Sample language to use, avoid in union-related discussions

Use this tool to better understand what a private duty employer can and cannot say to employees regarding unions.

Employers are given broad free speech rights under the law to express their views or opinions regarding the union and unionization in general. The law does not prevent private duty employers from informing their employees of the reasons why a union is not desirable and not necessary. Agencies may provide factual statements or opinions to employees.

Examples of permissible statements include:

- Offering factual information regarding the union and union officials, such as the high price of union salaries, union dues, fees, fines, and assessments;
- Offering personal opinions about the union and its policies, processes and officials provided the statements are not threatening or coercive;
- Pointing out that unions work under bylaws that allow members to be fined if they violate the union’s rules, such as “slandering a union official or another union member;”
- Reminding employees that where there are unions, there can be strikes, and in most states striking employees are not entitled to unemployment compensation benefits;
- Telling employees that, if they engage in an economic strike, they may be permanently replaced and will be reinstated only if an opening occurs;
- Offering factual comparisons between the company and other companies that have been unionized, including pointing to strikes in other businesses;
- Explaining to employees that, if a union is voted in, there is no guarantee an agreement will be reached because law only requires that the employer negotiate in good faith with the union, but does not require that the employer agree to a single demand or to make a single concession;
- Explain the disadvantages of union membership, including those which are financial (dues, fees and assessments) and job-related (loss of work from strikes or picket lines).
- Telling employees that they may be required to picket other employers, even when they are not on strike;
- Telling employees that a union can always make promises, but the union cannot guarantee anything;
- Urging employees to vote against the union and suggesting that they encourage others to do the same; and,
- Discussing the employer’s prior history of paying good wages, offering generous benefits, and providing excellent and safe working conditions to employees without needing a union to tell it to do so.

Source: Joseph Maddaloni, Jr., Partner with Schenk, Price, Smith & King, LLP in Florham Park, N.J.
Regarding the legislation in California and Massachusetts, employers would have similar free speech rights. Agencies can provide employees factual information regarding the legislation (i.e., that legislation that allows their private contact information to be supplied to the union to enable the union to contact them for organizing purposes has been passed and vetoed in California and has been passed in Massachusetts). Employers can also inform employees of their rights regarding the legislation, and their rights regarding contacts or visits by the union, which include the right to:

- Refuse to have their private contact information provided to the union (“Opt-out”);
- Refuse to talk to a union organizing agent over the telephone;
- Refuse to allow a union organizing agent into their home;
- Refuse to sign an Authorization Card supporting the union;
- Refuse to vote for a union even if they sign an Authorization Card.

Guidelines on what agencies should not do or say:

While private duty employers have the right to advocate against the union, they cannot make threats, promise benefits or improved working conditions, or make coercive statements to discourage employees from supporting or voting for a union. Employers also cannot conduct surveillance of employees or interrogate employees about support for the union. The acronym to remember is: “TIPS” (Threaten, Interrogate, Promise, and Surveillance). In order to avoid violating the law, employers should follow these general guidelines:

- Do not ask employees about their position on the union;
- Do not ask employees about another employee’s views concerning the union;
- Do not ask employees about the status of the union organizing efforts;
- Do not call employees or visit them at home to discuss the union;
- Do not tell employees that unionizing will be futile because they will not be given any further wages and benefits than what they already receive;
- Do not discipline, terminate, suspend or otherwise adversely treat employees because they are engaged union organizing activity or support a union;
- Do not promise wage increases or improved benefits if the union is defeated;
- Do not threaten to close the agency or eliminate positions if the union is voted-in;
- Do not spy on employees, photograph them or video tape or record employees who are meeting with union representatives;

Source: Joseph Maddaloni, Jr., Partner with Schenk, Price, Smith & King, LLP in Florham Park, N.J.