

HOW TO FORM AN INDEPENDENT UNION

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December 2024

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About the Emergency Workplace Organizing Committee (EWOC)

EWOC provides support to non-union workers who want better employment conditions and union representation. EWOC was founded in March 2020 as a joint project of United Electrical, Radio and Machine Workers of America (UE) and Democratic Socialists of America (DSA). Since its founding, EWOC has trained and supported thousands of workers, empowering them to lead their own organizing campaigns. Together, with hundreds of volunteers, EWOC helps workers across the country build power from the ground up.

Learn more about EWOC at <https://workerorganizing.org/>.

I. INTRODUCTION

This Manual explains the nuts and bolts of formally creating a union without formal affiliation with an established union. This Manual includes four main parts: (1) the legal process under the National Labor Relations Act (NLRA) that, if successfully navigated, will require the employer to negotiate terms and conditions of employment with the workers; (2) setting up the internal rules of the union designed to provide for democratic, transparent, and participatory decision making, including certain requirements of the NLRA and the Labor Management Reporting and Disclosure Act (LMRDA); (3) the logistics of forming the union as a legal entity and fulfilling various ongoing reporting requirements; and (4) affiliating with another union. In addition, the Manual includes a template union authorization card and a template union constitution and bylaws, as well as links to further resources both throughout the text and in Part IV of the Manual. The goal of this Manual is to help workers organize their workplace and build their own democratic labor organizations to advance their collective interests, regardless of whether they affiliate with an established union.

This Manual is primarily designed for workers who are interested in organizing their workplaces with the goals of achieving a legally recognized union with which employers are required by law to negotiate working conditions. **This Manual does not address how to improve working conditions through organizing outside the formal collective bargaining framework (also known as “pre-majority unionism”) or how to build rank-and-file movements to make established unions already in the workplace more transparent or democratic.**

Most workers organize with established unions. Organizing with an established union can provide greater resources, access to professional organizers and lawyers, and more clout and experience when confronting the employer. Often, the established union also handles the legal and bureaucratic tasks described in this Manual, freeing up rank and file leaders to focus their attention on organizing their coworkers.

In some circumstances, however, it may make sense to organize an independent union. For one, many established unions have limited resources and they may be unable to respond to every potential lead (especially given the current wave of organizing across the country). Independent unions also provide organizing workers with control over their own governance and finances, including the dues structure. And sometimes, it may make sense to establish an independent union and organize the workplace first, and then reach out to established unions for affiliation later.

At the outset of any union organizing effort, it is critical to determine which laws will apply. **This Manual only discusses the protections and processes under the NLRA and the LMRDA, which are federal laws that apply to many private-sector workers.** If you work for a public employer, a railway or airline, or certain other employers, different laws may apply.

This Manual is not a substitute for getting legal advice from an attorney licensed to practice in your state. Our coverage of the law is not exhaustive. Although we try to anticipate common issues and outline the process at a high level, you will likely confront rules and legal issues raised by your specific circumstances that are not addressed here. Moreover, the legal processes and protections around union organizing are constantly evolving. For these reasons, you should seek the advice of experienced legal counsel as you navigate these processes, if you are able.

A final note on the relationship between law and organizing. The law is not a substitute for organizing in your workplace and building power through collective action. We recognize that it is not uncommon for employers to abuse the legal process and even blatantly ignore or violate the laws. That said, it is important to understand the legal processes and protections that exist so that you can use them to workers' advantage and so that you can avoid potential inadvertent pitfalls.

II. WINNING UNION RECOGNITION THROUGH THE NATIONAL LABOR RELATIONS BOARD

a. Overview of the National Labor Relations Act

The National Labor Relations Act (NLRA) protects workers' rights to organize unions, engage in concerted activity, and bargain collectively with their employers. Section 7 of the NLRA protects the right to:

... self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection...

The NLRA protects employees from retaliation if they act together vis a vis their employer to improve their conditions at work, also known as engaging in “protected concerted activity.” Protected concerted activity can be two workers complaining about an unsafe machine, or a thousand workers going on strike. Preventing workers from engaging in protected concerted activity, or retaliating against workers who do engage in protected concerted activity, is illegal—it is known as an “unfair labor practice” (ULP).² These basic protections apply to all workers covered by the NLRA (regardless of whether a union is in place, the worker's immigration status, or the workplace existing within a so-called “Right-to-Work” state).

The law also establishes a process through which workers can form a legally recognized union and require the employer to negotiate with the union over working conditions. To achieve that status, the union needs to be either “recognized” voluntarily by the employer, or certified by the NLRB based on a majority vote in an election among the workers.

It is important, however, to distinguish between organizing a union and winning legal recognition or securing a contract. Workers can form an organization and call it a union, or otherwise act together to improve their working conditions, without permission from the employer or the government. But without formal recognition, the employer has no legal obligation to bargain with them over the workers' demands.

A newly formed independent union may need to establish that it is a labor organization under the NLRA when it seeks recognition. The NLRB will look at whether: (1) employees participate in the organization; (2) the organization exists for the purpose of “dealing with” one or more employers; and (3) those dealings relate to “grievances, labor disputes, wages, hours of employment or conditions of work.” The organization can be an informal organizing committee, and does not need a constitution to qualify under the law, but adopting a constitution as an initial organizing document may be helpful if the employer forces a hearing on the issue.

