

# **GUIDELINES FOR SUPERVISORS AND MANAGERS DURING A UNION ORGANIZING EFFORT**

## **INTRODUCTION**

In their day-to-day dealings with employees, both supervisors and managerial employees function as members of management. In that capacity, they have the duty and responsibility to implement management policies, interpret management plans, make decisions as they affect the employees who report to them and in general accurately reflect the position of the employer.

For these reasons, the attitudes, actions and opinions expressed by supervisors and managerial employees in the areas of unionism and labor management relations are of great importance.

The National Labor Relations Board (NLRB) and the courts have held, generally, that in these sensitive areas supervisors and managerial employees are, in fact, management - and that the Employer will be held legally responsible for what they do and say. Supervisors and managerial employees can cause the Employer to be found guilty of unfair labor practices if they overstep the legal limitations in opposing a union, and equally if they engage in union organizing activities or render support to a union.

It is therefore essential that all members of management, both supervisors and managerial employees, have a thorough understanding of what they may say and may not say, what they may do and may not

do, and how their statements and/or actions may be viewed by the NLRB.

### DEFINITIONS OF SUPERVISORS AND MANAGERIAL EMPLOYEES

The term "supervisor" is defined in the National Labor Relations Act as follows: Any individual having the authority, in the interest of the employer, to hire, transfer, suspend, lay-off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment."

The term "managerial employee" is not defined in the Act, but two alternative tests have traditionally been applied by the NLRB in determining managerial status: 1) The employee is so closely related or aligned with management as to place the employee in a position of potential conflict of interest between the employer and his or her fellow workers (this test requires that the employee be substantially involved in the employer's labor relations policy). 2) The employee formulates, determines and effectuates the employer's policies or has discretion independent of the employer's established policy, in the performance of his or her duties.

## THE COMPANY POSITION ON UNIONS

Unionization is not solely a matter for unions and employees. Management has a direct and important interest in any attempt to organize employees and should feel a strong obligation to see that employees are aware of all the facts upon which to make a free, uncoerced choice.

The position of the company on the issue of unionization should be made clear. Many employers would sum up their position on unions along these lines: That it is not in the best interest of either the Employer or the employees to bring in a union to stand between them; that management and employees should continue to deal directly with each other without the intervention of an outside third party; and that employees do not need to pay union dues, fees, fines and assessments to a union in order for them to receive fair treatment. The employer, in short, respects the ability of the employees to act and speak for themselves.

Supervisors and managerial employees should not hesitate to communicate the Employer's position on unionization to employees!

## **DISADVANTAGES OF UNIONISM TO MANAGERS AND SUPERVISORS**

The entire management and supervisory staff should be taught the various disadvantages to themselves, should a union be brought

into the picture. They should fully understand such basic union principles as:

1. When a union is selected by employees as their representative that union becomes the exclusive collective bargaining representative of all employees in the unit. (This means that an outside "third" party is injected between the supervisor and the employee and there is a loss of flexibility between the company and employees.)
2. As a result of the exclusive bargaining principle, most collective bargaining contracts have grievance and arbitration procedures within them which set up the machinery to "second guess" supervisor action as to an employee. (For example, sometimes this machinery is directed at a specific supervisor out of hostility or resentment, and this can greatly impair the supervisor's ability to accomplish his work objectives.)
3. Frequently, managers and supervisors find themselves "squeezed in the middle" as a result of the hostility and confrontation between the union and the employer. (For example, on one hand, they still have their duties and responsibilities to carry out, while on the other hand, they do not receive the cooperation and willingness on the part of the unionized employee to fulfill that objective.)
4. Managers and supervisors should also realize that collective bargaining language sometimes restricts their ability to fulfill their management responsibilities. (For

example, many such contracts establish rigid job classifications which have a tendency to decrease efficiency and flexibility, while at the same time increasing potential "featherbedding." Frequently, contracts have language that weakens standards or in some similar fashion cuts into the efficiency of the organization.)

