



306 Managing Employees in an Organized Workforce

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Faculty Biographies

Edward B. Lieber

Edward B. Lieber is the corporate labor counsel for Clear Channel Communications in San Antonio, Texas. As labor counsel, Mr. Lieber is responsible for all of the company's collective bargaining and union activity, including leading all union negotiations, managing all union organizing campaigns, and interpreting and implementing all of the company's collective bargaining agreements.

Prior to joining Clear Channel, Mr. Lieber was an associate with the law firm of Akin, Gump, Strauss, Hauer and Feld in Washington, DC. While at Akin Gump, Mr. Lieber provided advice and counsel on all aspects of labor law as well as providing employment advice and engaging in employment litigation.

Mr. Lieber received a B.S. and B.A. from the University of Maryland at College Park and his J.D. from New York University School of Law.

Faye R. Rosenberg

Faye Rosenberg is senior corporate attorney, employment law for Office Depot in Delray Beach Florida. Office Depot is one of the world's largest sellers of office products. Ms. Rosenberg provides legal assistance in the areas of labor and employment: counseling, audit, policy, compliance, training, and contract agreements for a domestic work force of 47,000 employees as well as Office Depot's international markets throughout the world.

Prior to joining Office Depot, Ms. Rosenberg worked as employment and compliance counsel for a subsidiary chain of supermarkets under Royal Ahold, the world's third largest grocery retailer. Ms. Rosenberg covered Ahold's southeastern grocery market comprised of 30,000 employees over 500 stores and several distribution centers. Prior to becoming an in-house attorney, Ms. Rosenberg was in private practice specializing in employment litigation including class actions, as well as employment training and employment transactional matters.

Ms. Rosenberg graduated from the University of Rochester, Cum Laude, and Emory law School.

Barbara Ann Sellinger

Barbara Ann Sellinger is enterprise vice president, labor and employment law at Wyndham Worldwide in Parsippany, New Jersey. Ms. Sellinger has extensive experience in all areas of global labor and employment law, representing and counseling major corporations in such areas as corporate restructuring and reorganizations, facility closings and consolidations, compensation and benefits, safety, development and implementation of policies, labor relations, union contract negotiations, grievance arbitrations, dispute resolutions, work stoppages, employee hiring, discipline and discharge, negotiations of employment and severance agreements, harassment, equal employment opportunity and affirmative action requirements, wage and hour issues, workplace violence, preventative practices training, mergers and acquisitions, and agency and court employment litigations.

Early in her career, she worked for the National Labor Relations Board Division of Judges and the U.S. Department of Labor. She previously worked as an associate at the labor and employment law firm of Grotta, Glassman and Hoffman and in the employment law group of the law firm Cohen Shapiro. She was a partner at the labor and employment law firm of Epstein Becker and Green. She worked as a chief litigation and labor and employment lawyer at American Standard Inc. and RJR Nabisco Inc.

Ms. Sellinger served on the ACC Board of Directors, was the president of ACC's New Jersey Chapter (NJCCA) and remains on the NJCCA board of directors.

Ms. Sellinger received her bachelor's, Magna Cum Laude/Phi Beta Kappa from Syracuse University, her master's, from the Maxwell School at Syracuse University and her law degree from the Washington College of Law at American University, where she was awarded a dean's fellowship.



Session 306
Managing Employees in a Non-Union and
Partially Unionized Workforce: What In-Counsel
Should Know

Edward Lieber
Faye Rosenberg
Barbara Ann Sellinger

ACC's 2006 Annual Meeting: The Road to Effective Leadership

October 23-25, Manchester Grand Hyatt



Introduction

- US-centric presentation
 - Identification of global issues
- Union free workplace unionization issues
 - What you need to know
- What issues you should be aware of in a partially unionized workforce

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Changed Union Environment

- 2006 is the first time in many years that organized labor has seen an increase in membership
- Renewed focus and resources by unions on organizing
 - Spurred by Change to Win



How To Prevent Unionization in a Totally Non-Unionized Workforce




Question:

What are the most significant causes of Unionization??



What may cause union activity?

- Change in the work place
- Problems with Supervisors/lack of fair treatment-favoritism
- Lack of internal resources for problem solving
- Lack of communication
- Job security
- Safety concerns
- High turnover
- Union activity in the industry or geographic area



Question: What are signs of union organizing?



Signs of Union Organizing

- Increase in employee complaints and questions
- New employee groups
- Avoiding supervisors
- Union literature appears
- Union contact with employees and/or management



What are Union Organizing Techniques?

- Corporate Campaigns
- Use of internet
- Convince employees they know their problems, understand them, and can resolve them.
- Make promises or guarantees as to what employees will get if they vote to unionize.
- Focus on individual employees with problems against the Company to act as a solid group.
- Salts



To Prevent Unionization and Maintain a Union-Free Work Environment Your Company Should have:

- **Training**
- **Education**
- **Policies, and**
- **Evaluation**



Training, Education, Policies, & Evaluation

● Training

- When and how to train management.

● Education

- What are you educating your managers about?

Training, Education, Policies, & Evaluation

- Educate your management about exactly what they can and can't communicate:

- **T**hreaten
- **I**nterrogate
- **P**romise
- **S**py



Training, Education, Policies, & Evaluation

Policies:

What type of policies should a company have to prevent unionization?

- Non-Solicitation
- Statement about maintaining a union-free workforce
- Open Door Policy

NON-SOLICITATION POLICY

Employees of the Company may not engage in solicitation or distribution during their working time or during the working time of the employees to whom the solicitation or distribution is directed. Employees of the Company may not distribute literature or materials in work areas at any time. No merchandise, other than sold by your employer may be sold on Company premises.



Establish Corporate Philosophy

We firmly believe the Company can best listen to, support and serve the needs of all employees only through open and direct lines of communication. Our employees have strongly supported a union-free workplace. The involvement of a third party such as a union, could lead to disruption of our business that could hamper our ability to continue our success. We do not believe it is in the best interest of our employees, customers, or the Company to have a third party involved. Only through our team effort, hard work, and cooperation can job security, good pay, benefits, and job satisfaction be assured. Your cooperation and support will be greatly appreciated.