² The National Labor Relations Board (NLRB) is a federal agency responsible for investigating and prosecuting ULPs and has the legal power to order employers to stop any ULPs they are committing and impose certain other remedies (such as re-hiring workers fired for union organizing and paying those workers certain lost wages).

b. Organizing and Filing for an NLRB Election

Deciding which workers to organize involves a series of strategic and legal questions, the full scope of which this Manual cannot address. As an initial step, however, it is important to understand some general requirements of a bargaining unit that the NLRB will certify. For one, workers in a bargaining unit must share a “community of interest,” reflecting the workers’ shared interests and conditions of employment. In determining whether the workers share a “community of interest,” the NLRB will consider whether the workers are organized into separate departments, have distinct skills and training, have frequent contact with other workers, interchange frequently with other workers, have distinct terms and conditions of employment, and are separately supervised.

Moreover, the bargaining unit may not include supervisors, managers, casual workers, or employees who may have access to confidential information relating to collective bargaining, all of which are terms with specific definitions under the law. Certain employees (for example, agricultural workers) are entirely excluded from federal law. Additional specialized rules define the units that certain types of employees (for example, professional workers, or security guards) can join.³

Defining the bargaining unit may be as simple as including all workers eligible to be in a bargaining unit (for example, anyone that is not a supervisor), but for strategic reasons you may also want to carve out a subgroup of workers from a larger workforce. For example, you may want to organize production workers but not office staff. Strategic questions of this nature require careful discussion among workers in the organizing effort.

When you’re ready to seek recognition of your union, you may demand recognition of the union from your employer—your employer may then choose to voluntarily recognize the union. If your employer refuses to voluntarily recognize the union, you may file for an election with the NLRB. You are not required to demand recognition before filing for an election, but there may be strategic reasons to do so (such as to put pressure on the employer and to gain support from the community).

To file for an election with the NLRB, you are required by law to show that at least 30% of the workers in your proposed bargaining unit support the petition by collecting signed union authorization cards. However, it is rarely advisable to file for an election without at least 50% support among workers, and it is typically a best practice to secure a supermajority of at least 70% support before filing or demanding voluntary recognition from the employer. The more power and unity you are able to demonstrate to your employer, the more likely it is that your

³ As discussed in the Section below, because the law puts limitations on which workers can be a part of the bargaining unit, the NLRB has the power to modify the proposed bargaining unit and ultimately certify the union to represent a different bargaining unit from the one listed in the RC petition.

employer will voluntarily recognize you, and the better your chances will be of winning an election.⁴

An election petition is filed using a specific form on the NLRB’s website called an “RC petition.”⁵ The RC petition requires you to state which job titles the union is seeking to represent through the petition (and which job titles the union does not seek to represent). When you file your petition, you will also be required to serve certain documents on your employer.⁶

c. The NLRB Legal Process around the Union Representation Election

Once you file your RC petition, things may start moving quickly. Your employer will be required to submit a “Statement of Position” explaining whether they agree with your definition of the collective bargaining unit. If they don’t, you can either negotiate with them to come to an agreement on who is in the bargaining unit and can participate in the NLRB election, or you will go to a hearing before the NLRB (it is also possible that you vote in an election, and then a hearing is held afterwards).

At the hearing, the workers and the employer will introduce evidence through witnesses and documents to convince the NLRB whether it should order an election and, if so, which workers will be included in the bargaining unit and therefore eligible to vote.⁷

You should assume from the outset that you will need to attend a hearing, and plan accordingly. That planning will entail anticipating what arguments the employer may make to oppose your proposed unit, identifying arguments you will need to make, discussing which workers should testify at the hearing to support the union’s arguments, and gathering other evidence. You may need to request subpoenas to compel the production of documents or the attendance of witnesses. All these tasks will be much, much easier with the assistance of a lawyer. It is highly recommended that you find a lawyer to represent you, if possible. EWOC may be able to connect you with labor lawyers in your area.

Following the hearing, the NLRB will issue a decision on whether an election will be ordered, the time and place of the election, and which workers will be in the unit and therefore allowed to participate. It can take a few months for the NLRB to issue a decision. If all goes well, the NLRB will approve your proposed unit and an election date will eventually be set. The election will probably be a secret-ballot election in person at the workplace, administered by the

⁴ At the end of this Manual, you will find a template union authorization card (Appendix A).

⁵ Here is the blank RC petition form from the NLRB website:

https://www.nlr.gov/sites/default/files/attachments/pages/node-195/nlr_502rc_2-18.pdf

⁶ See Steps for filing a Petition, <https://www.nlr.gov/guidance/key-reference-materials/steps-for-filing-a-petition>

⁷ The reasons an employer might argue that your proposed bargaining unit is not appropriate are beyond the scope of this document, though they made relate to the requirements discussed above in section II.b. You can read more about these rules in the NLRB’s Basic Guide to the National Labor Relations Act:

<https://www.nlr.gov/sites/default/files/attachments/basic-page/node-3024/basicguide.pdf>

NLRB and observed by representatives from the union and the employer, though mail elections are sometimes permitted in special circumstances.

Depending on your employer, you can expect anti-union campaigning to escalate in the weeks leading up to the vote. Keep track of any potential ULPs that your employer commits (such as threatening to shut down the workplace if the union wins or promising to improve the working conditions if workers vote against the union)—if there are enough ULPs or the ULPs are severe enough, it may be the basis for overturning the election if the vote doesn't go your way. The employer may also try filing various appeals with the NLRB to delay or deny the election.⁸

After the election has concluded, the NLRB will generally count the votes right away. If more than 50% of your coworkers voted for the union, congratulations, your union will (probably)⁹ be certified by the NLRB and your employer will be required by law to negotiate with the union!

If you fell short, you can consider appealing to the NLRB to overturn the election. Assuming the loss sticks, you will need to wait a full year before petitioning for another election.