5. Managers and supervisors must also understand that they do not have bargaining rights or protection against strike, and were the employees to engage in a strike, managers and supervisors could well be the victims of some unpleasant conduct on the part of the strikers and picketers. (For example, threats, intimidation, violence, personal injury and property damage are very realistic possibilities in "spirited" strikes.)
6. Managers and supervisors should also appreciate the reality that unreasonable union demands or job actions sometimes place businesses and institutions in such an economical condition that they no longer can continue to operate. (Although this should never be used in a threatening manner by a manager or supervisor to an employee, it is a very real possibility which would mean the potential loss of job for the manager, supervisor, and employees as well.)

## DISADVANTAGES OF UNIONS TO RANK AND FILE EMPLOYEES

Once the management team comprehends how a union could detrimentally effect its efforts, it should then be educated about the various disadvantages of unionization to rank and file employees. Management and supervisory personnel should be substantially aware of the following:

- That *unions cost employee members a sizable sum of money* through union dues, assessments, per capita taxes, initiation fees, and so forth.
- That *the unionized employee loses his individual job freedom* - the freedom to be his own person and work out his affairs with management directly. The employees loses this freedom because he subordinates his individual rights to the union via the exclusive bargaining principle.
- That a *unionized employee who is a member of a union is legally bound to the union's constitution* and any violation of the union rules can bring severe sanctions against the individual in the form of fines, suspension , expulsion, etc., depending on the specific disciplinary rules of the union in question.
- That legal cases reflect that *some unions have discriminated against their own members* and that some unions have been found guilty of violating the rights of employees under the National Labor Relations Act.

- That *nothing is automatic* just because a union is brought into the "picture."
- That negotiations are "give and take" and *employers may insist that wages and fringe benefits be decreased or kept more "in line" with other unionized firms in the area that are paying less wages and fringe benefits.*
- That *neither the government nor the National Labor Relations Board guarantees employees that they will not lose anything in the negotiation process.*
- That unionized employees always face the *possibility of strikes.*
- That *when employees strike, their pay is cut off immediately.* (So are their fringe benefits, and in most states, strikers are not entitled to unemployment compensation.)
- That *picket line violence and other conduct which may evoke a citation for contempt of court frequently result from such job actions.* (Managers and supervisors should never leave an impression with the inquiring employee that a strike is inevitable, only that the possibility exists.)
- That as a result of economic strikes - those that occur when negotiations break down at the bargaining table over wages, working conditions, etc. - *striking employees may be permanently replaced* and if and when they apply to go back to

work, the employer is not required to give them priority over their replacement. (Often, in reality, this is tantamount to costing them their job in that the replacement desires to keep the job indefinitely.)

- That *unionized employees are also subject to listing their jobs when their employer is placed into a non-competitive position due to unreasonable union demands* and can no longer keep its doors open. (Again, this should not be used in a threatening manner.)
- That *certain union officials have been charged and convicted of crimes* such as corruption, fraud, embezzlement, etc., through the years.
- That *the union may enter into a "sweetheart contract" with the employer* in order to gain a "check-off" or "union-shop" provision in the collective bargaining contract. (Unions are frequently accused of *subordinating contract provisions* which would be more beneficial to employees for their own self-interest.)

Once the management team has an arsenal of knowledge relating to the disadvantages of unionization, it should be in a most able defensive posture to combat the union's organizing effort.

## **GENERAL STANDARDS OF CONDUCT**

Before listing specific "DO's and DON'Ts", it may be helpful to set down some general guidelines. In determining what actions are legal and what actions are not legal, a fairly complicated set of rules has been established by the NLRB. However, these rules may be summarized in order to make sure an Employer's communication with employees during a union campaign are acceptable. In the most general terms, the following actions on the part of an Employer would be ruled illegal and can easily be remembered by thinking of the word TIPS:

**T - THREATEN:** You may not threaten an employee with any reduction or loss of pay, benefit or working condition. You cannot threaten an employee with possible plant closure or loss of any other term or condition of employment for supporting a union or state that any employee or group of employees will suffer a reduction in pay, benefits or position with the company if the union wins the election.

**I - INTERROGATE:** You may not ask an employee about his views or activities in connection with unionization. In addition, you may not ask questions in an attempt to determine who is and who is not supporting a union.