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Have a good **OPEN DOOR POLICY**

- Appeals to upper management must be handled quickly, objectively, accurately, fairly and without retaliation of any kind.
- Vulnerability increases greatly when confidence in the **OPEN DOOR** declines.

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Training, Education, Policies, & Evaluation

Evaluation:


Evaluate the effectiveness of your company's:

- Communications
- Training
- Policies
- Procedures
- Employee Relations Audit



Consequences of Unionization

1. Reduced flexibility
2. Seniority controls
3. Formal grievance process
4. Union negotiations
5. Possible strikes
6. Increases legal costs
7. Any many more



Managing Unionization in Partially Unionized Workforce

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Basic Challenges of a Partially Unionized Workforce

- Containing the union
- Impact of the use of economic force on other employees
- Legal compliance
- Morale of non-union employees
- Efficiency in operations

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Three Key Focus Areas

- Negotiations and negotiation strategies
- Bifurcated workforce communications
- Increased risk of further unionization efforts



Negotiations and Negotiation Strategies

- Legal Concerns
 - Duty to bargain
 - Unilateral changes prior to impasse
 - Status quo obligations
 - Impasse
 - Unilateral implementation post impasse



Negotiations and Negotiation Strategies

- Overall Strategy
 - Effectively operate your business
 - Develop a corporate philosophy or philosophies
 - Change your employees' desire for a union
 - Contain unions at their current position
 - Remain at peace with your existing unions



Negotiations and Negotiation Strategies

- Issues to consider for negotiations
 - Jurisdiction
 - Accretion
 - Exclusivity of work vs. cross-utilization
 - Benefits and policies
 - Treatment of union vs. non-union employees
 - Tone of negotiations - hard bargaining or conciliatory



Negotiations and Negotiation Strategies

- The special case of first contracts
 - Determine corporate goals
 - Goals effect overall approach
 - Union containment
 - Union access rights
 - Union security clauses



Bifurcated Workforce Communications

- Legal Concerns
 - Direct dealing
 - Grievance resolution
 - Unilateral changes
 - Beneficial changes to benefits and perks
 - EWC notice and consult
 - Impact of US communications



Bifurcated Workforce Communications

● Types of communications impacted

- Soliciting employee input
 - Suggestions, grievances, concerns
- Benefit changes
- Corporate Changes
- Handbooks and arbitration agreements
- Policies
 - Code of conduct
 - E-mail/internet use policies
- Domestic versus international



Bifurcated Workforce Communications

● Overall Strategy

- Legal Compliance
- Effectively communicate with employees to achieve corporate goals
- Make the most of an event through effective communications



Increased Risk of Further Unionization

● Legal Concerns

- Interpretation of collective bargaining agreements
 - Accretion clauses
 - Jurisdictional issues
- NLRB elections and processes
 - Pre-election conduct
 - What you can but may not want to communicate
 - When changes can be implemented
 - Jurisdictional issues
 - Accretion
 - Refusal to bargain

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Increased Risk of Further Unionization

● Organization Structure

- Employee integration
- Communication between employee groups
 - Gossip
- Union access rights

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Increased Risk of Further Unionization

● Corporate Campaigns

- Neutrality and card check agreements
- Union leverage and threats
 - Economic
 - Public relations
 - Vendor and supplier threats
 - Administrative/court pressures
- Demand for percentage increase in representation
- Industry pressure

Increased Risk of Further Unionization

● Global Concerns

- Movement of business overseas
- Pressure of overseas unions to support US unionization efforts

UNION AVOIDANCE HAND-OUT MATERIALS

CONDITIONS CAUSING UNION ORGANIZING

1. Lack of ability or care in screening applicants.
2. Failure to remove misfits during introductory period.
3. Expecting over-qualified or higher paid employees to do lower qualified or lower paid work.
4. Lack of continuing courtesy, respect, and fair consideration from managers, supervisors and others.
5. Lack of effort to motivate employees.
6. Failure to LISTEN and UNDERSTAND the employee BEFORE making decisions or responses.
7. Failure to persuade employees that wage and benefit terms are fair and competitive.
8. Lack of attention to employee facilities - lavatories, eating areas, parking, etc.
9. Failure to give employees a sense of security and a feeling that they have a job that others want.
10. Handing out nasty little surprises in work schedules, time off, work assignments, pay cuts, or other changes.
11. Failure to truthfully communicate what employees need to know about the Company and their jobs.
12. Making or implying promises that are not kept.
13. Making vague promises that are subject to misinterpretation by employees.
14. Failure to persuade employees that criticism or discipline is for THEIR benefit, not solely for Company benefit.
15. Having a "small" person for a boss - a supervisor who sets a bad example, is snobbish, has a little clique of favorites.
16. Failure to respond to employee questions, problems and complaints.
17. Generally, the absence of an effective employee communication program.
18. Absence of effective employee problem-solving procedures.

RECOGNIZING THE EARLY WARNING SIGNS OF UNION ACTIVITY

It is extremely important that supervisors react in a quick, positive and aggressive manner following the first signs of union organizing. A delayed reaction is almost always damaging and often fatal to Company efforts to remain union-free.

However, before the Company can react to the attempted unionization of its employees, it must be aware of its existence. It is a tragic, but all-too-common fact of labor relations life, that many employers are totally unaware of organizing until the union declares itself either in the form of a demand for recognition or a petition for an election filed with the NLRB. Should that happen, the Company will have already lost the first battle in its fight to retain its freedom.

The key is to be aware: aware of the early warning signs of union activity and how they can be recognized. The signs may or may not appear at our Company; but should you recognize any of the activities discussed below, it should be reported immediately to your supervisor. You may have discovered important evidence of an attempted organization of the employees.

1. A different, more qualified type of applicant applies for work.
2. Employees who usually talk to supervisors and other members of management no longer do so.
3. Employees who are speaking in a group immediately halt their discussion when a supervisor approaches.
4. Employees start questioning supervisory authority with respect to job assignments.
5. Employees start visiting areas they do not normally visit.
6. Employees start spending more than their normal time in breakrooms and cafeterias, often delaying their return to the workplace.
7. Employees start spending more than their normal time in restrooms.
8. Employees who are never seen together start talking with each other; start associating with each other; strange alliances begin forming.
9. The nature of employee complaints change and the frequency increases.
10. The front office starts receiving an inordinate amount of critical and probing questions concerning certain policies and benefits.
11. Argumentative questions begin to be asked in department meetings.

