



Tuesday, October 21
2:30 pm-4:00 pm

611 How to Survive a Union Corporate Campaign and NLRA/Labor Law Update

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Maria Natoli-Miller

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Faculty Biographies

Carolyn K. Fisher

Carolyn K. Fisher is director of global labor and employee relations for Ingersoll Rand in Davidson, NC. Ingersoll Rand is a \$17 billion global diversified industrial company with approximately 64,000 employees worldwide. Ms. Fisher has global responsibility for labor and employee relations across all five Ingersoll Rand business sectors.

Ms. Fisher has spent nearly her entire legal and business career advising management and developing strategy on labor and employee relations, including union organizing campaigns, labor contract negotiations, claims of discrimination, policy-making, and general advice and counsel. Prior to her current position at Ingersoll Rand, Ms. Fisher had similar responsibilities for the US operations of Coca-Cola Enterprises and DHL Express. Additionally, she spent eight years practicing law with the management labor and employment firm of Ford & Harrison in Atlanta.

Ms. Fisher received her BA from the University of Virginia and is a graduate of Wake Forest University School of Law.

Maria N. Miller

Maria N. Miller is vice-president and deputy general counsel for ABM Industries Incorporated in San Francisco. ABM Industries Incorporated is among the largest facility services contractors listed on the New York Stock Exchange. With fiscal 2007 revenues in excess of \$2.8 billion and more than 105,000 employees, ABM provides janitorial, parking, security, engineering and lighting services for thousands of commercial, industrial, institutional, and retail facilities across the US. Ms. Miller heads the labor and employment practice group at ABM and her responsibilities include managing high stakes employment litigation including wage and hour class actions, drafting company employment policies, and providing advice and counsel on a wide variety of employment related issues, including labor relations.

Prior to joining ABM, Ms. Miller was a litigator associated with two law firms in the San Francisco bay area handling a variety of general practice matters. In addition, Ms. Miller first-chaired five jury trials prior to going in house with ABM ten years ago.

Ms. Miller received a BS from Santa Clara University and is a graduate, cum laude, of the University of San Francisco School of Law.

Kimberly Strohm

Kimberly Strohm is currently assistant general counsel for American Eagle Outfitters, Inc. in Pittsburgh, a leading retailer that operates under the American Eagle Outfitters and Martin+Osa brands. Ms. Strohm has over 16 years of experience in the retail industry,

and performs general corporate work, with a concentration in labor and employment and civil litigation, for American Eagle.

Prior to her current position with American Eagle, Ms. Strohm was a law clerk for president Judge Martin J. O'Brien, Butler County Court of Common Pleas in Butler, PA during which time one of her memorandum opinions written for the Judge was published. Ms. Strohm was also an associate attorney for four years with a law firm in Pittsburgh handling a variety of general practice matters.

Ms. Strohm received a BS from Carnegie Mellon University and is a graduate, cum laude, of Duquesne University School of Law.

How to Survive a Union Corporate Campaign and NLRA/ Labor Law Update

How many in the audience:

- Have Union representation?
- Are, or have been, involved in a Corporate Campaign?
- Have entered into a neutrality agreement?

Union Organizing Pitfalls, Tips and Strategies for Employers

New Tactics Used to Organize Workers

- Traditional Organizing Campaigns
 - Workers Targeted prior to NLRB Secret Ballot Election
- “Change to Win” Unions Use Different Organizing Tactics
 - Target Customers or Employer vs . Workers
 - Neutrality Agreements
 - Card Check Elections
 - Corporate Campaigns (covered next section)
 - Use of internet, radio, email and TV
 - Videos
 - Salting

Old School – A Secret Ballot Election

- Card Check – Begins without notice
 - Employees ask other employees to sign cards
 - Once at 30% , can ask for an NLRB election
- Representation Petition is Filed
 - Campaign Begins
 - Laboratory Conditions
 - NLRB conducts election by secret ballot
 - Majority needed to win

Train Supervisors BEFORE Organizing Starts to...

- Refuse anything in writing from union or employee group
 - Could be signed cards = acceptance of the union
- Follow Existing Solicitation, Distribution, Posting Rules
 - Selective Enforcement is a ULP
 - Review Policies now with a union in mind
- Follow Existing rules re uniforms and insignia
- Avoid Unfair Labor Practices
- Call Legal!

