

UNION ORGANIZING IN THE HOSPITALITY INDUSTRY:

A REPORT FROM THE FRONT

BY:

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ATTORNEYS AT LAW

Mike is a founding Partner of the New Orleans office of Fisher & Phillips LLP, one of the oldest and largest firms in the country practicing exclusively in labor and employment law representing management. His practice covers all aspects of employee relations, with an emphasis in collective bargaining, defense of unfair labor practice charges, union avoidance and supervisor training in employee relations.

A native of West Virginia, Mike graduated from the West Virginia University College of Law in 1973 and for four years served in the judge advocate corps of the U.S. Air Force as trial counsel. Following military service, he returned to school, earning a master's degree in labor law from George Washington University, *magna cum laude*, in 1979.

He has practiced labor and employment law exclusively since then, and has been involved in major cases before a number of circuit courts of appeals. Mike has been recognized by *Chambers USA* as one of America's leading business lawyers, as well as *Who's Who in Law*. He has also been designated as a Louisiana "Superlawyer." He is a member of the Global Association of Hotel Attorneys, a frequent speaker before trade and professional associations, and is the editor of the Firm's award-winning newsletters, practice area publications, and legal compendiums.

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There was a time before faxes, cell phones and e-mail. It was the 1940s and a young man in Atlanta named Ike Fisher learned that the only way for an employer to give its employees a raise was to persuade the War Labor Board to allow an increase. Word spread throughout the South, and Fisher became the “go-to” guy for wage and hour law issues. Soon thereafter, Fisher expanded his practice to include assisting employers in defeating union organizing campaigns. Then, after completing his tour of duty during World War II, Erle Phillips joined Fisher in representing employers in labor and employment law matters. Phillips soon became the labor lawyer of choice for many of the South’s leading businesses and institutions. The rest is history.

Now, after more than 60 years of continued growth and success, Fisher & Phillips LLP is one of the largest national law firms specializing in the increasingly complex fields of labor, employment, civil rights, employee benefits and business immigration law. Our expertise and continuing focus on employment-related matters provide our clients with reduced start-up times, greater cost efficiencies, and better outcomes. Because of our size and experience, we are able to offer employers advice in all of the myriad areas of labor and employment law.

Many of the most significant labor and employment laws and regulations are federal in nature. Thus, our practice is nationwide in scope. But because state laws and court decisions increasingly affect the employment relationship, we also handle cases in the courts and administrative agencies of virtually every state in the country. With three offices in Florida, and an additional 13 other offices located in major cities around the nation, we can handle cases just about anywhere in a cost-effective and timely manner.

Our attorneys hail from a wide variety of geographic locations, backgrounds and law schools. Some performed government service in regulatory agencies prior to joining the firm. Others worked in labor relations or human resources positions – or as managers or supervisors – prior to attending law school, giving them a practical perspective on the legal problems our clients face. Each of our attorneys strives to handle the labor and employment law issues faced by our clients with a practical, business-oriented approach designed to achieve the client’s objective in a particular matter as efficiently as possible.

No other law firm in the country offers a greater complement of labor and employment law services or a more cost-conscious approach to providing common sense legal counsel. Over the years, employers across the country have come to trust Fisher & Phillips LLP as their labor and employment law advisors.

We value that trust as our greatest asset.

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A REPORT FROM THE FRONT

by Michael S. Mitchell

of

Fisher & Phillips LLP

I. SCOPE OF ARTICLE

This presentation covers the major trends of union organizing particularly in the hotel industry. It also provides practical guidance on avoiding this problem if you are expanding or buying new properties, as well as tips on keeping your property union-free.

II. GENERAL TRENDS IN THE LABOR MOVEMENT

A. Membership Decline

This is not a new trend, but has been going on for decades. Contrary to popular belief, union membership, even at its peak in the 1950's, never reached even 50% of the workforce. Today the unionized percentage rate in the private sector is around 8%.

This has had an obvious negative impact on the power and financial clout of Big Labor, which derives income solely from the dues of members. Particularly hard hit have been unions in industries which are in decline such as steel and automakers.

One of the few growth areas for unions is in government employment.

B. Mergers

These trends in turn have lead to mergers as unions struggle to survive. One of the most important mergers to this particular audience is between the Needle Trades Union (UNITE) and the Hotel and Restaurant Employees Union (HERE).

