



B Lab Controversial Issues Statement - Unionization Efforts by Employees

B Lab's Approach to Controversial Issues and B Corp Certification

As for-profit companies that meet the most rigorous standards of overall social and environmental performance, accountability, and transparency, Certified B Corporations are leaders in the movement to use business as a force for good.

Whether through information a company provides in its [Disclosure Questionnaire](#), an issue raised by a third-party through B Lab's formal [Complaints Process](#), or public discourse on B Corp certification requirements and standards, difficult and complex questions regularly arise as to how controversial issues in the world of business should affect a company's eligibility for B Corp certification. Judgments on these issues are then determined by B Lab's independent [Standards Advisory Council](#) as part of a disclosure review process.

B Lab's Disclosure Questionnaire forms the basis of the disclosure review process, which covers sensitive industries, practices, outcomes, and penalties and is based on third party screenings and standards like the IFC Excluded Industries List and International Labor Organization Conventions. Recognizing that any list of sensitive issues may be incomplete, however, B Lab also reserves the right to conduct similar reviews on issues that are not currently featured in the Disclosure Questionnaire but are deemed subject to material stakeholder concern and a potential violation of the B Corp movement's Declaration of Interdependence.

When new industries or issues where a decision making model has not already been developed arise, B Lab conducts research into the issue in order to guide the Standards Advisory Council's decision. Research is based on secondary sources compiled by B Lab staff, with the overall intent of identifying and understanding the different concerns related to the industry or issue and the different perspectives of stakeholders. This includes a review of press related to the industry and its impact, how the issue is covered by other standards, existing public policy and public policy recommendations from non-profit organizations and other topical experts, examples - potentially both good and bad - of actors within the industry, and other public commentary and perspectives. This content is in turn used to develop the framework for Standards Advisory Council review, and determines the types of questions that individual companies are required to answer as part of their review.

Particularly when it comes to industries that are controversial, there is a natural and healthy tension between the inclination to exclude all companies in those industries from eligibility for B Corp Certification, and *the need for leadership* that has the potential to transform the culture, behavior, and impact of those industries. While B Lab and its [Standards Advisory Council](#) may determine that an industry as a whole is ineligible for certification, they also recognize that in

controversial industries the need may be greatest to distinguish between good and bad actors, as well as good, better, and best performance by using rigorous standards of verified social and environmental performance, legal accountability, and public transparency. All stakeholders are best served by the existence of credible and transparent standards that facilitate improved policy, investment, purchasing, and employment decisions.

Along with the recognition that there are many diverse and reasonable perspectives as to what contributes to a shared and durable prosperity for all, B Lab and its Standards Advisory Council will make determinations regarding eligibility for B Corp Certification and, if eligible, will require companies in controversial industries, with controversial policies, or engaged in controversial practices to be transparent about their practices and how they work to manage and mitigate concerns. B Lab will also document and share these positions publicly in order to enable all stakeholders, including citizens and policymakers, to make their own judgments about a company's performance, as well as further thoughtful, constructive public discussion about important issues. Existing B Lab statements and frameworks on controversial issues are available [here](#).

These frameworks, like B Lab's standards generally, are works in process, and we look forward to improving upon them in the future. B Lab invites other perspectives as it continues to refine its views and, hopefully, contribute to a constructive conversation about the role of business in society.

Independent of eligibility for B Corp Certification, all companies in any industry are able to use the [B Impact Assessment](#) as an internal impact management tool to assess and improve their overall practices, receive a [GIIRS Rating](#), and/or adopt a stakeholder governance legal structure (such as [benefit corporation](#)) appropriate to the company's current corporate structure and jurisdiction.

If you have questions or comments about B Lab's approach to the below issues, please email B Lab's Director of Standards Dan Osusky at dosusky@bcorporation.net.

