

HOW TO READ AN ANTI-UNION WEBSITE

A GUIDE FOR FACULTY BY FACULTY
FROM PENN'S CHAPTER OF THE AMERICAN
ASSOCIATION OF UNIVERSITY PROFESSORS



Colleagues, have you seen that the Penn Provost's Office is running a union-busting campaign against our graduate students and trying to persuade faculty to repeat the administration's talking points? Anti-union communications often pose as neutral information. Here are our notes to help you read them. On the right you'll see the reproduced text of the Provost's "Guidance for Faculty" site, and in the notes on the left, our analysis.



Guidance for Faculty Related to Graduate Student Unionization

By framing faculty as management, the Provost is trying to make us see ourselves as extensions of the administration, which we are not. This is an idea that originated in anti-union campaigns in the 1970s and has been challenged ever since. It was notoriously used by Yeshiva University's administration to contest their faculty's union election by arguing to the NLRB that faculty were "managerial employees" ineligible for unionization. While the NLRB ruled against the administration, Yeshiva appealed all the way to the Supreme Court, which in 1980 stripped faculty at private universities of their rights to collective bargaining. Defining employees as managers is a common union-busting tactic that pits workers against each other. In the case of advising, moreover, faculty are not managers; advisors do not determine graduate workers' pay, for instance, or the number of semesters they teach.

This entire first section is legal liability protection for Penn's administration. It lists practices that are illegal under the National Labor Relations Act. The message to faculty is: "We told you not to do this! But read on for the anti-union things you CAN do..."

In the context of a graduate student unionization effort or campaign, deans, department chairs, graduate group chairs, and **faculty members who direct graduate students** are considered "supervisors" by the National Labor Relations Board (NLRB). Supervisors may freely express their views about graduate student unionization. However, the NLRB offers the acronym TIPS to indicate that supervisors may not:

- Make **threats** of harm to graduate students;
- **Interrogate** or question graduate students;
- Make **promises** of benefit to graduate students; or
- **Spy** on or place under surveillance graduate students or union meetings, or otherwise conduct themselves so as to give the impression that they are watching graduate students to find out about their union activities.

In addition, supervisors may not, per the NLRB:

1. Ask a graduate student to report on union activities;
2. Make changes in wages, hours, and working conditions, unless such changes are in accordance with customary practice;
3. Discipline a graduate student because of their union support or union-organizing activities. The

University may, however, enforce its rules impartially and in accordance with customary action, irrespective of a graduate student's union membership or activity. Discipline is appropriate as long as such action follows customary practice and is done without regard to union membership or activity. Such action should not normally be taken, however, without checking in advance with the appropriate graduate group chair and/or associate dean.

This section contains standard talking points that have been part of anti-union campaigns in the U.S. since the '70s, crafted by anti-union law firms and consulting companies. Penn currently uses the law firm Cozen O'Connor in its campaign against resident advisors who work in the dorms. The administration is priming faculty to repeat these talking points to advisees—instrumentalizing our advising relationships to make us conduits for anti-union messaging.

Per the NLRB, it is permissible for supervisors to:

1. Emphasize the importance of voting if an election is held and point out that the matter will be decided by a majority of those who actually vote;
2. State their position on union representation;
3. State the reasons why they have taken such a position so long as those reasons are not threats or promises;
4. Point out the importance of the union representation issue;
5. Discuss the financial obligations, such as dues, which graduate students would have to assume if they were represented by a union and had to become members;
6. Tell graduate students the facts about any experience they may have had with unions;
7. Tell graduate students that, in collective bargaining, neither side is required to agree to what the other side wants, although the parties must bargain in good faith;

Warning workers about union dues is a common anti-union tactic designed to imply that they may be worse off if they unionize. There are good reasons to reject this argument. First, workers do not pay dues until they vote to ratify their first contract, and have no reason to ratify contracts that leave them worse off. Second, according to the U.S. Department of Labor, unionized workers in the U.S. earn around 18% more than non-union workers, while union dues are generally less than 2% of wages.

This is a threat. It tells workers that the employer will fight them in contract negotiations.

Anti-union campaigns portray unions as third parties interfering with workers' individual relationships with their employers. In reality, unions are organizations of workers themselves. Workers make up the bargaining committees that negotiate contracts, vote on contracts, and participate in grievance procedures. Workers unionize precisely because individuals don't have effective negotiating power with large institutions. Collective bargaining is a way to make their voices heard.



8. Tell graduate students that, if a majority votes for a union, Penn will be required by law to deal with the union rather than with each student individually, even with respect to individual problems, concerning wages, hours, and other conditions of employment;

During an organizing drive, workers sign cards indicating interest in forming a union. They send these to the National Labor Relations Board, which schedules an election. Anti-union campaigns aim to create just enough doubt, confusion, discomfort, and fear that some workers who signed cards will vote against unionization. Here, the Provost's office is urging those who signed cards to vote no.



9. Discuss the secret ballot election that may be conducted by the NLRB and the facts that no one need ever know how a person voted and that even those people who sign union authorization cards are under no obligation (legal or otherwise) to vote for the union;

On its face, it seems hard to argue with this! But it's important to recognize that employers often present anti-union websites and mailers as factsheets or answers to frequently asked questions—supposedly neutral information. They often do contain some facts like union election dates so as to appear trustworthy. This message primes faculty to read university communications as authoritative sources and to direct graduate workers to them, even though they are laden with anti-union talking points.



10. Direct graduate students to places where they can find answers to their questions.

For further information on anti-union campaigns, here are some recommended sources:

Richard W. Hurd and Joseph B. Uehlein, "Patterned Responses to Organizing: Case Studies of the Union-Busting Convention," in S. Friedman, A. Oswald and R. L. Seeber, eds., *Restoring the Promise of American Labor Law* (Ithaca, NY: ILR Press, 1994), 61-74, available at <http://digitalcommons.ilr.cornell.edu/articles/320/>

John Logan, "The Union Avoidance Industry in the United States," *British Journal of Industrial Relations* vol. 44, no. 4 (Dec. 2006): 651-675.

Lane Windham, *Knocking on Labor's Door: Union Organizing in the 1970s and the Roots of a New Economic Divide* (Chapel Hill: University of North Carolina Press, 2017), chapter 3.

2017 interview with Jennifer Klein, Bradford Durfee Professor of History at Yale University. Professor Klein explains the anti-union campaign that Yale was running against graduate student workers in 2017 and puts it in historical perspective: <https://freshedpodcast.com/jenniferklein/>