C. Geographic Realities

The overall decline in union membership, power and prestige, has not been at all uniform either geographically or in industries. While there have been a relatively small number of union elections in some states (the Dakotas, the Carolina's, and several of the Mountain and Southern states), there have been a very large number of elections in states such as Washington, California and New York.

D. Win Rate Up

In addition, the percentage of elections which unions win have been steadily increasing since 1998.

E. Hotels

The hotel industry makes a particularly attractive target in today's atmosphere, as it is a growth industry, it contains some jobs that relatively low paying, and it is an industry which cannot be exported or handled offshore.

III. NEW UNION APPROACHES

A. AFL-CIO To CTW

For many years, the major consortium of unions, the AFL-CIO, has attempted to counter these trends by putting more and more resources into political campaigns and other political activities. These have not always been successful in getting pro-union politicians elected, and even when that does occur, it does not always result in pro-union legislation.

B. Politics To Organizing

Consequently, a major dispute developed among member unions of the AFL-CIO as to whether or not this was the right approach. Eventually, seven major unions, including UNITE HERE chose to defect from the AFL-CIO and form their own organization called "Change to Win". The main goal of Change to Win is not political but traditional union organizing efforts.

IV. LABOR PEACE AGREEMENTS

The most successful tactics used in the Change to Win Arsenal are the so-called Labor Peace Agreements, which come in a variety of permutations.

A. Traditional Union Organizing

Unions traditionally organized employee workforces from the ground up. A several weeks long period of persuading employees to sign authorization cards, usually low key and sometimes secretive, would result in filing an election petition with the National Labor Relations Board (NLRB), the government agency in charge of labor management relations.

After a sometimes intense campaign in which both sides – the employer and the union – attempt to persuade employees to vote either for or against the union, an

election is held via secret ballot. If the union persuade a majority of those voting to vote yes, “the” union then represents all of the employees in an appropriate bargaining unit, whether they had voted for or against the union.

B. The New Approach

Unions now try to organize companies from the top down. Unions pressure company ownership and management to agree to union demands before ever approaching employees. There are several variations on these so-called Labor Peace Agreements.

1. Neutrality

In a Neutrality Agreement, the company agrees not to oppose future unionization efforts.

- a. These Neutrality Agreements can be “strict” requiring the company to do nothing at all during a union organizing campaign, to affirmatively allow union organizers access to the property or to give union spokes people a form from which to persuade employees to support the union.
- b. More limited Neutrality Agreements allow the company to express its opinion (if done in temperate terms) to correct any misstatements the union may make, to respond to union “provocations” or to give union representatives equal time, i.e. if the company holds meetings with employees to present it views, a union spokesman will be present.

2. Card Check

Some labor peace agreements go so far as to require the company to recognize the union on the basis of authorization cards alone. There is no campaign and no secret ballot election.

C. Why Do Hotels Agree To Labor Peace Agreements?

1. In most situations, labor peace agreements grow out of collective bargaining at one location where the company is at an economic disadvantage. The union may have a credible threat of a strike, or may be seriously affecting the company’s business. In order obtain a better relationship at the target location, the company agrees to some form of labor peace agreement at its other properties.

2. Many locations in the country (San Francisco, Chicago, New York) are much more pro-union than other parts of the country. There may be politicians at either the local or national level who are able to put pressure on employers to deal favorably with unions.

City councils are often useful tools for unions, and may pass local ordinances requiring employers who do business with the city, or who do business in a certain area of the city to recognize unions or deal favorably with them.

3. The employer may actively seek union assistance because of certain business reasons.
 - a. Unions are often able to steer major conventions toward or away from certain hotels based on their labor policies.
 - b. Employers in the gaming industry may find certain localities overtly hostile to the opening of a new casino. Unions can often be helpful in overcoming this opposition.
 - c. Unions may offer direct financial assistance to certain properties including in the area of financing new constructions. Loew's New Orleans Hotel is a good example of this.
4. American properties of foreign-owned corporations may sometimes receive pressure from the parent, in order for the parent to maintain good relations with its own union. Sodexo is a target of this tactic.
5. Fear of a corporate campaign. (See below)

D. Corporate Campaigns

Corporate campaigns are another example of top down organizing when ground up organizing no longer is effective. Rather than persuading employees to sign authorization cards, unions persuade Boards of Directors and shareholders of major companies to adopt favorable policies towards unions in order to avoid negative publicity, boycotts, etc.

