

Supervisors in National Labor Relations Board Relations— You Are a Key to Winning

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It is essential to know if you are a supervisor for the purposes of a National Labor Relations Board (NLRB) election. And, if you are a supervisor, you must know what you can and cannot do during such an election under the National Labor Relations Act.

If you are a supervisor as defined by this law, your employer may be legally liable for any mistakes you make by your words or actions during the entire organizing campaign, and even after the campaign's conclusion. Your company may be held responsible for your conduct although you had no intention of any wrong-doing.

There is no single test that determines if you are a supervisor. If you can hire, fire, or effectively recommend the same, or if you assign work or are paid a salary instead of an hourly rate, then you may be a supervisor within the meaning of the labor law. These are just a few examples. If you are in doubt, treat yourself as a supervisor and play it safe—you won't get your company into trouble.

As a supervisor, you may experience some stresses and strains during the election campaign. And, there may be attempts by union supporters to trap you into making mistakes. What you say to employees, and how you act or appear to act toward them, is the whole ball game. You will have to maintain your poise and know what you can and cannot do.

Situations to Avoid

What, then, shouldn't you do during a NLRB election?

- Don't make any specific statements about the union until you have been advised by your company's attorney or consultant as to what you can and cannot say. That's the best advice.
- Don't favor one union if two or more unions are involved in an election. Your favoritism may interfere with the rights of employees to select their own representatives.
- Don't make any statements to employees that threaten to take away existing benefits if the employees support the union. For example, if you say that the company will close the plant if it is unionized, the company may be found to have committed an unfair labor practice by

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your statement. Nor can you say that coffee-break privileges will be discontinued or that the work will be contracted out. These are only three examples from a number of possible illegal threats.

- Don't promise to grant new benefits unless those benefits were established before the union organizing campaign began. That means that you cannot tell the employees that they will receive raises if they will vote against the union. Any raises that are given during the organizing drive must have been planned before that time.

- Don't question employees about their union sympathies. That also means that you cannot conduct any polls to determine the extent of employee support for the union.

- Don't spy on your workers, no matter how curious you get. You might think that you will help the company by attending a union meeting to find out what is going on. But this could jeopardize your company since your action may be found by the National Labor Relations Board to be spying on the employees—an unfair labor practice. You can, of course, learn a great deal about what is going on by remaining alert during the normal course of your working activities.

- Don't be defensive about any mistakes you may have made in the past. Be receptive to employee complaints, even if they are about you. The mature supervisor will correct any shortcomings and help win the election.

Many questions will be directed to you by employees during the campaign. If you do not know the answer, find out. If you are uncertain of the interpretation that an employee might give your answer, discuss it first with the company's attorney or consultant.

If you follow these guidelines and use common sense, you will help your company to remain non-union. And, you will prevent the union from generating unfair labor practice charges or raising objections that may cause the election to be set aside.

CASE HISTORIES

Now that you have some of the basics, let's see how you act or react under fire. Here are two situations taken from actual cases. Read the facts and assume that you are the supervisor involved. What problems can you see? How would *you* respond? Compare your ideas with those stated in the "answer." But, remember, the "answer" is only a guide. It is not complete and you may come up with ideas better than those discussed. Here's the first case.

First Case

The employer, the Widget Manufacturing Company, is a national manufacturer of Widgets. Early last year the International Brotherhood of Dues and Fine Collectors Union began a campaign to organize the employees at Widget Manufacturing Company. On November 1, the Union filed a representation petition with the National Labor Relations Board and a hearing was held. At that hearing the Company and the Union agreed upon a date for the election.

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Beginning in late November, and prior to the election, some supervisors, including Miss Ann T. Union, asked some employees how they felt about the Union. Early in December the Company's community relations manager told a newly-hired employee that the Company would probably move out of the area if the employees unionized. Later that month, another supervisor, Will Winner, told an employee to tell the men that they would be better off without the Union.

Then, on December 18, supervisor Beau Brummel told an employee that there would probably be a strike if Widget was unionized because the Company would turn down whatever the Union asked for in negotiations.

About the same time, the local newspaper published an editorial which mentioned that the Union had forced the Apex Anchor Company to close. The editorial contained the following statement: "If the union wins, we can assure you that there will be total disorder and that Widget's workers will meet the same fate as those at Apex Anchor." Widget posted this editorial on its bulletin board.

