

2009 HOSPITALITY LAW CONFERENCE

Recent Developments in Unionization/Collective Bargaining



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Presenters



- Bruno W. Katz-Shareholder
- Named as one of the Top 20 Lawyers under 40 in the State of California in 2003
- Active Member of California Hotel & Lodging Association and California Restaurant Association
- Frequent Lecturer on employment practices, liability issues and other risk management matters



Labor Union Density

- **30% of Employees were union members in the 1950s**
- **12% of American workers were union members in the year 2000, and only 8% of private sector employees.**



Labor's Challenge

Declines in unionized sectors of the economy (manufacturing) is forcing labor to concentrate on the service sector to replace the dues-payers they have lost.



Change to Win

- **SEIU**
- **UNITE-HERE**
- **UBC**
- **LIUNA**
- **IBT**
- **UFCW**
- **UFW**



Change to Win

The coalition was founded on two basic principles:

- **Working people, including current union members, cannot win consistently without uniting millions more workers in unions.**
- **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.**



Labor Turns to Politics

- **Unions have a poor record of winning unionization elections under the National Labor Relations Act (NLRA).**
- **Instead, they are leveraging their political strength to force employers to do what their workers will not.**
 - **Project Labor Agreements in the construction sector**
 - **Card check in the hospitality and other sectors, or direct recognition of the union as the exclusive bargaining representative/union security clause**



Rationale for Targeting Hospitality

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



Tactics Used to Organize

- **Promise of No Dues or Initiation Fees**
- **Promise Actual Union Contract Already Negotiated**
- **Wage and Hour Putative Class Action Filed (Union Hires Its Attorneys to Represent Employees)**
- **Neutrality Agreements As Negotiating Tool to Stop Labor Protests or Lawsuits**
- **Manipulation of Voting Unit**
- **Use of Labor Front Groups to Forward Agenda**
- **Collective Bargaining through Legislation**



Manipulation of Voting Unit

***Westward-Ho Hotel Co. v. NLRB*, 437 F.2d 1110 (9th Cir. 1971)**

- **An RC Petition based upon the extent of organizational success is an inappropriate basis for determining what an appropriate bargaining unit is.**



Legislative Collective Bargaining

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)

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.



They Said It!

AFSCME President Gerald McEntee On How Unions Expect To Be Paid Back For Supporting President Obama And Democrats

McEntee: "The payback would be Employee Free Choice Act - that would be a vehicle to strengthen and build the American labor movement and the middle class." (Stephen Dinan, "Blagojevich Link Stings Even Rival Union," *The Washington Times*, 12/18/08)



Likely Legislative Initiatives

- **Employee Free Choice Act-both federal and state**
- **Expansion of Prevailing Wage Legislation**



Employee Free Choice Act

Does this Further Democracy?:

- **Card Check On Steroids**
- **Elimination of Secret Ballot Elections**
- **Mandatory Arbitration Provisions**
- **Stronger Penalties Against Employers Only**
- **Decertification Still Secret Ballot**



Benefits of Union Free Workplace

- **Productivity is Higher**
- **Morale is Higher**
- **Business Success is Higher**



Leadership

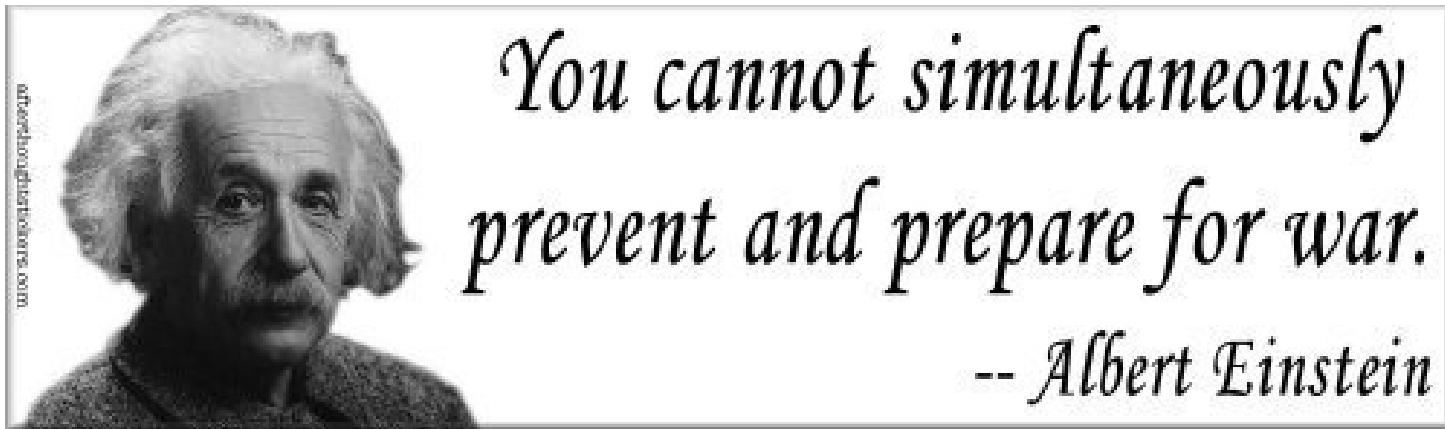
**It is our individual and team responsibility
to practice**

PREVENTION!



The Continuous Campaign

- **Develop a clear policy**
- **Communicate the policy to all employees**
- **Train managers on the policy**
- **Create an effective complaint procedure**
- **Investigate complaints thoroughly**
- **Take appropriate corrective action**



EINSTEIN WAS WRONG!!