Unions may also put pressure on banks or lending institutions and other third parties who are friendly to it to either cease doing business with a particular hotel target or to persuade the hotel target to adopt union-friendly policies.

V. 2006 THE “SUMMER OF DISCONTENT”

A. Hotel Workers Rising

UNITE HERE’s “Hotel Workers Rising” campaign was successful. Targeted hotels in Chicago, New York and San Francisco all ended up signing collective bargaining agreements, many of which contained labor peace requirements. The Chicago campaign was particularly successful and resulted in a Hilton-UNITE HERE “Partnership for Future Growth” agreement.

This agreement included:

- 1) card check agreements at other locations;
- 2) advancing labor peace in other cities with collective bargaining agreements;
- 3) the Hilton receiving “preferred status” as a hotel management company of choice for the union and
- 4) a commitment to mutually explore enhancing Hilton hotels productivity and competitiveness, especially in food service and restaurant sectors.

B. Other Properties Targeted During The “Summer Of Discontent” Included The Following:

1. Atlanta
 - a. Hotel Indigo Atlanta Midtown
 - b. InterContinental Buckhead
2. Boston
 - a. Hyatt Regency Boston Financial District
 - b. Hyatt Regency, Cambridge
3. Chicago
 - a. Four Seasons, Chicago
 - b. Intercontinental Hotel
4. Hartford
 - a. Downtown Hartford Marriott at Adriaens Landing
5. Honolulu
 - a. Turtle Bay Resort

6. Los Angeles
 - a. Glendale Hilton
 - b. Hyatt Regency Long Beach
7. Miami
 - a. Hotel Inter-Continental Miami
 - b. Hyatt Regency Miami
8. Monterey
 - a. Monterey Bay Travelodge (Fairgrounds)
9. San Francisco
 - a. Argent Hotel
 - b. Comfort Suites San Francisco Airport
 - c. Crowne Plaza Union Square
 - d. Fairmont San Francisco
 - e. Four Seasons San Francisco
 - f. Grand Hyatt
 - g. Hilton San Francisco
 - h. Holiday Inn Civic Center
 - i. Holiday Inn Express (FW)
 - j. Holiday Inn Fisherman's Wharf
 - k. Hyatt Regency San Francisco
 - l. Mark Hopkins InterContinental
 - m. Omni San Francisco Hotel
 - n. Palace Hotel
 - o. Park Hyatt at Embarcadero Ctr

VI. EXPANDING INTO NEW TERRITORY

A. Location, Location, Location

1. Some states are more conducive to remaining union free.
2. Know the difference between “right-to-work” and “employment at will.”

B. Understand The New Location

Do not acquire new properties in the dark – get **all** the information you need. If the property is unionized, make sure you have copies not only of the collective bargaining agreements but side letters, white paper agreements to master contracts and past arbitration decisions. If the property is currently nonunion, what is the atmosphere at the property.

1. Have employees been transferred from a union facility to a nonunion facility recently?
2. Is the prospect hotel operated on a union-free basis?
3. Has the prospect opened new facilities in the last ten years that have remained union-free?
4. Has there been union activity in the last five years?
5. Does the property have sophisticated employer relations program?
6. Does the prospect utilize external resources to remain union-free?

VII. REMAINING UNION-FREE

It is possible to “union proof” your property to a great degree. By following a few simple pro-employee rules, carefully monitoring wages and benefits, aggressively dealing with safety issues, discrimination, favoritism and other employee complaints, you will be able to demonstrate that a union is not needed at your property. Remember: it is far easier to prevent union organizing from getting started in the first place than it is to campaign against a union once organizing has started.

5th Annual Hospitality Law Conference
Presents

Union Organizing in the
Hospitality Industry:
A Report from the Front

Presented by:
Mike Mitchell



Mike
Mitchell

- Partner with Fisher & Phillips
- His practice emphasizes traditional labor law matters such as union avoidance, collective bargaining, arbitration, and unfair labor practice
- He has more than twenty years of experience and has successfully argued major cases in the Third, Fourth, Fifth, and Seventh Circuit U.S. Courts of Appeals.
- He is listed in *Chambers USA, America's Leading Business Lawyers*, 2002 and 2006.
- Named as 2007 Louisiana "Superlawyer."