⁸ For EWOC resource on how to identify and report ULPs to the NLRB, see <https://workerorganizing.org/unfair-labor-practice-law-tool-protect-organizers-organizing-fight-back-3104/>. For EWOC resources on union-busting campaigns generally, see <https://workerorganizing.org/anatomy-of-a-union-busting-campaign-8748/>.

⁹ There are circumstances where an employer can challenge the election result, or where a hearing will be held after the election that ultimately undermines your effort.

III. SETTING UP AND RUNNING A DEMOCRATIC UNION

a. Legal Obligations as the Recognized Bargaining Representative

Once the union wins legal recognition, the union is subject to several legal requirements designed to make sure unions treat all workers they represent fairly. It is important to recognize that once the union wins legal recognition, the union will represent all workers in the bargaining unit, rather than just members of the union. As a result, it is possible that there are workers who are part of the bargaining unit who are not union members. Any improvements in wages, hours and other terms and conditions of employment that the union has achieved will apply to all workers, regardless of union membership.

Under the NLRA, unions have a “duty of fair representation” to all workers in the bargaining unit, whether or not they are members of the union. This means that the union must act reasonably, in good faith, and without discrimination in its interactions with bargaining unit members and with the employer (such as contract negotiation).

Additionally, the Labor-Management Reporting Disclosure Act (LMRDA) defines certain rights of union members and responsibilities of union officers specifically, including the need to elect officers and set the dues structure by a secret ballot vote by the members. The LMRDA is enforced by the Office of Labor Management Standards (OLMS), an agency with the United States Department of Labor (DOL) rather than by the NLRB. The LMRDA also establishes a number of ongoing reporting and disclosure requirements for unions, some of which are discussed in Part IV of this Manual.

Other civil rights laws also require unions not to discriminate based on race, color, religion, sex (including sexual orientation) and national origin. As long as the basic minimum requirements of the law are followed, the members can decide the rules for running the union and the priorities of the union.

b. Constitution and Bylaws

The union’s constitution and bylaws set out the basic rules for how the union will be run. The LMRDA requires unions to adopt a written constitution and bylaws, but there is no legal requirement to adopt the constitution and bylaws as separate documents. Adopting a written constitution and bylaws serves the purpose of promoting union transparency, democracy, and accountability among the workers, and they are required to be filed with the federal government once the union wins recognition (as explained in Part IV below).

A union’s constitution and bylaws set out the initial internal structure of the union.¹⁰ These templates are intended to help you satisfy the minimum obligations required by federal law and may be approved by a relatively informal organizing committee. In turn, these templates provide for how the internal structure can be formally adopted by the members (through a general meeting) once that becomes possible.

¹⁰ At the end of this Manual, you will find a template constitution and template bylaws (Appendices B and C, respectively).

As you draft a constitution and bylaws, some initial steps and considerations you may want to think through include:

1. Pick a name. Find a name that isn't already taken. If you want to set up a website, consider whether the name will be available as a domain name. Most unions end the URL of their website with ".org."
2. Define who you are and the purpose of the union. The constitution should state that the purpose of the union is to establish an organization in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work. Doing so is important for purposes of qualifying the union as a labor organization under the NLRA and as a tax-exempt labor organization under federal tax law (discussed in Part IV). However, the union's constitution may also list additional objectives and purposes, such as to fight for social and economic justice in the broader sense. The constitution also needs to make clear that the union is created for the benefit of the membership as a whole and not for any individuals.
3. Set the requirements for union membership. Members of the union have certain rights and responsibilities (like voting on certain decisions and paying dues). Just because a worker is in the bargaining unit and represented by the union does not automatically mean the worker is a member of the union.

Typically, only workers in the bargaining unit are eligible to be members of the union. Before a bargaining unit is recognized, the union may also allow any workers who have signed the union authorization card to join the union. Generally, to maintain their union membership, workers must pay dues to the union, but many unions do not require such dues until the workers have won a first union contract. The template we provide reflects these membership eligibility criteria.

As an independent union, you will have flexibility in deciding on a dues structure, but the LMRDA requires that dues be set by a majority vote in a secret ballot election.

4. Spell out each member's rights to participate. The LMRDA includes a union member bill of rights¹¹ and both federal and state anti-discrimination laws generally apply to unions as well as employers. The union constitution should include those basic minimum protections required by law and may go further.

¹¹ OLMS, Union Member Rights and Officer Responsibilities under the LMRDA, <https://www.dol.gov/agencies/olms/compliance-assistance/publications/union-member-rights-and-officer-responsibilities-under-the-lmrda>.

The union also needs to establish a mechanism to enforce those rights. In the sample bylaws we provide, enforcement is left to an executive committee elected by the members, requiring certain due process rights if a complaint is made against an individual. You may want to create an independent internal judicial process, but the framework in the template is common in unions. The sample rules provide a right to appeal to the full membership.

5. Who will manage the union’s day-to-day affairs and initiatives? All members run their union, but unions generally rely on elected officers to conduct the day-to-day affairs of the union, and such officers are also listed as the contact person for NLRB and other government filings. While unions use various titles, unions typically have at least a president and a treasurer. Unions also generally have one or more vice presidents and a secretary. Unions can elect members to an executive board that meets periodically and has broader oversight power over union administration. The sample constitution provides for an Executive Board, President, Vice President, Secretary and Treasurer.

The union may also establish other committees and positions, such as an organizing committee, contract negotiation committee, and stewards, which may be elected or appointed.

6. How to elect officers and other representatives of the union. The bylaws should spell out the basic procedures for how members elect union officers, including the positions that must be elected, the terms of office for elected positions, the procedure for filling mid-term vacancies, and the rules for nominating and voting for candidates.