**P - PROMISE:** You may not promise an employee any benefit for opposing the union.

**S - SURVEILLANCE:** You may not spy on union meetings or drive by the union meeting place in order to determine who or how many people are in attendance nor can you enlist any other person including eligible voters to do this on your behalf.

## OTHER GENERAL GUIDELINES

A. Any decision you make concerning an employee should not be influenced in any way by his or her attitude or activities either for or against unionization. Such matters as promotions, work assignments, wage increases, discipline or discharge and transfers must be decided strictly on the merits.

B. In order to help employees make an informed choice, you should provide them with information about the Employer and the union and the process and consequences of unionization. For example, you can explain the Employer's compensation, benefit and other personnel policies or correct misstatements about the Employer's policies or actions.

C. You should accurately communicate to employees the position of the Employer on the matter of unionization.

D. You should continue to meet individually with employees who wish to speak with you to answer questions and to resolve problems and grievances in accordance with past practice. However, you should not call individuals or small groups of employees into management offices for the specific purpose of discussing unionization.

E. The Employer's supplies, equipment or services should not be made available to employees for the purpose of supporting or opposing the union.

## THE DOS AND DON'TS

The following is a list indicating some of the things supervisors and managerial employees CAN DO, followed by a second list indicating some of the things they CANNOT do under the law.

These DOS and DON'Ts are presented to serve as guidelines to supervisors and managerial employees in their day-to-day dealings with employees. Remember, that these guidelines cover particular situations in only a general way. They do not deal with every possible kind of permissible or impermissible conduct but merely set forth some common examples.

If you are in doubt about a particular situation or have any questions concerning these matters, do not hesitate to ask for advice. If employees ask you any questions and you are not sure of the answers, tell the employees that you will get the answer for them. Whenever you make a factual statement to employees, be sure your facts are accurate.

## WHAT YOU AS A SUPERVISOR OR MANAGER CAN DO:

1. Express management's view on the union to employees. Set the record clear and straight from the outset that a union is not in the employees' or company's best interests.
2. Discuss current employee benefits, and compare those at other area companies. Many employees, particularly the newer ones,

are not aware of all of the company's benefits and these should be repeatedly focused on to employees.

3. Point out to employees that the union can guarantee them nothing in the way of increased wages or improved benefits. The union can only make promises, but it is up to the company alone to deliver on wage or benefit increases. Point out to employees that the law does not permit an employer to make promises of wage and benefit increases during an election campaign, but permits the union to make such promises because the law recognizes that unions have no ability or authority to deliver on their promises while the company does.

4. Tell employees that if they become members of the union, the union will have the power to levy fines against them for engaging in conduct of which the union's officers do not approve. Also, point out that the union has the power to collect special assessments from its members.

5. Explain to employees that as a practical matter only union companies have strikes and that if there is a strike, employees will lose wages while on strike. It is an obvious fact that non-union companies do not have strikes with the resulting loss in income to its employees. But, employees should be reminded of this fact with examples of this union's strike record.

6. Tell employees that if they are called out on strike by the union during contract negotiations, such strike is called an "economic" strike and all employees not reporting to work can be permanently replaced. A company cannot fire employees for striking, but it can "permanently replace" them. Tell employees that permanent replacements hired for strikers are allowed by law to keep the striker's job even after the strike ends. Thus, employees who go on strike and are replaced have no job to return to when the strike ends. However, by law, the employer must place the names of permanently replaced

strikers on a preferential hiring list for any future employment openings once the strike is over.

7. Point out to employees that while they are on strike they receive no wages, they are not covered by the company's insurance or benefit plan, and they may not receive unemployment compensation. The topic of lost medical insurance protection is particularly important to employees who are the sole support of their families and this point should be dwelt upon, particularly with them.

8. Discuss with employees the nature of the business and the fact that many of your competitors are non-union and that being union may make your company non-competitive with a resulting loss of business and jobs. Explain to employees that this loss of business could come about through increased cost of operation, not due to wage or benefit increases to employees, but rather due to the inherent increased cost in operating a union business. Note to employees that at union companies much time is spent on grievance processing, contract negotiations, and dealing with the union, which add to the cost of operation, but do not put any benefits in the employee's pocket. Other increased costs of operation can come from optional employer contributions to union educational or apprenticeship funds which do not benefit employees, but do add to the cost of production.

