



Not Your Father's Union: Recent Labor Organizing Trends and Prevention Strategies

Gregory J. Kamer



Showdown at the AFL-CIO



Showdown at the AFL-CIO

- What Happened?
 - SEIU President, Andrew Stern, alleges AFL-CIO leadership, under direction of President John Sweeney, failed to revive flagging membership
 - SEIU creates alternate organization called the “Change to Win Coalition”
 - Includes Teamsters, UNITE HERE, UFCW, Laborers, United Farm Workers, and Carpenters Union
 - Change to Win Coalition unions cease financial support of AFL-CIO

Showdown at the AFL-CIO

- What Does it Mean for Employers?

Gregg says, "As a manager you need to be educating your employees."

By Alan Rubenstein
As labor leaders fight over the best way to restructure the labor movement, their management lawyers say courts, business leaders should weigh in on what the union will be.

As a manager you need to be educating your employees. It's about educating your workforce in a legal manner, in a nonthreatening manner.

The state's largest union, California Union Local 699, is expected to have 60,000 members by the end of the year.

"It's a good idea to educate your workforce in a legal manner," Gregg said. "Owners have to be vigilant. It's about educating your workforce in a legal manner, in a nonthreatening manner."

Gregg says, "As a manager you need to be educating your employees." It's about educating your workforce in a legal manner, in a nonthreatening manner.

Gregg says, "As a manager you need to be educating your employees." It's about educating your workforce in a legal manner, in a nonthreatening manner.

Gregg says, "As a manager you need to be educating your employees." It's about educating your workforce in a legal manner, in a nonthreatening manner.

Showdown at the AFL-CIO

- What Does it Mean for Employers?
 - Expect to see an increase in Union organizing by both the AFL-CIO and the Change to Win Coalition
 - Expect more aggressive bargaining during contract negotiations
 - Expect changes in Union tactics

Changes in Union Tactics

- Added focus on minorities
 - Minority organizers
 - Cultural bond
- Avoiding NLRB elections
 - Card signing
- Lengthy, low intensity campaigns
 - Subtle infiltration
 - Using company email to distribute propaganda
 - Meeting with employees individually

Changes in Union Tactics

- Creating emotional bonds with employees
 - Organizers with similar cultural or economic backgrounds as employees
- Increased number of union organizers
 - More one on one interaction with employees
- Filing claims with other agencies
 - EEOC charges, OSHA complaints

Changes in Union Tactics

- Internet
 - Password protected websites
- “Salts”
 - Paid union organizers
 - Protected as “employees”
 - Cannot discriminate in hiring
 - *Aztech Electric Co.*, 335 NLRB 260 (2001)

Employers' Response

- Address union issues at first sign
- Prevent card signing
- Preemptive auditing
 - Surveying employee reactions to policies
 - Know what issues are concerning employees
 - Prior policy of responding to employee concerns may be maintained
 - *Macdonald Machinery Co.*, 335 NLRB 319 (2001)

Employers' Response

- Direct communication with employees
 - Meetings are critical
 - Use communicators who understand the culture
- Intranet
 - Set up system for employees to get information as well as express concerns
- Negative campaigns not working
- Empower and train front line supervisors

Supervisor Training

- Ensure supervisors meet the test for supervisory status under the NLRA
- Need to determine loyalty and commitment of supervisors
- Make sure supervisors feel they are a part of the management team
- Supervisors must report union activity to management
- Supervisors must be aware of what constitutes protected concerted activity

Protected Concerted Activity



Protected Concerted Activity

- Activity protected by Section 7 of the National Labor Relations Act
- “Concerted” in nature
 - Can be lone employee acting on behalf of others

Protected Concerted Activity

- Pursued for union-related purposes aimed at collective bargaining, or
- “Mutual aid or protection”
 - Efforts to improve terms and conditions of employment or otherwise improve their lot as employees
 - Need not be related to union activity

Protected Concerted Activity

- Examples
 - Legitimate work stoppages
 - Walking off job as a result of working conditions
 - Refusing to cross picket lines
 - Filing or processing grievances
 - Appeals to agencies and filing of court actions

Protected Concerted Activity

- Examples

- Employee demand for representation during investigation
 - *Weingarten* rights
 - Right not available to nonunion employees
 - *IBM Corp.*, 341 NLRB No. 148 (2004)
- Writing letters to complain about working conditions
- Employees discussing their respective wage rates with one another

