

Webcast: Resisting Union Neutrality Agreements, Ballot-free "Elections" and Corporate Campaigns
Date and Time

Wednesday, September 6, 2006 at 1:00 PM ET

Presented by ACC's Employment & Labor Law Committee and [Jackson Lewis LLP](#)

ASSOCIATION OF CORPORATE COUNSEL

Moderator: Bruce Pincus

September 6, 2006

12:00 p.m. CT

Operator: Just a reminder, today's conference is being recorded.

Female: Please go ahead, (Bruce).

(Bruce): Good afternoon everyone. Or good morning or good evening, whatever the case may be depending upon where you are today. My name is (Bruce) ((inaudible)) and I'm the subcommittee chairman on the ACC's employment and labor law committee.

I am general counsel for ((inaudible)) Incorporated. And I am delighted to be the moderator for today's WebCast. A couple of items related to logistics, and then I will have the pleasure of introducing today's speakers. The title for today's WebCast is Resisting Union and ((inaudible)) Reelections and Corporate Campaigns.

You are able to ask your questions online. If you have your screen open you should have at the bottom left hand corner a box which says questions. Please type in your questions there and click send. You can enlarge that box if you need to. I will see your questions as they are submitted, and I will try to get them to the speakers during the presentation today.

However, I know that there is quite a bit to cover today. So please understand that depending on the number of questions submitted, we may not have time to get to many of them. However, the presenters have agreed to provide answers to your questions, which will be posted on the committee web site.

Another matter which is very important to the speakers and the ACC and the Employment and Labor Law committee is the evaluation form which you are asked to complete. In the middle of the left-hand side of your screen, you should see a link to the WebCast evaluation. We would very much appreciate your taking a few moments to complete that evaluation form at the end of today's presentation.

These forms are reviewed and used to continually improve these WebCasts so they can remain a superior resource available from the ACC. Please note that this WebCast is being recorded and will be made available on the ACC web site.

If you have technical difficulties during the session, please e-mail ACC WebCast at commpartners.com, and note that there are two Ms in commpartners.com. Also, please note that the ACC has extended the registration deadline for the annual meeting in San Diego. Information on the deadline extension is available on the ACC WebCast or web site.

That being said, allow me to introduce our two presenters and we will go from there. I am delighted to have both of them speak on today's topic, and I am sure you will agree as we proceed.

(James) ((inaudible)) is Senior Employment Law Counsel and the Global Director of Labor Relations at ((inaudible)). Jim joined the ((inaudible)) legal group in 1998 as director of labor employment law where he leads the group globally, dealing with more than 133,000 employees in 48 countries.

Jim is also the subcommittee chairman for WebCasts with the ACC employment and labor law committee. His bio is attached as a link, and I encourage you to read the rest of his information. Additionally, we have (Michael) ((inaudible)). Martin is a partner with Jackson Louis out of their San Francisco office, and co-chairs the firm's management training practice group.

Jackson Louis is the employment and labor law committee sponsor and a recipient of the ACC's Sponsor of the year award. (Michael) is listed in who's who in American law, and is a life member of the National Registry of Who's who. He has testified before the U.S. Senate and House of Representatives on labor law issues and has over 30 years of experience in labor law matters.

We're delighted to have him here today. And again, I recommend you take a look at his bio to get an idea of his extensive experience in employment and labor law matters.

Welcome to you both. And Jim, I'll now turn it over to you.

(James): Thanks very much, (Bruce) for that introduction and good morning and good afternoon to everybody. Good evening if you are actually in another part of the world. We're delighted to be here today. (Michael), I understand our topic today is actually the subject of potential legislative activity. Can you tell us about that?

(Michael): There is a couple of pieces of legislation that take different approaches on this issue. As this slide indicates, there is a so-called employee-free choice act which would change the National Labor Relations Act. So these card check procedures would become law under the statute.

This ((inaudible)) protection act would preserve the election processes that we have had in place essentially since 1935. The U.S. Chamber of Commerce has a lot of information about these different pieces of legislation. And you may want to check their web site.

I think that the November elections and the elections in 2008 will have a great deal to say about what the actual statutory provisions will be going forward.

(James): Thanks (Michael). Moving to the next slide. Can you tell us what a ((inaudible)) agreement is?

(Michael): Well there is – they have grown. And they take on many different forms. The early example was directed towards management's behavior that they would essentially tell their supervisors not to comment either pro or con with respect to the union.

They have grown a little bit to also try to prevent unions from saying disparaging things about the organization.

(James): OK, could you drill down just a little bit and give us some specific examples?