9. Point out to employees that as a union company there is the ever present possibility of a strike, that your customers rely upon dependable delivery of goods and services, and that the risk of a strike may force that customer into looking for alternative suppliers. Explain to the employees that this could lead to a loss in jobs. Remember, the reasons that employees should vote against the union must be explained in terms of their own personal best interests rather than what is good for the employer.

10. Tell employees that should the union win the election, there is no guarantee that bargaining would start with the benefits which employees presently receive and only go up, but rather the union may be willing to trade off some present employee benefits in order to gain concessions which it wants in a contract. For example, the union may be willing to give up a paid holiday or some vacation allowances in order to gain a union shop clause or a dues check-off clause.

11. Tell employees that by being members of the union they would be subject to regular monthly dues and initiation fees. Point out that union dues must be paid, even if an employee only works a few days during the month due to illness or vacation.

12. Urge employees not to sign a union card because it can be used by the union to require the company to recognize and negotiate with the union without an election.

13. Always answer each and every employee's question concerning the union. Most employee questions can be answered to the benefit of the company. Some careful thought and consultation with labor counsel may be necessary to formulate the answer, but never pass up the opportunity to get your point across.

14. Tell employees that the company will enforce its rules uniformly and treat employees fairly, as it has always in the past.

15. Tell employees that one of union's first bargaining demands, should it win the election, will be that all employees be required to join the union and pay regular monthly dues, or be fired. (Check state law.)

16. Let employees know that even though they may have signed a union card, this does not obligate them to vote for the union in the election.

17. Point out to employees that should the union win the election, it may be dominated and controlled by the international union

is some distant city, and that the local members will only bring in the dues to support this big organization.

18. Point out to employees instances in which this union was involved in violent conduct, or acted to abuse its members. The case books are full of examples where virtually every union has threatened or physically assaulted some of its members for not following the union line. These cases can be made available through your labor counsel and should be a point of discussion with employees.

19. Keep employees posted on the progress of scheduling an election. Once the date is set, try to be first to announce it to employees along with the information as to the polling location, hours and procedure. Get the employees in the habit of looking to management for full, truthful and quick information.

20. Make job and work assignments, including assignments of overtime, so long as this is done without reference to the employee's participation or non-participation in union activities.

21. Enforce rules concerning employees impartially and in accordance with customary action, irrespective of the employee's activity for or against the union.

22. Lay off, discipline and discharge employees, so long as such action follows customary practice and is done without regard to union membership, activity or sympathy.

23. Tell employees about any bad experience you may have had with unions.

24. Tell employees that you or any other member of management are always willing to discuss with them any subject of interest to them, and that they do not need to pay a union representative to speak for them.

25. Tell employees that you and the Employer prefer to deal with them personally and directly, rather than with the participation of an outside organization, a third party or a stranger.

### WHAT YOU AS A SUPERVISOR OR MANAGER CANNOT DO.

1. Do not ask employees or applicants for employment why, or if they are for or against a labor union. Generally speaking, if you tell an employee your position on the union and the reasons, the employee will respond by stating his view. It is not necessary to ask the employee in order to get a general feeling as to his view on the union.

2. Do not ask employees how they are going to vote in the election, if they are going to vote, or whether or to they signed union cards. Don't ask employees if they or another employee attended a union meeting. Generally, in any work force there are several employees who enjoy being the center of attention and they will gladly volunteer any information on this subject. Again, a conversation with an employee about a union need not be opened with a question, but rather management can open the conversation by stating its view on the union and then pausing for the employee to make a response.

3. Do not ask employees to spy on each other concerning their union activities. If an employee wishes to report to management about a union meeting, that is lawful, but management cannot ask for the report. Remember, there is no law against listening, only against asking the wrong questions.

4. Do not drive past an area in which you know or believe that a union meeting is being held in order to observe what is going on.

5. Do not promise employees any new benefits or wage increases should they vote against the union. If employees ask for such a promise, they should be told that the law does not permit the company to make any such promises during an election campaign.

