Union Avoidance Tips & Strategies: Do’s and Don’ts

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ReedSmith
The business of relationships.
Preliminary Concerns

- Why should the company care? (ideologically and practically)
- Why should you care?
- How and why Unions continually pursue additional members
Union-Friendly Regulatory Environment

- Union-friendly NLRB agenda
  - Rulemaking – resolution of litigation in 2013
    - Poster requirement
      - Educate employees on their right to unionize
    - Quickie elections
      - Limit employers’ ability to conduct an anti-union campaign
Union-Friendly Regulatory Environment (cont’d)

- Board targets personnel policies that “disadvantage” organizing efforts
  - Solicitation
  - Confidentiality
  - Employment investigations
  - Social media
  - Use of email and intranet to organize
Union-Friendly Regulatory Environment (cont’d)

- Board cases that demonstrate Union-friendly leanings
  - Operating with Union, but without CBA
    - Discipline must be bargained
      - Extend during union campaign?
    - Extension of dues deduction
Pre-Petition

- What does the term “pre-petition” mean?
- What is the significance?
- How does this stage differ from later stages in the process? (Preventive vs. Prescriptive)
- Can we do certain things during this period that we can’t lawfully or practically do later?
Solicitation Rules

- Uniformity
- Consistency in application
- Consistency in enforcement
- Susceptibility to confusion or overly broad interpretation
- Act before it’s too late
A Paradigm for Dynamic Union Avoidance

- Monitor morale and Union “temperature” (listen and observe)
- Instill confidence that company will do the right thing
  - Do the right thing
    - Communicate doing the right thing
- Analyze how to strengthen Union-avoidance techniques
Union-Organizing Techniques

- Demands for recognition and claims of majority support
- Employee visits and cell formation
- Union “salts”
- Offsite employee social events (i.e., union-sponsored happy hour)
- Invitations to employer to debate or attend union meetings
- Hand billing and informational picketing (area standards)
- Rallying behind employees during major adverse event (mass layoff or a significant safety or environmental disaster)
Key Concerns (and Employee Fears) Targeted By Unions

Common to All Employees

- Job security
- Capricious treatment
- Arrogant, hostile, or abusive management or supervision
- Incompetence of direct supervisor
- Fairness of compensation & benefit package (in comparison to other potential places of employment)
Key Concerns (and Employee Fears) Targeted By Unions (cont’d)

Unique to “blue collar” employees

- Occupational and workplace safety concerns
- Fairness issues relative to job status (salaried vs. hourly employees; manual labor and production employees vs. clerical employees)
- Financial rewards for longevity/loyalty
- Acknowledgement of seniority
Key Concerns (and Employee Fears) Targeted By Unions (cont’d)

Unique to “white collar” employees

- Weak, ineffective &/or inaccessible management
- Feeling out of the loop regarding important corporate changes & developments
- Lack of promotional opportunities
- Discriminatory personnel practices (including both favoritism and unlawful treatment)
- Childcare & parental leave policies
- Inability of supervisor/manager to protect them and/or control their fate
Supervisor-Controlled Conditions Affecting Unionization

- Failure to *listen* and *understand* before making decisions or responses
- Failure to respond promptly – or at all – to questions, problems or complaints
- Failure to communicate what employees need to know about the company, its policies, and/or their jobs
- Unawareness of employees’ concerns *before* they become issues
Supervisor-Controlled Conditions Affecting Unionization Desires (cont’d)

- Lack of courtesy and respect
- Inability to treat employees equally
- Inability to motivate employees to work toward common goal
- Failure to convey a sense of job security
- Failure to convince employees that wages and benefits are fair and competitive
Types of Supervisors Who Inspire Unionization

- Bossy, pushy or on ego trip
- Demands instead of requests
- "You Do" attitude vs. "Let’s Do"
- Weak or insecure; DOES NOT TAKE A STAND
- Critical of management or company in presence of employees (openly jaded or disloyal)
- Self-serving or dishonest
Types of Supervisors Who Inspire Unionization (cont’d)

