Labor Organizing in Home Care

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Topics for Discussion

- A brief history of labor and unionization
- Labor laws and the organizing process
- Effective strategies used by unions
- Inoculating your Workforce
- Current trends in NLRB enforcement
Chapter One

Union History and Development

A Brief History of Labor

• 1935: National Labor Relations Act (NLRA)
  ❖ Established the NLRB
  ❖ Guaranteed right of employees to bargain collectively
  ❖ Regulated how companies interact with unions
  ❖ In general, protects unions and employee from anti-union employer actions
  ❖ Core of this law remains unchanged today as written almost 80 years ago
Since then, Congress has Enacted...

- The Civil Rights Act
- OSHA
- Family and Medical Leave Act
- Americans with Disabilities Act
- Age Discrimination in Employment Act
- Pregnancy Discrimination Act
- Periodic Increases in Minimum Wage

[Yet, unions’ legal authority has not been reduced – rather they have found new ways to leverage it.]

Declining Union Membership
Currently

According to data from the U.S. Department of Labor’s Bureau of Labor Statistics released on January 23, 2013, **11.3%** of workers are union members, continuing the annual downward trend.

More unionized employees work for the government (7.3 million, 35.9%) than for private businesses (7.0 million, 6.6%).

A Change of Strategy:

**Old School**
- Picket Lines
- Fight with Employers on the Shop Floor
- Generate power and authority from requirement that companies bargain with them

**New School**
- Fight with Employers they don’t represent
- Corporate campaigns
- Regulatory interaction
- Try to convince employers to be their friends, not enemies
- Lesser priority on existing members’ issues
The Corporate Campaign

Douglas Dority, Former Executive Vice President, UFCW

Andy Stern, Former SEIU President

Chapter Two

Union Basics
**What is a Union?**

A complex business organization that:

- Represents employees in their dealings with employers
- Engages in collective bargaining over grievances and conditions of employment
- Collects union dues, fees, fines

**A Union is Big Business**

- For-profit organization
- Salaried employees
- Large revenue from union dues
- Support political action committees (PACs)
- Utilizes collective bargaining
**What is Collective Bargaining?**

- Everything’s on the table — wages, hours, benefits, other conditions of employment.
- It’s a give and take process.
- Employees could end up with more, the same, or less than they have now.
- The Company is not legally required to agree to union demands.
- The Company has a right to make proposals and demands also.

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**EMPLOYEE RIGHTS**

Employees have a legal right to participate in unions.

- **BUT** -

Employees also have the right **not** to participate in unions.
SUPERVISOR INVOLVEMENT

- Not permitted to join unions
- Not protected under the law

- Company policy may dictate supervisor opinion/ actions.

3 Ways a Union Achieves Representation

1) An Election
   - 30% Petition filed with NLRB
   - NLRB conducts election

2) Voluntary Recognition
   - Union demonstrates majority support
   - Company agrees to recognize (e.g., card check)

3) NLRB Mandated
   - As remedy for Unfair Labor Practice
The NLRB Election

- Union files 30% or more of cards with NLRB
- NLRB gives notice to company and schedules election date
- Union and company try to convince employees how to vote in lead up to election
- NLRB administers the election process and tallies votes
- Majority of voting employees decides

Union Win Rates

Union’s chances of winning an election increase when the number of employees signing cards increases:

<table>
<thead>
<tr>
<th>% of Group Signing Card</th>
<th>Chance Union Will Win</th>
</tr>
</thead>
<tbody>
<tr>
<td>75% or more</td>
<td>60%</td>
</tr>
<tr>
<td>60-74%</td>
<td>50%</td>
</tr>
<tr>
<td>50-59%</td>
<td>45%</td>
</tr>
<tr>
<td>40-49%</td>
<td>33%</td>
</tr>
<tr>
<td>less than 40%</td>
<td>10%</td>
</tr>
</tbody>
</table>
Significance of Union Authorization Card

A union authorization card:

- is a legal document
- means you allow someone else to represent you on the job
- could result in an obligation to pay union dues, abide by union rules, and participate in strikes
Chapter Three

How Unions Gain Support

Why would anyone choose to join a Union?

