



WALTER & HAVERFIELD

UNION-AVOIDANCE

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INTRODUCTION

- Supervisor's Role in Remaining Union-Free

Supervisors Play Key Role In Making Unions Unnecessary

- Close Relationship with Employees
- Best Position to Build Credibility
- Best Position to Advocate for Employees and for the Company

Supervisors Are Required to Represent Management

- Because of close relationship with employees, supervisors often share same concerns that cause some employees to go to union
- Best thing supervisors can do if you or your employees have concerns is advocate internally for change
- If union gets in, your job will be harder
- You will be on a different “side” from the people you work most closely with

Supervisors and Managers Not Covered by National Labor Relations Act

- Supervisors and managers can't join or assist union
- Supervisors can't vote in election
- Supervisors won't be represented by union if union gets in

How Does Supervisor Build Credibility?

- Be Honest
- Be Fair
- Be Consistent

PART I

Why Strive To Be Union-free?

Economic Costs of Unions

- Administrative costs
- Management time spent on union issues
- Strikes

Administrative Costs Increase
6% to 10% When a Facility
Becomes Unionized

Management Time Spent on Union Issues

- Contract negotiations
- Grievance processing
- Union enforcement of compliance with contract requirements
 - Meetings over discipline
 - Meetings over other alleged contract violations

Strikes

- Economic losses for company
- Economic losses for strikers
- Further divides management and production workers
- Causes rifts between production workers who don't support the strike and those who do
- Damages the “team” environment

Other Disadvantages Of Unions

- Unions protect bad to mediocre employees
- Adverse impact on flexibility

Adverse Impact On Flexibility

- More difficult to assign work
- More difficult to transfer employees
- More difficult to modify jobs
- More difficult to contract out work
- More difficult to discipline employees

Adverse Impact On Flexibility

- Union reinforces division between management and labor

Part II

- How To Stay Union-free

How To Stay Union-free

- Understand that unions are in the business of getting members
- Understand the reasons people join unions

Understand That Unions Are in the Business of Getting Members

- Union's sole source of income is from unionized workers
- Union organizers target company to increase revenues even if employees haven't sought out the union

Understand Reasons People Join Unions

- Employees don't vote for a union, they vote against the company
- Employees vote against the company because:
 - Dissatisfaction with wages, benefits, and working conditions;
 - Dissatisfaction with management; or
 - A combination of both.

Dissatisfaction With Wages, Benefits, and Working Conditions

- Major reason for creation of unions
- Usually not a significant issue in union elections today
- Employees may perceive that their wages and benefits are not competitive and may need to be educated on the wages and benefits at comparable companies in the area
- Working conditions are unpleasant or difficult

Dissatisfaction With Management

- Social needs
- Mental stimulation
- Responsibility
- Recognition
- Potential for growth
- Achievement
- Self-protection/fair treatment

Establishing a Work Environment That Eliminates Reasons for Joining a Union

- Be pro-active
- Eliminate or lessen the dichotomy between labor and management
- Development positive employee relations programs with ongoing feedback

Be Pro-Active

- The company's demonstrated concern for its employees' welfare increases loyalty to the company; strengthens resistance to tactics of union organizers
- Satisfied employees do not want to share their wages with the union

Eliminating or Lessening the Dichotomy Between Labor and Management

- Union organizers want employees to believe it is “us” versus “them” (management versus labor)
- Satisfied employees view “us” as the entire company
- Take steps to build the Team concept

Develop Positive Employee Relations Programs with Ongoing Feedback

- Develop and implement communications network
- Develop a Team and invest all employees in success or failure of the company
- Implement positive approach to discipline
- Written dispute resolution procedure culminating in peer review for discharges
- Other techniques for improving employee morale and performance

Developing and Implementing a Communications Network

- A good communications network enables the company to remain aware of employees' attitudes and concerns so that the company may address them before they become huge problems
- A good communications network enables employees to understand company changes to practices or policies and avoid false rumors among employees
- Establishing a good communications network prior to any union campaign allows the company to continue to address issues in the same manner during a union campaign

Develop a Team and Invest All Employees in the Success or Failure of the Company

- The company should use its communication network to keep employees informed and make them feel like of the Team by communicating information such as:
 - Cost of their benefits package and information on how to get the most out of their benefits package
 - Company news and future business prospects
 - Employee recognition for special achievements on the job or years of service
 - Changes to company rules and the reason for the change
 - Changes in company benefits and reasons for the change
 - Promotional and training opportunities
 - Community activities in which the company and its employees have been involved
 - Personal news concerning employees and management