B Corp Certification and Company Opposition to Unionization Efforts

Unions have played, and continue to play, an important role in empowering and improving the conditions and wages of workers.¹ The right to freedom of association and collective bargaining is internationally recognized as a basic human right as outlined in the Universal Declaration of Human Rights (1948) and the International Labor Organization's Right to Organise and Collective Bargaining Convention (1949).² While more prevalent in jurisdictions around the world, union membership in the United States has been steadily declining, for a variety of

¹ <https://www.bls.gov/opub/mlr/2013/04/art2full.pdf>

²http://www.ilo.org/empent/areas/business-helpdesk/WCMS_DOC_ENT_HLP_CB_EN/lang--en/index.htm ; <http://www.un.org/en/universal-declaration-human-rights/>

potential reasons, from its height of 20% (in 1950s-60s) to just under 11% in 2016. In the private sector, the percentage is even lower, currently at 6%.³

While governments hold a primary responsibility for upholding and preserving the right to organize, businesses nonetheless have the responsibility to adhere to those laws and to respect their workers' rights (especially in the absence of effective regulation). Exactly whether and how a specific company's actions in reaction to efforts from its workforce to unionize may constitute a violation of its worker's rights to organize, however, yields various perspectives.

Some might argue that a company can, and should, oppose efforts to unionize if it is not in the best interest of their organization and workforce, arguing that the costs of unions as an intermediary between the workforce is unnecessary, could negatively affect their worker's long term job stability, or create costs that do not directly benefit the workers themselves. Others, however, would argue that, beyond any laws established to protect the rights of workers to organize, all company's ought to remain entirely out of, or neutral on, efforts to unionize or even pro-actively facilitate unionization among their employees.

Recognizing the many different perspectives on the issue of unionization and the responsibility of the company to preserve the rights of its workers, there is value in a constructive, public debate on the role of businesses in facilitating or preventing organization. As a global non-profit that certifies businesses that meet higher standards of positive overall social and environmental impact, B Lab recognizes that it is essential to consider the strategies a business uses to address attempts in its workforce to organize in order to understand whether it has met the requirements of the Certification.⁴

In response to a complaint regarding the activities of a Certified B Corporation in response to efforts to unionize the workforce, B Lab and its independent Standards Advisory Council have rendered the following decision:

Companies who have taken a public stance against unionization, or have engaged in activities that can be perceived as taking a stance against union organizing activities, are required, at minimum, to make their stance and practices transparent on their B Corp public profile.

Specific practices that impede the rights of workers to organize, such as the violation of laws designed to protect the right of employees to organize, or the

³ <https://aflcio.org/about/history>

⁴The right to freedom of association and collective bargaining is featured in B Lab's Disclosure Questionnaire, a negative screen used by B Lab as part of its B Corp certification process to identify whether businesses may be violating the rights of its workers. The DQ item is a true/false statement: *Company prohibits workers from freely associating and bargaining collectively for the terms of one's employment*. A negative answer triggers further review by B Lab staff and, if deemed material, by B Lab's independent Standards Advisory Council, and may result in a request for additional disclosure, remediation, or denial of certification or recertification.

hiring of outside consultants specializing in responses to union organizing activity, will also be reviewed by the Standards Advisory Council to determine if additional actions, including remediation or ineligibility for the Certification, should be taken.

Details and Rationale:

Based on B Lab's research and consultation process, there are several different types of practices and positions relevant to a company's activities in response to unionization, outlined below.

Neutral vs. Non-Neutral Positions on the Unionization of the Workforce

Although a rare practice in the United States, a company can take a "neutral" position on the unionization of their workforce, meaning that they do not take a stance against efforts to unionize, and may even actively facilitate union organizing activities or allow unionization efforts to take place on their property and during work hours. Labor advocates recognize this as an ideal best practice, as it means that the company does not "interfere" at all with unionization efforts and may even actively promote them, recognizing the potential value in unions and that the decision to unionize is best made directly by the employees themselves.