(Michael): Sure. The ((inaudible)) rule for employers is extremely important from the union standpoint. Because typically the employer will want to explain to the employees issues such as the union's constitution, their bylaws, their financial reports, their history with respect to strikes and the like.

And essentially the gag rule prevents the employer from providing any of that information. Sometimes they are a little bit more specific and they just deal with certain content-based limitations. And we'll talk about those later on. There is also restrictions on conduct. Such as whether or not the union can engage in any kind of strikes or picketing.

There may be also restrictions on preventing the union from filing different type of lawsuits against the organization as part of their corporate campaign. And ((inaudible)) names and addresses is very important. As I think probably everybody in the call knows, when a union files an election petition, there is something called an ((inaudible)) list that has to be provided to the union about three or four weeks prior to the election.

What these new ((inaudible)) agreements do is, they provide the names and addresses of the employees at the onset of the organizing campaign, which of course gives the union that much more access to them. Speaking of access, often times the employer will agree to

permit the union to ((inaudible)) to their property during periods of time like in a lunchroom in order to chat with the employees.

And ((inaudible)) tied to card check recognition procedures because unions really don't want to do elections anymore.

(James): OK, are elections always preempted?

(Michael): They are not always preempted. I think unions have had some problems with some of the neutrality agreements that are tied exclusively to card check processes because most people in the country like the idea of being able to vote. So what we are not beginning to see with these agreements is that there will be variations.

So there might be an election, but it is not ((inaudible)) pursuant to ((inaudible)) processes. They might have a third party supervising an election. There will also be limitations on whether or not there can be any appeals from the election processes, as you have under the labor board today.

There is also sometimes limitations on the ((inaudible)) of organizing. So you might agree to neutrality for California for example, but not agree to it for the rest of the country. There may also be some pre-defined bargaining unit issues which are often times contested before the labor board.

The agreements do not necessarily last forever. The one in Houston involving the janitors there, which we will talk about in a few minutes, has actually expired. It went for a year.

The ((inaudible)) New Haven one, which we'll talk about in detail later on, lasted for nine months.

There might also be pre-agreements on contractual terms. And we will discussed that in the context of the ((inaudible)) case. And there can also be some interest arbitration if no agreement is reached with respect to a first contract. And there may be arbitration of disputes and we'll talk about a case involving ((inaudible)) and what happened with their arbitration case ((inaudible)) violation of ((inaudible)) agreement.

(James): Thanks. (Michael), the audience may be wondering now how we got to where we are.

The rest of the program will deal with these issues. And we are going to suggest the preventative program for consideration. Can you tell us what the – isn't the proposed state of the law really a return to the union statute?

(Michael): If you go back to 1935 on the next slide, when the Labor Act was passed, it recognized elections, but it also recognized quote/unquote other suitable methods for ascertaining representation. Prior to 1935, we had chaos with respect to union recognition in the country. There were all kinds of workplace disputes going on. And the statute was designed to minimize those disputes by having a defined mechanism for union recognition that would require an employer to deal with the union in good faith, based upon the majority showing.

The card sharks were very commonly used. But when the statute was amended in 1947 with ((inaudible)), 9C1 was inserted. And that's when this concept of the secret ballot election became so firmly rooted in the statute. So an employer can insist upon an

((inaudible)) election. And that's been the state of the law really since 1935, but more profoundly since 1947.

(James): Now free speech has changed as well, has it not?

(Michael): Yes. There was a lot of concern when the statute was first enacted as to just what an employer could say top employees about a union. And there was some labor board decisions that held that an employer essentially could not say negative things about the union. The free speech ((inaudible)) section 8C was inserted into ((inaudible)) in 1947 and gives employers a very, very broad right of free speech.

So provided there is no threats or promises, or interrogations and spying of union activity, the employers right of free speech is extremely robust. And that's one of the things that unions do not like. Because they would prefer for the employer to be neutral as they say or a gag order as we sometimes say so that they are not exercising their 8C rights, which gives the union that much more of an opportunity to influence the employees.

(James): How does neutrality impact employees?

(Michael): Well it often times deprives them of the right to a secret ballot election conducted by the Labor Board. It also impacts their informed choice. The statute says employees can join a union or not join a union. Those are two equal rights. And I think most employers would say that they respect the rights of their employees once they have made an informed choice.

The informed choice is of course based upon all of the information that has been provided.

If the employer cannot provide information like constitution bylaws, it's usually the case that the union will not do so. So there is a question as to whether or not the employees really have informed choice.

