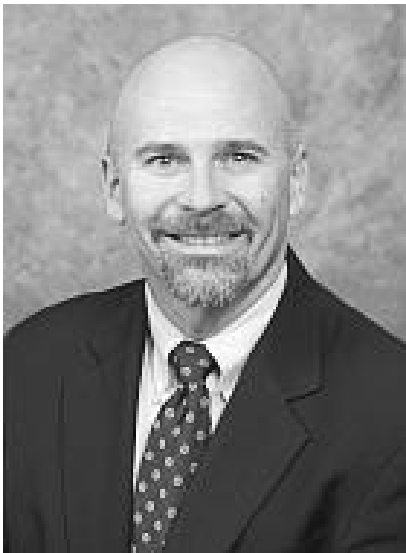


The Evolution of a Union Campaign

Presenter



- Stephen J. Roppolo – Fisher & Phillips LLP
- Regional Managing Partner, Houston Office
- Represents Management in Labor and Employment Matters
- Clients include hotels, restaurants, resorts

Declining Union Membership

- Membership is down from 34% compared to its peak
- Total union membership is now below 13%
- It's down to **7.2%** in the private sector
- Only 2,000 elections last year vs. 8,000 30 years ago



What Have Unions Been Doing To Reverse The Losses?

New targets

- Government and service sector employees
- Moving away from higher skilled, higher paid “blue collar” groups to smaller service sector employees
- Going after jobs that are not likely to be exported
- Looking at “secondary” targets that purchase supplies from unionized businesses
- Targeting new Americans
- Exploring traditionally unfriendly geographic markets
- More open to smaller bargaining units

What Have Unions Been Doing To Reverse The Losses?

Spending money to influence politicians

- Unions spent millions to influence elections in the past two election cycles because they want to change the rules
- More than \$100,000,000 spent in 2008 and 2010; average of \$50,000,000 per year for past decade
- Some of the largest PACs are union-sponsored

What Have Unions Been Doing To Reverse The Losses?

Different tactics

- Corporate campaigns
- Greater use of web-based communications
- Neutrality agreements
 - Companies remain “neutral” and don’t get involved in the campaign, while unions continue to sell employees
 - Unions are recognized upwards of 90% of the time when the employer remains neutral
- Pushing for legislative and/or regulatory change

Unions Turn to Technology

Organize Here. Win Here. UNITE HERE! - Windows Internet Explorer

http://www.unitehere.org/about/hotels.php unite here

File Edit View Favorites Tools Help

★ Favorites Suggested Sites Web Slice Gallery Free Hotmail


Organize Here. Win Here. UNITE HERE!

UNITE HERE!

Join Us facebook RSS

About UNITE HERE Press Center En Español

UNITE HERE represents workers throughout the U.S. and Canada who work in: Hospitality Airports Laundry Food Service Gaming Manufacturing, Textile



Hotels

We represent over 100,000 hotel workers who work in more than 900 hotels in the U.S. and Canada, in cities large and small. Through UNITE HERE's **Hotel Workers Rising** campaign, union and non-union hotel workers are building a movement to lift hotel jobs into the middle class.

Our members are guest room attendants, cooks, bell staff, food and beverage servers, kitchen workers and laundry workers, and they take great pride in delivering the quality service and amenities that travelers expect.

Our members are guest room attendants, cooks, bell staff, food and beverage servers, kitchen workers and laundry

Our Union

- Who we are
- Affiliates/Locals
- History
- Governance
- Press Center
- UNITE HERE in the News
- Buy Union
- Links
- Student Partnerships
- International Affairs
- Documents/Downloads
- Videos
- Contact Us
- Jobs with UNITE HERE

Union Hotel Guide

Internet 100%

More Than 100 Properties On UNITE-HERE Boycott List

The screenshot shows a Windows Internet Explorer browser window displaying the website http://www.hotelworkersrising.org/HotelGuide/boycott_list.php. The page features the "HOTEL WORKERS RISING!" logo and a navigation menu with links for Home, HWR Cities, Union Hotel Guide, Boycott List, Press, Photos, Video, Join Us, and Contact Us. The main content area is titled "Boycott List" and includes a paragraph of text: "Please refer the [Union Hotel Guide](#) to search for recommended union hotels. Make sure to steer clear of [boycotted hotels](#) and you may wish to consider the desirability of staying at hotels that are [at risk of dispute](#) (where there are current or looming labor disputes). Be aware that this list only reflects the present status of union hotels across North America. To avoid the prospect of labor conflict during your stay at a hotel, insist on protective contractual language when you make a reservation or organize an event. [For Group Customer Model Protective Language, click here.](#)" Below this text are links for "On Strike", "Boycott These Properties", "Risk of Dispute", and "SEARCH AGAIN". The "On Strike" section lists the "Congress Plaza Hotel - ON STRIKE" with its address (520 S. Michigan, Chicago, IL 60605) and phone number (312-212-8192). The "Boycott These Properties" section lists the "Anchorage Hilton" with its address (500 West Third Avenue, Anchorage, AK 99501). On the right side of the page, there are three promotional banners: "HWR Cities across North America", "UNION Hotel guide", and "BOYCOTT boycotted hotel list". At the bottom right, there is a banner for "Hyatt Hurts Our Economy" featuring a cartoon face with a frown and the word "HYATT" written across it. The browser's address bar, menu bar, and status bar are also visible.

