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Recent Developments in Unionization/Collective Bargaining

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OUTLINE

Recent Developments in Unionization/Collective Bargaining

I. Brief History of Labor Unions

- A.** 1947-Taft-Hartley Act Passed.
 - 1. Extended the concept of unfair labor practices to unions.
 - 2. Permitted states to enact 'right-to-work' legislation.
 - 3. Prohibits management and unions from developing agreements that require union membership as a condition of employment
 - 4. Union membership peaks at 30% in 1950s
- B.** Decline of Union Membership Reasons
 - 1. Decline in manufacturing sector
 - 2. Foreign Competition
 - 3. Deregulation
 - 4. Civil Rights Movement
 - 5. History of "give-backs" and reduction of wages in contracts negotiated in 1970s, 1980s and 1990s
 - 6. 2000-12% union members-8% in private sector

II. Change to Win Coalition Formed

- A.** 1995-John Sweeney head of SEIU takes over leadership of AFL-CIO
- B.** 2003-New Unity Partnership
 - 1. Push for Reform by SEIU, UNITE, HERE, UBC and LIUNA
 - 2. UNITE and HERE merge in 2004
 - 3. Teamsters and UCFW join Change to Win partners and push for reform
- C.** Break from AFL-CIO
 - 1. Change to Win partners all break from AFL-CIO between 2005 and 2006
- D.** Change to Win Founding Principles
 - 1. Working people, including current union members, cannot win consistently without uniting millions more workers in unions.

2. Every worker in America has the right to a union that has the focus, strategy, and resources to unite workers in that industry and win.

III. Hospitality Targeted

A. Labor Moves Away From Elections

1. Project Labor Agreements in Construction
2. Greenmail and use of administrative bodies to hold up approval of building and permits
3. Neutrality Agreements-Card Check
4. Passage of Local Wage and Hour Legislation and Work Standards

B. Rationale for Targeting Hospitality

1. No Fear of Moving of Jobs Overseas/Outsourcing
2. Less Likely to Respond to New Regulations By Closing or Reducing Employment
3. Perception that Many Jobs Similar to Janitorial Industries that Already have Labor Code Protections on Worker Retention
4. Owners Not as Well Organized as Other Industries or Funded to Fight Labor Campaigns

IV. Ways to Organize

A. Traditional Methods

1. Publicity Campaigns –
 - (a) Ads in newspapers
 - (b) Letters to Companies holding functions at hotels
 - (c) Informational Picketing
2. Boycotts-economic pressures
3. Visits to employees' homes
4. Card Check
 - (a) Promises made of no initiation fees or due
 - (b) Promise improved wages and benefits if elected including

specific amounts

(c) Threaten that the Company will take away benefits, reduce wages, lay off employees, or close the operation.

(d) Give assistance to employees in supporting the union.

(e) Promise that there will not be a strike if the union is elected

(f) Promise a collective bargaining agreement is already in place

B. Newer Methods to Organize

1. Legal Action

(a) Filing a multitude of law suits which are financially draining and extremely time consuming for management

(b) Wage and Hour Actions filed and union lawyer hired for employees to represent them

(c) Negotiate away lawsuit in exchange for Neutrality Pacts

2. Signing Authorization Cards

(a) Younger, better educated, multilingual union organizers are being hired

(b) The union will attempt to have the employer hire “plants”

(c) Convince current staff to organize other employees

(d) Invite employees to attend union meetings, rallies, etc.

(e) Manipulation of Voting Unit-However, An RC Petition based upon the extent of organizational success is an inappropriate basis for determining what an appropriate bargaining unit is.-*Westward Hotel Co. v. NLRB*, 437 F.2d 1110 (9th Cir. 1971)

3. Labor Front Groups (Community Action Organizations) i.e. ACORN, EBASE, etc.

V. Use of Legislative Process

A. Labor Partnership with Municipalities

1. Targeting private businesses who rely on a local workforce

2. Privately owned entities who cannot outsource work product

3. Hotels, restaurants, dock workers, etc.

4. Terms like a Collective Bargaining Agreement
- B. Non-Traditional Labor Tactics Through Legislation-Key Provisions**
1. Minimum Compensation/Average Compensation
 2. Premium wages based on square footage
 3. Protection from discharge when new employers take over
 4. Compliance as a condition of an operating permit
 5. Unionized businesses (hotels) can collectively bargain out of compliance
 6. City's costs for ordinance enforcement and management are incurred by the private businesses, not the taxpayers
 7. Examples

(a) Illinois' Hotel Room Attendant Amendment-Found to be preempted by the NLRA under the Machinists doctrine-*520 South Michigan Avenue v. Shannon* (7th Circuit December 17, 2008)

(b) Emeryville, California's Measure C-Initial permit proceeding found invalid and violated hotel's due process rights. City has reissued permit with many of the same defects.