- Plays favorites or exhibits inconsistent application of company policies
- Not open to ideas, suggestions, or change – closed-minded about improvement
- Habitually profane and disrespectful
- Negative or unappreciative attitude (lack of personal interest in subordinates)
- Failure to acknowledge achievements, or to give recognition when due (blames downward)
Types of Employees Unions Exploit

- Lazy, non-productive, or inefficient
- Footloose and fancy-free, no major obligations or commitments – financial or otherwise
- Rebel, anti-establishment, opposes society, structure, management
- Malingerer, something-for-nothing attitude
- Whiner and complainer
- Activist
- Over-qualified for current job position
Checklist of Early Signs of a Union-Organizing Attempt

- Noticeable increase in casual employee gatherings (tendency to stop talking when supervisors approach)
- Employees seem uncommonly busy during breaks, before or after work, and during lunch hour
- Discussions of informal employee “get togethers” after hours
- Nature of employee complaints changes, and becomes *noticeably more* or *less* frequent
- Complaints/concerns presented by a delegation instead of individual employees
Checklist of Early Signs of a Union-Organizing Attempt (cont’d)

- Formation of new cliques with new leaders
- Employees begin using terms like “job security,” “concerted activity,” “economic pressure,” “duty to bargain” and “right to representation”
- Sudden changes in employee attitudes, coupled with reluctance to talk to/deal openly with management
- Former employees – especially discharged ones – loitering on company premises
Checklist of Early Signs of a Union-Organizing Attempt (cont’d)

- Any person (employee or outsider) asking for names and/or addresses of employees
- Unknown individuals appearing at facility and conferring with groups of employees (such as in the parking lot)
- Personal “visit,” telephone call, or registered letter from a Union representative
- Union authorization cards, handbills, or leaflets left on the premises or in parking areas
- Anti-company graffiti
Checklist of Early Signs of a Union-Organizing Attempt (cont’d)

- Once popular and/or friendly employees become withdrawn, seem outcast and avoid contact with supervisors or co-workers (may be opposed to unionization effort)

- Sudden and unexplained change in work habits and productivity – watch for a drop in quantity and/or quality of production (i.e., work-to-rule attitude)

- Increase in questionable usage of sick time coupled with noticeable attempts to take advantage of HR policy “loopholes”
The Counter-Attack

- Must begin with premise that employee perception is the reality
- Plan should be implemented even before (concrete) knowledge of Union-organizing efforts
- Create impression that employees are “in the loop”
- Highlight stability created by seemingly harsh corporate decisions
- Publicize open-door policy
The Counter-Attack (cont’d)

- Get THE key decision-maker (i.e., someone who can control their fate) in front of the employees
- Train supervisors on recognizing signs of Union organizing
- Train supervisors how to avoid and be responsive to the typical reasons for unionization
A Paradigm for Dynamic Union Avoidance

Monitor morale and Union "temperature" (listen & observe)
A Paradigm for Dynamic Union Avoidance (cont’d)

Instill confidence that company will do the right thing
A Paradigm for Dynamic Union Avoidance (cont’d)

Do the right thing
A Paradigm for Dynamic Union Avoidance (cont’d)

Communicate doing the right thing
A Paradigm for Dynamic Union Avoidance (cont’d)

Continually

Analyze how to strengthen Union-avoidance techniques
Post-Petition ("The Insulated Period")

- What does the term "post-petition" mean?
- What is the significance?
- How did we get to this point?
- Does this mean we’ve lost the battle?
- What happens next?
Cardinal Sins During Union Organizing

- Threats
- Interrogation
- Promises
- Surveillance
Things You Cannot Do

- Attend Union meetings or engage in any undercover activity for this purpose
- Threaten, intimidate or punish employees who engage in or spearhead Union activity
- Request information about Union matters
- Prevent employee Union representatives from soliciting memberships during non-working time (unless consistent with earlier discussion on Solicitation Rules)
Things You **Cannot** Do (cont’d)

- Grant wage increases, special concessions or promises to keep the Union out
- Question a prospective employee about affiliation with a labor organization
- Threaten to close up, move or curtail operations
- Engage in discriminatory practices (work assignments, overtime, lay-offs, promotions, wage increases, etc.)
Things You Cannot Do (cont’d)