Twitter

The screenshot shows a Windows Internet Explorer browser window displaying the Twitter profile for 'Union Workers'. The browser's address bar shows the URL 'http://twitter.com/UnionWorkers'. The page features the Twitter logo and a navigation menu. A prominent banner encourages users to follow the account for short, timely messages. Below this, the profile information for 'UnionWorkers' is displayed, including their name, location (United States of America), website, and bio. A recent tweet is visible, titled 'Congresswoman Raises 2 Fingers, Gives Thumbs-Up', with two links and a timestamp of '26 minutes ago via Google'. The right sidebar shows statistics: 32 following, 103 followers, and 5 listed. It also lists 2,362 tweets and a 'Following' section with several user avatars.

Union Workers (UnionWorkers) on Twitter - Windows Internet Explorer

http://twitter.com/UnionWorkers

File Edit View Favorites Tools Help

Union Workers (UnionWorkers) on Twitter

twitter


Have an account? [Sign in](#)

Get short, timely messages from Union Workers.

Twitter is a rich source of instantly updated information. It's easy to stay updated on an incredibly wide variety of topics. [Join today](#) and [follow @UnionWorkers](#).

[Sign Up >](#)

Get updates via SMS by texting **follow UnionWorkers** to **40404** in the United States
[Codes for other countries](#)

 **UnionWorkers**

Congresswoman Raises 2 Fingers, Gives Thumbs-Up
<http://goo.gl/fb/3jBZD>
<http://uw.lmsoc.com>

26 minutes ago via Google

Nevada Supreme Court Addresses Notice of Injury in Workers Compensation... <http://goo.gl/fb/yhFug> <http://uw.lmsoc.com>

Name Union Workers
Location United States of America
Web <http://UnionWorke...>
Bio Labor union news and related information.

32 following 103 followers 5 listed

Tweets 2,362

Favorites

Following

E-Mail

- *Guard Publishing Co.*, 351 NLRB 1110 (2007)
 - 3-2 decision
 - Permitted discipline of employees for using company email system to solicit support for union
 - Email systems considered like bulletin boards



E-Mail

- *Guard Publishing Co. v. NLRB*, 571 F.3d 53 (D.C. Cir. 2009)
 - Overruled Board decision
 - Legality of facially neutral policy not appealed
 - Failure to apply neutral policy in even-handed manner results in unfair labor practice



Guard Publishing Dissent

- “Only a Board that has been asleep for the past 20 years could fail to recognize that e-mail has revolutionized communication both within and outside the workplace. In 2007, one cannot reasonably contend, as the majority does, that an e-mail system is a piece of communications equipment to be treated just as the law treats bulletin boards, telephones, and pieces of scrap paper.”
- “National labor policy must be responsive to the enormous technological changes that are taking place in our society. Where, as here, an employer has given employees access to e-mail for regular, routine use in their work, we would find that banning all nonwork-related ‘solicitations’ is presumptively unlawful Accordingly, we dissent from the majority's holding that the Respondent's ban on using e-mail for ‘non-job-related solicitations’ was lawful.

Wilma Liebman
Current Chair, NLRB

Labor's Backup Plan – The NLRB

- Labor law regulators
- Offices in Washington D.C.
- Five presidential appointees
- Three from President's party
- Two from opposition party



Who Currently Sits On The NLRB?

- Wilma Liebman; Chairman (D)
 - Former Teamster Attorney has actively dissented and suggested that laws are “broken”
- Mark Pearce (D)
 - Former Union-side Attorney advocates shorter Canadian representation election model
- Craig Becker (D)
 - Former SEIU Attorney has said he sees little place for employer in campaign process
- Brian Hayes (R)

What Can We Expect From the NLRB?