The New Paths to Recognition

- Card Check Election
 - Union recognition without a secret ballot election
 - After receipt of 50% plus of signed cards
- Neutrality Agreement
 - Employer does not campaign against union
 - Sometimes, employer endorses it
 - Employer does not assist anyone opposing union

Leafleting, Buttons, Picketing Issues

- Distribute and enforce policies in advance
 - Non working time only
 - Cannot restrict access to public property
- Buttons, Stickers generally allowed
 - Except if a uniform uniform policy ☺
 - Offensive button

Act Quickly When Election Petition is Received

- Contact NLRB Promptly
 - Extend Election Date to 60 days
 - Stipulate to an Election Agreement?
- Negotiate Size and Members of Bargaining Unit
 - Excelsior List
- Logistics Are Important
- Laboratory Conditions Exist

It's a Tightrope Walk During "Laboratory Conditions"

- Rules are lopsided
 - Union can say anything
- Employer can't "SPIT"
 - Spy, Promise, Interrogate, Threaten
- Common Traps:
 - Surveillance = just being near area where meeting is occurring
 - Interrogate = 1-3 persons in your office
 - Promise = agreeing to make changes in future
 - Threat = describing the negative impact of a "yes" vote

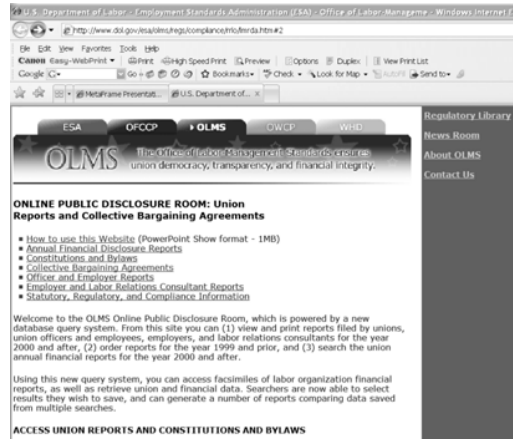
Talk to Your Employees

- Tell them you oppose the union
- Hold meetings
- Ask what is important to them
- Artfully explain the economics
- Look to union's track record
- Emphasize dues and impact on relationship
- Campaigning ends 24 hours before election

You Don't Have to Go It Alone

- Labor Relations Consultant
 - A union "persuader"
- Purchase Campaign materials
 - Posters
 - DVDs
- Buy Union-Specific Research materials
 - Election Losses, Abandoned Contracts, ULPs filed against union by members, Lengthy negotiations, Strike history, de-certification petitions

Public Resources Exist to Assist You



Pre-packaged videos and posters are available for small campaigns

- Inexpensive, re-usable
- Reduces Chances of ULPs
 - Videos talk, not management
- Multi-media presentation more polished

Be Proactive

- Select a persuader now
- Train Supervisors now
- Order DVDs now

You only have 30-60 days.

Corporate Campaigns

- Purpose: to get Companies to agree to neutrality agreements or card checks without the risk of holding an election

Corporate Campaigns

“Employees are complex and unpredictable.
Employers are simple and predictable.
Organize employers, not employees.”

– Joe Crump, UFCW Official

Tactics

- File frivolous actions and complaints with government agencies, alleging unfair labor practice
- Assail business partners' images to force them to put pressure on the target company
- Attack the company on issues such as zoning and permitting
- Media warfare: enlist celebrities, religious figures, and politicians to publicly campaign against the company

What is a Corporate Campaign?

- Multifaceted attack on business relationships
- Several channels of attack
 - Legislative
 - Regulatory
 - Legal
 - Economic
 - Psychological
- Goal: Undermine confidence in the company internally and externally

Tactics

- Commission and distribute literature attacking the company and its leadership
- Create front groups and websites that attack the company
- Advertisements in all media forms- web, television, radio, print and billboard
- Unite with other interest groups that attack the company on other issues- e.g., environment, safety
- **Any means necessary: create a level of chaos and hardship for the employer so that it is forced to give in to a card check or neutrality agreement**

Case Study: University of Miami/UNICCO

- SEIU launched a campaign to unionize Janitors at the University of Miami via card checks and a neutrality agreement
- The janitors were employed by UNICCO, a subcontractor; not by the University.
- SEIU pressured the University, hoping it would then pressure UNICCO.
- SEIU targeted University President Donna Shalala, a former Clinton Administration Cabinet Member with prominent ties to union-friendly Democratic politicians.

Case Study: University of Miami/UNICCO

- At the outset of the campaign, the University and UNICCO formed a committee to investigate SEIU's public claims of poor treatment of janitors, agreeing to raise wages by more than two dollars per hour.
- SEIU was unsatisfied, as it sought a card check agreement and union recognition. SEIU escalated its campaign.

Case Study: University of Miami/UNICCO

- SEIU's attack
 - Former Vice-Presidential nominee John Edwards participated in public protests, and used his political ties to Shalala to pressure her.
 - Recruited local religious figures and turned a local church into a "strike sanctuary"
 - Organized a hunger strike, consisting of students and janitors. Several strikers became ill, and one suffered a minor stroke, further drawing media attention.
 - Used information from a newspaper profile of Shalala that listed her salary and descriptions of her house in an effort to portray her as "out of touch"
 - Organized sit-ins with student and faculty groups at the University.

Case Study: University of Miami/UNICCO

- The University and UNICCO offered to let janitors vote to unionize through a secret-ballot election, but not a card check.
- The University and UNICCO eventually gave in to SEIU's demands, and the American Arbitration Association determined that 75% of the janitors had signed cards authorizing SEIU representation.

Is the Strategy Working?