6. Do not threaten to close or move the plant if the union wins the election. You can explain to employees about the competitive nature of the business and ask them if they think a union will help you get new customers or increase business. But management cannot threaten to go out of business should the union win the election.

7. Do not threaten employees with a loss of wages or other benefits should the union win the election. You can point out to employees that should the union win the election there is **no guarantee** that they will continue to receive all the benefits which they presently have, but an employer cannot tell employees that it will take away benefits in retaliation for their vote for the union.

8. Do not stop employees from passing out union literature in non-working areas such as lunch or break areas of the plant on non-working time. Nor can the company prohibit employees from talking about the union during non-working time.

9. Do not threaten an employee with discharge, demotion or layoff for engaging in union activity.

10. Do not change an employee's assignment because he supports the union or has assisted the NLRB in the investigation of charges against the company. This does not mean that employees who support the union cannot be disciplined or assigned to new jobs, only that their union activity cannot be the motivation for that action. The issue of disciplining or reassigning union activists is very complex and advice should be sought from our labor counsel before pursuing that course.

11. Do not create or provide financial assistance to a "company union" or an "anti-union" employee committee.

12. Do not circulate or encourage employees to circulate a petition against the union. If employees wish to circulate such a petition, they are free to do so, but management should keep at arms length from such activity.

13. Do not visit the homes of employees to urge them to vote against the union.

14. Do not tell employees that should the union win the election the company will refuse to recognize or negotiate with the union. An employer can tell employees that during contract negotiations it could take a very hard stance with the union and that negotiations frequently take a long time to conclude, but should not suggest or imply that employee selection of union representation would be futile.

15. Do not tell employees that a strike is inevitable if the union should win the election. Management can point out that no one can predict when or if a strike will occur, and that strikes are commonplace with this union.

16. Do not create an atmosphere of fear among employees with nonfactual stories of job loss or union violence.

17. Don't tell employees they would have received a wage increase or other benefits but for the start of the union campaign.

18. Don't conduct yourself in a way which would give the impression to employees that you are watching them to determine whether or not they are participating in union activities. For example, telling an employee that you understand he went to union meeting would be improper.

19. You may not Transfer employees because of their union activities or affiliation.

20. Don't engage in any partiality favoring other employees over employees who are active on behalf of a union.

21. You can't discipline employees who are supporting a union for an infraction which other employees are permitted to commit without being likewise disciplined.

22. Don't make any work assignment for the purpose of causing an employee who has been active on behalf of a union to quit his or her job.

23. Don't make any action which is intended to impair the status of, or adversely affect, and employee's job or pay because of his or her activities on behalf of a union.

24. You can't select employees to be laid off with the intention of curbing a union's strength or discouraging support for a union.

25. Don't call employees individually or in small groups into management offices or similar locations away from their normal work area for private discussions concerning union matters. (It is NOT an unfair labor practice to hold large group meetings.)

26. Don't hold meetings with employees for the purpose of soliciting grievance and complaints unless there has been a past practice of holding meetings for this purpose.

27. Do not use communications to employees that play upon racial prejudice.

Essentially, an employer can convey any message to employees that it wishes, so long as the wording is carefully tailored to avoid legal pitfalls.

## Other Employer Conduct During a Campaign

Speech limitations are not the only limitations on employer conduct during an organizational campaign. Employees who are active in the union's campaign should be discharged only with caution. As a practical matter, their discharge must be based on some valid reason other than their union activity, for if the discharge is found by the NLRB to have resulted from the employee's union activity, the employer will be guilty of unlawful discrimination.

When a supervisor finds it necessary to discharge or discipline a worker, he should be able to answer the following questions if charged with discrimination:

- What was the reason for the action?
- Was the same action taken against other employees for the same reason?
- Were written or other warnings given?
- Was the worker known to be active in union matters?
- What was the worker's record as to length of service, efficiency rating, wage increases, promotions, or words of praise from his boss?

*Important:* Be sure to document conversations and to keep adequate records. Be sure to have witnesses to any discipline or discharge conversation.

In addition, the granting or withdrawing or withholding of benefits during an organizational campaign can be construed as such interference with employees' rights as to be an unfair labor practice. The legality of such actions is so dependent on the particular employer that professional advice is a necessity.