UNION ORGANIZING TECHNIQUES

Why is Management Running From Open Debate?

Management only wants you to hear its side.



Teamsters call for fair debate on the issues.

Many employees have come to the Union asking why management forces them to sit through mandatory, one-sided, on-the-clock meetings.

We say workers have a moral right to hear, on-the-clock, both sides of the issues.

To ensure workers have the chance to hear both sides, Teamsters Local 70 challenges management to an "On-The-Clock." The debate between the "head" of the company and elected leader of the union would take place on a mutually agreed upon date, time and place.

We hope that management won't "DUCK" the debate. If management refuses to debate the only thing workers can conclude is that the company must have something to hide!



Let's do the debate—NOW!

Teamsters Local 70 Organizing Committee
1-800-243-1350

Graphic Communications Union District Council No. 2 AFL-CIO

Affiliated Local Unions: No. 388M, No. 747M, No. 28N, No. 541S, No. 625S



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TO: ALL EMPLOYEE'S:

We the employee's at B.T. Office Supply in Newark have voted overwhelmingly to approve a new contract with Graphic Communications Union.

With guaranteed:

- Wages
- Health & Welfare Benefits
- Pensions
- Grievance Procedures
- & other Benefits

Now we have joined with Corporate Express, which already had their own guaranteed contract.

That leaves you alone with no guarantees.

To get started on the road to getting your own guarantee's in a union contract. Sign the enclosed card today and drop it in the mail.

In solidarity,

The B.T. Organizing Committee

UNION MADE PRODUCTS

Q & As for TRAINING

ANSWERS TO EMPLOYEES' QUESTIONS ABOUT THE UNION

Q: Why is the Company fighting the Union?

A: You are entitled to hear our views on the Union. We feel it is our responsibility to give you the facts. We do not think a union is necessary or beneficial to either the employees or the Company. Sometimes union demands, if fulfilled, result in a Company being non-competitive. This could result in cost cutting and fewer jobs. Where a Company says "NO" to demands, a union may strike. This seriously hurts the employees and the Company.

Q: Why does the Union want to represent you?

A: I don't know for sure. Perhaps this question could best be answered by considering what you or I would do if we were paid union organizers. Just as our Company want to find new customers, so are unions looking for new customers. Just as this Company must have income in order to pay its employees, so must unions have income in the form of dues from individual workers in order to pay their large staffs of people. Thus, it appears that a union's attempt to organize is not necessarily based on whether the majority of the employees want, or need, a union to handle their affairs.

Q: What is it that the Union wants?

A: I honestly don't know of anything except the dues, and special fees and assessments, and what about fines?

Q: When employees go out on strike and lose their normal income for the period of the strike, do the paid professional people on the union payrolls suffer a similar loss of income?

A: As far as I know, their pay goes on the same as always.

Q: Can't I try the union for a year and then drop out?

A: That's easier said than done. Once you get a union in, it's almost impossible to get rid of them. In the first place the employees can't get rid of the union while a contract is in force -- often two or three years. In addition, the union can fine any employee or group of employees who try to get rid of the union. The courts would enforce such a fine.

Q: Why shouldn't we join the union and pay dues every month just for insurance?

A: Union or no union, the Company will always pay competitive and fair wages and benefits. The union cannot force us to pay more than we want to pay. The Company can really give more job insurance than the union because we provide the work and try to maintain full employment. With the union there is always the danger of strikes and work stoppages with resulting unemployment and hardship.

Q: The union agent tells us that with a union we would get everything we have plus more. Is that true?

A: Absolutely not. Bargaining on a union contract does not start from a base of your present wages and benefits. All present wages and benefits are as much a subject of negotiation as are any increases. Since it takes two parties to make a contract, demands, counter-demands, horse trading and compromise would all take place. No one can predict what the result would be.

Q: Does collective bargaining require that either party agree to anything?

A: No. No union can require the Company to agree to anything -- even retention of the status quo -- unless a Company is willing to agree. A union can request, it can demand, it can bargain, but if the Company does not agree, the union's only weapon is a strike. Who is hurt the most when this occurs? Not the union, but you and your family immediately and often for very long periods of time.

Q: If the Company and the Union cannot agree on a contract, what can the Union do?

A: It can call the employees out on strike to try to make the Company cease operations. The Company, however, has the legal right to continue operations.

Q: If the Union calls a strike, can employees be replaced?

A: Yes, under the law, the Company is free to hire new employees to permanently replace economic strikers. If an employee's job is filled by a permanent replacement when he asks for reinstatement when the strike ends, he would not be entitled to return to work at that time. He would be offered a job, when and if a vacancy occurred.

Q: If the Union calls us out on strike, will I receive pay from the Company?

A: Absolutely not. The minute you strike, your pay stops. The Union won't pay your salary either. In addition, striking employees are not entitled to unemployment compensation while on strike.

Q: If the Union calls me out on strike, will they pay me anything?

A: You might be entitled to strike benefits, but these are far less than your salary, and are token payments.

Q: If the Union calls a strike and I want to continue working, can I be fined?

A: The Union can fine any member who attempt to cross the picket line to work. The Supreme Court has upheld the right of a union to assess fines in such circumstances.

Q: If I go out on an economic strike because the Company and the Union can't agree on a contract will I receive back pay when the strike ends?

A: Absolutely not! No Company has to pay strikers while they engage in a strike.

Q: Is it true that the Company can stop making payments for benefits such as hospitalization and life insurance during a strike?

A: That is true. If you wanted these benefits to continue during the strike, you would have to arrange to make payments for them yourself.

Q: What is the real issue?

A: The real issue is whether you feel it is necessary to place your affairs in the hands of the Union which could have little knowledge or understanding of our business, and which would place you in the ever-present danger of being called out on strike. No organization of people is free of day-to-day problems. I sincerely feel that the best result in solving problems will be achieved through our individual relationships and the efforts of all employees. I believe our personal relationships are best served without a union and I am strongly convinced that our communications will be far more effective without the intervention of an outside party. The Union cannot improve our relationship.

Pros and Cons of the Union

Question: If we don't have a union, what voice do we have in what happens here?

