The pandemic delivered humbling defeat for California’s struggling farmworker union.” The Sacramento Bee, retrieved from <https://www.sacbee.com/news/california/article250507059.html>.
4. Kasler, Dale (2021) “The pandemic delivered humbling defeat for California’s struggling farmworker union.” The Sacramento Bee, retrieved from <https://www.sacbee.com/news/california/article250507059.html>.

Additional facts about farm unions and unionizing are available in previously published LOFP articles- if you’d like these republished, please ask!

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
- 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

New York Farm Laborers Fair Labor Practice Act

Violating these rights can result in a union or an individual employee filing an “Unfair Labor Practice” charge or “ULP”:

- One way to get a ULP is to say or do things that unlawfully interfere with employee free choice – remember TIPs and FOE.
- Other ULPs:
 - Failure to bargain in good faith
 - Failure to respond to union information requests
 - Discrimination / retaliation based on union affiliation or other protected concerted activity
 - Access rules

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.



What Happens if You Get a ULP?

- PERB will investigate:
 - Written response from employer
 - Phone conference
 - Hearing
- Outcome:
 - Dismissal
 - Violation

What Happens if You Get a ULP?

- Consequence of a violation?
 - Dismissal, but if not ...
 - Awarding of backpay to displaced workers
 - Reinstatement (with or without backpay)
 - “Such order may further require such person to make reports from time to time showing the extent to which the order has been complied with.”

Thank you!

Questions?