- Overturning substantial precedent
 - Temporary employees/joint employment
 - “Weingarten” rights in non-union setting
 - Use/reinstatement of “Salts”
 - Electronic communications
 - Supervisory card solicitation
 - Picketing/permanent replacement
 - Removal of early decertification window
 - Scope of protected concerted activity

Possible NLRB Rulemaking

- Condensed time to election
- Electronic balloting
- Union access to employer premises
- Increased scrutiny on first contract negotiations
- Enhanced penalties

What Can We Expect From a New General Counsel?

- Increased resort to injunctive relief in all discharge cases
- Expanded scrutiny of first contract negotiations
- Reduced standard for ULP complaints
- Increased utilization of bargaining orders

What Can We Expect From a New General Counsel?

OFFICE OF THE GENERAL COUNSEL

MEMORANDUM GC 11-01 December 20, 2010

TO: All Regional Directors, Officers-in-Charge,
and Resident Officers

FROM: Lafe E. Solomon, Acting General Counsel

SUBJECT: Effective Remedies in Organizing Campaigns

I. Introduction

The protection of employee free choice regarding unionization is a keystone of the Agency's mission, and I am committed to making the principle of employee free choice meaningful. Accordingly, as Acting General Counsel I have placed a priority on ensuring that the Agency protects employee freedom of choice with regard to unionization by obtaining effective remedies for employers' unlawful conduct during union organizing campaigns. In Memorandum GC 10-07, I outlined my commitment to seek Section 10(j) injunctive relief as a quick and effective remedy for an employer's serious unlawful conduct during union organizing campaigns. But, to fully ensure that the Agency protects employee freedom of choice with regard to unionization, we must seek remedies that enhance the effectiveness of Section 10(j) and Board relief.

In Memorandum GC 10-07, I announced an initiative to seek 10(j) relief in all discriminatory discharges during organizing campaigns (so-called "nip-in-the-bud" cases) because they have a severe impact on employees' Section 7 rights. In such cases, the discharges are often accompanied by other serious unfair labor practices such as threats, solicitation of grievances, promises or grants of benefits, interrogations and surveillance.¹ These additional unfair labor practices

¹ See, e.g., Jewish Home for the Elderly of Fairfield County, 343 NLRB 1069 (2004) (where employer discharged an employee one day before an election, it also threatened job loss and plant closure through its chairman of its board of directors, threatened employees with arrest, created impression of surveillance, videotaped employees, interrogated employees, promised better benefits, increased wages, solicited employees to repudiate the union and revoke authorization cards, prohibited employees from discussing the union but allowed them to discuss other non-work subjects, prohibited off-duty employees access to its facility to talk to coworkers, and restricted the locations of employees' breaks to deny employees from discussing wages, benefits, and terms and conditions with fellow employees); Blockbuster Pavilion, 331 NLRB 1274 (2000) (in addition to refusing pro-union employees work, employer threatened discharge for union activity, threatened to burn its facility before allowing a union

What Can We Expect From a New General Counsel?

- Acting NLRB General Counsel Lafe Solomon
- Enhanced penalties for employer unfair labor practices during union campaigns
 - Requirement that boss “read the notice”
 - Greater union access to company property

NLRB Proposed Rulemaking

- All employers must post
- Employers who communicate with employees electronically must disseminate notice the same way



News Release National Labor Relations Board

December 21, 2010

Contact:
Office of Public Affairs
202-273-1991
publicinfo@nlrb.gov
www.nlrb.gov

Board proposes rule to require posting of NLRA rights *Notices would be similar to those detailing rights under safety, wage and anti-discrimination laws*

The National Labor Relations Board has submitted to the *Federal Register* a Notice of Proposed Rulemaking, which provides for a 60-day comment period. The rule would require employers to notify employees of their rights under the National Labor Relations Act.

As the Notice states, the Board "believes that many employees protected by the NLRA are unaware of their rights under the statute. The intended effects of this action are to increase knowledge of the NLRA among employees, to better enable the exercise of rights under the statute, and to promote statutory compliance by employers and unions."

Private-sector employers (including labor organizations) whose workplaces fall under the NLRA would be required to post the employee rights notice where other workplace notices are typically posted. If an employer communicates with employees primarily by email or other electronic means, the notice would be posted electronically as well. The notice would be available from the agency's regional offices and could also be downloaded from the NLRB website.

The proposed notice is similar to one recently finalized by the U.S. Department of Labor for federal contractors. It states that employees have the right to act together to improve wages and working conditions, to form, join and assist a union, to bargain collectively with their employer, and to choose not to do any of these activities. It provides examples of unlawful employer and union conduct and instructs employees how to contact the NLRB with questions or complaints.