Answer: You don't need a union to bring up your views. You never have had to in the past. We have an open mind. That policy won't change.

Question: Why do you care how we spend our money on dues and assessments? You don't seem to care how we spend our money on other things or what we join or should not join, except when it comes to a union.

Answer: Whether a union represents our employees would affect our business, and your interests, in more ways than just how you spend your money. However, the union's collection of union dues will cost employees money, and it will make the union representatives take action to justify their existence. We have a track record of affording our employees good wages and benefits, without forcing employees to pay "dues" or "fees" or "assessments." That's why we believe having a union, with corresponding union dues and fees, does not further the interests of employees.

Question: If we don't have a union contract, what is to protect us against the company taking away any benefits?

Answer: As a company we have to live in this community; we have to hire and retain good employees.

We couldn't have gotten where we are today unless we paid fair wages and benefits and unless we kept them up to date. You already have received these benefits, and they have been retained for years without a contract and without a union.

Question: Now you can fire us any time you want; but with a union contract you couldn't, could you?

Answer: I don't think a union contract would change anything. Tell you why.

We do not fire an employee without having a good reason, and every union contract recognizes a company's right to discharge for "cause." That is all we have ever done here.

Question: If we had a union, wouldn't we have "seniority rights"?

Answer: Here, too, there is no guarantee that a union contract would be different from our practices. Under many union contracts, both experience and

ability would be considered. We follow the same approach, and decided to follow this approach even without having a union represent our employees.

POSSIBLE QUESTIONS AND ANSWERS

Organizational Activities

Question: Are we entitled (allowed) to pass out union materials on company premises?

Answer: Yes, but not during time you are supposed to be working. That is, you can do this only on your own time and not in working areas (as distinguished from locker room and lunch areas). You can't disturb other employees at work, even though you may be on your own time. (Work time is for work.)

Question: Can a union supporter rightfully ask us to sign a union card on company premises?

Answer: Yes, but only on your non-working time and his or her non-work time.

Question: Can we have any time off work to discuss the question of having or not having a union?

Answer: We do not stop work to have discussions of politics, other subjects or "union" questions on working time. Work time is for work. [Note: This "working time is for work" rule must be enforced impartially -- not just against union discussion.]

Question: Would it be possible for you to talk to us at our homes like the union representatives are doing?

Answer: The National Labor Relations Board has ruled that a company cannot go to employee homes to discuss union issues, even though a union can -- so my answer has to be "no," I can't visit you at home to discuss why we don't need a union.

TYPICAL QUESTIONS ABOUT AUTHORIZATION CARDS

QUESTIONS

ANSWERS

- | | | |
|----|--|---|
| 1) | Do I have to let a union representative into my house? | No. A union representative has no more right to enter your house than any other salesman. |
| 2) | Do I have to sign an authorization card? | - No. You don't have to sign anything to work here. Under the law you have the right not to join a union and no one can threaten or coerce you into joining. |
| 3) | What difference does it make if I sign a card? | - By signing a card there is a good chance you may be giving up your right to vote in an election. The Government may order the Company to bargain with the union based on these cards. |
| 4) | If I sign one of these cards, can I get it back? | - You can write to them asking for the card, but this is up to you. |
| 5) | But, the union says they for an election. Is this so? | - While they can use cards need cards to request an election, they can also use these cards to demand from the Company that they be recognized without an election and also they can be used to request the Government to order the Company to bargain without an election. |

WORKSHOPS and QUIZZES for TRAINING

WORKSHOP 1

"WHY EMPLOYEES ORGANIZE"

It can happen that the first time anyone realizes that organizing is taking place in a company is when the union comes forward and "demands" recognition as bargaining agent. This often comes as a complete surprise to management and the question then becomes - Why? Why do our employees want a union? To test your knowledge of why employees organize list the five most significant reasons in order of importance to employees. Number one would signify the most important reason to employees. Number two the second most important reason, etc. If you do not agree that any of the following are reasons, simply write N.A.R. for "not a reason."

- Job security
- Better health insurance/share cost with employee
- Other family members are in unions
- Wages
- Overworked
- More benefits for part-time people
- Boyfriend or girlfriend is a union organizer
- Nobody listens - desire for better communications with management
- Seniority
- Better vacation and holiday benefits
- Day care for working parents
- Don't like boss or immediate supervisor
- Perception of favoritism or unfair treatment

WORKSHOP 2"RISE AND SHINE"

You have arrived for work at 7 o'clock this morning to find union representatives in the parking lot placing literature on the windshields of the cars. This is a lot owned by the Company, so you, the supervisor, want to remove them bodily from the lot. You also noticed that two of your off-duty employees are assisting the organizer. When you arrived in your office, you found a note to the effect that these employees had been in the locker area yesterday talking to other employees and passing out union authorization cards. This was on their off-duty time. Also, you have heard that an outside union organizer has been seen in the locker area and yesterday spent half an hour roaming around the Company. Worse, you learned that the union organizer was having lunch with an employee in your lunchroom yesterday. The rumor is that she's his girlfriend.

Can all this happen? What should you do?

WORKSHOP 3"LETTERS AT HOME"

Sam Supervisor is told that some of the employees in the Company are being solicited by a union. One day an employee tells him that he received a letter in the mail. "Do you want to see it?" he asks Sam. "Of course I do," says Sam. When Sam looks at the letter, it says:

Dear Company employee:

Tired of no recognition and being overworked? Tired of just being tired? Our union can help you! Look around. AT&T employees have better wages and benefits and better working conditions! You people are taken for granted. I know how you feel. I used to work for the Company. I've been there.

You need a voice! We can provide one. United we shall stand. Divided we shall fall.

Felix Brown, Organizer

1. Was it lawful for Sam to talk to the employee about the union?
2. Was it permissible for Sam to take the letter from the employee?
3. Is there any significance that the organizer is an old Company employee?

WORKSHOP 4

"SURVEILLANCE"

You have just heard from one of the supervisors that one of the employees is going to hold an open forum for the CWA at his house tonight. A lot of pressure is being exerted on employees to attend. One of the supervisors comes to you and tells you that an employee approached him and invited him to go to the meeting. You think this is a lucky break. You were wondering how you were going to find out who was behind this activity and you were thinking about asking a loyal staff member to go and report back to you.

