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LARNER**January 2017 | **Labor Law Alert**

Unionization Trends

An Ounce of Prevention . . .

by Paul I. Weiner, Esq.

Introduction

There have been many unionization trends throughout the years, both positive and negative. For many years unions were losing more union elections than employers. Very recently the opposite is occurring. Unions are winning many more elections and by higher margins. Two- and three-to-one vote ratios are not unusual.

One question is: What is occurring to cause such a seismic change? There are many factors with which unionized and non-unionized employers should be concerned. First, certain industries have hired more and more immigrants from countries where unions are prevalent such as those in South America. Second, many industries are more susceptible to unionization even though all are vulnerable: trucking, warehousing, construction, health care, media, real estate management, utilities, security companies, colleges and universities, small family companies, cleaning companies, and companies which have back office clerical such as insurance companies. Also, the NLRB has issued new rules that have shortened the time to hold an election to three to four weeks from the filing of a petition. Previously companies had six weeks to over eight weeks to conduct a campaign.

Proactive Management

Almost all employers can be unionized. One should not be paranoid about it but should be aware that reasons for unions are multi-faceted and sometimes difficult to discover. Simply stated, good management and supervisory techniques and skills make a big difference. Most employers have the view that if employees are paid right with benefits they do not need to be concerned about unions. That is not true. For example, one “bad egg” supervisor can cause employees to turn to a union.

Employees look to their managers for guidance and some “TLC”. There is a delicate balance management seeks being a person open to employee communication and proper supervision of the work. How does an employer know how its management is conducting itself? There are numerous ways to keep an eye on the workforce. Monthly management and supervisor meetings are helpful. These can influence the employees who attend each meeting and foster open discussions of issues. Without this, employees feel isolated and as if they have nowhere to go. Their supervisors should be trained in being open to employee questions and issues and not “close the door.” Part of management’s job is to listen to employees.

Employees need to feel they are part of a well run company. Further help in improving communication lies in the employee handbook. The handbook should cover all personnel policies and benefits. In many ways, it can be a substitute for a union contract. Handbooks and manuals need to be written with less formal language and legalistic language. Your employee handbook should fit your particular business and not be “canned” from a computer program.

Early Warning Signs of an Organizing Campaign

Employers need to be diligent in keeping their “ear to the ground.” Changes in morale or employee actions and non-actions can be signs there are problems. For example, employees stop talking to management (silence can be deafening); employees asking about when there will be a raise or benefit improvement; or all of a sudden there is more absenteeism, especially within certain departments. Other signs include:

1. A significant increase in the number of grievances being filed.
2. Employees forming in groups that include individuals who do not normally associate with each other.
3. A large number of policy inquiries, particularly on pay, benefits and discipline.
4. Employees in work areas they do not normally visit.
5. Avoidance of supervision.
6. Argumentative questions being asked in departmental or sales meetings.

7. Exit interview information indicating that people are attempting to escape an unpleasant environment.
8. News items placed on bulletin boards about union settlements in local companies or industries.
9. Cartoons or graffiti which direct humorous hostility towards the organization, management or supervision.
10. A significant change in the rate of turnover, either upward or downward.

Conclusion

Employers should conduct employee audits which review all policies, practices, employee discipline, hiring and the types of grievances being received.

This may seem overwhelming but it is just good management practice which can lead to greater productivity and the prevention of employment litigation as well as unionization. Unionization is a major change in running the company which does not go away easily.

Lastly, unions have become more sophisticated in organizing; many do not apply for a union election but file unfair labor practices (ULPs) against the companies they are organizing. This is a clear sign the union has you in their sites. These ULPs can be costly to defend and involve all types of violations of the NLRA which include discriminating against union employees, making threats, refusing to provide information, and others.

In our next newsletter, we will review all the areas of labor law that employers could unwittingly violate. For example, if there is a union organizing your company, you cannot threaten employees, promise benefits, spy on employees' union activities, or ask them questions about the union. These are difficult things to comply with. There are management training programs which help assist management on the "Do's and Don'ts" of a union campaign.

Remember, now is the time to maintain a non-union posture.

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