The Secret Ballot Protection Act is really trying to mandate in a statutory format what the U.S. Supreme Court has said, and that secret ballot elections are generally most satisfactory. I mean, bottom line is, it's very easy to get someone to ((inaudible)) the union authorization card. It is much more difficult to get that individual to vote affirmatively for a union through a secret ballot election process.

(James): Why are unions so insistent about this?

(Michael): Well, they are in trouble. They are in serious trouble. This chart indicates that back in 1955 they represented about 35 percent of the work force. Today in the private sector, that number is about 7.8 percent. If union representation in the private sector was about 20 percent, we probably wouldn't be having this WebCast. But given the fact that they are below 10 percent in private sector, and about 12 percent overall with the public employees, this has created a huge issue for organized labor.

And when we go to the next slide, you can see that this dissatisfaction last Labor Day lead to an actual split between the ((inaudible)) and the new change to win coalition.

(James): Now who or what has changed the win?

(Michael): Well it changed to win is now a competing organization to the ((inaudible)) CIO.

There are a number of unions that split from the family so to speak. You can see then listed here, ((inaudible)), the (FCW), and the (FEIU). The (FEIU) is very significant. Especially with respect to healthcare. The (UFCW) of course and the retail environment unite here as you focus in on hospitality and the ((inaudible)) and transportation.

Despite the fact that only seven unions left the ((inaudible)) leaving about 53 in the ((inaudible)) it accounted for about six million workers. So it was a huge hit to the federation.

(James): What's the focus of change to win?

(Michael): The focus of change to win is to basically organize those industries that cannot move offshore. It is also a focus that emphasizes what we call wholesale organizing as opposed to retail organizing. By that what we mean is they are attempting to organize an entire company at one time or an entire industry, as they are for example trying to do with the assisted living industry.

The particular organizations that they are focusing on, retail services, healthcare, finance, insurance, construction. And I think this is part of the analysis that the in-house counsel needs to think about as they are evaluating the potential vulnerability of their organization to these types of attacks.

This is not to say that if you are not in one of these industries, that you are necessarily immune. But this is the primary focus of change to win.

(James): Now is this actually leading to more organizing?

(Michael): Well there has been a number of articles about that over the last couple of days in light of Labor Day on Monday. And I think that everybody pretty much agrees that there has been a tremendous increase in organizing. It's difficult to quantify that precisely because there are not stats that I know of that unions report that they have necessarily commenced organizing ((inaudible)) because obviously a great deal of what they do at least initially is done very quietly.

So we haven't necessarily seen the increase in the numbers. And the ((inaudible)) and change to win don't report their number changes until the end of the year. But anecdotally, we certainly know at Jackson Louis that there is a tremendous increase in organizing just from the attendance and our public programs dealing with this topic. We know that many organizations are increasingly concerned.

We also know that at least with respect to change to win, that they have increased their internal cooperation in their research of companies. I think streamline their operations tremendously. And as these two quotes indicate, you know we'll file for an election if we have to, or as one change to win vice president said, you know we just don't do elections.

So they want to organize wholesale. And they don't want to do it through elections. They want to do it through neutrality and card share.

(James): So (Michael), do you actually see a trend away from auctions?

(Michael): Most definitely. When I started 30 years ago, there were probably somewhere in the neighborhood of seven or eight thousand elections per year. Today that number is down to about 25, 26, 2,700, something like that.

And when you look at the actual growth and the numbers of numbers, about 70 percent or 150,000 in 2005, organized without ever voting in a secret ballot election conducted by the Labor Board, but through a card share. And there have been some high profile examples of this like the janitor situation in Houston, the Las Vegas casino workers, the wireless company.

There has been also some very high profile successes among healthcare public sector employees, such as home health care workers.

(James): Don't these high profile examples stem from corporate campaigns?

(Michael): Yes they do. And the corporate campaign is the subject of a book written by Professor ((inaudible)). And there is a site for it on this slide. And if anybody is interested, I would suggest that you get a hold of this through Amazon.

There is also on the U.S. Chamber of Commerce web site, a booklet that can be downloaded by Professor ((inaudible)) which was prepared in 2005, which was prepared in 2005 which is a condensed version of his 300-page book.

But he has defined a corporate campaign as a form of reputational warfare. And I think warfare is an interesting word because that is what this is. And it's conducted through, as he says, broad sized half-truths, innuendo, and litigation and legislation. And it goes on.

And it is really a fight about the soul or the reputation of the organization. And I think that it is very important to recognize what Andy ((inaudible)) says, we'll unionize your workforce, or we will destroy your reputation.

One of the most significant problems that I have as a counselor to organizations is to get this ((inaudible)) to understand what a corporate campaign is all about. Because often times they will tell us that their employees love them and they are not interested in a union.