The LMRDA requires that officer elections and the setting of dues rates be decided by secret ballot of the membership and that officer elections occur at least every three years for “local labor organizations,” which will include most independent unions. OLMS has published a comprehensive guide for conducting union officer elections.¹² Although the sample bylaws provide for in-person and mail voting, OLMS has also published a guide on how to hold secret-ballot elections online.¹³ These rules ordinarily do not apply to the election of less formal positions, such as members of the contract negotiation team, or voting on union matters generally, such as a contract proposal.

¹² OLMS, Electing Union Officers, <https://www.dol.gov/agencies/olms/compliance-assistance/elections>; OLMS, Conducting Local Union Officer Elections: A Guide for Election Officials, <https://www.dol.gov/agencies/olms/compliance-assistance/publications/guide-for-conducting-local-union-officer-elections>.

¹³ OMLS, Electing Union Officers Using Remote Electronic Voting Systems, <https://www.dol.gov/agencies/olms/compliance-assistance/tips/remote-electronic-voting-systems>.

The union should have an independent elections committee administer the officer election. Responsibilities of the elections committee should include: (a) sending notice to members of the process and deadlines; (b) soliciting and receiving nominations (unless done at a meeting); (c) preparing the ballot and any supporting material; and (d) mailing the ballots and supporting materials to eligible voters or otherwise conducting the election. The bylaws should provide that members or candidates can have observers present for the ballot count and request recounts. It should also provide for a process for challenges or appeals.

7. Union finances. Organizing costs money. The union should handle its funds (often consisting mostly of dues from members) in a transparent and accountable manner. The union should keep funds in bank accounts in the union's name, rather than in the name of any officer or organizer, with at least two people having access to the bank accounts. It is a best practice to have the union's books kept by someone different from the person who has the authority to sign the check (or otherwise authorize payments) on behalf of the union.

The treasurer of the union should prepare a budget that is approved by either the members or the executive board. Expenditures should be authorized by votes of appropriate bodies, consistent with the bylaws, either through an approved budget or a resolution reflected in the minutes of a formal meeting. Dues, however, may only be set or changed by a secret ballot vote of the membership.

8. Records and meetings. Members make decisions for the union by participating in and taking actions at meetings of the union, held in accordance with the union's bylaws and accepted rules of procedure. The bylaws should lay out what steps need to be taken to call a formal meeting whose decisions will be valid, and the union (usually its secretary) should take minutes that record all decisions made at those meetings. Minutes should be available to members.

Generally, the bylaws should spell out who can call a meeting, and provide a mechanism for members to call a meeting themselves. Members should receive proper advance notice of the meeting, and of any significant actions that may be taken at the meeting. Meetings will generally be chaired by the President or Vice President. Members make decisions by "acting on motions" at a meeting, and action on those motions are then recorded.

9. Amendments to Constitution or Bylaws. The constitution and bylaws should spell out how members can amend them. As an example, in the sample constitution and bylaws provided here, an amendment requires a meeting of the members held with two weeks' notice (and the notice must state the proposed amendments). In our example, the constitution can be amended by a 2/3 vote, while the bylaws only requires a majority. Additionally, your constitution can spell out specific

requirements for major decisions for the union, such as calling a strike or affiliating with another union.

c. Discussing and Deciding on Issues at Union Meetings

The union evolves and conducts business through the election of leaders and by establishing rules or adopting resolutions at meetings. For those actions to have legal effect, the meetings need to be properly conducted. Most unions use Robert's Rules of Order or adapt a variant as a system to structure their decision-making.¹⁴ While those rules sometimes seem overly formal, they ensure that the union can act in an organized and systematic way that helps guarantee every member of the body a voice.

This Part gives an overview of the decision-making process under Robert's Rules of Order. Appendix D to this Manual provides further information about action steps for making a motion at a union meeting and specific types of motions.

1. Calling a meeting. To call a proper meeting at which action can be taken, members must receive appropriate advance notice, in accordance with the union's bylaws.

The persons participating in the meeting must be members or elected leaders entitled to vote on the matters being discussed in accordance with the union's constitution or bylaws. There must be enough members to create a quorum (the minimum number of participants for an official meeting, if one is specified in the bylaws).

2. The conduct of meetings. Meetings are run by a Chair (usually the President or Vice President). The Chair is tasked with conducting the meeting in a neutral manner and does not participate in debate or vote while fulfilling that role.

Other roles involved with conducting the meeting may include a clerk (who will keep a record of all the actions taken at the meeting, producing minutes that are saved), or a parliamentarian (who will interpret the rules of order in the case of a dispute).

There should be an agenda, setting out what issues will be acted on and, if appropriate, what opportunity the members will have to raise additional issues. The agenda is generally adopted by a motion at the start of the meeting and may be amended, though a proposed agenda may be circulated with the members as part of the advance notice for the meeting. Similarly, at the start of a meeting, the minutes from the previous meeting (if any) are generally adopted and/or amended.

¹⁴ You can find an online resource for Robert's Rules at <http://www.rulesonline.com/index.html>.

3. Taking action by motion. Once a meeting is properly called and an agenda is approved, the Chair will take action on agenda items in order. The members then discuss and debate the agenda items by making and voting on motions.

Any member of the body can make a motion by raising his or her hand and being “recognized” by the Chair. The motion must be “in order,” meaning that it is appropriate under the bylaws, the agenda, and, typically, Robert’s Rules. Once made, the motion must be “seconded” by another member before it can be acted on. The motion may then be debated by members recognized by the Chair until either debate is complete or debate is ended by a “motion to call the question,” which, if adopted, brings the debate to an end and the motion to a vote.

