INDUSTRIAL RELATIONS

in the

Non-Union Plant

INDUSTRIAL RELATIONS IN THE NON-UNION PLANT

Toward a Better Understanding of the Question of Representation

INDUSTRIAL RELATIONS DIVISION
NATIONAL ASSOCIATION OF MANUFACTURERS

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OF THE UNITED STATES OF AMERICA
2 East 48th Street, New York 17, N.Y.

Fourth printing

FOREWORD

THE PAGES WHICH FOLLOW seek to clarify for management some of the questions which typically arise where a union organizing campaign develops.

None of the discussion presented herein is intended as legal advice and should not be construed as such. Nor is it meant to substitute for the services of technically informed labor relations consultants or legal specialists who are familiar with labor relations problems.

No information in this field can be considered final. The procedures, rules, regulations, and interpretations change from time to time. There must, however, be a starting point. This book, with the lectures amplifying it, is designed to provide some useful background and to set forth some of the considerations which must be taken into account when management decisions are involved.

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I. BASIC CONSIDERATIONS

ABOUT 17 MILLION INDUSTRIAL EMPLOYEES in the United States are presently represented by labor organizations. Some 28 million are not. This study is addressed to *employers* of the unorganized.

Unorganized employees frequently are subjected to unionizing drives. In such organizing attempts, the employer has two main responsibilities:

1. To see that representation is not *forced* upon his employees.
2. To assure his employees a *free choice* in the matter of union representation.

Assuring employees a free choice means more than arranging for them to vote by secret ballot in a National Labor Relations Board representation election. It means giving them complete information so they can judge the validity of union claims and promises, so as to make a choice that is in their own best interests.

The choice employees make in a representation election is influenced by at least four factors:

1. The tactics of the organizing union and the vigor with which those tactics are carried out;
2. The force of opinion of influential employees within the work group;
3. The past experience of employees on the job; and
4. Statements and conduct of the employer during the election campaign.

Of these four factors none is so important as the third — the past experience of employees on the job. Employee attitudes are the product of day-to-day work experience and employer communications interpreting practices, policies and management motives. For this reason, employers are urged to be sure that their "house is

in order" at all times — not just when the organizer is at the gate. This implies constant, objective analysis of pay scales, benefit plans, working conditions, personnel policies, quality of supervision, and similar factors.*

But having a "house in order" is still no guarantee against organizing attempts — both legal and illegal. The normal legal attempt follows this pattern: A union gets 30 per cent of employees to sign union cards, and petitions NLRB for an election. If the Board finds the petition in order — and if both the company and the union consent — an election is held. If the company refuses to consent, a hearing is held, and transcripts of testimony are forwarded to Washington. The Board will order that an election be held if it finds that a question of representation exists in an appropriate bargaining unit at an appropriate time.

Prior to the Labor-Management Disclosure Act of 1959, some unions followed a practice of seeking representation through coercion or intimidation. In such instances a union would claim to represent a majority of employees and seek to induce the employer to recognize it as the bargaining agent without having a NLRB election. Frequently, the demand would be accompanied by a picket line. The employer was informed that the pickets would remain until the union was recognized.

The McClellan hearings disclosed instances of the use of threats of physical violence or destruction of property to compel recognition.

Although it was believed that the Taft-Hartley Act would prevent many of the practices in which irresponsible union leaders engaged to obtain recognition, a number of legal loopholes developed through a series of Court and Board cases. The Reform Law of 1959 has overcome a number of the Taft-Hartley loopholes and also provided for a special procedure to be used in cases involving recognition picketing.

Remedies are now available to prevent strong-arm tactics or pressures.

Therefore, if confronted with a demand by a union for recognition without following the orderly procedures provided for such

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* As outlined in the NAM booklet "Dealing with Employees as Individuals". See also outline for discussion — "Basic Principles for a Sound Personnel Program", Appendix A, page 59.

purpose, you should seek legal counsel immediately. He will outline for you the steps that can be taken both through the Board and the Courts to restrain any illegal conduct. You can require that elections be held in accordance with the law and the administrative process.

Capitulation to an irresponsible union leader is not a solution. An agreement with one who has adopted irregular practices causes loss of stature in the public sight and may be classified as illegal recognition. Such is violative of the law.