Regardless of whether or not that's ((inaudible)) thinking, what a corporate campaign is designed to do, is to unionize your employees not because they want a union, but rather because the union wants them. And they are essentially ((inaudible)) in a game called union survival yes or no. And the tool that organized labor uses to get companies to agree to these type of provisions are corporate campaigns.

(James): So what type of tactics do you actually see the unions using?

(Michael): Well they are very, very extensive. And I am surprised almost once a week with a brand new tactic. Cross action litigation, especially in the employment arena is part of it. The organization just receives very negative media attacks. There is sometimes targeted legislation. That's the so-called Wal-Mart Maryland healthcare bill, which was found to be preempted under a ((inaudible)) which is now on appeal.

I was with the organization a week ago. And they were wondering how come they had this OSHA inspector on their premises because the inspector said that they weren't there pursuant to any kind of employee complaint. The inspector wasn't really sure why he was there at all.

Well it was very clear, because the company had publicly declared as a target of a corporate campaign a week before. They will join with community and faith-based groups. And the corporate campaign with respect to the janitors in Houston, there was a mass that was conducted by the then archbishop of Galveston, Houston, attended by about 15,000 individuals in support of the overall campaign.

The unions are very good with respect to co-opting politicians and other civic leaders. People that are running for office. Actors. We have seen some of this for example in the University of Miami situation, where there was a hunger strike that lasted for I believe about 20 days before the University of Miami agreed to recognition.

Labor cooperation, especially on the international front. If your organization is based internationally, and has signed various cooperation agreements with organized labor, whether it is in France, or some other European country, that can be utilized to come back and haunt you in the United States.

Public demonstrations. There is going to be a number of demonstrations when the Labor Board issues its decision involving the determination of supervisors. Especially ((inaudible))

nurses in healthcare. Assuming that that decision is a quote/unquote ((inaudible)) decision.

There will be demonstrations all around the country with respect to that.

They will go out to the consumer. Essentially, what they are trying to do is to destroy your business.

(James): Now we see here this, We Stand with Houston janitors ad that you talked about. And this is actually an ad signed by community leaders in Houston. How far do you think unions will go in their tactics, (Michael)?

(Michael): Well when you take a look at the ((inaudible)) New Haven situation, and you take a look at some of the lessons learned, which are reflected in the next slide, they will go pretty fast. Because as we indicate here, at least – and this is from Yale New Haven that we are going to talk about in a second.

All of the negative criticism, the co-opting of the religious, et cetera, that wasn't enough. But it was enough, and this certainly was the case with ((inaudible)) Healthcare West, but it is also the case with Yale, New Haven.

It's when the organization's bottom line is directly impacted that the organization often says, uncle. Because what organized labor says is, organizing employees is very unpredictable. Because employees have different views of organized labor and different needs and demands.

But when you organize an organization it's very simple because they all care about one thing, their bottom line. And when their bottom line is being destroyed, they will find ways to make sure that that doesn't continue to happen.

(James): Take us through the Yale New Haven situation as a case study.

(Michael): Well I think the most important thing about Yale New Haven is to note that it was a seven-year campaign. These campaigns are relentless. And they can go on for a very long period of time. District 1199 of ((inaudible)) had represented some of the hospital employees. The basically wanted to get the rest of them. I think that they were a good target because while they were separated from Yale University, obviously Yale University is a very high profile. And they also had representation by ((inaudible)) and that was a very effective mechanism to give additional pressure against Yale New Haven Hospital.

They also had tremendous political clout, and access to the state and local media which we see the ((inaudible)) doing very effectively all around the country.

(James): On the next slide, we demonstrate some of the point of attack, especially with respect to healthcare. The pricing, the billing, and the debt collection practices are something that the union will take a very careful look at.

I think you should also note that before the union goes public with the campaign, I make the assumption that they had been researching the organization for at least six months. And they will find the silo within the organization that presents a pain point.

So as reported a couple of weeks ago in the “Wall Street Journal” and the ((inaudible)) there a corporate campaign, they alleged that the general counsel was not admitted to practice in – I think it was Virginia. And they sent the letter to the head of the audit committee of the board of directors asking them to look into whether or not the general counsel was actually admitted. And they were looking forward to a full report at the annual shareholder meeting because the union would be there since they owned 560,000 shares of stock.

So they will find whatever that little niche is that is going to be embarrassing to the organization. No matter how much charity care for example the healthcare institution has provided it’s never enough. They will focus in on those segments of the community that need healthcare the most that perhaps are not being so readily served by the targeted organization.