- C. Potential New Areas of Widespread Federal and State Legislation**
1. Employee Free Choice Act
 2. Expansion of Prevailing Wage Legislation

VI. Employee Free Choice Act

- A. Key Provisions and Amendment to the National Labor Relations Act**
1. Elimination of Secret Ballot Elections for Recognition once majority of valid authorization cards are shown
 2. Mandatory and binding arbitration if the parties are unable to determine the terms of the initial collective bargaining agreement if the parties are unable to come to terms in a specified time period-90 days currently proposed
 3. Enhanced penalties against employers only for alleged unfair labor practices including the potential for punitive damages and

mandatory injunctions against employer interference in union campaigns.

4. Decertification of union proceedings are still via secret ballot

VII. COMPLIANCE

A. The Preventive Program®

1. Establish Employee Standards
2. Define Human Resources
3. Educate Managers
4. Discipline on Facts
5. Develop Compensation Plan
6. Create Quality Work Life
7. Foster Employee Communications
8. Promote From Within
9. Determine Labor Policy
10. Fight When Right

B. LAWDIT® -- The Complete "Checkup"

1. The Selection
 - (a) Advertisement
 - (b) Employment Application
 - (c) Job Posting
 - (d) Uniform Offer of Employment
 - (e) Gender neutral job titles
 - (f) Accurate job description
 - (g) Unbiased decision making with checks & balances
 - (h) Discrimination check
 - (i) Background check
 - (j) Equal Opportunity statement
 - (k) Affirmative Action plan
 - (l) Unfavorable military discharge policy
 - (m) Equal pay
 - (n) Adequate skill testing

- 2. The Employment Relationship**
 - (a)** Employment contract or "at will"
 - (b)** Binding arbitration agreement
 - (c)** Comprehensive employment handbook
 - (d)** Written job standards
 - (e)** Written standards of conduct
 - (f)** Training program
 - (g)** Employee communications
 - (h)** Employee complaint procedure
 - (i)** Employee incentives & awards
 - (j)** Open door policy
 - (k)** Sexual harassment policy
 - (l)** Internet use policy
 - (m)** Workplace privacy policy
 - (n)** Duty of loyalty policy
 - (o)** Non-compete agreement
 - (p)** Strategy for union activity
 - (q)** OSHA compliance
 - (r)** Drug/Substance abuse policy
 - (s)** Leave policy
 - (t)** Labor cost analysis
 - (u)** Pension & retirement plans

- 3. The Employment Path**
 - (a)** Quality work life
 - (b)** Human resources policy review
 - (c)** Human resources documentation
 - (d)** Promote from within
 - (e)** Progressive discipline
 - (f)** Employee appeals board
 - (g)** Performance evaluation
 - (h)** Health & Safety Committee

- (i) Suspension pending investigation;
 - (j) Employee notice & hearing
 - (k) Employee record retention policy
 - (l) Independent contractor policy
 - (m) Confidentiality of employee records
 - (n) OSHA records
 - (o) EEOC records
4. The Separation
- (a) Clear decision-making authority
 - (b) Layoff/downsizing policy
 - (c) Recall policy
 - (d) Documentation
 - (e) Employee notification
 - (f) Non-discriminatory termination
 - (g) Final paycheck policy
 - (h) Rehire
 - (i) Employee retaliation
 - (j) Defamation & Slander
 - (k) Wrongful discharge
 - (l) Dismissal without cause benefit
 - (m) Severance pay policy
 - (n) Separation/Settlement/Release policy
 - (o) Enforcement of non-solicitation & non-compete agreements
 - (p) Vacation pay
 - (q) COBRA
 - (r) Employment reference policy
 - (s) Notice period

