

## Is Your Craft Brewery Ready for the Golden Age of Union Organizing?

Jon Hyman

Wickens Herzer Panza

[ohiobeerlawyers.com](http://ohiobeerlawyers.com)

“Among the many lessons we will learn from the COVID-19 pandemic is its demonstration of the importance of union membership for essential workers. Of all the injustices exposed by the pandemic, the risks faced by non-union workers have become the most apparent. Non-union workers are being asked to risk their safety with little or no protections of their own.” Gary Perinar (executive secretary-treasurer of the Chicago Regional Council of Carpenters), *The importance of unions is more obvious than ever during the COVID-19 pandemic*, Chicago Sun-Times, Apr. 30, 2020.

One of the unexpected byproducts of the COVID-19 pandemic is a corresponding rise in union organizing. According to report of the White House Task Force on Worker Organization and Empowerment, 52% of non-union workers say that they would vote for a union if an election were held today. In and of itself, this majority support should scare any employer.

Unions are using the Covid-19 crisis to magnify attention on key agenda items and talking points such as worker safety, higher pay, and paid time off benefits. Moreover, unions have not been shy about pressing these issues not only for current members but also more importantly for potential members. For example, as recently as this past summer, production employees at Great Lakes Brewing Company, Ohio's oldest and largest craft brewery, signed union cards to be represented by the United Steelworkers. If successful, it would become the first unionized craft brewery in the state and the largest craft brewery union in the country.

Indeed, according to Richard Berman, the founder of the Center for Union Facts, this union activity is part of a much larger trend:

- This is the first time since the early 1980s where he senses significant interest by employees in “collective action” and “3rd party representation”.
- Gallup polling in 2019 shows the 18-34 demographic has a 69% approval of unions. In 2017, 76% of those joining unions were younger than 35.
- Employees who feel they will be exposed to co-workers or customers who have the virus are communicating on Facebook and other platforms about their jointly held

concerns. Union organizers have access to these conversations and are making themselves available to help.

- Most current HR professionals have *zero* history in dealing with a partial workforce rebellion. This will most likely happen in individual companies, or it could be a *wider industry movement* in a city or region.

That last point might be the one most important to your business. “Most current HR professionals have no history in dealing with a partial workforce rebellion.” If Great Lakes is emblematic of a growing trend without our industry (and the safest course of action is to assume that it is, as unions typically focus their attention on employers within a particular industry), then your brewery, right now, must be preparing itself in the event a union is talking to your employees.

The best defense is a good offense. I recommend that breweries adopt the T.E.A.M. approach to union avoidance:

Train supervisors  
Educate employees  
Affirm the open door  
Modernize policies

1. Train supervisors. If a union is organizing, supervisors are likely to be the first people to know. They will also be the people that rank-and-file employees will come to with questions or concerns. Thus, supervisors need to know how to report, monitor, and *legally* respond to union activity.

2. Educate employees. Employees should not be told that the company is anti-union, but why it is anti-union – competitive wages and benefits; a strong commitment to worker safety and health; positive communication between management and employees; a history of peaceful employee/management relations; management’s openness to listen to employees and handle their concerns without an intermediary; and an unwillingness to permit a third-party to tell the company and employees how to do their jobs. Of course, if this is just lip service, you might as well not say it at all. Of course, this all must be communicated legally, meaning that you cannot: (i) threaten employees about what could happen if a union comes in, (ii) interrogate, poll, or question employees about their support of a union; (iii) promise employees you will make things better for them if you stay union-free; or (iv) spy on or surveil employees to determine who might support unionization.

3. Affirm the open door. Management should routinely round its employees to learn what is happening within the rank-and-file and what they are thinking about. Management should walk the floor daily. It should also hold regular meetings with employees, whether in small sessions with HR or large town hall-style meetings. And management's door should always be open to listen to employees' concerns, offer feedback, and adopt positive change when feasible and practical.

4. Modernize policies. In an ideal world, employee handbooks and other corporate policies should be reviewed and updated annually. I've yet to come across a company that does so this frequently. Issues to consider and review? Do you have a written statement on unionization? An open-door policy? An issue resolution procedure? Peer review? An employee bulletin board? An electronic communications policy? Most importantly, do you have a no-solicitation policy? It is the single most important policy to help fight labor unions.

No avoidance program is foolproof. No matter what steps are taken and no matter the quality of employee relations, every company is at some risk for a union organizing campaign. Some, however, are more at risk than others, and it appears that unions are targeting our industry. All businesses should strive to be an employer of choice for employees and not an employer of opportunity for labor unions. The steps you take before the representation petition ever arrives will help define whether you remain a non-union employer after the union arrives.