Diversity is huge. They will look at what your history is with assets and investments. Executive compensation. Such a major issue today. Especially with the stock option issues that are going on. If you are a public company or if you are a non-profit healthcare company where you have to file documents that reveal the level of executive compensation. You can fully expect that that is going to happen.

If you are tax exempt, you can expect that the unions will be asking different governmental authorities to investigate the propriety of your tax-exempt status. Again, in the Yale New Haven situation, they also focused on patient outcomes and safety issues. And there were a whole variety of unfair labor practices that they filed against the organization.

Notice that there is only one point of attack that actually involved the treatment of the employees. Everything else involved the organization and its very essence.

(James): So in Yale New Haven, who were the allies?

(Michael): Well, they had a variety of allies. The state attorney general was very much in favor of what the union was attempting to do from the standpoint of investigating the allegations. We have seen a situation recently in Oregon where the secretary of state in Oregon has assembled a so-called workers rights board asking the targeted organization to come and give testimony and have now written a 50-page report condemning the company.

So what happened with Yale New Haven with the state attorney general, this pattern is repeating itself in other areas of the country. Local politicians ((inaudible)), the community leaders, such as you saw in the Houston flier that we had a couple of slides ago. They will look to different minority groups in order to attack diversity issues. They will go to recognized leaders such as the Reverend Jackson, to help hold rallies and to speak.

They will create groups such as residents for a healthy open debate. They are excellent at messaging – the messaging. After you get finished with it, leaves a lot to be desired. But they are very good at messaging. They are very good at the quote/unquote ((inaudible)) fairness issue.

They emphasize that over and over and over again. They even have created something called the Center for a New Economy. So the union recognizes that its reputation may not

be as highly esteemed within the community as some others. And so what they will do is they will go to those other groups and use them as nominees to help further the message.

(James): Now is the campaign here really unrelenting?

(Michael): Yes. First as I mentioned, it went on for seven years. And these are some of the kinds of things that took place in the Yale New Haven situation, which are self-explanatory. Everything from newspaper ads, to dedicated web sites condemning the organization, which are fairly typical in these situations. There were TV commercials all over the state of Connecticut. There were billboards that were condemning Yale New Haven. They went on and on and on.

(James): And despite that Yale New Haven resisted all this?

(Michael): Well they resisted to a point. But ultimately, what happened is that they wanted to build a new cancer center. And the mayor – and here is the quote, said that it was dead in the water unless there was an agreement on holding a union election for Yale New Haven hospital employees outside the ((inaudible)) of tradition and/or the election processes.

So here the union had been very successful in co-opting local politicians that were involved in an approval process to building a new hospital.

(James): So was the deal made?

(Michael): Yes. Ultimately a deal was made. This slide is a AP article that mentions that struck a deal that clears the way for the cancer center. So the ((inaudible)) here is that politicians basically bless the cancer center. And in return, there was a neutrality agreement that was reached.

(James): So what were the elements of the deal?

(Michael): I think the elements of the deal are interesting. And I think that they demonstrate that there is a rather wide variety of agreements that are reached with respect to these type of arrangements. They agreed to a mutual non-disparagement clause. They wouldn't introduce new issues to the campaign 72 hours before their alternative vote, which we will talk about in a second.

One of the things that employers typically do during a campaigns that they will hold meetings for the employees on site and have supervisors engage in one-on-one conversations. Those were eliminated. The union had to be given the home addresses before the hospital could send anything to anybody's home.

There were restrictions even with respect to the size of the postings. And the hospital agreed to doing what they couldn't do anyway under the National Labor Relations Act. But it gave the union a sense of victory that they were protecting the employees by making sure that the organization wouldn't threaten them.

Excuse me. There were some other elements to this that were also reached. The hospital agreed to a discussion about the composition of the voting unit without going through

((inaudible)) processes. Again, you see the list of names and addresses. Interesting that the hospital actually has a dedicated room or lunch break area – I forget exactly what it was, where the union could come on hospital grounds and talk to employees three days a week for the two-and-a-half hour period.

Of course on their trespass solicitation rules for non-employees such as union organizer, this would otherwise be precluded. They also permitted the union to have access to other areas of the hospital to chat with the employees. And there was an election process. But disputes that arise out of the election were not subject to any of the rules and regulations.

And the union was given nine months to actually implement this. And if they couldn't make the demand with the majority within nine months, then the agreement expires. And that nine-month period is now in process.

(James): Thank you, (Michael), for that very interesting discussion on the Yale New Haven situation. Now there are some more cases pending right now which may impact all of us, correct?

