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2020 Becker Forum: Ag Labor: Times of Change

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Union Organizing and Collective Bargaining under New York's FLFLPA



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Authorization

- Farm workers are eligible to form unions in New York under:
 - The FLFLPA which took effect 1/1/2020, and
 - New York Appellate Court Division's decision in Hernandez v. State of New York & New York Farm Bureau
- This includes all "farm laborers," except the parent, spouse, child, or other member of the employer's immediate family.
- All "agricultural employers" including,
 - any employer engaged in cultivating the soil or in raising or harvesting any agricultural or horticultural commodity including custom harvesting operators, and
 - employers engaged in the business of crops, livestock and livestock products as defined in section 301 of the agriculture and markets law, or other similar agricultural enterprises. § 701(2) (b).

Change?



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Administration



- The NYS Department of Labor does not have regulatory authority over unions and collective bargaining.
- NY Public Employee Relations Board (PERB), <https://www.perb.ny.gov/> or (518) 457-6410
- A 3-person board, appointed by Governor and confirmed by the Senate.
- Responsibilities include: administering the laws, issuing rulings, providing qualified arbitrators, resolving impasses.
- PERB provides extensive mediation services to resolve conflicts. Even to resolve such early issues as union organizer access to employees.



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Rights Extended to Farm Laborers

Following bullets are quoted directly from PERB:

- The right of self-organization, to form, join, or assist labor organizations,
- To bargain collectively through representatives of their own choosing,
- To engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection, free from interference, restraint, or coercion of employers.
- These rights do not prohibit employees from exercising the right to confer with their employer at any time, as long as the employer does not, during such conferring, attempt, directly or indirectly, to interfere with, restrain or coerce employees in the exercise of the rights. [§ 703]
- Recognizing the unique issues confronting farmers, the FLFLPA forbids strikes, or other concerted slowdowns or stoppages of work by employees. (§ 703).



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Union Certification under FLFLPA

- If only one organization is attempting to organize a workplace, then the choice of employees can come from **dues deduction authorization cards**. The union will be certified without an election based on a majority of employees signing dues cards.
- If two organizations are seeking to organize a workplace then the authorization will still be based on which one gets a majority of signed cards, or other measures possibly including an election, if PERB decides it is necessary.
- The PERB Board has the power to immediately certify a union if it finds that an employer was using unfair labor practices.



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Example "Dues Deduction Authorization Card"

American Federation of State, County and Municipal Employees			PLEASE PRINT LEGIBLY.		
Membership and Authorization for Dues Deduction			Local Number _____		
I hereby apply for membership in Council 4 (hereafter "Union") and I agree to abide by its Constitution and Bylaws. I authorize the Union and its successor or assign to act as my exclusive bargaining representative for purposes of collective bargaining with respect to wages, hours and other terms and conditions of employment with my Employer.			Last Name _____ First Name _____ M.I. _____		
Effective immediately, I hereby voluntarily authorize and direct my Employer to deduct from my pay each pay period, regardless of whether I am or remain a member of the Union, the amount of dues certified by the Union, and as they may be adjusted periodically by the Union, and to authorize my Employer to remit such amount monthly to the Union.			Street Address _____ Apt. No. _____		
This voluntary authorization and assignment shall remain in effect in accordance with the applicable collective-bargaining agreement. If the applicable collective-bargaining agreement does not address revocation, then this voluntary authorization and assignment shall be irrevocable, regardless of whether I am or remain a member of the Union, for a period of one year from the date of execution or until the termination date of the collective bargaining agreement (if there is one) between the Employer and the Union, whichever occurs sooner, and for year to year thereafter unless I give the Employer and the Union written notice of revocation not less than ten (10) days before and not more than twenty (20) days after the end of any yearly period. The applicable collective bargaining agreement is available for review, upon request. This card supersedes any prior check-off authorization card I signed. I recognize that my authorization of dues deductions, and the continuation of such authorization from one year to the next, is voluntary and not a condition of my employment.			City _____ State _____ ZIP Code _____		
Payments to the Union are not deductible as charitable donations for federal income tax purposes. However, they may be tax deductible as ordinary and necessary business expenses.			Personal e-mail _____ XXX-XX-SSN Last 4 digits _____		
Notice: In order to comply with Internal Revenue Service rulings, be advised that your membership dues are not deductible for federal income tax purpose.			Department _____ Telephone No. _____		
Contribution Form			Signature _____ Effective Date _____		
AFSCME PEOPLE Become a PEOPLE MVP for \$8.35/ month (\$100 annually)			AFSCME PEOPLE		

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Unfair Labor Practices (ULPs)

- State and federal laws identify certain activities as “unfair labor practices” and they may apply to employers, unions, or to employees.
- ULP’s specific to the FLFLPA:
 - Employers may not:
 - Lockout workers as a result of a dispute.
 - Refuse to continue an expired agreement until new one is in place.
 - Discourage union organization.
 - Farm employees or unions may not strike or otherwise stop or slowdown farm work.



T-I-P-S Covers What Employers (Including Supervisors) Cannot Say Or Do Under the Federal NLRA

- 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.

Employers Have Free Speech

- [First Amendment to the U.S. Constitution](#)

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.”

F-O-E Outlines What Employers (Including Supervisors) 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.
- O 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.

Other Employer ULP's

- No Blacklist
- No domination/interference
- No interfering with employee choice of union
- No guiding or discouraging employee choice
- No refusal to bargain in good faith
- No refusing to discuss grievances
- No discharge or discrimination



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Access to Employees

- Union organizers have the right to communicate with employees.
 - Not a problem when employee live off-farm, but it becomes an access issue when employees live on-farm.
- Farms need to control outside visitors to the farm for: security, safety, biosecurity, animal welfare, and operational efficiency.
- Consider adopting a farm visitation and employee solicitation policy. In some cases the farm may designate a location and time for union organizers to meet with employees.
- Employees have the right to invite who they wish to their homes, but the rights of others to not have visitors must also be respected.



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Bargaining Timelines

- No Strike Rule, prohibits any strike or other concerted stoppage of work or slowdown by farm laborers
- 40 Day Rule – Bargaining
 - "An impasse may be deemed to exist if the parties fail to achieve agreement by the end of a forty-day period from the date of certification or recognition of an employee organization or from the expiration date of a collective bargaining agreement."
- 30 Day Rule – Mediation
 - Voluntary resolution by the Board
 - Petition for Arbitration
- 10 Day Rule – Arbitration Appointment
 - Hearings, evidence and testimony



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PERB Activities

- The PERB Board has legal authority. Resisting or impeding PERB can have legal consequences including fines and imprisonment.
- **Mediation.** The board appoints a mediator to help the parties resolve disputes and reach a mutual agreement. Can be used at any point.
- **Arbitration.** Board work with the employer and union to select a neutral arbitrator. The arbitrator reviews each sides' facts, evidence, and witnesses, then decides, with written justification, how the matter will be resolved. Decision is binding for up to 2 years.



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