



SHOOK
HARDY & BACON

APRIL 2021

Labor and Employment Law in the Cannabis Industry – How to Navigate Unionization Part I

Stephanie McGraw
Ashley Harrison
Charlie Rosebrough

Shook, Hardy & Bacon L.L.P.

Labor and Employment Law in the Cannabis Industry – How to Navigate Unionization Part I

Stephanie McGraw
Ashley Harrison
Charlie Rosebrough

Shook, Hardy & Bacon L.L.P.

As the cannabis industry grows in market power and sophistication, unions are playing a larger role in labor-management relations. To keep up with the growing presence of unions, it is crucial that your management staff understand the boundaries of union interactions, union negotiations, and—most importantly—how to work effectively with a union.

What Role Do Unions Have in the Cannabis Industry?

In the cannabis world, the predominant union is the United Food and Commercial Workers International Union (UFCW). The UFCW represents cannabis employees in growing and cultivating facilities, manufacturing and processing facilities, laboratories, and dispensaries. The UFCW is an established union, representing grocery and packing employees since the 1970s.

The UFCW is not alone in the cannabis industry. More specialized unions exist, such as the United Cannabis Workers (UCW). These unions represent bargaining units or groups of employees with similar job responsibilities. These unions are third-party entities, which negotiate with management on all aspects of an employees' terms of employment.

How Should Management Interact with a Union?

It's critical your upper management understands labor relations to make sure your company is working with your employees and not against them.

First, in California, cannabis companies of a certain size must enter Labor Peace Agreements (LPAs) or "neutrality agreements," under which the company agrees to remain neutral to any employee efforts to unionize.

Second, once a workforce is unionized, the National Labor Relations Act (NLRA) requires that management and the union engage in a good faith

Reprinted from



effort to reach a contract (also called the duty to bargain). If the parties reach a deal, the contract is called the Collective Bargaining Agreement or CBA. The CBA can govern anything from break periods to pay to termination processes.

And third, once a CBA is in place, management must be knowledgeable about its terms. The CBA is a contract and any failure to abide by that contract will open your company to liability. Because the CBA typically contains terms relating to hiring, firing, and paying, strong upper management candidates will consult either the CBA or legal counsel before taking any action.

How Should Management Interact with Collective Bargaining from Non-Union Employees?

Strong management candidates know their way around collective bargaining, both inside and outside the union context. The NLRA protects “collective bargaining” for all employees, not just those in unions.

Collective bargaining includes most concerted activity regarding the terms and conditions of employment. Employees discussing their salary with each other, employees meeting to discuss unionizing, and employees sharing their thoughts

on possible strikes in an online setting can all be examples protected concerted activity.

Upper management should know the signs of collective bargaining and know when and where it can step in.

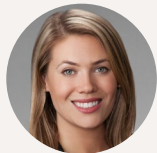
Effectively Working With or Beyond Unions

There are effective and ineffective ways to handle unionized labor. For effective examples, many look at Whole Foods and the approach it adopted to employees attempting to unionize. There, management adopted the belief that strong health benefits, fair wages, and employee representation in management decisions would do more to prevent unionization than bitter adversarial campaigns. This approach succeeded in preventing Whole Foods’ workforce from unionizing, and it also succeeded in making its employees feel valued and impactful.

Knowing how to handle union relations is difficult but vital. When hiring management, the savvy business will ensure it has executives and supervisors who are familiar with predominant unions, understand collective bargaining, and know the utility in working with labor. ●

AUTHORS

Shook, Hardy & Bacon L.L.P.



Stephanie McGraw

Partner
Houston
smcgraw@shb.com



Ashley Harrison

Partner
Kansas City
aharrison@shb.com



Charlie Rosebrough

Associate
Kansas City
crosebrough@shb.com

Shook, Hardy & Bacon Partner Stephanie McGraw represents clients in product liability and business litigation matters in the cannabis, and food, beverage and agribusiness industries, among other areas. Partner Ashley Harrison and Associate Charlie Rosebrough advocate for national companies facing employment and commercial litigation matters in the cannabis space, and food, beverage and agribusiness. For more information, go to www.shb.com.