IV. UNION LOGISTICS AND GOVERNMENT FILING REQUIREMENTS

a. Incorporating the Union as a Separate Entity with Your State

While neither the NLRB nor the OLMS require unions to be incorporated (that is, to be formed as a separate organization apart from the individual members), incorporation has important practical advantages and makes sense in most cases. Incorporation means, among other things, that the liabilities of the organization attach to the organization and not to its members. Liability is not an idle concern, as employers sometimes file lawsuits against unions. On the other hand, many small independent unions are formed and operate successfully as unincorporated associations. We strongly recommend getting advice from a lawyer to determine what is best in any given circumstance.

Incorporation is a matter of state law, which is separate from the federal labor laws discussed elsewhere in this Manual. Once the union has adopted its constitution and bylaws and elected its officers, you can typically incorporate the union with your state's department of state. Unions are typically incorporated as non-profit organizations and non-profit corporations. The website of your state's department of state often has useful information about how to incorporate a union.¹⁵

b. Obtaining an EIN and Federal Tax-Exempt Status with the IRS

Once the union is incorporated in your state, you should consider applying for an Employer Identification Number (EIN).¹⁶ Most banks expect an EIN before they will set up a bank account for a union. Even if the union is not incorporated, it still may apply for an EIN. It is worth noting that a small union that does not collect dues or other funds may not need an EIN or a bank account.

After the union is incorporated, it may also apply for tax-exempt status as a 501(c)(5) labor organization¹⁷ with the federal Internal Revenue Service (IRS). As a 501(c)(5) labor organization, the union is required to file an annual federal tax return on Form 990 (Return of Organization Exempt from Income Tax).¹⁸

Depending on your state, you may also need to apply for a tax-exempt status from your state and file annual reports with the state, though in some states a federally tax-exempt organization is automatically exempt for state tax purposes. This information is generally on available on your state's tax department's website.

¹⁵ For an example for Vermont, see Vermont Secretary of State, Nonprofit Corporation, <https://sos.vermont.gov/corporations/registration/domestic-registration/nonprofit-corp/>.

¹⁶ IRS, How to Apply for an EIN, <https://www.irs.gov/businesses/small-businesses-self-employed/how-to-apply-for-an-ein>.

¹⁷ IRS, Labor and Agricultural Organizations, <https://www.irs.gov/charities-non-profits/other-non-profits/labor-and-agricultural-organizations>.

¹⁸ IRS, About Form 990, Return of Organization Exempt from Income Tax, <https://www.irs.gov/forms-pubs/about-form-990>.

c. Following Initial and Periodic Reporting Obligations with OLMS

Once your union is recognized as the representative for workers in your workplace, the union is required by OLMS to file a Form LM-1 within 90 days of certification, along with the union's constitution and bylaws. Form LM-1 asks for basic information about the union's membership, internal governance and finances.¹⁹ Separate from the EIN required by the IRS for federal tax purposes, the union will need to obtain an OLMS Electronic Forms System (EFS) ID for purposes of making OLMS filings.²⁰

After the union initially files the Form LM-1, it will need to file annual financial disclosure reports on the appropriate form with OLMS.

The specific form for OLMS reporting and the level of detail required by the form generally depend on the amount of money the union receives in a given year.²¹ In addition, if the union has more than \$5,000 in property and annual receipts, officers and representatives that handle funds of the union are required to be "bonded," which means they must be covered by an insurance policy insuring the union against loss caused by improper uses.²² In connection with OLMS reporting, the union must also maintain financial records and other related records (such as membership records).²³

Union Logistics and Government Filings – Mini Checklist

Initial Steps & Filings

(to be completed as promptly as practicable, and in any case not later than 90 days after recognition)

1. Adopt a constitution and bylaws.
2. Elect officers.
3. Incorporate the union within your state.
4. File for an EIN and request federal tax-exempt status as a 501(c)(5) labor organization with the IRS.
5. File for tax-exempt or similar status with your state, if required.

¹⁹ OLMS, Form LM-1 Labor Organization Information Report and Forms LM-2, LM-3, and LM-4 Labor Organization Annual Reports, <https://www.dol.gov/agencies/olms/reports/forms/lm-1-lm-2-lm-3-lm-4>.

²⁰ OLMS Electronic Forms System, <https://www.dol.gov/agencies/olms/reports/electronic-filing>.

²¹ OLMS, Form LM-1 Labor Organization Information Report and Forms LM-2, LM-3, and LM-4 Labor Organization Annual Reports, <https://www.dol.gov/agencies/olms/reports/forms/lm-1-lm-2-lm-3-lm-4>.

²² OLMS, Bonding Requirements Under the LMRDA and the CSRA, <https://www.dol.gov/agencies/olms/compliance-assistance/bonding>.

²³ The OLMS has published a fact sheet about the recordkeeping requirements: <https://www.dol.gov/agencies/olms/compliance-assistance/record-keeping>.

6. Set up a bank account in the union's name.
7. Purchase surety bonds for union officers and representatives that handle finances, if required.
8. Obtain an EFS User ID and file the initial report on Form LM-1 with OLMS.

Periodic Filings

1. File annual report with your state, if applicable.
2. File annual report on Form 990 with the IRS (due by the 15th day of the 5th month after the union's fiscal year-end).
3. File the annual financial report on the applicable LM form with OLMS (due within 90 days of the union's fiscal year-end).

VII. AFFILIATING WITH ANOTHER UNION

An independent union can affiliate with a national or international union at any time, before or after it wins recognition or its first union contract. In some cases, it may make sense to organize as an independent union first, and later discuss affiliation with a larger, more established union.