(Michael): Yes there are. There is a few of them. The first one is ((inaudible)). And with ((inaudible)) is going to do is deal with the situation where the employer agrees to recognize the union. And then without the secret ballot election and whether or not the one-year ban on a decertification process is going to be recognized, or whether there will be a period of time immediately after the recognition is granted when employees can file a decertification petition.

So this is a very important potential case that is before the board. And everybody is just waiting for a decision.

Another case is ((inaudible)), I made a quick mention of this earlier. But they had agreed to a neutrality agreement which the arbitration enforcement process. The arbitrator found that the company had violated the terms of the arbitration agreement. And while the company had closed that particular location, the arbitrator has now forced ((inaudible)) to submit their campaign ((inaudible)) to the union for prior review and other elections at other plants.

It would have been interesting if the arbitrator would have ordered that the plant be reopened.

(James): Now is there also what we call an RM case – a petition filed by an employer pending as well?

(Michael): Yes. There is a case involving Marriott hotels in Hartford. And there is a type of petition called an RM or a management petition that basically calls into question whether or not the union does in fact represent the employees and asks the labor board to hold the secret ballot election.

Obviously this would be useful from a company standpoint, because it might be a mechanism to stop the campaign if the employees actually vote against the union. Because remember, this is not necessarily about whether or not the employees want the union. It's the fact that the union wants the employees.

Previously, to the ((inaudible)) by the ((inaudible)) Labor Board of this regional director decision, you needed an actual demand. But we're not sure what's going to happen as a result of this. But this is a very interesting potential case.

(James): Now, are employers just sitting idly by here, or they starting to fight back?

(Michael): Well you can see that employers are beginning to create very aggressive strategies to try to ((inaudible)) these campaigns. The ((inaudible)) here situation generated national publicity just a month or two ago with a \$17.3 million judgment based upon defamation. This is a very difficult burden to be able to make this out as ((inaudible)) in this case. Because most of these communications ((inaudible)) to be preempted onto the National Labor Relations Act.

The union is going to appeal this decision based upon what I have read. And I am sure that their focus argument is going to be that the communications were preempted. And state defamation laws don't apply. It was also a case that was decided by a district court yesterday that we do not have a slide on involving Cintas where they were successful with an invasion of privacy argument, also against ((inaudible)) where each individual is entitled I think to \$2,500, and they are now in the process of figuring out how much that is going to be.

So employers are becoming increasingly frustrated in trying to find other ways of combating these reputational campaigns.

(James): Yes. The Cintas case is fascinating. And I think we certainly can put a link to that in the web site as well. The union was actually going around collecting license plates numbers and then going to the online service where they could find out who owned those vehicles, and then they would use that to go to people's homes unannounced.

And so each of the employees that were plaintiffs in this suit got \$2,500 directly from the union. So – and it is a very great example of fighting back. I am going to address the next few slides because it is – you know our job is ((inaudible)) counsel, what should we be doing now?

And obviously we want to educate and prepare senior management board of directors for the possibility of one of these corporate campaigns. Certainly you have got to consider the level of threat based upon your industry and geographic area. Obviously some companies may be more vulnerable than others.

But I would say that I think any company potentially is – especially I think any publicly traded company. And then the question that you have to ask ((inaudible)) house counsel and make a recommendation is, are we going to make the commitment to grant this? Or are we going to stand by and try to withstand the corporate campaign?

And I would say from my vantage point, you know, I ((inaudible)) reaction will be maybe it is smartest ((inaudible)) but maybe it is not. (Michael), if you have a view on that one.

(Michael): I think everybody who has been subjected to a corporate campaign pretty much says the same thing. I never thought this could happen to me. I never thought it would go as far as

it did. And we should have done a lot more to preempt it. Because it is really about defining yourself until the union has an opportunity to define you for you.

(James): That is a great point that we will get to. And so you really want to assess your vulnerabilities to a corporate campaign, those tactics. And I ((inaudible)) traditional organizing. You can't ignore that that could happen too. But you want to conduct an internal and external assessment. And you want a plan for addressing these vulnerabilities.

And you know this is going to include exposure as to wages benefits, healthcare, retirement plans, safety, and working conditions. Workload, stress, hours, and workload. Dispute resolution procedures. What about job security? Is it at ((inaudible)) employment? And notice the other day that California still says that employment ((inaudible)) is alive and well in California even.

So you know what's your company's point-of-view on that? And then there is some softer issues, obviously that are difficult to put a finger on. But you should really look at them as (Michael) said, you know, lots of companies think, well all our employees love us. But you really have crawl underneath the covers of that and make an assessment.