VIII. CONCLUSION

TABLE OF CONTENTS

I.	Brief History of Labor Unions.....	1
A.	1947-Taft-Hartley Act Passed.....	1
1.	Extended the concept of unfair labor practices to unions.	1
2.	Permitted states to enact ‘right-to-work’ legislation.	1
3.	Prohibits management and unions from developing agreements that require union membership as a condition of employment.....	1
4.	Union membership peaks at 30% in 1950s.....	1
B.	Decline of Union Membership Reasons	1
1.	Decline in manufacturing sector	1
2.	Foreign Competition	1
3.	Deregulation.....	1
4.	Civil Rights Movement.....	1
5.	History of "give-backs" and reduction of wages in contracts negotiated in 1970s, 1980s and 1990s	1
6.	2000-12% union members-8% in private sector.....	1
II.	Change to Win Coalition Formed.....	1
A.	1995-John Sweeney head of SEIU takes over leadership of AFL-CIO.....	1
B.	2003-New Unity Partnership	1
1.	Push for Reform by SEIU, UNITE, HERE, UBC and LIUNA	1
2.	UNITE and HERE merge in 2004	1
3.	Teamsters and UCFW join Change to Win partners and push for reform	1
C.	Break from AFL-CIO	1

1.	Change to Win partners all break from AFL-CIO between 2005 and 2006.....	1
D.	Change to Win Founding Principles	1
1.	Working people, including current union members, cannot win consistently without uniting millions more workers in unions.....	1
2.	Every worker in America has the right to a union that has the focus, strategy, and resources to unite workers in that industry and win.....	2
III.	Hospitality Targeted.....	2
A.	Labor Moves Away From Elections	2
1.	Project Labor Agreements in Construction.....	2
2.	Greenmail and use of administrative bodies to hold up approval of building and permits	2
3.	Neutrality Agreements-Card Check.....	2
4.	Passage of Local Wage and Hour Legislation and Work Standards.....	2
B.	Rationale for Targeting Hospitality	2
1.	No Fear of Moving of Jobs Overseas/Outsourcing.....	2
2.	Less Likely to Respond to New Regulations By Closing or Reducing Employment.....	2
3.	Perception that Many Jobs Similar to Janitorial Industries that Already have Labor Code Protections on Worker Retention.....	2
4.	Owners Not as Well Organized as Other Industries or Funded to Fight Labor Campaigns	2
IV.	Ways to Organize.....	2
A.	Traditional Methods.....	2
1.	Publicity Campaigns –	2
(a)	Ads in newspapers	2

(b)	Letters to Companies holding functions at hotels.....	2
(c)	Informational Picketing	2
2.	Boycotts-economic pressures.....	2
3.	Visits to employees' homes.....	2
4.	Card Check.....	2
(a)	Promises made of no initiation fees or due	2
(b)	Promise improved wages and benefits if elected including specific amounts	2
(c)	Threaten that the Company will take away benefits, reduce wages, lay off employees, or close the operation.	3
(d)	Give assistance to employees in supporting the union.	3
(e)	Promise that there will not be a strike if the union is elected	3
(f)	Promise a collective bargaining agreement is already in place	3
B.	Newer Methods to Organize	3
1.	Legal Action.....	3
(a)	Filing a multitude of law suits which are financially draining and extremely time consuming for management	3
(b)	Wage and Hour Actions filed and union lawyer hired for employees to represent them.....	3
(c)	Negotiate away lawsuit in exchange for Neutrality Pacts	3
2.	Signing Authorization Cards.....	3
(a)	Younger, better educated, multilingual union organizers are being hired.....	3
(b)	The union will attempt to have the employer hire “plants”	3

(c)	Convince current staff to organize other employees.....	3
(d)	Invite employees to attend union meetings, rallies, etc.....	3
(e)	Manipulation of Voting Unit-However, An RC Petition based upon the extent of organizational success is an inappropriate basis for determining what an appropriate bargaining unit is.-Westward Hotel Co. v. NLRB, 437 F.2d 1110 (9th Cir. 1971)	3
3.	Labor Front Groups (Community Action Organizations) i.e. ACORN, EBASE, etc.	3
V.	Use of Legislative Process	3
A.	Labor Partnership with Municipalities.....	3
1.	Targeting private businesses who rely on a local workforce	3
2.	Privately owned entities who cannot outsource work product	3
3.	Hotels, restaurants, dock workers, etc.	3
4.	Terms like a Collective Bargaining Agreement.....	4
B.	Non-Traditional Labor Tactics Through Legislation-Key Provisions.....	4
1.	Minimum Compensation/Average Compensation.....	4
2.	Premium wages based on square footage	4
3.	Protection from discharge when new employers take over	4
4.	Compliance as a condition of an operating permit	4
5.	Unionized businesses (hotels) can collectively bargain out of compliance.....	4
6.	City’s costs for ordinance enforcement and management are incurred by the private businesses, not the taxpayers	4
7.	Examples.....	4