Those in favor of non-neutral positions, on the other hand, argue that in cases where the company is neutral, the decision itself may not be - debates about unionization may be misleading or simply one sided if all information, including potential downsides, are not presented in the process as well. When taking a non-neutral position on the unionization of the workforce, a company takes a more active stance that states the company is not in favor of their workforce organizing (although, within the bounds of the law, the workforce can still choose to unionize despite the company's wishes).

In order to achieve or maintain B Corp Certification, companies that take a non-neutral position on the unionization of their workforce are required to make that position transparent as a part of their B Corp public profile. This requirement is intended to recognize the value of transparency in the company's practices and allow interested stakeholders, including workers and the broader public, an opportunity to make their own judgment.

Following Laws Protecting the Rights of Workers to Organize (in the United States)

Union related labor law in the United States is based on the National Labor Relations Act of 1935, and governed by the National Labor Relations Board, tasked with ensuring the ability of unions to organize without the backlash of the companies in which they try to operate in.

The primary functions of the NLRB are:

- to decide if an appropriate bargaining unit of employees exists for collective bargaining, should employees request it
- to determine by secret-ballot elections (conducted by the NLRB) whether the employees in a business or industry wish to be represented by labour unions
- to prevent or correct unfair labour practices by employers and unions.

It is illegal for a company to interfere with efforts by a workforce to unionize. While there are some clear precedents regarding what specific activities are illegal (for instances threatening to fire workers or close locations, asking employees about whether they are for or against unions, etc.), there is nonetheless ambiguity in the laws. The NLRB can make determinations about the actions of companies and whether they violate the law.

At a minimum, Certified B Corps are required to abide by the laws governing the rights of employees to organize. B Lab and its Standards Advisory Council's role, however, is not to adjudicate on whether a company violated the law, independent of the judgment of the NLRB which has the formal mandate, resources, and expertise to make such decisions. and therefore will respect and defer to the judgments of the organization with formal governance and expertise on the matter.

B Lab and its Standards Advisory Council will defer to the judgment of the NLRB, and in cases where a company has been found guilty of violations, B Lab will review the case to determine if the company has sufficiently remediated and whether any further action, beyond transparency on their B Corp public profile page, is necessary.

Other Practices Used to Influence or Delay Union Organizing Decisions

Beyond those practices that are deemed illegal, worker advocates have flagged certain activities that, while not necessarily illegal in all jurisdictions, may interfere with an objective process for employees to determine what is best for them when it comes to unionizing. These include:

- Hosting "captive audience" meetings, either collectively or one-on-one with individual workers, in which employees are required to listen to the position of the company.
- Heavy investments in anti-union PR campaigns or the use of specialized consulting firms (sometimes labelled "union busting firms") to aid in the engagement process with employees.
- Requiring an NLRB election even after 50% of the workforce has formally signed a union card in favor unionizing,

In the case of any of these practices, or other additional practices with similar objectives, Certified B Corps are, at minimum, required to make their practices transparent on their B Corp public profile. If these practices are current and/or ongoing, they will also be reviewed in more

detail by B Lab's Standards Advisory Council to determine if additional actions, like remediation or ineligibility for the certification, are also necessary.

This judgment is intended to, as above, reflect the fact that at a minimum, it is necessary for workers and other stakeholders to be able to arrive at their own judgment regarding the companies practices. Nonetheless, in some cases, the Standards Advisory Council may determine that a company's particular practices extend beyond the need for transparency and, in their judgment, constitute a clear violation of their workers rights and/or the spirit of the B Corp Community as expressed in the B Corp Declaration of Interdependence, in which case remediation or ineligibility for the certification will be determined.

Conclusion and Invitation:

This statement is effective as of April 2018 until further judgment from the Standards Advisory Council, and was triggered by a complainant regarding a current Certified B Corp. In response to that complaint, B Lab conducted research, including engagement with union advocates and labor rights experts, for presentation to B Lab's independent Standards Advisory Council.

In preparation for future revisits by the Standards Advisory Council on this issue and B Lab's continuous improvement of its standards, please send your feedback or questions to B Lab's Director of Standards Dan Osusky at dosusky@bcorporation.net.