What's the morale like? Do the employees view leadership as credible? Are the supervisors fair to employees? Are they treated well? Do the employees feel like they are treated well? What are their communication channels? Do employees have an opportunity to make their views heard?

Are there you know shared decision making approaches and input from employees? And just recognizing and appreciating employees. I think a lot of companies you know, it's a cutthroat environment. Other companies live for the (quarter) as they say. And the old you know pat on the back – some people certainly really recognize. It may not be there anymore.

And you have to assess you know, how that effects it. Now how can you minimize the risk? Well obviously one is to recommit to an issue-free workplace. That you want to know what the issues are and take care of those issues. The other thing is educating and informing. You want to certainly with your employees.

But also other groups. Suppliers, franchises, and contractors are other groups that you want to educate and inform. You want to have understanding from your supervisors and support of the corporate philosophy that there is a commitment to being an employer of choice.

The next one is key solicitation distribution roles. You know, employees are always getting in trouble with these. They are very difficult because you know, you let the person sell the Boy Scout cookies, but you want to clamp down on the e-mails from the union. It is very difficult. I don't know, (Michael), if you have a specific comment on that. But that is a tough one I think for many companies.

(Michael): Especially with respect to the e-mail. The Labor Board is struggling with this. And we should get some guidance from them. I hope relatively soon. But these rules are more often un-enforced by the organization. And then the union shows up and they start trying to enforce them and that is a huge problem.

(James): right. You know, certainly if you see union supporters, press, look out for your early warning signs. Generally they will be there. And it is important to be aware of them. Obviously if there is a demand for recognition, that is an important thing, an important tip.

If you want to be preemptive, you want to identify who the stakeholders are. Obviously they are your customers, your shareholders talk about suppliers and contractors. Charities. Religious and political leaders, community organizations, financing agents, and politicians. And this all – I see it now with the public companies. I would prefer it with mine. Trying to really focus on this and get the right context in the community so you are recognized as a very good corporate citizen.

And even that is not going to make you immune. That's absolutely apparent. But it certainly can help if you have established those relationships already. And as (Michael) said, and I think it goes to the next slide. That is, defining what you are before union defines you. And I will turn it back over to (Michael) here. But I think that's just an excellent point, that you want to consider, is let's define ourselves before somebody else does it for us.

(Michael): Right. I think that that is key. And while we are all (lawyers) here, I think it is important to note that these corporate campaigns, this neutrality agreement, card check, this is at least 80 percent about communication and general treatment and reputational issues and 20 percent law.

It's really goes to the definition of the institution. And there is just not enough that any organization can do to define themselves before the union decides to attack. And making

sure that everybody within the organization understands your position, the people are comfortable with your position. And now I will tell you many instances Jim, go to the ((inaudible)). And they say, why would you even use the U word to ((inaudible)) give people ideas.

And often times that is the very first thing that we have to do to be very open about our position as to why unions for example made a contribution years ago, but in our organization, we just don't think they are a value proposition. And then to get everybody very comfortable with being consistent, whatever that message is going to be.

(James): (Michael), I will ask you a question along – on that point, because it's something that we struggle with, and I think many companies do because increasingly, companies are multinational. Especially publicly traded companies. So if for example, when ((inaudible)) introduced me, we do – we have employees in 48 countries.

Many of the European countries – you know you couldn't even say that we don't recognize the union as a value proposition. That would be unlawful potentially. And so you know, how do you develop a consistent approach and judge the balancing between what you may have to do in Europe versus you know what your position is in the United States.

And you mentioned that of course at the beginning, the fact that unions are using the statements that employers make about their European operations and their point of view about unions there.

(Michael): Yes. I think the organization has to say something to the effect that you recognize the laws of the different jurisdictions that you operate in. You obviously respect all of the different employment laws. Different countries, for different historical and social economic reasons have taken different approaches with respect to the union issue.

We respect that those instructions, wherever we may happen to be. But at least here in the United States based upon the current state of the law employees have the right to make any self-determination as to whether they do or do not wish to be represented by a union, pursuant to a secret ballot election conducted by the Labor Board.

We respect that. And if our employees decide that they want a union based upon informed choice, we will deal with it just as we would in any other country in the world. OK. Any other comments on the preemptive communications?

(James): Well I think that maybe one more slide that discusses making sure that everybody is on message here and incorporating some of these concepts that we have talked about. The one thing that I want to highlight, and made brief mention of it, but I just want to emphasize it. That third bullet says communicate the message to the supervision.

