

THE LAW OF WIND
—Labor Issues—

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I. Organized Labor Issues. As in any construction project, wind power project developers will face the question of whether to use union labor. The Carpenters Union, Ironworkers Union, International Brotherhood of Electrical Workers, Laborers Union, and Plumbers and Pipefitters Union cover almost any job that is performed on a construction site. There are arguments both for and against the use of union workers. Opponents assert that union labor simply raises the cost of a project for no reason. By contrast, unions argue that union craftspeople are the most skilled and, therefore, projects will have fewer accidents and a higher-quality product.

Whatever one's opinion may be, it is important to be aware of the issues surrounding organized labor. It is also important to understand the way in which these issues can go directly to a project's bottom line, whether as increased labor cost or as increased permitting and mitigation costs caused by union opposition at early stages of a project.

A. Organizing. Lately, unions have stepped up their efforts to organize workers in new fields and industries. For example, in the Northwest, the International Brotherhood of Electrical Workers has focused its efforts on contractors engaged in gas pipeline expansion projects. Organizing construction workers is different from the typical organizing that takes place in other private industries. Federal labor law allows construction unions and employers to enter into prehire agreements. This means that the employer and the union can enter into a collective bargaining agreement before a single employee is hired. Such agreements are illegal in other industries.

Because prehire agreements are legal in the construction industry, organizing typically focuses on the contractor. The unions focus on getting the contractor to sign an agreement rather than on soliciting employees. If a contractor refuses, the unions will usually picket the site and engage in other pressure tactics to force the contractor to relent and sign an agreement.

1. Picketing. Picketing is the most common tactic used at construction sites. The union will strategically place pickets at the entrances to a site, in hopes of stopping union deliveries, preventing any union subcontractors from entering, garnering public support, and generally disrupting operations. Contractors and project managers can limit the effectiveness of any picketing campaign by establishing separate reserved gates. If such gates are established correctly, the union will be limited in where it can picket, thus allowing deliveries and work to proceed without significant interruption.

2. Legal Challenges. A new union strategy that has proven costly to employers is the funding of lawsuits against union-free employers. The most common suit is for wage and hour violations such as the failure to pay overtime properly. Unions have also attacked companies by filing multiple safety complaints with the Occupational Safety and Health Administration. The goals are transparent. First, the union wants to increase the cost of remaining union-free by forcing the employer or contractor to incur legal expenses. Second, the union's lawsuit is meant to show employees the union's power to protect employees from "greedy" employers.

3. **Other Types of Pressure.** In addition to picketing and legal challenges, unions have increasingly turned to the media and politics to put pressure on businesses and contractors. Rather than concentrating on the “bread-and-butter” economic issues, which tend to be boring to the average mass-media consumer, unions have turned to “hot-button” moral and ethical issues to increase the heat on nonunion companies. Unions are now joining forces with community, health and safety, immigration, and environmental groups such as Greenpeace. For example, to pressure the increasingly nonunion lumber industry, unions have joined forces with environmental groups to protest logging.

A more potent weapon for unions has been political pressure. If a wind project will involve public land or the cooperation of local government, it is important to keep in mind that union members may form an important part of the local politicians’ constituencies. The unions may pressure politicians to condition governmental cooperation on the use of union labor. The issue of prevailing wages will also be championed by unions.

4. **Salting.** Salting is a very common tactic in construction trades and is becoming more popular in private industry. A union will “salt” a work force by sending a paid union organizer to apply for a full-time position on the job site. The organizer will openly state on his or her application that he or she is applying for work in order to organize the work force. If the organizer is qualified for the position, this puts the employer in a difficult situation. The employer can either hire the organizer or refuse to hire the individual and face a possible discrimination charge. Another salting technique is to flood the job site with applications from union members. This places the employer in the same untenable position.

5. **Permit Extortion.** In recent years unions have become fairly sophisticated at identifying energy projects at a very early permitting stage and at opposing projects that have not signed a prehire agreement. Unions often raise a wide variety of environmental issues. They can be very dangerous opponents because they have the resources to hire lawyers and technical consultants. Unions often make a large issue out of “local hiring” and tend to get a good reception for this theme with local- and state-level decision makers.

B. Elections Before the National Labor Relations Board. The law does not require an employer to voluntarily recognize a union in the construction industry or any other industry. If an employer refuses to agree to a union’s demand for recognition, the union can petition the National Labor Relations Board (“NLRB”) to conduct an election. To get an election, the union must have the support of 30 percent of the employee group that it seeks to represent. To win an election, the union must garner support from a majority of the group.

Before the election, there is a period during which both the union and the employer may campaign. During that time, certain legal rules must be followed. In fact, the restrictions apply whenever an employer has knowledge of a union drive. For example, an employer may not promise increased benefits to induce employees to reject the union and cannot change wages, hours, and working conditions in an attempt to dissuade employees from voting for the union. In addition, an employer may not threaten employees or punish them for supporting the union. Similarly, an employer cannot spy on union meetings or question employees about their union affiliation. The NLRB has interpreted these rules broadly, so employers must be wary when speaking with employees about unions. There are many subtle interpretations, and employers faced with organizing are encouraged to seek legal counsel.

II. Union Organizing May Arise in Operations as Well. Union organizing is not limited to construction. Unions may attempt to organize the employees who operate or maintain the wind farm. There has been at least one election in California in which a union attempted to organize wind farm employees. The

simplest way to avoid or defeat a union organizing drive is to manage the work force fairly so that employees do not feel the need to seek outside representation. An organizing drive, however, is not the end of the road. Employers have been successful both in union elections and at the bargaining table.

III. Collective Bargaining. A common misperception about unions is that once a union wins an election, the employer must then pay so-called “union wages.” That is simply not true. Unless the employer is in the construction industry and has signed a prehire agreement, the determination of wages, hours, and working conditions is left to the collective bargaining process. During the collective bargaining process, nothing is automatic or guaranteed. Employees can end up with the same, more, or fewer wages and benefits than they currently enjoy. In fact, wage rates may decrease because of bargaining. Moreover, an employer is not legally required to come to an agreement with the union. The only requirement is that the parties bargain in good faith.

IV. Conclusion. Obviously, this article cannot cover the full expanse of labor law and the conflicts and challenges that might develop. However, labor issues are usually one of the last considerations in planning and developing projects such as wind farms. Knowing the risks, costs, and options will allow developers to better plan for any issues that may arise.