



User Guide: Employee Organizations and Representation Activities

Introduction

The Public Employment Relations Act (PERA) guarantees public employees the right to organize and bargain collectively through “representatives of their own choosing.” As part of the process for selecting a representative, employee organizations and their supporters frequently seek to communicate with employees. This may take the form of speaking with employees about their organizations or unionization in general (“solicitation”), or handing out literature on these topics (“distribution”). These activities often occur in or around the workplace.

Policy

It is the State’s policy not to interfere with the rights of employees to organize and bargain collectively through representatives of their own choosing. This policy is embodied in Executive Order 10, which provides that:

- Managers and supervisors shall not interfere or otherwise hinder state employee efforts to exercise their right to organize for purposes of collective bargaining
- The State shall maintain a neutral position as to whether employees become involved in an organizing campaign
- Managers and supervisors shall not express any view, argument, or opinion on employee organization or collective bargaining except to inform employees of the requirements of this Executive Order relating to labor management relations and representation

The State also recognizes that communications between employees and their representatives are crucial to employees' ability to exercise their rights. Subject to the terms of the Public Employment Relations Act, Executive Branch state agencies shall authorize access to union representatives for such communications in non-work areas, such as employee break rooms, lunch rooms and other areas that foster communications, for which access does not compromise security, confidentiality, or privacy, or otherwise interfere with operations.

Regulation

It is important to remember that these rights are balanced against the State's responsibility to maintain efficient and uninterrupted operations, and ensure that necessary services are provided to citizens in a timely fashion. The PERA attempts to strike an appropriate balance between these interests by providing that it is an "unfair labor practice for a public employee or for an employee organization or its designated representative" to:

Distribute organizational literature or otherwise solicit public employees during working hours in areas where the actual work of public employees is being performed in such a way as to hinder or interfere with the operation of the public employer. This paragraph shall not be construed to prohibit the distribution of literature during the employee's meal period or duty-free periods or in such areas not specifically devoted to the performance of the employee's official duties.

Agencies are therefore reminded that "solicitation" and "distribution" in the context of union representation activities—as in any other context—are subject to reasonable rules and regulations. Agencies should also ensure that their practices on providing access to facilities are consistently applied.

Questions

The following information is designed to provide general guidance on these issues. Not every situation or example that might arise can be addressed. Thus, you are encouraged to contact OMB/HRM's Labor Relations and Employment Practices section at (302) 577-8977 with any questions on this.

Terminology

Solicitation: "solicitation" in the labor relations' context describes verbal communications by labor organizations and their supporters used to disseminate information to, or obtain support from, employees. It can also apply to the distribution of membership or dues authorization cards, or similar printed material that measures a labor organization's support among the workforce. Solicitation does not include the distribution or posting of flyers, brochures, handbills, etc.

Distribution: "distribution" involves the dissemination of written material (flyers, letters, brochures, handbills, etc.) that advances the representation interests of labor organizations and their supporters. This includes descriptions of the labor organizations, along with their beliefs, principles, objectives, activities, leadership, and similar matters.

Non-Work Areas: locations where work activities are not normally performed such as cafeterias, break areas, sidewalks and parking lots.

Work Areas: locations where work activities are normally conducted or where employees perform their duties.

Non-Working Time: this is time before and after employees are scheduled to work, or any meal periods or breaks in which employees are relieved from performing assigned tasks.

Working Time: this is time during which employees are scheduled to work. It does not include meal periods or break times.

Guidance

Solicitation and Distribution

The distribution of literature and solicitation of employees during working hours in violation of the Public Employment Relations Act is strictly prohibited. Such activity is permitted in non-work areas, during non-work hours when the activity does not otherwise interfere with or hinder operations. Examples of how this activity may interfere with operations include: (1) undermining the privacy of patients, clients, residents, etc.; (2) compromising the public's ability to receive services; (3) obstructing the entrance or exit from work locations; (4) violating an agency's security and/or safety policies or procedures; or (5) being inconsistent with state or federal law.

Equipment, Materials, etc.

The State's mail, messenger, reproduction, email, telephone, and similar means of technology and communication shall not be used for solicitation or distribution, or any related representation activities.

Bulletin Boards

Employee organizations that are currently certified as exclusive bargaining representatives may have provisions in their collective bargaining agreements permitting the posting of material on workplace bulletin boards. These provisions typically restrict the material to informational matters, and prohibit the posting of campaign material, or anything that is critical of any individual or detrimental to the labor/management relationship. These contractual provisions will continue to be enforced.

Use of State Facilities

All requests to use State facilities (e.g., meeting or conference rooms, break areas, and similar locations) for any representation activities shall be reviewed in the context of existing laws, regulations and policies, and considered on the basis of whether granting the requests would interfere with or hinder operations, undermine the privacy of patients, clients, residents, etc., compromise the public's ability to receive services, or violate an agency's security and/or safety policies or procedures. All such requests must be submitted for approval to OMB/HRM's Labor Relations and Employment Practices section. If you receive such a request, please contact this Office immediately.

Conclusion

As noted above, these procedures provide general guidance on issues that may arise in connection with representation issues. For more specific information, or guidance on any particular situations that arise, please contact OMB/HRM's Labor Relations and Employment Practices section at (302) 577-8977.