- Discipline Union advocates more severely than others
- Deviate known company policies to eliminate a Union supporter
- State or even suggest that unionization will force the company to lay off employees or shut down
- Make statements to the effect that you’ll refuse to deal with any Union
Things You Cannot Do (cont’d)

- Give any financial support or assistance to employees
- Visit the homes of employees to urge them to oppose the Union
- Link pre-planned raises or benefit enhancements to success or failure
- Withhold pre-planned or regularly scheduled bonuses or raises because of organizing efforts
Things You *Cannot* Do (cont’d)

- Use a third party to violate T.I.P.S. (but registered consultants can conduct a lawful campaign)
- Question employees on whether they have or have not affiliated or signed an authorization card
Things You Can Do

- Keep non-employee organizers off premises (not public areas)
- Remind employees about the benefits they currently enjoy (avoid veiled promises or threats)
- Inform employees that the signing of a Union authorization card does not mean they must vote for the Union
- Inform employees of the disadvantages of belonging to the Union, such as the possibility of strikes, picketing, dues, fines and assessments
Things You *Can* Do (cont’d)

- Inform employees about any prior experience you have had with Unions and whatever you know about the Union officials trying to organize them
- Inform employees that the law permits you to hire a new employee to replace any employee who goes on strike for economic reasons
- Inform employees that no Union can obtain more than you, as an employer, are able to give
- Inform employees that the local Union probably will be dominated by the International Union, and the members will have little say in its operation
Things You *Can* Do (cont’d)

- Inform employees of any untrue or misleading statements made by the organizer; you may give employees the correct facts
- Respond to employee questions about Union membership, although you should not interrogate employees as to their own views
- Reply to Union attacks on company policies, practices or individual managers/supervisors
- Advise employees of their legal rights under the National Labor Relations Act (but be correct)
Things You Can Do (cont’d)

- If asked (and only if asked), explain how to revoke a signed authorization card
- Conduct an aggressive pro-company campaign (hire consultants?)
- Continue to administer discipline (so long as it’s without regard to Union involvement)
- Proceed with pre-planned layoffs, promotions or reorganization (Union cannot prevent by filing a petition – but proof will be needed to counter suspicious timing)
Certain Things You Can and Should Say About Unions

- Union members are required to pay dues each and every month.
- Dues may be deducted from your paycheck before you even get it, as most Unions insist on a “check-off” provision.
- If negotiated, a Union shop agreement would require the company to terminate you for falling behind in your Union dues.
- As a Union member, you would be subject to Union disciplinary procedures, including fines if you choose to work during a strike.
Certain Things You Can and Should Say About Unions (cont’d)

- Must pay all dues and fines or other obligations to remain in good standing with Union
- You might be required to go out on strike and picket, even though you, personally, would prefer to stay on the job
- Economic strikers do not get paid or receive benefits, and could be replaced if the company exercises its right to do so
- No unemployment benefits are paid during economic strikes (varies by jurisdiction)
Certain Things You Can and Should Say About Unions (cont’d)

- Union politicos may trump your seniority in the event of a layoff
- We do not want a Union and do not need one
- The company prefers to deal with employees individually and directly; they don’t need to pay an outsider to intercede
- Explain the benefits they currently enjoy without having to pay out Union dues (avoid veiled promises/threats)
Certain Things You Can and Should Say About Unions (cont’d)

- Explain how their wages, benefits and working conditions compare with other facilities in our industry, whether unionized or not
- Don’t promise raises, but discuss history of average wage increases in past (compare to CPI if helpful)
- The Union cannot guarantee the employees anything
- Collective bargaining is a give-and-take process: it may result in the same, more or less (can’t say it will be less)
Certain Things You Can and Should Say About Unions (cont’d)

 No Union or law requires the company to agree to anything (there is no STANDARD union contract!!)

 Restrictive work rules on job classifications may lead to layoffs, interfere with efficiency and care and competitive disadvantages

 Federal labor law prohibits the company from making untrue or misleading statements about Unions – the Union is not bound to the truth or prohibited from making promises on which it cannot deliver

 Employees do not have to talk with Union organizers at their homes or anywhere else unless they want to
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