Furthermore, an employer who illegally recognizes a union is heading for trouble in negotiations because he has already established the fact that he will sacrifice principle for expediency.

One word of caution is in order: No two organizing attempts are exactly alike. Each is surrounded by its own individual circumstances and conditions, and no "formula" approach can be used. The employer is urged to apply the suggestions contained in this outline to his own particular situation, always under the advice of legal counsel.

II. THE REQUEST FOR REPRESENTATION

YOU ARE THE OWNER OR MANAGER of a business. Your telephone rings and a voice says, "I'm Mr. _____. Our union represents a majority of your employees. When can we get together to work out a contract?" Or . . .

A registered letter comes to your office. It's from a union claiming to represent a majority of your employees and containing the same request to meet and negotiate.

What do you do? A wise first step would be to engage legal counsel before discussing the matter any further on the telephone or replying to the letter. When the union agent calls, do not agree to negotiate or admit even that he represents a majority of your employees. You are not required to look at any evidence that he may present allegedly proving that he represents a majority of your people and it is unwise to do so. You can explain to him that you insist on a NLRB-conducted election because you do not know the circumstances under which the signatures on the authorization cards were collected.

It may be that your attorney will suggest that you tell the union to take its claim to the National Labor Relations Board, the duly constituted federal agency for resolving questions of union representation. Most unions will do this. In fact unions today rarely try to take advantage of an unwary employer who will agree to a contract without an election. There is a benefit to certification. Therefore they usually take their claims immediately to the Board and the employer is notified either by a copy of the union's letter to the Board or by a Board agent who telephones.

You will want to let your employees know, right away, by bulletin board notice or letter, that a union is claiming to represent them and that you have referred the union to the NLRB.

The Board will ask you to furnish a list of employees in the unit. Send it to them, excluding those whom you believe to be ineligible to vote. It will be used to check the union's "showing of interest." A substantial interest has been interpreted to mean that

the union must have signed cards from at least 30 per cent of eligible employees. But since the Board has no way of checking the validity of card signatures, unions rarely if ever fail to get the required amount.

There are several important legal points to remember about the processing of representation claims. *First,* and most important, employees have the right to organize for purposes of bargaining collectively. But equally important, they have the right to refrain from organizing. *Second,* neither the employer nor the union is permitted to restrain or coerce employees in the exercise of this right. Under the new law, any payments, agreements or arrangements made to influence the employees in the exercise of their basic rights may become reportable transactions.

Employees may file unfair labor practices with the Board for coercion or intimidation by a union or employer. Because of the complicated legal procedures involved, however, employees rarely file such charges against a union. The employer is not in a position to help them do so — since such action constitutes interference prohibited by law — and employees themselves either do not know what to do, or feel they cannot afford to employ counsel to advise them. But if the employer commits an unfair labor practice, the union *will* process the claim for the employees because it gains propaganda ammunition for use in the election campaign.

Some key points are emphasized in the following questions:

Q. *How do I know that the union actually has signed cards from at least 30 per cent of my employees? If I doubt that it has such signatures, can't I object to the Board?*

A. You have no way of knowing whether the union actually has the required number of signatures, but even so, you have no legal basis for an objection. The Board satisfies itself that there are a sufficient number of cards signed with names of persons who are actually employees in your plant. It cannot, obviously, make a detailed check to determine whether the signatures are genuine or whether the signers are members of the appropriate bargaining unit. The Board assumes that if the signatures are not genuine, employees will have an opportunity to rectify matters in the election. Similarly, if some signatures are

of non-employees it makes no difference — only employees may vote.

Q. *Wouldn't I have basis for an objection if I could show, through an employee poll that I might conduct, that less than 30 per cent want to be represented by a union?*

A. No. Your conducting such a poll would be ruled as interference with employees' right to organize. Furthermore, in accordance with a line of Board decisions, the results of such a poll would be open to question because you conducted it.

Q. *Couldn't I ask a minister or some impartial third party in the community to conduct an election?*

A. You can but it isn't advisable. Results of such elections may not have the proper standing in the eyes of the law. The union could still petition for a NLRB election — which would eventually be ordered.

III. FIND OUT WHAT'S GOING ON

BY THIS TIME YOU WILL HAVE ENGAGED legal counsel and acted pursuant to that advice. Your attorney or labor relations consultant may recommend that you tell the union to take its claim to NLRB, and after you have notified your employees that a union is claiming bargaining rights — get to work immediately. You have a lot to do.