By affiliating, the two unions essentially enter a contract to join together. Each union needs to follow its own constitution and bylaws in making that decision, so it is best if the independent union includes any procedural requirements for affiliation in those documents from the start and it is recommended that any affiliation decision requires, at a minimum, approval at a general meeting by the members.

Since the independent union simply decides as an internal matter to become an affiliate of the larger one, the employer and the government do not participate in the process; there is no need for an NLRB election. If the union is already recognized, affiliation should not affect the employer's legal obligation to negotiate with the union, or any contract that is in place. The employer may, however, challenge whether the newly affiliated organization qualifies as a legal successor to the original independent union.

As with any important decision, do the research, ask the questions, and find out what the options are. It is important to understand what affiliation means for dues, support, and internal democracy. You might also ask that the larger unions you are considering connect you with workers from similar workplaces already in that union to better understand their experience. Some questions to consider in evaluating affiliation are as follows.

1. How is a typical contract bargained? How are workers involved in the negotiation process? What has the union won in contracts for similar workplaces?
2. What level of support will your union get? How responsive is the larger union?
3. What will the dues structure be like? What proportion of the dues from the workplace will be dedicated to supporting the workplace?
4. How do workers make decisions at the workplace, local and union-wide level? Does the union have a "one member one vote" system?
5. What will the transition process look like? Will there be a phase-in period for the dues and other rules?

Ultimately, whether specific terms of affiliation make sense depends on the conditions and needs of your independent union and requires careful analysis and discussion by all members.

V. FURTHER RESOURCES

a. Union Organizing and the NLRB Process

- EWOC: How to Start a Union at Work, <https://workerorganizing.org/how-to-start-a-union-at-work/>
- EWOC: How to Fight Back Against Union-Busting: Unfair Labor Practice Charges, <https://workerorganizing.org/unfair-labor-practice-law-tool-protect-organizers-organizing-fight-back-3104/>
- EWOC, Anatomy of a Union-Busting Campaign, <https://workerorganizing.org/anatomy-of-a-union-busting-campaign-8748/>
- EWOC: “Unite & Win: The Workplace Organizer’s Handbook” <https://workerorganizing.org/unite-and-win/>
- Organizing Institute, AFL-CIO, Powertools Resources, <https://toolsfororganizers.org/resources> (with fact sheets on campaign planning, messaging and the NLRB election process, including some fact sheets available in Spanish)
- LaborLab: Informational Resources on the Right to Start, Join or Support a Union under the NLRA, <https://laborlab.us/resources/>
- NLRB: What is the Law, <https://www.nlr.gov/about-nlr/rights-we-protect/whats-law>
- NLRB: Frequently Asked Questions, <https://www.nlr.gov/resources/faq/nlr>
- NLRB: Basic Guide to the National Labor Relations Act, <https://www.nlr.gov/sites/default/files/attachments/basic-page/node-3024/basicguide.pdf>

b. Union Democracy

- Legal Aid at Work: Labor Unions – Duty of Fair Representation, <https://legallaidatwork.org/factsheet/labor-unions-duty-of-fair-representation/>
- Association for Union Democracy: Legal Rights and Organizing, <https://uniondemocracy.org/legal-rights-and-organizing/>
- OLMS, Union Member Rights and Officer Responsibilities under the LMRDA, <https://www.dol.gov/agencies/olms/compliance-assistance/publications/union-member-rights-and-officer-responsibilities-under-the-lmrda>

c. Union Logistics

- IRS, Labor and Agricultural Organizations,
<https://www.irs.gov/charities-non-profits/other-non-profits/labor-and-agricultural-organizations>
- IRS, How to Apply for an EIN,
<https://www.irs.gov/businesses/small-businesses-self-employed/how-to-apply-for-an-ein>
- IRS, Annual Filings and Forms,
<https://www.irs.gov/charities-non-profits/annual-filing-and-forms>
- OLMS, Form LM-1 Labor Organization Information Report and Forms LM-2, LM-3, and LM-4 Labor Organization Annual Reports,
<https://www.dol.gov/agencies/olms/reports/forms/lm-1-lm-2-lm-3-lm-4>
- OLMS, Electronic Form System,
<https://www.dol.gov/agencies/olms/reports/electronic-filing>
- OLMS, Bonding Requirements Under the LMRDA,
<https://www.dol.gov/agencies/olms/compliance-assistance/bonding>
- OLMS, LMRDA Recordkeeping Requirements for Unions,
<https://www.dol.gov/agencies/olms/compliance-assistance/record-keeping>

APPENDIX A – SAMPLE UNION AUTHORIZATION CARD

Sample authorization card:

XYZ WORKERS UNION AUTHORIZATION CARD AND MEMBERSHIP APPLICATION

BY SIGNING THIS CARD, I STATE: Yes, I want to join and become a member of XYZ Workers Union to improve my workplace and my community. I hereby request and accept membership in the XYZ Workers Union and authorize it to seek recognition from my employer as the exclusive bargaining agent for myself and my co-workers, and to negotiate and conclude all agreements as to hours of labor, wages, and all other conditions of employment.

Signed: _____
on this date: _____

Name: _____

Employer: _____

Position: _____

Address: _____

Phone: _____

Email: _____

APPENDIX B – SAMPLE UNION CONSTITUTION

CONSTITUTION OF THE XYZ WORKERS UNION

The undersigned members of the XYZ Workers Union Organizing Committee hereby organize and establish the XYZ Workers Union (“the Union”) as a labor organization.

Article 1: Purpose.

The Union is established for the benefit of its members and as a democratic labor organization, for the purpose of mutual aid and protection, to provide representation to employees in matters relating to their employment, and for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

Article 2: Membership.