Your determination of who your supervisors are is key. Those supervisors have to have allegiance to the organization. And this Kentucky river decision that we are waiting for by the Labor Board, that is going to give us guidance on lead person and charge nurses, and the determination of who a supervisor actually is under this 1935 law is a very important decision.

And one of the preemptive things that organizations should do is take a look at that decision when it comes out to determine whether or not you may want to make any modifications to the determination of who your supervisors are. So that those individuals can be adequately trained.

(James): We just had a few more minutes left before the end of the hour. And we are happy to open it up for questions of any kind. We moved through a lot of information quickly. And we wanted to get through it. So we appreciate you bearing with the pace.

But since we do have a few minutes left, fire away if you have anything.

(Michael): Well we also have a couple of other slides as we are getting those questions coming in.

(James): Sorry about that (Michael).

(Michael): That's OK. We timed this pretty well, Jim. If you have to agree to neutrality, these last two slides give you some negotiating points to at least think about. As we have indicated here, neutrality agreements have really evolved over the last several years. You know, if the organization makes a decision that they need to agree to neutrality for whatever the business reason is, that's fine. But you may want to consider some things such as the duration. Like the nine month provision or the one year provision.

Does it have to be the entire United States? Maybe it is only your locations in major cities, but not others. That seems to be the approach that some are taking in the hospitality

industry. Think about whether or not you are going to agree at least preliminarily on some contractual terms which could be effected by the ((inaudible)) situation.

And try to negotiate for at least some kind of secret ballot election instead of the card check recognition. The other bullets are self-explanatory. And I think we have got one more slide that identifies some other points that you might want to consider. Including the look of ((inaudible)) damage or the attorneys fees provisions including the ((inaudible)) neutrality agreement.

It could have been disastrous for example in a ((inaudible)) situation. If the arbitrator had ruled that the facility needed to be re-opened. There is also clauses that we're beginning to see in some of these agreements. And if there is a violation, there is – and if it is found to be willful that there is a 25 percent penalty on top of it.

So you may want to be sensitive to issues such as that. And at least get a provision in there that both parties agree that the message is one of choice. And that it is up to the employees to decide whether they do or do not wish to have a union represent them. And that both the union as well as the employer will respect whatever that decision is.

(Bruce): (Mike), let me jump in here for a moment and just ask since we are getting close to the end here. For those of us that don't get ((inaudible)) with unions, how does it begin? What would be the early warning signs? Would you look for someone handing out pamphlets in the employee parking lot? Does someone come and knock on the door? And do you have to let them in? How does it generally begin?

(Michael): Well there is two different ways. And Jim made reference to this. I should have been clear. There is outside in organizing, and there is inside out organizing. The outside in is when organized labor says, I'm going to go after you. And how do you find that out? You start having class action lawsuits filed against you. You start having politicians questioning what it is that you are doing whenever you try to build a new building.

You start seeing an increase with the number of OSHA, EEOC type charges. You begin to see negative publicity about the organization. And there is a blog about you or a web site about you.

On the inside out, which is when the employees do wish to have a union, the early warnings signs are people avoiding supervision, secret meetings taking place off premises, union terminology such as you know rights or seniority provisions, or arbitration begin to bubble up within the organization.

And this could be going on simultaneously. Which is what the union hopes will happen. If they engage in outside in, there will be some people within your organization who don't like you, who will start organizing inside out. And I don't care what the organization is, any organization has the ten percent factor. Ten percent of your workforce doesn't particularly care for you.

They are unhappy with life. They don't accept personal responsibility. If they have an opportunity to have some fun by knocking the organization, they will do it.

(James): I would add (Michael), you made an excellent point about the blogs or anything else. In this day and age of technology, you should be out there every single day finding out what people are saying about you because in some ways, there is nothing secret anymore. And if there is something in the works, you should be able to find out about it.

I know it may be more that difficult for smaller companies, most of us that work in large in large companies, there is somebody who's actual job it is to do this every single day. I get an e-mail every single day saying here is where we appeared on the internet. And that gives you a lot of things that you can be proactive about. At least to say let's make sure we fix this so that we you know keep our consistent story and we have defined ourselves as (Michael) said.

(Bruce): All right. Well thank you. Well this will conclude today's WebCast. We have run up against our hour. On behalf of the Employment and Labor Law Committee, and the ACC, let me thank our two superb speakers, (Jim) ((inaudible)) and (Michael) ((inaudible)).

For everyone attending today, please take a few moments to complete the WebCast evaluation. And remember that the answers that you submit will be – you will find answers to the questions you submit on the ACC web site.

And with that being done, I thank everyone for attending today.

END