- Card checks have become much more popular than secret ballot elections
- 80% of union members now join through card checks and methods other than a formal NLRB election
- The SEIU, who is most closely associated with the card check has grown by 900,000 members in the past decade.

How you should be prepared as in-house counsel

- Have labor counsel decided upon before an organizing campaign starts
- Conduct regular positive employee relations training
- Identify in advance your internal team of business partners in the event of organizing

Managing a Union-Represented Workforce

Is Management Prepared?

There Are Unique Elements to Managing a Union-Represented Workforce

- The Terms of the Contract Control
- Rules/Working Conditions Often Cannot be Changed without Bargaining, If at All
- Work Assignment/Promotion/Layoff Decisions Are Not Always Yours to Make
- Employees Can Picket, Leaflet and Wear Buttons, Even if the Contract Contains a No Strike Clause
- Union Stewards Have a Presence in the Workforce
- Union-Represented Employees Have Weingarten Rights

Management's Role in Effectively Managing a Union Workforce

- Your Own Management Can Be Your Worst Enemy if They Do Not Know the Terms of the Labor Contract
 - Long Term Union Employees/Stewards Can Intimidate Supervisors
 - Union Tells Management What the Contract Means
 - Misapplication Can Lead to Past Practice that Cannot Be Changed
- Labor Contract Training Should be Included in New Supervisor/Manager Management Training
- Upon Ratification of Each New Labor Contract, Conduct Management Training for ALL Facility Management Reviewing All Provisions (Old and New) of the New Contract

Recent Developments in Labor Law

- NLRB Rules That Employers Can Prohibit Union Solicitations via E-Mail
- NLRB Issues New Guidelines Concerning Contract Bar Application When an Employer Voluntarily Recognizes a Union
- Employer LM-10 Filing Requirements in Full Effect
- OFCCP Includes Beck Posters in Audits
- Terms of Pension Protection Act Applicable to Multi-Employer Pension Plans Implemented

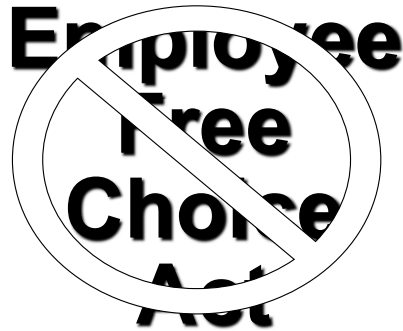
The Perils of the Pension Protection Act

- Multi-Employer Pension Plans Evaluated on a Funding Scale
 - Green: Sufficiently Funded
 - Yellow: Endangered
 - Red: Critical
- Yellow or Red Status Requires Trustee Rehabilitation Plan to Enable the Plan to Emerge within 10 Years
 - Reduced Future Benefits
 - Increased Employer Contributions
- Red Status Requires Immediate Surcharges of 5% for 2008 and Increasing to 10% in 2009. Surcharges Remain in Place Until New Contributions Negotiated That Are Consistent with Trustee Rehabilitation Plan.

Contract Language to Protect Yourself From The Perils of The Pension Protection Act

If, in accordance with a duly adopted funding improvement plan or rehabilitation plan, the [*Pension Fund Specific Name*] is required to issue a schedule pursuant to ERISA Section 305 (added by the Pension Protection Act of 2006) that requires contributions in excess of those provided in this Agreement, the Union and the Company shall promptly meet to negotiate changes in the Agreement to generate sufficient savings to cover the cost of the increased contributions. If the parties are unable to reach agreement within 60 calendar days of the issuance of notice of the increased contributions, the issue may be submitted by either party directly to arbitration. In such instances, the arbitrator's authority is limited to determining which party's final proposal to the other meets the obligation to generate savings sufficient to cover the increased contributions required by the Fund. Once agreement is reached or a decision is issued by an arbitrator, the Fund shall be obligated to accept the new contributions as if it were the term of a new Agreement.

On the Horizon in Labor Law



Employee “Free Choice” Act

- Mandates Card Check Recognition of Unions Without a Secret Ballot Election
- Imposes Greater Penalties on Employers for Unfair Labor Practice Violations Found to Have Been Committed During an Organizing Campaign
- Requires Contract Bargaining Within 10 Days of the Union's Request and Refers Negotiations to the FMCS if No Agreement is Reached After 90 Days of Bargaining and then to Binding Arbitration 30 Days Later. The Arbitrator's Ruling is Binding for 2 Years.
- Likelihood of Passage of the EFCA Appears to Depend on Outcome of Presidential Election
- Be Prepared with a Proactive Strategy – Unions Are Watching and will be Ready to Act

Mergers and Acquisitions

- The Labor Contracts in a Potential Merger or Acquisition Should Get the Same Scrutiny in Due Diligence as Any Other Major Contract
- Retain an Experienced Labor Attorney – Do Not Rely on M&A Counsel
- Ensure Counsel Understands How Your Business Operates and How You Intend to Operate the Merged or Acquired Business
- Pitfalls in Labor Contracts Can Be Monetary or They Can Be Buried in Language that will Impair Your Ability to Operate the Merged or Acquired Business as You Intend