Membership of the Union is open to all workers employed by the XYZ Corporation who are employed in a proposed or potential bargaining unit seeking to organize for representation, or who are working in a recognized or certified bargaining unit represented by the Union, and who:

a. In the case of workers seeking recognition or negotiating an initial contract, have signed membership cards asserting their interest in joining the Union and authorizing the union to seek recognition for the purpose of collective bargaining;

b. In the case of workers who are employed in a unit recognized or certified as represented by the Union who have ratified a first contract, have signed authorization cards and paid the established dues;

Furthermore, membership may be revoked by vote of the Executive Board, if after having been provided notice of the charges and an opportunity to be heard, a member is found to have assisted in any effort to decertify the Union.

Article 3: Member rights.

The members of the union shall have the right to participate in union activities, elect officers, establish and amend bylaws, set dues, and ratify collective bargaining agreements. These rights shall include the right to attend meetings, speak freely about union matters, or to associate with other union members, as well as all other rights protected by law. Participation in the Union shall be open to all members in good standing, regardless of race, gender, national origin, political affiliation, religion, ancestry, sexual orientation, gender identity or expression, age, disability or medical condition, or any other status protected by law. Members shall be free to participate in Union affairs without harassment or bullying.

Article 4: Adoption and amendment.

This Constitution is adopted by the Organizing Committee as an interim organizing document, to be formally adopted or otherwise superseded by vote of the members at a meeting duly warned for that purpose. This Constitution may be adopted, amended or repealed by a vote of two thirds of the members present and voting at a meeting, warned electronically or by regular mail to all members at least 2 weeks in advance.

Article 5: Operation and administration of the union.

The ongoing business of the Union shall be managed in accordance with established bylaws and other policies or resolutions adopted by members at a duly warned meeting, by an Executive Board. The Board shall include the following officers: President, Vice President, Secretary, and Treasurer, except that the Executive Board shall include such other members as may be established by the bylaws. The officers and board members shall be elected by the members in accordance with the bylaws but shall be filled on an interim basis by the undersigned organizing committee until members have met and elections have been held pursuant to a formally adopted constitution and bylaws.

Article 6: Affiliation.

The Union may affiliate with a national or regional labor organization or federation by majority vote of the members at a meeting duly warned for that purpose.

Approved on this date _____ by the members of the Organizing Committee:

Adopted by vote of the members on _____

APPENDIX C – SAMPLE UNION BYLAWS

BYLAWS OF THE XYZ WORKERS UNION

These Bylaws of the XYZ Workers Union are adopted on an interim basis by the XYZ Workers Union Organizing Committee on _____ pending formal adoption by the members at a duly convened membership meeting warned to all members at least two weeks in advance by mail or electronic means.

1. Executive Board

The Executive Board shall meet as necessary to conduct the affairs of the Union, and shall have the power to:

- a. Serve as the bargaining team for the union in collective bargaining;
- b. Enter into contracts on behalf of the union, except that any collective bargaining agreement will be ratified by vote of the unit membership.
- c. Appoint stewards, establish committees, appoint committee members, hire staff, and contract for services as needed.
- d. Oversee the finances of the union.
- e. Make such appointments as may be necessary to fill vacancies as may arise on the Board or among the officers on an interim basis pending the nomination and election of replacements.
- f. Establish policies and rules of procedure for the union.
- g. Act as a Judicial Board for internal complaints by union members alleging violations of these bylaws or other misconduct relating to union activities. The Board may adopt procedures for such complaints but will ensure that any member who is the subject of any such complaint shall have notice of the charge against him or her, adequate time to present a defense, and the opportunity to be heard. Decisions of the Executive Board acting in this capacity may be appealed to the full membership.
- h. Such other powers as may be needed to protect and advance the union.

2. Officers

The President shall act as the chair of the executive committee and membership meetings and shall be empowered to manage the affairs of the union consistent with constitution, bylaws, policies, and other direction set by resolutions adopted by the members and the executive committee. The President shall be the chief spokesperson of the union, either directly or through his or her designee.

The Vice President shall chair meetings of the executive committee or the membership in the president's absence or serve as president in the event the president is incapacitated or otherwise unable to serve.

The Secretary shall:

- a. Keep minutes of the executive committee and membership meetings, recording formal actions taken by the body.
- b. Maintain the organization's records, which shall be made available to members upon request or may be posted on a union website.
- c. Schedule meetings as may be called pursuant to these bylaws.
- d. Issue notices to members warning of meetings, including a proposed agenda and any documents relating to actions to be considered.
- e. Maintain list of members, which list shall be confidential except as needed or as permitted by action of the Executive Board.

The Treasurer shall oversee the financial affairs of the Union, including:

- a. Establishing and maintaining such bank accounts as may be needed, naming the president and the treasurer as signatories for any transactions.
- b. Preparing a draft budget for approval by the members at a duly warned meeting.
- c. Reporting periodically to the Executive Board and membership on the financial health of the union.
- d. Preparing or causing to be prepared such reports as may be required by federal or state agencies.