Is this a good idea?

WORKSHOP 5

"WHAT TO DO"?

Several employees have asked you to talk to them in the lunchroom. When you go to see them, you hear several employees talking about a union and some of them are very pro-union. One of the employees who asked you to talk to them asks you: "Do you think we should sign a union card"? Everyone stops to listen.

What should you say?

WORKSHOP 6

"RESPONDING TO PROTECTED ACTIVITY"

Bill is a Customer Service Manager. Suddenly, an employee comes into his office and says that about ten employees are milling around and refusing to work. Apparently they are upset over a new mandatory overtime policy. The employee wants to know what to do.

Since the employees are non-union and there is no union contract governing, Bill thinks the employees have no right to engage in this work stoppage. This is in violation of the employee handbook rules of conduct. Bill goes out and tells the employees that their conduct is wrong and that they must return to work immediately or be subject to discipline.

1. Is Bill correct?

Most of the employees then return to work. However, about half a dozen are still refusing to work and have moved out to the parking lot. Bill goes out to talk to them and they tell him that they want to present grievances. Bill tells them to go to the Manager. When they refuse, he warns them that if they don't go back to work, they'll be disciplined. When they again refuse, Bill tells them they are suspended pending investigation. A few days later, these employees are discharged.

2. Was Bill correct in refusing to hear their grievances?
3. Was Bill justified in discharging these employees for refusing to work?

WORKSHOP 7

"CAN YOU SAY IT?"

A very complex and controversial problem when supervisors discuss unions is the question of what one is allowed to say. The Labor Board says it is attempting to balance two highly valued rights - your freedom of speech and the freedom of employees to form, join, or assist a labor organization, or refrain from doing so, without coercion or interference. This problem comes to the fore when an employer wants to tell its employees either in writing or verbally the disadvantages of joining a union.

You may have heard and read a good deal about what you, as management, may or may not say. Read the statements made on the following pages. We ask you to indicate whether you think each statement is proper and legal for you to make or whether it is not. Let's have your best judgment. Indicate your answer to each item by circling whether you think the statement is legal or illegal.

* * *

1. Why pay a union for what you already have?
 Legal Illegal
2. Our benefits may not necessarily continue as they are under a contract with this union. You could get more - you could get the same - you could get less. In any event, you'd still pay money to the union.
 Legal Illegal
3. Your pay is good and we treat you decently. I personally feel that this union cannot do any better for you.
 Legal Illegal
4. No union, this one or any other one, can obtain more than the Company is willing to agree to in good faith negotiations.
 Legal Illegal

5. Think twice about signing an authorization card. Sooner or later, we'll find out who signed and we'll do something about it.
Legal Illegal
6. This is our Company and we don't allow any union activity on these premises.
Legal Illegal
7. People who are supporting this union are in for a big surprise.
Legal Illegal
8. If the union wins the election, we are going to cut staff.
Legal Illegal
9. This union doesn't care about the Company and they don't know anything about the business; why let them experiment with us?
Legal Illegal
10. Vote against the union and we will match whatever the union is promising you.
Legal Illegal
11. Alice, I want to talk to you about the union.
Legal Illegal
12. Bill, the rumor is that some of our people signed union cards at a meeting last night. Were you at the meeting? How many people were there?
Legal Illegal
13. I'm going to make it my personal objective to get you as many facts about this union as possible. If you have any questions about the union you want answered, come and see me.
Legal Illegal
14. I personally feel this union is comprised of a bunch of irresponsible, reckless people who care nothing about you. All they want is your money.
Legal Illegal
15. I don't care what the union told you. The law says we must bargain in good faith. It does not say that we must agree to any of the union's demands, and we will not agree to anything that is not in the best interest of the Company and our employees.
Legal Illegal
16. Tell the union to put their promises in writing with an accompanying guarantee that they will get you all these things. If they won't back up their promises, they are worthless.
Legal Illegal
17. John, I'd like you to keep me informed as to what is going on with the union.
Legal Illegal
18. We just will not deal with the union. You have a right to vote any way you want but if it gets in, we'll close the place.
Legal Illegal
19. This union had a long strike at another company where all the strikers were permanently replaced. It could happen here.
Legal Illegal
20. You don't need the union putting its hand in your pocket. Vote against the union and keep your hard earned money.
Legal Illegal
21. Mary, if the union gets in here, there'll be no more overtime.
Legal Illegal

22. I recognize that you were scheduled for your normal increase last week. However, because of the union election before us, I cannot put it through.

Legal Illegal

23. You should know our position in this matter -- we do not think that a union is in the best interest of our Company, our employees or our customers.

Legal Illegal

24. If the union calls you out on an economic strike, the Company has the right to stop paying your insurance premiums.

Legal Illegal

25. This union is noted for its lengthy strikes. The same thing could happen here.

Legal Illegal

QUIZ FOR MANAGEMENT

CAN YOU LEGALLY SAY THESE THINGS TO YOUR EMPLOYEES?

1. Just because some of our employees pay dues and are currently union members does not mean they have to vote for the union.

Legal Illegal

2. Has the union organizer paid you a visit yet?

Legal Illegal

3. Personally, I don't think it's professional or beneficial to join a union and bargain for wages and benefits.

Legal Illegal

4. How many people will vote for the union? Do you know?

Legal Illegal

5. How much are the union dues a year?

Legal Illegal

6. I can think of better ways to spend my money than to pay dues to them.

Legal Illegal

7. Do you have any idea how much of your dues money would go to pay someone else's salary, benefits, conventions or trips?

