

Maintaining Neutrality

Partnership Office
(UnionQueries@tsa.dhs.gov)

December 2009

Purpose

- This presentation provides managers and supervisors with basic awareness about maintaining neutrality regarding any union organizing activities at TSA.

Topics Covered

- Neutrality: What it is and Why it's Important
- Protected Activities Employees can Engage in
- How to Maintain Neutrality

Neutrality: What is it?

- Neutrality means doing nothing through words or actions that could be **interpreted** as supporting, favoring, or opposing:
 - a particular union
 - unionization and collective bargaining rights
 - employees who engage in protected activities related to unionization

Why is Neutrality Important?

- Managers and supervisors in federal agencies are required to be neutral during union organizing and union election campaigns.
- In the event that a union election is held, manager or supervisor actions **perceived** as endorsing or opposing unionization or one union over another could be grounds for setting the election results aside and requiring a new election.

Neutrality: Critical Element

APPEARANCE and PERCEPTION are KEY

- An action can be considered to violate neutrality even if it is not intended to endorse or oppose unions or unionization. Be aware of how your statements or actions might be perceived and when in doubt, **ASK.**

Union Organizing and Union Activities are Protected Activities

- Employees may engage in union-related activities.
- Employees engage in union activities when they:
 - discuss unions and unionization
 - participate in union organizing or other activities
 - show support or opposition to unionization or one union over another
 - serve as a union official

When Can't Employees Engage in Union Activities?

- Employees do not have the right to engage in union activities when:
 - they are on duty (except for breaks); or
 - they are off-duty but are talking to employees who are on-duty and working

How Can Managers and Supervisors Maintain Neutrality?

- The **TRIPS** test for maintaining neutrality says that supervisors and managers cannot engage in:

Threats

Retaliation

Interrogation

Promises

Surveillance

Threats

Managers and supervisors cannot make remarks that directly or indirectly threaten an employee with loss of any benefit such as promotion or leave approval, or threaten to take action against an employee engaging in protected activities.

What a Threat Could Sound Like

- “Anyone attending a union meeting can forget doing a detail in the payroll office.”
- “If you have a union, we will bid every shift by seniority and you will lose the flexibility you currently have on shift swaps.”
- “Let me give you some friendly advice. If you keep making waves like that, you’ll never get anywhere in this organization.”

NOTE: Examples are not meant to be exhaustive or authoritative but rather to illustrate what is meant by the topic of the slide.

Retaliation

- Retaliation is harassment, negative behavior towards, or negative consequences for an employee who has engaged in union activity.
- This **does not** mean that employees cannot be disciplined for conduct which violates TSA rules or policy.
- It **does** mean that all TSOs should be treated fairly and consistent with national policy and local practice, without regard to whether or not they are union supporters.

What Retaliation Could Look Like

- Not including an individual in an informal pier briefing because he's a strong union supporter and always challenges management decisions
- Denying a leave request for a TSO because she persuaded another TSO to file a grievance and seek union representation.

NOTE: Examples are not meant to be exhaustive or authoritative but rather to illustrate what is meant by the topic of the slide.

I Interrogation

- Managers and supervisors cannot ask employees about union sympathies or union activities.
- If an employee chooses to share, *unprompted*, union-related information with a supervisor, the supervisor can listen (but cannot share his/her perspective).
- These rules apply even when the managers, supervisors or TSOs are off-duty.

What Interrogation Could Look Like

- An STSO asks an employee in casual conversation what was discussed in a union meeting the day before.
- A TSM asks an employee how he intends to vote if there were a union election.

NOTE: Examples are not meant to be exhaustive or authoritative but rather to illustrate what is meant by the topic of the slide.

Promises

- Managers and supervisors cannot:
 - make promises to employees directly or indirectly suggesting that they will receive something if they vote against the union, speak against unionization, or participate in union activities
 - favor employees who are not engaging in protected activities over those who are, or vice versa
 - promise or make predictions about what will or won't happen if there is a union representing employees

What a Promise Could Sound Like

- “If a union loses, all TSOs will get a raise.”
- “If a union wins, all TSOs will get a raise.”
- “If you elect a union, all the part-timers will lose their health insurance.”
- “Peer Review will no longer exist if we have a union.”

NOTE: Examples are not meant to be exhaustive or authoritative but rather to illustrate what is meant by the topic of the slide.

Surveillance

- Surveillance is:
 - monitoring employees' engagement in union activities
 - asking employees to monitor and report on other's engagement in union activities.

What Surveillance Could Look Like

- A TSM follows a TSO who is a union supporter to see where she goes after work.
- A DAFSD positions himself near a table set up by a union in order to see which employees stop by during their break.
- An STSO casually asks an LTSO which TSOs went to the pizza lunch provided by the union in the airport conference room.

NOTE: Examples are not meant to be exhaustive or authoritative but rather to illustrate what is meant by the topic of the slide.

What Managers and Supervisors MUST Do

Be neutral.

- In your words and actions – whether on- or off-duty – maintain neutrality.
- Do not express your personal opinion to employees regarding unions – even if it is requested.

What Managers and Supervisors MUST Do

Be fair and consistent.

- Make sure that your actions are consistent with policy and local practice.
- Treat competing unions even handedly.

What Managers and Supervisors MUST Do

Be fair and consistent.

- Don't treat employees differently because of their stance on unionization.
 - Manage and supervise all employees in the same manner whether they engage in union activities or not.
 - Manage and supervise union supporters and union representatives the same without regard to which union they support.

What Managers and Supervisors SHOULD do

Ask.

- When in doubt, check with the chain of supervision or colleagues in local management, local counsel, Employee Relations, or TSA's Partnership Office (UnionQueries@tsa.dhs.gov).

Summary

- Both actions and appearance are critical.
- Neutrality means doing nothing through words or actions that could be interpreted as supporting, favoring or opposing a particular union, unionization, or employees engaged in protected activities.
- Employees may engage in union-related activities.

Summary (con't)

- For prohibited behaviors, remember the acronym **TRIPS** (**T**hreats, **R**etaliation, **I**nterrogation, **P**romises, **S**urveillance)
- **BE CONSISTENT** in your treatment of employees whether they engage in protected activities or not.
- When in doubt, **ASK**.