3. Elections

Elections of officers, votes to set dues rates, and votes to ratify collective bargaining agreements shall be conducted by secret ballot of the members, either by mail or during an in-person meeting. Elections shall be administered by an elections committee appointed by the Executive Board. No person who is running for office or currently holding elected office shall be eligible to serve on the elections committee. The procedure for elections shall be as follows:

- a. In elections to fill seats as officers or members of the Executive Board, a notice shall be sent to all members eligible to vote for that position announcing the vacancy and soliciting nominations. Nominations will be submitted in writing to the Elections Committee by a specified date at least two weeks in advance.
- b. Candidates for office may submit written materials to the Elections Committee to be included with the ballot and will be given a deadline to submit such materials.

c. If the election is to be conducted by mail, the Elections Committee shall send a ballot by mail to all members, along with candidate statements, proposed contract summaries, or such other documents as may be appropriate, along with a return envelope and a blank second envelope. The voter shall be instructed to mark the ballot and insert it into the unmarked envelope, and then to return it to the Union by a specified date at least two weeks later.

d. If the election is to be conducted at an in-person meeting, members shall be sent notice of the meeting and election two weeks in advance, along with any candidate statements, contract summaries or other supporting material. These materials may be sent electronically or by mail. The Elections Committee shall then prepare and distribute ballots at the meeting, announce any deadline for casting ballots, and at the end of the voting period shall count the ballots and announce the results.

e. The Executive Board and Elections Committee may adopt systems for electronic voting that meet the standards adopted by the Office of Labor Management Standards of the United States Department of Labor.

f. Members shall have the right to review the eligibility list and to observe the ballot count.

g. Any request for a recount or challenge to an election shall be submitted in writing within five days after the election to the Elections Committee, which shall investigate the complaint and issue a report to the Executive Committee. The Executive Committee shall have authority to order a new election or to adopt any other remedy it deems proper.

h. No write in candidates will be considered. If only one candidate is nominated for one seat, that candidate shall be seated without conducting an election.

i. The term for all elected positions shall be two years.

4. Meetings

Membership meetings shall be held at least once a year at a time and place determined by the Executive Board. Special meetings may be called by the Executive Board or by petition signed by ten percent of the members.

5. Rules of order

Meetings shall follow Robert's Rules of Order unless modified by these bylaws or by rules of procedure adopted by the members.

6. Amendments to the bylaws

These bylaws may be adopted, amended or repealed by a vote of a majority of the members present and voting at a meeting, warned electronically or by regular mail to all members at least 2 weeks in advance. Any member wishing to propose an amendment shall

provide the proposed change to the Secretary in writing at least three weeks prior to the membership meeting at which the amendment will be considered. The Secretary or the election committee shall then provide the proposed amendment to the members at least two weeks in advance of said meeting.

APPENDIX D – MAKING A MOTION AT UNION MEETINGS

Illustrative Action Steps for Making a Motion at a Union Meeting Under Robert’s Rules of Order

1. **Prepare:** Research the issue, plan the arguments both for and against, draft the motion you want to propose.
2. **Organize:** Talk to other members and gather support. You will need a second to begin discussion, and a majority to win. Get supporters to be ready to argue for the proposal.
3. **Make sure you are proposing the motion during the correct meeting:** For example, some bylaws require that bylaw changes be proposed at particular meetings, and with prior consideration or notice to members.
4. **Determine when in the meeting it can be proposed.** If the agenda does not already have a slot for “new business” or there is no other time when the proposal will be “germane,” make a motion to amend the agenda when the agenda is proposed at the start of the meeting.
5. **Raise your hand at the right time.** When a union member raises their hand, the chair is required to call on them.
6. **Make the motion. When you have the floor, state “I move ...” and describe your motion. It will be helpful if you have written it out, especially if it is long.**
7. **Have someone second it.**
8. **Speak in favor of the motion.** The maker of the motion is entitled to be the first person called to speak in favor of the motion.
9. **If the chair rules you out of order:** You may move to appeal the chair’s decision and if it is seconded and you get a majority to overturn, the chair’s motion will be overturned. Even if a parliamentarian or lawyer is there to support the chair, the body’s decision is final unless it is unlawful.
10. **If another member:**
 - a. **Offers a friendly amendment:** This is not in Robert’s Rules, but as a matter of convenience some organizations allow someone to offer an amendment that you as the maker might find acceptable. If such amendments are allowed, it is up to the maker to decide whether to agree.
 - b. **Moves to amend the original motion:** This is a new motion and must be seconded, debated and decided upon before the body can take further action on the main motion.
 - c. **Calls the question:** This is a motion to cut off debate. It generally means that people in line can talk but otherwise there is a vote on this motion before any further action can be taken.

- d. **Calls for a point of order:** Members can ask procedural questions throughout the process.
 - e. **Moves to table:** A motion to table indefinitely means the motion is killed, while a motion to table to a time certain means the issue will be returned to later at the designated time.
11. **Win the vote.**
 12. **Make sure the minutes are accurate:** The minutes will be approved at the following meeting. To make sure that it is recorded correctly, attend the next meeting and speak up if there is an error.

Sample Special Motions and Actions at a Union Meeting Under Robert's Rules of Order

1. **Motion to table to date certain:** This motion allows the body to end debate and put off decision until a later date.
2. **Motion to table indefinitely:** This motion has the effect of terminating the debate without a vote on the motion itself.
3. **Motion to refer:** A matter that needs additional work may be referred to a subcommittee or other entity to be reconsidered at a later meeting.
4. **Point of order:** A member can interrupt the debate at any time and make a "point of order" requesting the Chair to make a ruling on a procedural matter.
5. **Point of information:** A member may interrupt at any time to ask for information relevant to the discussion from the chair.
6. **Appeal from a ruling by the chair:** A member can move to overturn a ruling by the chair. The motion must be seconded and supported a majority of the body. A tie vote affirms the chair.
7. **Suspend the rules:** An otherwise properly constituted meeting can vote to suspend all or part of the rules of procedure by a two-thirds vote. The Bylaws, however, cannot be suspended.
8. **Reconsider:** A previously decided motion can be brought back for reconsideration, but only by a member who voted previously on the prevailing side.
9. **Nominations:** Nominations do not need to be seconded. A person can also put his or her own name in nomination.