

Torkildson
Katz
Moore
Hetherington &
Harris

Attorneys At Law
A Law Corporation

Union Activism: Prevention Strategies That Work

*Alika McGuire
McGuire & Associates,*

*Robert S. Katz
&
John L. Knorek*

INSTITUTIONALIZED CONFLICT

- “Without the power of the industrial union behind it, democracy can only enter the state as a victim enters the gullet of a serpent.”

James Connolly, Irish Labor Leader

- “Unionism seldom, if ever, uses such power as it has to insure better work; almost always it devotes a large part of that power to safeguarding bad work.”

H.L. Mencken, American Journalist

Torkildson
Katz
Moore
Hetherington &
Harris

Attorneys At Law
A Law Corporation

Unionization in Hawaii

We're #3 behind Alaska & NY

	1988	1993	1998	2007
Union Member %	30.5	28.1	26.5	23.4
Union Representation %	32.9	31.3	27.7	24.2

- Private Sector 1998

- Union Member 19.4%
- Union Represented 20.1%

- Public Sector 1998

- Union Member 53.7%
- Union Represented 57.3%

Trends In Organizing:

- Local Numbers
 - 14 RC Petitions in first 6 months
 - Half filed by ILWU
 - 3 RD Petitions
 - 1 RM Petition
- Move to Corporate Campaigns
 - Organize in multiple locations
 - Trans-Pacific organizing
 - “Neutrality” and “Card Check”
- Multiple Union Elections

Torkildson
Katz
Moore
Hetherington &
Harris

Attorneys At Law
A Law Corporation

Anatomy of an Organizing Drive

- Identify Message Carriers
 - Ideal candidate
- Identify Areas of Discontent
 - Must transcend all areas
 - Creation of areas
- Obtain Authorization Cards
 - Not difficult
 - Evasive techniques
- Seek voluntary recognition, keep momentum thru election, or wait until 2009?

Torkildson
Katz
Moore
Hetherington &
Harris

Attorneys At Law
A Law Corporation

National Labor Relations Act of 1935 (The Wagner Act)

- Section 7 – the right to organize, the right to bargain collectively, and the right to engage in strikes, picketing and concerted activities.
- Section 8 defined certain acts and practices of employers as unfair labor practices.

Torkildson
Katz
Moore
Hetherington &
Harris

Attorneys At Law
A Law Corporation

No Solicitation Rules

- “Solicitation” is defined as oral communication and the exchange of union authorization cards
- “Distribution” is defined as the exchange of all other written material or tangible things.
- Employer may regulate such conduct between employees that takes place on company premises, but it may not prohibit it entirely.

-
- Section 7 of the NLRA “necessarily encompasses the right [of employees] effectively to communicate with one another regarding self-organization at the job site” but must be balanced against “the equally undisputed right of employers to maintain discipline in their establishments.”

-
- Who is soliciting?
 - Employee v. Non-Employee
 - When does the rule prohibit solicitation?
 - “Working time is for work”
 - Where does it prohibit solicitation?
 - Working areas/open to the public/e-mail and bulletin boards
 - Has it been uniformly enforced?

Causes of Unionization

- Job Security
- Fair and Equal Treatment
- Compensation
- Power and Respect

Can we clearly communicate it?

Do we prove it through our actions?

Do our team members believe it?

Torkildson
Katz
Moore
Hetherington &
Harris

Attorneys At Law
A Law Corporation

Maintaining Your Union Free Status

- It all starts with management
 - Be the employee ombudsman
 - Set and maintain company standards
 - Communicate, Communicate, Communicate
 - Review and FOLLOW company policies/lead by example
 - Know why your team members are better off without a union
 - Conduct Internal Assessments (leverage strengths, hedge growth opportunities)
 - Build and maintain your credibility
 - Provide authorization card education????

Know Your Union

- Location and Industry still make a difference
- Unionized competition
 - Similarities and differences in wages, benefits, terms and conditions of work
- Labor disputes, layoffs, dues structure, election success/failure rate, etc...
- Look at the message and approach
- Get Educated
 - Websites, news services, reports, government agencies

Torkildson
Katz
Moore
Hetherington &
Harris

Attorneys At Law
A Law Corporation

Labor Management Relations Act of 1947 (The Taft-Hartley Act)

- Section 8(c):
 - “The expression of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice . . . If such expression contains no threat of reprisal or force or promise of benefit.