Implement Positive Approach to Discipline

- Good disciplinary systems educate and rehabilitate rather than punish
- A written handbook with clear work rules and job expectations lets employees know what is expected of them
- Managers and supervisors must be consistent and fair in applying rules

Written Dispute Resolution Procedure Culminating in Peer Review for Discharges

- Union organizers target employers “at will” policies with promises to provide employees with job security and a grievance and arbitration procedure
- Union organizers will tell employees that they have been subject to unfair and arbitrary treatment by management
- Employers can counter this by establishing a written dispute resolution procedure
- A written dispute resolution procedure may include an option for employees to seek a hearing before a neutral third party such as an arbitrator or peer review panel

Other Techniques for Improving Employee Morale and Performance

- Worker involvement programs
- Job enrichment programs
- Flex-time hours
- Creative fringe benefits
- Proper training of supervisors

PART III

Preparing For A Union Campaign

Preparing for a Union Campaign

- Lay the groundwork
- Weed out the bad apples
- Understand the scope of employee rights under Section 7 of the National Labor Relations Act
- Enforce no-solicitation policy
- Enforce no-distribution rule
- Recognize other concerted activity that does not involve the union

Lay the Groundwork

- Understand your role so that you can properly enforce certain rules and maintain productivity during the union campaign
- The axiom “you can’t please all of the people all of the time” is true
- During a union campaign, the National Labor Relations Act severely restricts an employer’s flexibility in enforcing rules, responding to employee grievances, and in disciplining and discharging employees especially union supporters

Weed Out the Bad Apples

- Union organizers establish a committee of pro-union employees to conduct the union's campaign in the plant
- Employees on such committees are usually the least productive and are the least likely to follow the company's rules
- Discharge the unproductive employees who don't follow the rules
 - Enforce rules
 - Document the enforcement
 - Turn the employee around or discharge him

Understanding the Scope of Employee Rights Under Section 7 of the National Labor Relations Act

- Section 7 protects many forms of concerted employee activity not just activity on behalf of a union

Employees' Section 7 Rights

- To organize themselves and to form, join or assist labor organizations
- To bargain collectively through their own representative
- To engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection
- To refrain from any or all of such activities

Section 7 Applies to Employees Only

- Supervisors and managers are not “employees” under Section 7 of the National Labor Relations Act
- The company has the right to expect its supervisors and managers to assist the company in its efforts to remain union-free
- Supervisors must be trained to recognize concerted protected activity and be trained to respond appropriately in the face of concerted protected activity including union organizing campaigns
- The company can be held liable for unlawful statements and conduct attributed to its supervisors and management

Enforcing the No-Solicitation Policy

- Understand the company's no-solicitation policy
- Enforcement of the no-solicitation policy must be consistent, whether the solicitation involves a union or any other third party

Enforcing the No-Distribution Rule

- Understand the company's no-distribution rule
- Company's no-distribution rule must be consistently applied, whether it involves a union or any other third party

Recognizing Other Concerted Activity that Does Not Directly Involve a Union

- Acting together to present complaints and grievances is protected
- Employees may discuss wages or working conditions with each other
- At times, the NLRB gives employees the right to be accompanied by another employee of their choosing during investigatory or disciplinary interviews or meetings

Part IV

- Responding to Union Campaigns

Responding to Union Campaigns

- Company's right to express opposition to union
- Designate management spokesperson for written communications/mass meetings
- Develop an overall campaign theme
- Establish guidelines for conduct during the union campaign
- Avoid illegal conduct

Companies Have the Right to Express Opposition to Unions

- Company should:
 - Advise employees of its opposition to the union
- Tell the employees of the employer's experience with unions
- Truthfully inform employees of the particular union history including its strike history, its unionized plants that have closed, salaries of the union officers and organizers, and the amount of dues employees should expect to pay if they vote the union in
- Truthfully advise employees of their legal rights vis-à-vis the union including:
 - How to request the return of an authorization card so long as the company makes no promises or threats in connection with how the employee chooses to exercise his legal rights
- Internal polls to target fence-sitters or those leaning towards Company.