Protected Concerted Activity

- Examples

- Employee complaints about employer to customers
 - *Guardsmark, LLC*, 344 NLRB No. 97 (2005)
- Employee calling supervisor a “son-of-a-bitch,” as long as it is not on the plant floor
 - *Stanford Hotel*, 344 NLRB No. 69 (2005)

National Labor Relations Board



National Labor Relations Board

- Federal agency established to enforce provisions of National Labor Relations Act
- Divided into regional offices
- Representation cases
 - Supervises union election proceedings
- Complaint cases
 - Unfair labor practice complaints filed by the union, the employer, or an individual

National Labor Relations Board

- Complaint Case Procedure
 - A party, e.g. the Union, files an unfair labor practice charge with the regional office
 - The regional office conducts an investigation
 - Witness interviews
 - Site visit
 - Regional office either dismisses charge or issues complaint

National Labor Relations Board

- Complaint Case Procedure
 - If complaint issues, the Counsel for the General Counsel of the NLRB prosecutes the case
 - Hearing held before an Administrative Law Judge
 - Administrative Law Judge issues opinion
 - Opinion may be appealed to the NLRB in Washington, DC
 - Decision of NLRB may then be appealed to a federal circuit court

National Labor Relations Board

- Does not just handle cases against employers
- Investigates claims against unions as well
- Tends to be more liberal in its rulings
- Makeup of the NLRB changes with the Administration
 - Recent opinions overruling Clinton Board

Effects of Election

- After Petition is filed:
 - Cannot make changes in terms and conditions of employment
- If Election is won:
 - Can make whatever changes employer wants
- If Election is lost:
 - Must negotiate over changes until either agreement or impasse is reached

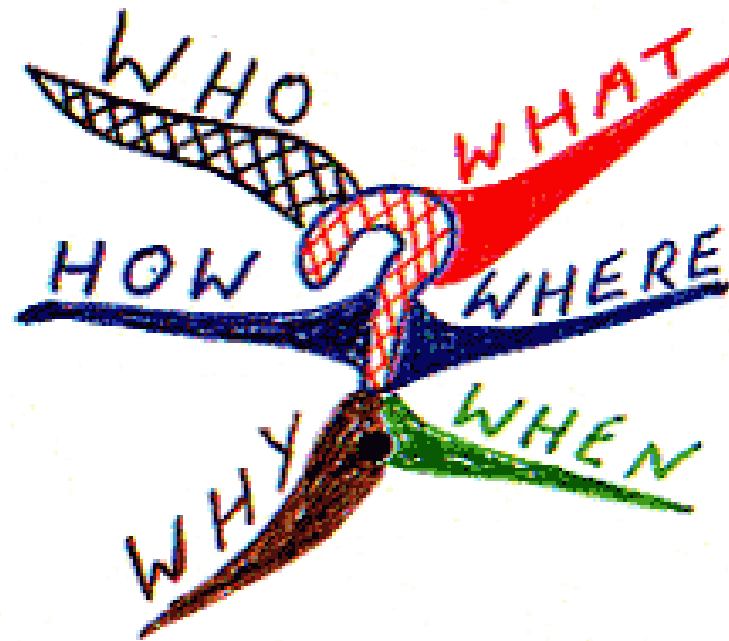
Latest Developments

- *Guardsmark, LLC*, 344 NLRB No. 97 (2005)
 - Employees can complain to customers
- *Stanford Hotel*, 344 NLRB No. 69 (2005)
 - Employees can use profanity against supervisors
 - Examine place of discussion, subject matter, nature of employee's outburst, and whether outburst provoked by employer's unfair labor practice

Latest Developments

- *IBM Corp.*, 341 NLRB No. 148 (2004)
 - Non-union employees not entitled to representative at disciplinary meeting
 - Overruled *Epilepsy Foundation*, 331 NLRB 676 (2000)
- *Oakwood Care Center*, 343 NLRB No. 76 (2004)
 - Bargaining units that combine employees solely employed by a user employer and employees who are jointly employed by the user employer and a supplier employer constitute multiemployer units, and are only permissible with the parties' consent
 - Overruled *M.B. Sturgis*, 331 NLRB 1298 (2000)

Any Questions?



IMΦ

Thank you
for your attention !