(a)	Illinois’ Hotel Room Attendant Amendment-Found to be preempted by the NLRA under the Machinists doctrine-520 South Michigan Avenue v. Shannon (7th Circuit December 17, 2008).....	4
(b)	Emeryville, California’s Measure C-Initial permit proceeding found invalid and violated hotel’s due process rights. City has reissued permit with many of the same defects.....	4
C.	Potential New Areas of Widespread Federal and State Legislation	4
1.	Employee Free Choice Act.....	4
2.	Expansion of Prevailing Wage Legislation.....	4
VI.	Employee Free Choice Act	4
A.	Key Provisions and Amendment to the National Labor Relations Act.....	4
1.	Elimination of Secret Ballot Elections for Recognition once majority of valid authorization cards are shown.....	4
2.	Mandatory and binding arbitration if the parties are unable to determine the terms of the initial collective bargaining agreement if the parties are unable to come to terms in a specified time period-90 days currently proposed.....	4
3.	Enhanced penalties against employers only for alleged unfair labor practices including the potential for punitive damages and mandatory injunctions against employer interference in union campaigns.	4
4.	Decertification of union proceedings are still via secret ballot	5
VII.	COMPLIANCE.....	5
A.	The Preventive Program®	5
1.	Establish Employee Standards.....	5
2.	Define Human Resources	5
3.	Educate Managers.....	5
4.	Discipline on Facts.....	5

5.	Develop Compensation Plan.....	5
6.	Create Quality Work Life	5
7.	Foster Employee Communications	5
8.	Promote From Within	5
9.	Determine Labor Policy	5
10.	Fight When Right.....	5
B.	LAWDIT® -- The Complete "Checkup"	5
1.	The Selection	5
(a)	Advertisement	5
(b)	Employment Application	5
(c)	Job Posting	5
(d)	Uniform Offer of Employment	5
(e)	Gender neutral job titles.....	5
(f)	Accurate job description	5
(g)	Unbiased decision making with checks & balances	5
(h)	Discrimination check	5
(i)	Background check.....	5
(j)	Equal Opportunity statement	5
(k)	Affirmative Action plan.....	5
(l)	Unfavorable military discharge policy.....	5
(m)	Equal pay	5
(n)	Adequate skill testing.....	5
2.	The Employment Relationship	6
(a)	Employment contract or "at will"	6
(b)	Binding arbitration agreement	6

(c)	Comprehensive employment handbook.....	6
(d)	Written job standards	6
(e)	Written standards of conduct	6
(f)	Training program	6
(g)	Employee communications.....	6
(h)	Employee complaint procedure	6
(i)	Employee incentives & awards.....	6
(j)	Open door policy.....	6
(k)	Sexual harassment policy.....	6
(l)	Internet use policy.....	6
(m)	Workplace privacy policy	6
(n)	Duty of loyalty policy	6
(o)	Non-compete agreement	6
(p)	Strategy for union activity	6
(q)	OSHA compliance	6
(r)	Drug/Substance abuse policy	6
(s)	Leave policy.....	6
(t)	Labor cost analysis.....	6
(u)	Pension & retirement plans.....	6
3.	The Employment Path.....	6
(a)	Quality work life.....	6
(b)	Human resources policy review.....	6
(c)	Human resources documentation	6
(d)	Promote from within	6
(e)	Progressive discipline	6

(f)	Employee appeals board	6
(g)	Performance evaluation	6
(h)	Health & Safety Committee.....	6
(i)	Suspension pending investigation;.....	7
(j)	Employee notice & hearing	7
(k)	Employee record retention policy.....	7
(l)	Independent contractor policy.....	7
(m)	Confidentiality of employee records.....	7
(n)	OSHA records.....	7
(o)	EEOC records	7
4.	The Separation	7
(a)	Clear decision-making authority.....	7
(b)	Layoff/downsizing policy	7
(c)	Recall policy	7
(d)	Documentation.....	7
(e)	Employee notification.....	7
(f)	Non-discriminatory termination.....	7
(g)	Final paycheck policy	7
(h)	Rehire.....	7
(i)	Employee retaliation	7
(j)	Defamation & Slander	7
(k)	Wrongful discharge.....	7
(l)	Dismissal without cause benefit.....	7
(m)	Severance pay policy	7
(n)	Separation/Settlement/Release policy.....	7

(o)	Enforcement of non-solicitation & non-compete agreements	7
(p)	Vacation pay	7
(q)	COBRA.....	7
(r)	Employment reference policy	7
(s)	Notice period.....	7
VIII.	CONCLUSION.....	7