This rule was originally proposed in a petition to the NLRB by Charles Morris, Professor Emeritus of Law, Southern Methodist University, in 1993. Similar postings are already required under the Fair Labor Standards Act, Title VII of the Civil Rights Act of 1964,

Utilizing Agency Charges

The screenshot shows a Windows Internet Explorer browser window displaying a news article on Chron.com. The browser's address bar shows the URL: <http://www.chron.com/dispatch/story.mpl/business/sixel/7002756.html>. The page features a navigation menu with categories like NEWS, SPORTS, BUSINESS, ENTERTAINMENT, LIFE, TRAVEL, BLOGS, JOBS, HOMES, CARS, and CLASSIFIEDS. A search bar is located on the right side of the page. The main content area displays the article title "Working: OSHA focuses on housekeeper injuries" by L.M. Sixel, dated May 12, 2010. The article text discusses a report from the American Journal of Industrial Medicine regarding higher injury rates for housekeepers, particularly Hispanic ones, and mentions that the research was funded by the union Unite Here. A sidebar on the left contains social sharing options for Del.icio.us, Twitter, Facebook, Email, Digg, and StumbleUpon. A large advertisement for Fry's Electronics is visible on the right side of the page, featuring a laptop, a monitor, and a refrigerator, with the text "Your Technology Headquarters for 2011". At the bottom of the browser window, the status bar shows "Done" and "Internet".

Working: OSHA focuses on housekeeper injuries | L.M. Sixel: Working | Chron.com - Houston Chron - Windows Internet Explorer

http://www.chron.com/dispatch/story.mpl/business/sixel/7002756.html

File Edit View Favorites Tools Help

★ Working: OSHA focuses on housekeeper injuries | L.M. Sixel: Working

harrumph | Logout

★ **chron** | L.M. Sixel: Working

NOW 45°

NEWS SPORTS BUSINESS ENTERTAINMENT LIFE TRAVEL BLOGS JOBS HOMES CARS CLASSIFIEDS

Facebook Twitter

0 Comments Recommend

Working: OSHA focuses on housekeeper injuries

By L.M. SIXEL Copyright 2010 Houston Chronicle
May 12, 2010, 10:53PM

Share

Del.icio.us Digg Twitter Facebook StumbleUpon Email

Recommend Be the first of your friends to recommend this.

Asservice workers go, hotel employees — and especially housekeepers — have higher rates of on-the-job injuries, according to a report last year in the American Journal of Industrial Medicine.

Housekeepers are prone to repetitive stress injuries from such continual work as changing sheets, washing bathroom floors and vacuuming, according to nine researchers who studied three years of government-required accident logs at five union-represented hotels.

More surprising, however, is that Hispanic housekeepers had a proportionally higher rate of injuries than non-Hispanic cleaners, according to the study. The research didn't address possible explanations for that.

The research was funded by the union Unite Here, which represents hospitality employees, but the problem also has captured the attention of the Occupational Safety and Health Administration.

It recently hosted a conference in Houston on health and safety issues facing Latino workers.

While OSHA doesn't have a specific ergonomic standard — it was repealed by Congress in 2001 before it was

Fry's ELECTRONICS

Your Technology Headquarters for 2011

CLICK HERE FOR THIS WEEK'S SPECIALS

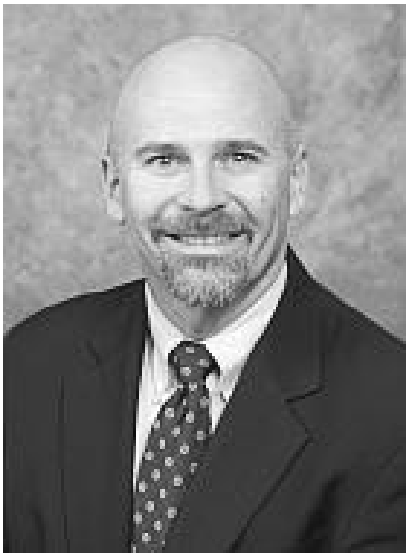
Should bankers' bonuses be capped? **BBC NEWS**

Done Internet 100%

What Can Employers Do To Oppose Unionization Of Employees?

- Exercise their “free speech rights” to tell employees of risks of unionization
- Employers can exercise these rights in a card-signing drive and after a petition for election has been filed
- Employers are subject to certain rules: no TIPS (threats, interrogation, promises, or spying)

Presenter



- Stephen J. Roppolo – Fisher & Phillips LLP
- Regional Managing Partner, Houston Office
- Represents Management in Labor and Employment Matters
- Clients include hotels, restaurants, resorts