Understand your rights and obligations

- Nothing Wrong with wanting to Remain Union-Free
- Right to Demand a Secret Ballot Election
- Educate your workforce
- Rumor Control
- Follow TIPS and FORE when you communicate

Torkildson
Katz
Moore
Hetherington &
Harris

Attorneys At Law
A Law Corporation

The Right Not to Join a Union

- Workers who do not want to become regular, full union members participating in union activities and responsibilities do not have to.
- All they have to do is pay the uniform dues and initiation fees that ordinary union members pay.
- Union “membership” required by such agreements has been “whittled down to its financial core.”

NLRB v. General Motors Corp. (1963)

Torkildson
Katz
Moore
Hetherington &
Harris

Attorneys At Law
A Law Corporation

Federal Contractors Required to Display Poster

- Under Federal Law, employees cannot be required to join a union or maintain membership in a union in order to retain their jobs.
- Under certain conditions, the law permits a union and an employer to enter into a union-security agreement requiring employees to pay uniform periodic dues and initiation fees.
- However, employees who are not union members can object to the use of their payments for certain purposes and can only be required to pay their share of union costs relating to collective bargaining, contract administration, or grievance adjustment.
- Workers may be entitled to a refund if they believe their dues or fees have been used for other purposes, such as political activities.

Communications Workers v. Beck, 487 U.S. 735 (1988)
Executive Order 13201

Torkildson
Katz
Moore
Hetherington &
Harris

Attorneys At Law
A Law Corporation

NLRB Protections for Non-Union Employees

- Protected concerted activity is that activity engaged in for employees’ “mutual aid or protection.”
 - An employee’s conduct is not “concerted” unless it is engaged in with or on authority of other employees. *Meyers Industries*, 281 NLRB 882 (1986).

Protected Concerted Activity for Non-Union Employees

- Speaking out against required attendance at pre-opening meetings. *NLRB v. Henry Colder Co.*, 907 F.2d 765 (7th Cir. 1990).
- Protesting change in the method of compensation by letter. *Westmont Plaza*, 298 NLRB 401 (1990).
- Sending letter to parent company complaining of working conditions, bonuses and President. *NLRB v. Oakes Machine Corp.*, 897 F.2d 84 (2nd Cir. 1990).
- Complaining about the tip pool system. *Showcase, Inc.*, 277 NLRB 1444 (1986).
- Telling co-worker of their belief that refusal to hire daughter was racial bias. *Dearborn Big Boy No. 3*, 328 NLRB No. 92 (1999).

Torkildson
Katz
Moore
Hetherington &
Harris

Attorneys At Law
A Law Corporation

Labor Management Relations Act of 1947 (The Taft-Hartley Act)

- Section 8(d) that “to bargain collectively ... to meet at reasonable times, and confer in good faith with respect to wages, hours, and other terms and conditions of employment, . . . and the execution of a written contract incorporating any agreement . . .
- changes in Section 9 including the filing of a decertification petition, . . . only one (1) election in a 12-month period.

Decertification – RM/RD Petition

- An employer needs only show that it had a good faith, reasonable *uncertainty* about a union's majority support to justify the filing of an RM petition.
 - It is not objectionable for an employer to pay the transportation costs for its employees to vote in a representation election. In *Sunrise Rehabilitation Hospital*, 320 NLRB 212 (1995)

Torkildson
Katz
Moore
Hetherington &
Harris

Attorneys At Law
A Law Corporation

Withdrawal of Recognition

- A majority of employees expressing a lack of union support via a petition justifies withdrawing recognition of the union, one year after the initial certification.
 - An employer needs only show that it had a good faith, reasonable *uncertainty* about a union's majority support to justify polling its employees to determine whether the union enjoys majority support.

Torkildson
Katz
Moore
Hetherington &
Harris

Attorneys At Law
A Law Corporation

Free Choice Act

H.R. 1696, S. 842

- Implications for Organizing
 - Allowing them to form unions by signing cards authorizing union representation.
 - Providing mediation after 90 days and binding arbitration after 30 more for first-contract disputes.
 - Establishing stronger penalties by raising fines up to \$20,000 and tripling the amount of back wages available.
- Lingle vetoed a bill that would have allowed the Hawaii Labor Relations Board to recognize a union based solely on card checks.
 - Lingle claimed that card check authorization would be a “poor substitute for the secret ballot and is ripe for abuse.”

Torkildson
Katz
Moore
Hetherington &
Harris

Attorneys At Law
A Law Corporation

Torkildson
Katz
Moore
Hetherington &
Harris

Attorneys At Law
A Law Corporation

Thank You.

www.torkildson.com