Legal Illegal

8. How many people went to that meeting last night?

Legal Illegal

9. I wouldn't want to be the one to keep a union in here if I was looking for advancement.

Legal Illegal

10. There is no guarantee that anything will change just because you get a union.

Legal Illegal

- 11. I think we're better off with a more informal working relationship; I don't want the inflexibility of a union contract here.
 Legal Illegal
- 12. It's hard to make individual exceptions under a union contract.
 Legal Illegal
- 13. If the union wins here, I'm not letting you get away with anything.
 Legal Illegal
- 14. What time is that union meeting tonight?
 Legal Illegal
- 15. Are you people for this union?
 Legal Illegal
- 16. If it was up to me, I wouldn't go for the union.
 Legal Illegal
- 17. Just because you vote in the union doesn't mean there will be a wage increase.
 Legal Illegal
- 18. As a matter of fact, wages could be reduced, not increased, during collective bargaining.
 Legal Illegal
- 19. This binding arbitration, in my opinion, isn't all that it's cracked up to be.
 Legal Illegal
- 20. People who vote for the union could lose their jobs.
 Legal Illegal
- 21. If this union wins the election, we may subcontract, relocate, or build a new facility elsewhere.
 Legal Illegal

- 22. The Company will never make a concession to this union if the employees vote for it.
 Legal Illegal
- 23. If this union wins, everyone will have to join the union and be a member whether they want to or not.
 Legal Illegal
- 24. I don't think we need a formal contract with a formal grievance procedure in this Company.
 Legal Illegal
- 25. Arbitration is pretty expensive; don't you think we'd be better off having that money go to wages and benefits rather than into the pockets of some attorney?
 Legal Illegal
- 26. Our benefits may not necessarily continue as they currently are - you could get more - you could get the same - you could even get less.
 Legal Illegal
- 27. With a union you lose control over your own destiny. In my opinion, that's not a very smart thing to do.
 Legal Illegal
- 28. Have you taken a look at this union's record?
 Legal Illegal
- 29. If the union wins, the Company will contract out your work.
 Legal Illegal
- 30. No union, this one or any other, can obtain in bargaining more than the Company is able or willing to give.
 Legal Illegal
- 31. John, Betty, could you come into my office for a moment? I want to talk to you about this union election.

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|-----|--|---------|
| | Legal | Illegal |
| 32. | Fred, I understand some of the employees supported the union at a meeting last night and I would like to talk to you about that. | |
| | Legal | Illegal |
| 33. | When you cut through everything, Sue, this union would do a lousy job for the employees. | |
| | Legal | Illegal |
| 34. | I'm going to make it my personal objective to get you people as many facts about the disadvantages of this union as possible. | |
| | Legal | Illegal |
| 35. | If you people can forget about the union, I think I can take care of your problems about your wages and benefits. | |
| | Legal | Illegal |
| 36. | Why in the hell do you think we need a union here, anyway? | |
| | Legal | Illegal |
| 37. | You know, Bob, if our employees decide to vote the union in, it sure makes me look bad. | |
| | Legal | Illegal |
| 38. | I'd certainly take it as a personal favor to me if the employees decided to vote against the union. | |
| | Legal | Illegal |
| 39. | As a matter of fact, if you don't knock off this crap about the union I'm going to take it very, very personally and you know you don't want that to happen now, do you? | |
| | Legal | Illegal |
| 40. | I don't think you ought to just jump on the bandwagon with this union business without giving it some very careful consideration. | |
| | Legal | Illegal |

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|-----|---|---------|
| 41. | The Company is very concerned these days about costs, and unions cannot create jobs or job security. | |
| | Legal | Illegal |
| 42. | You were scheduled to get a wage increase next month but because you may vote for the union, it's not going through, pure and simple. | |
| | Legal | Illegal |
| 43. | If anyone harasses you or causes improper trouble for you here at work because you haven't joined the union, if you want to let me know I'll try to see that it's stopped. | |
| | Legal | Illegal |
| 44. | You are free to talk about a union before work or after work, or during duty free time, but at no other time, so don't let it happen again. | |
| | Legal | Illegal |
| 45. | Do you know how many people went to that meeting last night? | |
| | Legal | Illegal |
| 46. | If we have a union contract here, I think it will make relationships much more formal and, personally, much less enjoyable. | |
| | Legal | Illegal |
| 47. | Just between us and off the record, how do you think our employees feel about this union? | |
| | Legal | Illegal |
| 48. | Look, Joe, let's vote down this union and I will see to it that you are made chairperson of the Employee Committee we plan to form after the election is over. | |
| | Legal | Illegal |
| 49. | I'm going to run this Help Wanted Ad the entire week before the election. | |
| | Legal | Illegal |
| 50. | I don't care what the union told you, the law says we must bargain in good faith; it does <u>not</u> say the Company must agree to any of the union's demands or that the Company must increase wages or benefits above present levels. | |

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|-----|---|---------|
| | Legal | Illegal |
| 51. | Tell the union to put their promises in writing with an accompanying guarantee that they will get you all these things. | |
| | Legal | Illegal |
| 52. | Joan, if the union wins, there will be no more overtime. | |
| | Legal | Illegal |
| 53. | If the union wins, we're going to have strikes and dead lock. | |
| | Legal | Illegal |
| 54. | Our supervisors met last week to begin work on a strike plan, just in case. | |
| | Legal | Illegal |
| 55. | There's no way this union will get wage increases through bargaining here. | |
| | Legal | Illegal |
| 56. | I'm keeping my eye on you; you'd better not talk to Dave or Mary about the union anymore. | |
| | Legal | Illegal |

**EDUCATING
MANAGEMENT
about
WHAT THEY
CAN DO**

WHAT THE SUPERVISOR/MANAGER CAN DO

1. Inform employees what you think about unions and about union policies.
2. Inform employees about any prior experience you have had with unions and whatever you know about the union officials trying to organize them.
3. Inform employees that no union can obtain more than the Company as an employer, is able to give.
4. Inform employees of any untrue or misleading statements made by the organizer. You may give the correct facts.
5. Keep outside organizers from conducting union business on the Company's premises. When an outside union organizer solicits on your property, he/she is trespassing and can be removed.
6. Inform employees from time-to-time of the benefits they presently enjoy. (Avoid veiled promises or threats).
7. Inform employees that the signing of a union authorization card does not mean they must vote for the union if there is an election.
8. Inform employees of the disadvantages of belonging to the union, such as the possibility of strikes, serving on a picket line, dues, fines, and assessments.
9. Inform employees that you prefer to deal with them directly rather than have the union or any other outsider settle employee grievances.
10. Inform employees that the law permits you to hire a permanent replacement for any employee who goes on strike for economic reasons.
11. Inform employees how their wages and benefits compare with unionized or non-unionized concerns, where wages are lower and benefits less desirable.
12. Inform employees of known racketeering or other undesirable or criminal elements which may be active in the union.
13. Give opinions on unions and union leaders, even in derogatory terms.
14. Distribute information about unions.
15. Reply to union attacks on the Company's policies or practices.
16. Give the legal position on labor-management matters.
17. Enforce rules impartially, regardless of membership or activity in a union.
18. Treat both union and non-union employees alike in making assignments of preferred work, desired overtime, etc.
19. Tell employees that they are free to join or not to join any organization, so far as their status with the Company is concerned.