Several days before the election, Widget told the employees that a 27-inch color television set would be raffled off during the election. The employees were advised that only those who voted in the election would be eligible to participate in the raffle. However, eligibility to participate was not contingent upon how the employees voted.

The election was held in the Company's auditorium during two periods: from 5:30 a.m. to 8:30 a.m. and 3:00 p.m. to 6:30 p.m. After the employees cast their ballots, they lined up outside the voting area to register for the raffle. Some of the employees had been assigned by the Company to register voters. As the voters approached the registration table, each was asked to identify himself by name and badge number. Then, the employee's name was checked off from a list of eligible voters, and he was given half a raffle ticket. The other half of the ticket was deposited in a box. The list of employees voting in the election was then taken to the personnel office.

Now, review the statements and the actions of the Company. What "unfair labor practices" were committed?

Answer: The National Labor Relations Board found that supervisor, Miss Ann T. Union, interrogated employees when she asked them about their union sympathies. Interrogation of employees in an NLRB election is prohibited. Therefore, the Widget Company was liable for Miss Union's statement.

The NLRB saw no factual basis for the Company's prediction of possible plant closure.

Although the employer may lawfully predict the precise effects he believes unionization will have on his company, the prediction must be carefully phrased on the basis of objective facts that convey an employer's belief as to the demonstrably probable consequences.¹

¹Marathon Letourneau Company, 208 NLRB No. 38, (January 8, 1974), 85 LLRM 1049.

The company argued that its supervisor's statements about plant closure were not illegal because the Company would close the plant if the Union demands were too high and caused the plant to become noncompetitive. They said that this was a legitimate expression of their views.

However, the NLRB disagreed. They found that these statements were thinly veiled threats of plant closure if the union won the election and were, therefore, violations of the National Labor Relations Act. They also found that the posting of the anti-union editorial on the Company bulletin board enhanced the atmosphere of fear of plant closure.

The Board additionally found that the employer interfered with the election by maintaining a raffle registration list that identified voting employees.

Second Case

Now, let's look at a case that raises other problems for supervisors to watch for in NLRB elections. Here are the facts.

The employer was the famous hotel and restaurant, the Notel Hotel in Palm Beach. The Hotel was a member of a hotel association that had a contract with the Fight and Strike Restaurant Workers of America. However, the hotel did not have a contract with the Union.

Last fall the Union filed a petition for an election among the employees of the Hotel. It was undisputed that, if the Hotel employees chose the Union, the employees would be covered by the existing collective bargaining agreement.

After the Union filed the petition, it distributed comparison sheets to the employees describing the benefits that would result if the employees selected the Union.

On February 16, Mr. Dewey Drinkum, the bar manager, held a meeting of the cocktail waitresses and bar employees. The Hotel's dress code required that female employees wear brassieres and stockings while working — a rule that was often broken and not strictly enforced. Mr. Drinkum told the employees that the Hotel's leniency toward the enforcement of the dress code would stop if the Union were selected.

During the same meeting Mr. Drinkum also discussed the Hotel's policy of allowing its employees an after-work drink in the hotel lounges. Mr. Drinkum pointed out that the employees at the Pink Palm Hotel (a hotel operating under the Association contract) have to ask management's permission for a drink, while Notel's employees do not. Drinkum further stated that the Hotel policy "might" change if the Union came in.

Other differences between the policies at the Notel Hotel and the hotels that operated under the Association's contract were pointed out in subsequent meetings. Drinkum said that he had filled in for employees when they took days off, but that this policy might change once the Union came in because of the contract's prohibition against

supervisors doing unit work. It was also noted that the Association's contract permitted split shifts, while split shifts were not used at Notel. Tina Tidy, executive housekeeper for the Hotel, said that housekeeping at the Hotel is scheduled by seniority, while the Union hotels distribute work evenly among all employees without regard to their seniority.

The day before the election, the Hotel employees received their pay checks. Instead of one pay check to each employee, each received two checks with a letter of explanation. The letter said that the purpose of the two checks was to illustrate a union dues check-off. The letter explained that the employee's pay check contained his regular pay minus the amount of Union dues he would pay if the Hotel were operating under the Union contract. The second check contained the amount that had been deducted from the first. The letter also stated that the Union had an initiation fee of ten dollars.

Did any of the statements by the Hotel supervisors constitute any unlawful threats or interfere with the election? And, was the dual distribution of pay checks legal?