Designate a Management Spokesperson for Written Communications/Mass Meetings

- One to three upper level managers should be appointed to convey the company's unified messages and theme

Develop an Overall Campaign Theme

- Every response to a union campaign should have a general overall theme that carries the thrust of the company's message. In addition, the company should establish sub-themes which are:
 - Positive for the company
 - Convey the negative consequences of unionizing
 - Responsive to specific union propaganda

Possible Positive Sub-themes for the Company

- Wages and benefits which favorably compare to other area employers
- History of adding jobs
- Good management
- Open-door policy to discuss issues and problems
- Explanation of recent policy changes
- Other issues of special consideration

Negative Consequences of Unionizing Sub-theme

- Unions strike history
- Closing of unionized plants
- Union disclosure forms filed with the Department of Labor which show salaries of union officials and organizers and the dues charged to members

Sub-themes for Responding to Specific Union Propaganda

- Explain true facts of what union can and cannot do
- Rebut union lies and misstatements of law

Guidelines for Campaign Conduct

- Supervisors and managers will talk to employees on a daily basis and are the primary means by which the company's messages in the campaign will be conveyed to employees on a daily basis
- Supervisors and managers are in the best position to identify the “fence-sitters” who will be the focus of the company's efforts during the campaign
- During a campaign, supervisors will be polled on a weekly basis to determine employees' likely vote
- Companies can be held liable for their supervisors' and managers' unlawful statements so it is critical that the supervisors and managers understand what they can and cannot say or do during a union campaign

Avoiding Illegal Conduct

- Threats
- Interrogation
- Promises
- Surveillance

Threats

- Employees cannot be threatened for engaging in union activities
- Examples:
 - Threatening employees with discharge for supporting the union
 - Threatening employees with lower wages or benefits if the union wins
 - Threatening closure of the plant or loss of jobs if the union wins
 - Threatening a reduction of hours if the union wins

LEGAL THREATS

A Company May Make Truthful Statements About the Company, the Union and What Would Happen If the Union Wins

- Examples include:
 - Employees may be discharged for violating a valid no-solicitation/no-distribution rule so long as the rules have been consistently enforced
 - The company will continue to enforce consistently enforced rules
 - The company needs to remain competitive in its industry and its competitiveness may be jeopardized if it was no longer competitive after the union was voted in
 - Wages and benefits can go up, down or stay exactly the same as a result of the negotiations of a collective bargaining agreement

Interrogation

- Employees cannot be interrogated about their, or other employees', union activities or sympathies
- Examples include:
 - An employee cannot be questioned as to his support or lack of support for the union's efforts or that of a fellow employee
 - Employees cannot be asked whether they signed union authorization cards, attended union meetings, or any other questions which would force the employee to disclose whether they supported the union or not
 - Employees cannot be asked to disclose whether they had talked to union organizers

Employees May Be Interrogated in Certain Situations

- Examples include:
 - If an employee complains about union harassment, the company may question the employee about the employees who have been harassing him and about the details concerning the harassment
 - Employees may be interrogated about rules violations

Promises

- Employees cannot be promised benefits or other economic rewards and cannot be promised remedies to specific grievances in exchange for supporting the company rather than the union
- The NLRB will consider the following factors in this context:
 - The purpose of the solicitation
 - The employer's past practice with respect to soliciting grievances
 - Whether the promise was made in response to the union campaign or whether the benefit being promised was under consideration prior to the onset of the union campaign

Examples of Illegal Promises

- Promising better wages, benefits, or working conditions if the union is not voted in
- Promising bigger or better things after the election if the company wins
- Promising better wages, benefits, or working conditions if the employees cease their support for the union

Examples of Legal Promises

- Employers with a past practice of soliciting grievances may continue to do so during a union campaign
- If true, the company is working on a pay raise in response to an employee question concerning the status of wage increases
- If true, the company is studying various benefit plans and may change to such plans
- The company may announce increased wages, benefits, or better working conditions if such plans were in the process prior to the onset of the union

Surveillance

- Companies may not engage in surveillance of employees' union activities

Examples of Illegal Surveillance

- Spying on or attempting to discover the identities of employees who are passing out union campaign literature
- Creating an impression of surveillance through a supervisor or manager who alter their normal actions to be close to an employee who is passing out union campaign literature
- Having someone drive by or be near a union meeting to discover the amount or identity of employees who attend the union meeting
- Publicizing the identities of the employees the company believes are the leaders in the union organizational activities
- Intimidating handbilling employees by taking notes while watching the employees or having a video camera trained on the employees who are engaged in handbilling

Legal Surveillance Examples Include:

- Making a statement concerning the knowledge of the time and location of union meetings where that information was common knowledge
- Conducting surveillance of employees who are violating company rules
- Commenting upon the knowledge of an employee's union activities where the activities were common knowledge and openly displayed
- Remaining in an area where union activity occurs after the presence of a supervisor or manager