Things You Can and Cannot Say to Associates about the Union



You May

1. Tell associates that unionism may mean strikes and, therefore, a big gap in their income. Wages of associates stop when they are out on strike, but the wages of the professional organizer keep right on rolling in.
2. Remind them that the Union's campaign promises of more and more money and benefits are just vote getting propaganda; that all such promises are subject to agreement by us.

Things You Can and Cannot Say to Associates about the Union



You May

3. Point out wage rates and fringe benefits which the associates now enjoy without Union membership and that these benefits have constantly increased over the years without the necessity of their paying dues, fines, initiation fees and strike assessments to the Union. In short, although you cannot make promises, you can point to our past record.

Things You Can and Cannot Say to Associates about the Union



You May

4. Tell them that a Union contract means a third-party wall between us and our associates.
5. Tell them that if the Union wins the election, the Company must deal with them and in many situations would not be able to deal directly with the associates -- even if the Union is doing things of which the associates violently disapprove. Ask the associates if they know these Union strangers well enough to surrender these rights to them.

METHODS OF TALKING TO EMPLOYEES ABOUT THE UNION

There are many ways to start conversations with your employees about the issues in the election. The most important thing to remember is not to be shy and withdrawn. On the contrary, you should welcome the opportunity to discuss your views with the individual employee. The following are some ideas for you to use and initiate conversations. Remember, do not initiate conversations with questions about the employee's Union sympathies. Make statements. Do not ask questions.

General

1. "I personally don't think the Union can do anything for you. I hope you will carefully consider whether it can."
2. "We have competitive wages and good benefits. All this Union can do is negotiate and you don't know what the outcome will be."
3. "There is no telling what can happen in negotiations. You could end up with less than you now have as easily as more."
4. "The union won't get you anything at all unless the Company agrees to it."
5. "Look at what we have now: good wages, good fringe benefits and all of us have job security. I doubt that the Union could improve it."
6. "With the Union, you are buying a pig in a poke. We know what we have now but who knows what we can end up with the Union."
7. "I don't think the Union can get you any more than you get for yourself."
8. "You know the election has just been scheduled. Have you given much thought to the issues in the election?"
9. "I hope you've thought about how the Union can change what we have here. It's not all for the better. Have you considered ..."
10. "I would like to discuss the Union with you. I think you'd be making a tragic mistake if you vote Union, but I'm willing to discuss the pros and cons."
11. (When you solve a problem, make an exception or explain something to

- an employee), "You know, things work differently in a Union shop. Problems are solved by a steward, not me..."
12. "If you are interested in information about the Union, I have it -- their constitution, By-Laws, and Financial Reports."
 13. "I hope I'll have your support in the election. I can show you how the Union can hurt all of us and we have lots of information about it that the Union won't show you."
 14. (Leave information with an employee). "Did you see this information about the union strikes?"
 15. "I need your support in the election because I think I can deal better with you directly than any outside union organizers can."
 16. "I hope you will consider the facts in the letters and handouts when you make your decision. This can cost you too much to just ignore."
 17. "If you have any questions about this, or want to see the Union Constitution or By-laws, just ask."
 18. "I think you will find this interesting. I will talk to you later if you have any questions."

**EDUCATING
MANAGEMENT
about
WHAT THEY
CANNOT DO

TIPS**

*STATEMENTS SUPERVISORS SHOULD NOT
MAKE TO EMPLOYEES DURING A CAMPAIGN*

A. THREATS

1. The Company will never sign a contract with this union.
2. The Company will get those employees that are for the union.
3. I'll see to it that you will never get another promotion or wage increase here.

B. INTERROGATION

1. Who is going to the union meeting tonight?
2. How do you feel about the union?
3. Why do the employees want the union?
4. What have other employees been saying about the union?

C. PROMISES

1. If you vote against the union, I will see to it that:
 - a. You get a raise;
 - b. You get that extra week's vacation;
 - c. You are promoted.
2. The Company will take care of its friends after the election.

D. SURVEILLANCE

1. The Company knows who is for the union.
2. I heard you had a lot to say at the union meeting last night.

Things to Avoid -- No "TIPS"



- T Threats -- that there will be a strike, or they will lose their jobs because of the Union. These are possibilities and must be explained as such.
- I No Interrogations -- Don't ask how an associate feels or intends to vote on the Union question. Do not put him in a position where he must tell you of his feelings.
- P No Promises -- Do not promise any benefit to an associate. It will be construed as an attempt to buy his vote.
- S Surveillance -- Do not spy on Union meetings or conversations.

Threats

Question: If the union wins, will we lose any of our present benefits?

Answer: Well, all benefits are negotiable, if the union wins. This means they can be left alone, increased, decreased or eliminated -- it all depends upon the outcome of negotiations.

Question: Will the company fire union supporters?

Answer: No, at least not because they are union supporters. But this does not give them any special privileges. They must abide by all the rules just as any other employees.

Question: If the union wins the election, will the facility move?

Answer: No, not just because the union wins. However, if the cost of providing our services goes up because of wage rates, fringes and work rules which the union has brought about, and if the Company can provide the same service cheaper elsewhere, then it could legally move elsewhere.

Question: If the union gets in this facility, will there be a strike?

Answer: The main way a union can attempt to enforce its "promises" of "more" of this and "more" of that is by striking. The company sells its products and services in competition with other companies and must watch its costs. If the Company says "no" to promises of the union, there could very well be a strike. The company will bargain in good faith, but the law expressly provides we do not have to agree to any union demand.

Question: Will the company lose customers if the union wins?

Answer: In our retail locations, if the union wins the election, can't get what it is proposing in bargaining and calls a strike and service is disrupted or a customer has to cross a picket line, this very well may lead to lost customers.

Question: If the union gets in here, will the bargaining on wages and benefits begin from "scratch"?