First, find out what's going on in the plant. What's behind the organizing attempt? What are the causes? The best way to find out is to talk to people. Call your staff together, including department managers and staff heads. Brief them on the situation and ask what they know about it.

Chances are, some of them will know some facts that you don't know. You may find out, in this first meeting, some of the main causes. If so, you are fortunate. It usually takes a good deal more digging.

Call a meeting of those who exercise first-line authority for management, making sure you do not include any "borderline" people* who might conceivably be entitled to be in the bargaining unit with other employees. While you can talk with them individually, the group method is usually better because it gives an opportunity to cross-check information. Furthermore, no one man will have the whole story. It is obtained by piecing together bits of information from many different men.

In these initial meetings with your managers and foremen you should clearly state your position with respect to the representation election. If you believe that unionization would be harmful, let your employees know that there is no need for them to be represented by a union if the management team does its job properly, and that you intend to encourage employees to vote against the union when the election is held. However, be sure to point out also that you intend to see that employees have a free choice in the election — that no intimidation, coercion or promising of benefits

* See page 24.

will be tolerated. Instead, you are going to see that employees have all the facts necessary to make a choice in their own best interests.

Continuous, reliable *upward communication* is the most vital single element in your program to meet this organization threat. The informational channels you have opened by these initial meetings with department heads and front-line foremen must be kept open and strengthened. The members of your management team should be encouraged immediately to increase their personal contacts with the people in their operations — to get into informal conversations at every opportunity — and to make opportunities when none exist. They should make a point of talking to everyone they supervise — not just once but many times. Ask them to keep you fully informed as to any changes in attitudes, indications of union coercion, employee huddles, etc.

In addition, you should set up a method for foremen and managers to report regularly what they find out in their conversations with employees. You may want them to give this information to you, personally. If not, you should designate someone relatively high in your management organization — or your personnel manager — to handle it. All leads and tips that come to this headquarters should be immediately followed up in this upward communication network.

But — this is vitally important — your managers and foremen should be coached in how to gather the information so they do not inadvertently violate the law by espionage or by asking questions prohibited by law. *You shouldn't ask your employees if they are interested in the union, or if they have attended any union organizing meetings. Don't ask if they are going to vote for the union. Don't ask if anyone they know is interested in the union, has attended meetings, or is going to vote for the union. Your asking constitutes interference with their right to organize for purposes of collective bargaining.*

Actually, your supervisors don't need to ask probing, prying questions to get information. Instead, they need to know how to *listen.*

The technique is simple. Stop at an employee's work station and ask, "How are things going?" Then listen to what he has to say. If that question doesn't get him started, try this one, "Any-

thing bothering you — any problems?" Then *listen.* Chances are he'll open up and tell you quite a bit of what he knows is going on.

If these approaches fail, try an approach with positive statements instead of questions. After an informal conversation with the employee, bring up the fact that the union has shown an interest in representing employees. Ask if the employee saw the bulletin or received the letter from the company reporting that the union had been directed to file its claim with the Labor Board. Explain that the company wants all employees to have full information about the election so they can make the choice they really want. Then ask if the employees have any questions about the situation. These approaches and hundreds of variations that will occur to you and your staff will result in your getting a tremendous amount of information about what's going on — what problems are on the minds of your employees — what the issues are — provided the members of your management team greatly increase their personal contacts with employees.

The process of reporting information should be made easy for your foremen — by reporting orally to someone rather than in writing. The person to whom they are reporting has a big job of sifting the information, culling the unimportant from the important, checking out the facts, and evaluating the situation continuously as the reports begin to shape up.

Since you will want to make use of these same channels to disseminate information as the campaign progresses, you should arrange to have regular meetings with your department managers and foremen. Initially, you may want to hold such sessions once a week or every three or four days. Later, as the campaign increases in tempo, you may find it advisable to meet daily to brief everyone on the situation as evaluated up to the moment and to pass out information that is needed to combat rumors, correct misunderstandings, and indicate how a union will affect relations with employees.