What sells?
It’s Not About the Money

<table>
<thead>
<tr>
<th>Primary Campaign Issue</th>
<th>Win Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Work Conditions</td>
<td>69%</td>
</tr>
<tr>
<td>Fairness</td>
<td>67%</td>
</tr>
<tr>
<td>Dignity on the job</td>
<td>55%</td>
</tr>
<tr>
<td>Wages</td>
<td>33%</td>
</tr>
</tbody>
</table>

Size Matters

The smaller the unit, the easier the Union can develop the issues and tailor their message.

<table>
<thead>
<tr>
<th>Bargaining Unit Size</th>
<th>Union Win Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-49 Employees</td>
<td>67%</td>
</tr>
<tr>
<td>50-99</td>
<td>50%</td>
</tr>
<tr>
<td>100-499</td>
<td>49%</td>
</tr>
<tr>
<td>500 or more</td>
<td>39%</td>
</tr>
</tbody>
</table>
**Tactics**

<table>
<thead>
<tr>
<th>Home visits</th>
<th>Win Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>60-75% visited</td>
<td>78%</td>
</tr>
<tr>
<td>No home visits</td>
<td>41%</td>
</tr>
</tbody>
</table>

**Union Meetings**

<table>
<thead>
<tr>
<th>Attendance</th>
<th>Win Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>More than 60%</td>
<td>72%</td>
</tr>
<tr>
<td>Less than 25%</td>
<td>29%</td>
</tr>
<tr>
<td>If primary tactic</td>
<td>25%</td>
</tr>
</tbody>
</table>

**The Playbook**

- Target smaller groups
- In-home visits for close, personal discussions
- Find out particular fairness and hot-button issues
- Parade out targeted issues to all employees at rally meetings
- Sell the idea that the employees and union can run the business better than we can
Chapter Four

Preventing Labor Headaches

Your Best Defense

- Run your operation every day the best way you can.
- A well-managed operation prevents the seeds of discontent from forming.
- Be fair and consistent. Listen. Communicate. Ensure that our staff know they are valued.
**When Employees Do Not Feel Valued**

Management/supervisors fail to:
- show employees respect and treat them with dignity.
- show interest in employees.
- listen to employees.
- seek employees’ input.
- treat employees fairly.
- use consistent management practices.

**When Employees Are Managed Poorly**

Management/supervisors fail to:
- conduct regular, fair performance evaluations.
- terminate poor performers.
- demonstrate consistency in disciplinary actions.
- reward and recognize employees.
- maintain confidentiality.
- model the desired behavior.
**When Employees Receive Little or No Communication**

Management/supervisors fail to:

- keep an “open door” policy.
- convey positive messages about the company.
- respond to employee questions, problems and complaints promptly.
- listen to and understand employees before responding.
- give frequent positive feedback to employees.
- seek employee input.

**Specific Dos and Don'ts**

You **CANNOT**:

- Threaten
- Interrogate
- Promise
- Surveil(lance)
Specific Dos and Don'ts

You CAN use:

- Facts
- Opinions
- Examples

Chapter Five

Current Issues in NLRB Enforcement
**Proposed Election Rules**

- Dramatically speed up election process timeline
  - Fears of “ambush” elections
  - Don’t wait to hear from NLRB, train now
  - Smaller short-term impact during election
- Phone numbers and email addresses
  - Currently suspended

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**Reaching into Non-Union Workplaces**

- Social Media and Concerted Activity
  - How Facebook is an even bigger headache
- Confidentiality of Investigations
  - Employees’ right to discuss our investigations
- At-will Policies
  - Cannot imply that at-will can never be changed
Thank you!!