Answer: All subjects relating to employment will be open for negotiations. What you mean by "scratch," I don't know, but all wages and working conditions as they now exist are negotiable; they can be left alone, added to, reduced or eliminated.

Surveillance or Interrogation of Employees

Question: Who do you think favors the union?

Answer: I don't keep a record of those whom I think are for or against the union. Some employees have voluntarily told me one way or another, but I do not keep a record of who is for or against.

Question: Do you know why I'm for the union? (Attempt to set up interrogation" charge.)

Answer: No, I don't know, and I'm not asking you to tell me. Union issues are important, and I am willing to discuss these issues and listen to your thoughts if you want to discuss them. But, if you want to tell me or discuss union issues with me, that's completely up to you. If you want to discuss your views concerning the union, I will listen and respond to any issues you have.

Question: Does the company think the union has a majority? (In addition to surveillance or the impression of surveillance, an attempt to set up fact that the company knows union has majority already and therefore should bargain without an election).

Answer: I don't know what the "company" thinks about whether the union has a majority. From what I have seen and what employees have volunteered to me, I feel that the union does not have majority support.

Question: Can we (i) discuss our employment problems with you individually? (Careful, this may be an attempt to set up an "interrogation" charge.)

Answer: Sure you can. We have always done this in the past, and we will continue to do so.

I want to make it clear, though, if you also want to discuss union matters, this is solely up to you -- I am not seeking to hear about that.

But, if you want to discuss any problem, I'm willing to listen and respond to any issues you have. (Be careful to avoid making any "promises" for rejecting the union.)

Promises

Question: Will our benefits improve (or continue to improve) if there is no union?

Answer: You know we can't promise you anything for rejecting the union. But we can say: look at our record -- without a union your benefits have increased year by year. We have no intention of changing our policy.

Question: When will we get a wage increase (or some other benefit improvement)?

Answer: With this union organization drive going on, we can't make any promises of increases or of benefit improvements, or we will violate the law.

However, we are allowed to continue business as usual, and any increases or improvements, that either have been planned prior to the union drive or that come up in accordance with our usual policy or procedure, could be placed in effect.

Question: If the union loses the election, how will I be better off?

Answer: As you know, under the law, I can't promise you any benefit for rejecting the union -- even though the union can make promises to get you to accept it. I can tell you this: If you reject the union, I believe you will be better off because . . .

- (1) you will not be bound by restrictions imposed by the union;
- (2) you won't be paying any dues for the wages and benefits you have gained;
- (3) you will be free from the threat of strikes and the loss of income and jobs that goes with strikes;
- (4) you will work in a facility that is free from the types of conflict, dissension, and grievances which may result from actions taken by union representatives to justify the union's existence; and
- (5) you will be able to have direct access to management to resolve problems rather than having to go through a third party

Question: If the union does not get in, will you set up a better grievance procedure?

Answer: As you know, under the law, I cannot promise you any benefit for rejecting the union -- even though the union can make promises to you to get you to accept it.

I can tell you this: union or no union, we will continue to have an open mind as to any employee problems, and if a better grievance procedure is needed, whether the union wins or loses, we will, as we have in the past, address ways of confronting issues that are important to employees. That has been our practice, and it will continue to be our practice.

Things You Can and Cannot Say to Associates
about the Union



You May Not

1. Threaten or discipline any associate in any way because of his/her Union sentiments or legitimate Union activity.
2. Promise any associate anything, directly or by inference for abandoning the Union or his or her Union activities or for voting against the Union or to influence how he or she feels about the Union.

Things You Can and Cannot Say to Associates
about the Union



You May Not:

3. Spy upon Union meetings or gatherings.
4. Question any associates about his Union sentiments or activities or the Union sentiments or activities of other associates. However, you may listen to what an associate volunteers and may ask how they feel about wages and other job-related conditions or if they have any gripes about the job. If we know what is bothering associates on the job, we are a long way toward knowing why the Union appeared.

Things You Can and Cannot Say to Associates
about the Union



You May Not

5. Threaten a shutdown or reduction of work as retaliation against the Union winning out.
6. Ask associates how the Union is doing.
7. Ask associates how they or other associates would vote if there would be an election.

Things You Can and Cannot Say to Associates
about the Union



You May Not

8. Prohibit Union discussion which does not interfere with work.
9. Make speeches on company time (captive audience) to associates within 24 hours of an election. This is the extent of the so-called 24-hour rule. Thus it would not prohibit speeches to associates off company property if attendance was truly voluntary. It does not prohibit campaign literature and it does not prevent casual conversations with an associate at this work station nor does it prohibit you from answering questions about the Union.

Things You Can and Cannot Say to Associates about the Union



You May Not

10. Visit associate's homes for the express purpose of talking to them about the Union.
11. Call an associate or associates into supervisory offices to talk to them about the Union.
12. Give the impression of spying, i.e., "I heard you were at the Union meeting last night," or "I know what happened at the meeting" or "how many people were at the meeting last night," etc.

WHAT THE SUPERVISOR/MANAGER CANNOT DO

1. Attend any union meetings, park across the street from a union meeting to see who enters, request that an employee report on union activities or engage in any activity which would indicate that employees are being kept under surveillance to determine who is and who is not participating in the union "push."
2. Dismiss or discipline individuals for disloyalty or other reasons if they engage in union activity; grant wage increases or special concessions in order to keep the union out or threaten to curtail operations, subcontract or reduce benefits.
3. Ask employees about confidential union matters, meetings, etc. (Some individuals may of their own accord discuss such matters. It is not an unfair practice to listen, but you must not ask questions to obtain additional information); ask what individuals think about the union or the union representative.
4. Ask employees whether they support a union.
5. Give financial support or other assistance to a group which opposes the union.
6. Announce that you will not deal with a union.
7. Ask an applicant, during an employment interview, about his/her affiliation with a labor organization.
8. Discriminate against pro-union people when disciplining employees, assigning work, etc.
9. Discipline union supporters for a particular action and permit non-union supporters to go undisciplined for the same conduct.
10. Deviate from policy directives for the purpose of dismissing a union supporter.
11. Threaten a union member through a third party.
12. Say unionization will force the Company to reduce staff, vacations or other benefits and privileges presently enjoyed.
13. Visit the homes of employees to urge them to reject the union.