At the first meeting, however, you should brief all members of the management team on the ground rules for communication during an election campaign. There are many things they can say — and many things they cannot — under the Labor-Management Relations Act of 1947. The following *DOs* and *DON'Ts*

are helpful in meeting the situation. You should go over these rules in detail with your staff and give them copies of *Some DOs and DON'Ts for Supervisors.**

Here are some of the key points about which supervisors should be briefed:

1. They can talk with employees at any time in any public place or open working area where they would normally talk with employees but not, according to NLRB, in private managerial offices or in employees' homes.
2. They can tell employees what they (the foremen) think about unions, union policies, and any experience they have had with unions.
3. They can talk about what unions have done in the nation and in specific plants.
4. They can state what they believe to be the answer to any union argument or claim, whether they think a union demand is fair, and whether they think union representatives are doing the right thing.
5. They can express their opinion as to how employees will be affected by what union representatives are doing.
6. They can say how they think employees should vote in a union election.

ON THE OTHER HAND —

1. They cannot ask employees what they think of unions generally or of any particular union.
2. They cannot ask if an employee belongs to a union or whether he knows if other employees belong.
3. They cannot ask how an employee has voted or will vote in a union election.
4. They cannot ask about confidential union matters.
5. They cannot promise benefits, threaten, coerce or discipline to influence an employee in his right to belong, or refrain from, belonging to a union.

* See Appendix B.

Your foremen should also explain to employees that they are free to vote their honest convictions in the election — that voting will be by secret ballot — that their union activities, if any, will not affect their standing with the company — and that the company will bargain in good faith with a union if a majority of employees vote for it.

All of this is merely an explanation — in simple language — of the free speech provision in the Labor-Management Relations Act of 1947.

There are two reasons for briefing your staff members and giving them copies of the rules. First, it instructs them in proper procedure. Second, it serves as evidence of your intention to observe the letter and spirit of the law. If, after the election, the union claims that you or your foremen engaged in improper practices or made illegal statements, you may point to these briefing sessions and written rules as evidence of your good intentions. While this will not absolve you of responsibility for illegal acts, it could help you establish good faith with the Board investigator.

In addition to organizing this upward communications program, you should make a number of other checks to determine what is going on. Review complaints or grievances of employees over the past several months. Frequently an objective appraisal of this type will supply a lead to employee dissatisfaction the union may be attempting to use as a springboard for its organizational effort.

Also check with other firms in the area, or with your local association, to find out if this particular union has been trying to organize other companies. If so, the firms that have been through election campaigns will be able to give you valuable information about the union, its organizers, and its methods. Copies of any contracts signed would be helpful. These firms also should be able to relate their experience with appeals to employees, any mistakes they made, and other pertinent information.

Finally, you should gather wage rates and employee benefit information from other companies in your community and industry — if you do not already have such data. Even if you have it, you should double check to be sure it is completely up to date. If this survey shows your rates and benefits to be out of line with

the community and industry — for comparable work — you *may* have put your finger on one of the causes of the organizing attempt. You can be sure that sooner or later during the election campaign the union will make reference to this fact.

This searching investigation of the situation — through upward communications, checks with other companies in the community and industry, and a critical analysis of your present rates, benefits and personnel practices — will undoubtedly pinpoint a number of matters that should be corrected to "put your house in order." Whether you can legally take corrective action during an election period — or whether it is advisable tactically to do so — will be discussed in the next chapter. But one generalization can be made here. If you have good personnel practices — if your rates of pay and benefits are in line — if you have competent supervisors who practice good employee relations — you may not be immune to organizing attempts, but you *will* be in a much stronger position to face them successfully. After you get through the election, you may take steps to improve your personnel practices and procedures.

Some questions and answers may help clarify certain points:

Q. *Is it wise to talk to employees during a period of organizing? Won't they suspect my motives and refrain from giving their true opinions?*

A. It definitely *is* wise because the essence of good employee relations is personal face-to-face communication. As for employees suspecting your motives, that depends upon what your motives are. If you are genuinely interested in their welfare and well-being, they'll sense it and act accordingly. An honest, forthright expression of personal interest is rarely rebuffed.

Q. *What should I tell my foremen to do if employees come to them voluntarily and talk about attending union meetings, which employees are members of the union, etc.?*

A. They can't refuse to listen, but they should not encourage such conversations or make specific inquiries. This would be prying into confidential union matters and constitute interference.