Answer: The NLRB found that the supervisors' statements were merely attempts to compare the working conditions at the Notel Hotel with those at hotels that were operating under the Association contract.² The NLRB felt the statements were made in a noncoercive atmosphere and in the absence of any other unfair labor practice. The Board found that Mr. Drinkum's remark that the dress code would be enforced more strictly once the Union came in was only a prediction that all house rules would be enforced in accordance with the contract, a foreseeable consequence of unionization. Therefore, such a remark was not a threat, but rather a statement protected by free speech and did not interfere with the election.

The NLRB found that a dual distribution of pay checks is legal as long as the employer does not materially misrepresent the amount of Union dues that the second check purports to represent and does not distribute the two checks in an intimidating manner.

The Positive Approach

We have discussed situations to avoid during an NLRB election, but that's not the whole story.

Smart union organizers find their internal organizers in companies where people have been treated as "underlings." Without these internal organizers and some internal inequities, even the greatest salesman among the union organizers could not organize a group of any size.

So, you must face the fact that because the union has interested some of the employees, management has failed in some ways. As a supervisor, you are part of management and a representative of management. You must work to correct its shortcomings.

²Island Holidays Hotel, 208 NLRB No. 145, (1974). 85 LLRRM 1225.

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There are positive actions you can take that can affect the election's outcome.

First, work harder than ever before at being a supervisor who is sensitive, fair, and sincerely interested in the problems and ambitions of your employees. You must practice good human relations. You can show employees that the Company is more interested in them than the union is, by knowing your employees' skills, aptitudes, abilities, and shortcomings. You must know the facilities, equipment, and material your employees use. And, you must know how to make their jobs interesting.

Second, plan your work. Generally, you can make changes in your planning procedures even during an election campaign. Good planning requires thinking and reasoning. It should not be limited to one-time or major operations, but applied to daily, as well as special, job activities. Instead of doing what seems best at the time, and keeping busy at jobs as they occur, sit down and plan how to get more work done with less effort.

As a supervisor, you should suspect poor planning or lack of planning if:

- You are "snowed under" with work.
- Your personnel cannot meet deadlines.
- There is confusion and discontent among your personnel.
- Work is slowed down because of insufficient or inferior equipment, tools, or materials.
- Work is slowed down because of incompetent personnel. (Why are they incompetent? What have you done to develop their competence?)
- Your personnel are so rushed they can't do good work.
- Some individuals are over-worked and some under-worked.
- Skilled employees are doing work that could be done by less skilled employees.
- There are too many "peaks and valleys" in work loads.
- There is discontent due to lack of promotional opportunities.

You can correct these situations through good planning. Do your best to assure that workers know the importance of their jobs and how their work relates to the mission of the Company. Make sure that you have people working on jobs they can do best. Plan so that there is little waste of manpower or materials. Strive towards the completion of work on time. Emphasize an atmosphere of friendliness, cheerfulness, and cooperation. Employees will admire and respect your leadership and prefer it to that of the Union.

Finally, direct your employees. Directing is the process of getting your employees to perform their jobs well, willingly, and quickly even through the turmoil of the election. It makes employees feel more secure in the Company and in their jobs.

Good direction is based on good communication. Keeping the channels of communication open is a full-time job, but there are many ways you can increase the quality of your communication with your employees.

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- *Use the conference technique.* A guided conference, with sufficient informality to draw out employees and enough formality to keep the discussion on the subject, can do wonders for morale. Recognize worthwhile suggestions and encourage employees to be alert for ways to improve methods and procedures and to save time and money. Be brief. You are wasting your own time and losing prestige with your personnel if you talk too much.
- *Ask questions.* Then, devote your time and attention to hearing the full explanation.
- *Be a good listener.* Let it be known that you are available as your work permits to hear grievances, suggestions, plans, and ideas.
- *Be direct.* Don't leave your people in doubt about what you mean. When you have something to say, say it and say it to the person to whom it applies. If it is criticism, present it quickly and forcefully. If it is praise, offer it freely, honestly, and graciously. Criticize privately, praise publicly. Be earnest and set a good example.
- *Explain "why" regarding directives.* When employees understand the reasons behind a directive, they can more easily adapt their actions to the overall purpose.

These suggestions will help you learn from the successes and failures of others. Your actions as a supervisor are important during a National Labor Relations Board election. In fact, you are a key to winning.