5th Annual Hospitality Law Conference

Union Organizing in the
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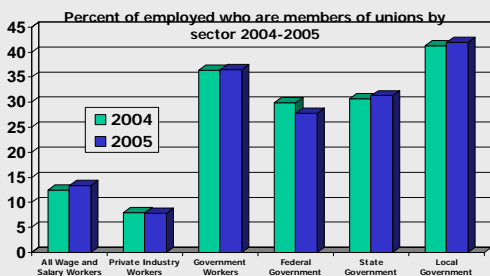
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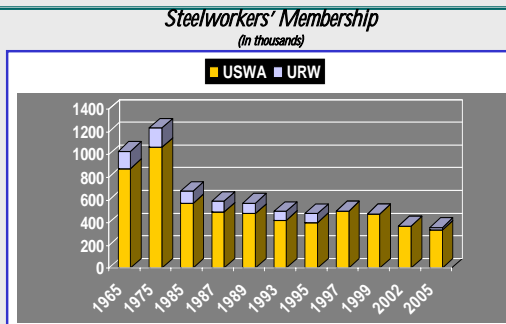
GENERAL TRENDS IN THE
LABOR MOVEMENT

- Membership
- Financial
- Mergers
- Elections

TRENDS: UNIONIZED
PERCENTAGE OF WORKFORCE

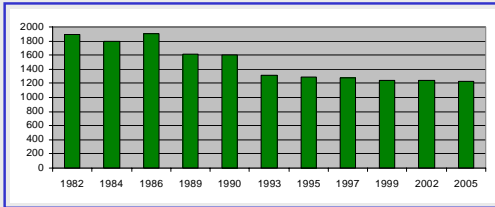


TRENDS: DECLINING MEMBERSHIP
IN OTHER SECTORS



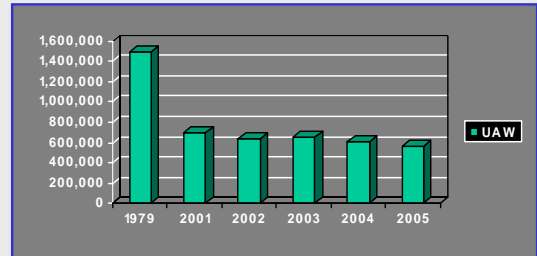
TRENDS: DECLINING MEMBERSHIP IN OTHER SECTORS

Teamsters' Membership (in thousands)



TRENDS: DECLINING MEMBERSHIP IN OTHER SECTORS

United Auto Workers' Membership



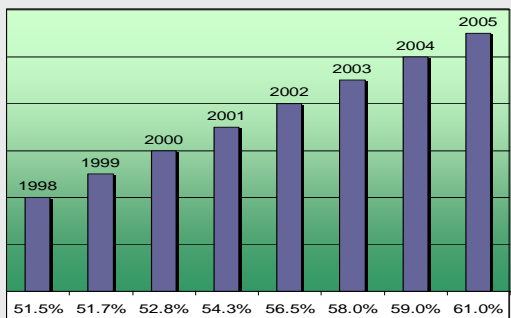
TRENDS: Union Elections by State (Number of Elections in 2005)

State	Elections	State	Elections
AL	18	IL	114
AK	16	IN	32
AZ	13	IA	22
AR	12	KS	12
CA	173	KY	23
CO	27	LA	19
CT	43	ME	7
DE	11	MD	45
D.C.	12	MA	49
FL	50	MI	82
GA	25	MN	47
HI	24	MS	9
ID	9	MO	36

TRENDS: Union Elections by State (Number of Elections in 2005)

State	Elections	State	Elections
MT	12	RI	14
NE	9	SC	7
NV	19	SD	2
NH	13	TN	14
NJ	122	TX	59
NM	12	UT	4
NY	348	VT	1
NC	12	VA	28
ND	4	WA	126
OH	93	WV	16
OK	13	WI	25
OR	36	WY	6
PA	138		

TRENDS: UNION WIN RATES Increased every year since 1998



Low unionization rates in other industries actually increase pressure on hospitality industry

SAME PLAYERS, NEW GAME:
“CHANGE TO WIN”

- Issues with AFL-CIO
- Politics v. organizing

SAME PLAYERS, NEW GAME:
SEVEN UNIONS DEFECT

- Teamsters
- Carpenters
- Laborers
- Farm Workers
 - SEIU
 - UFCW
- UNITE HERE!

SAME PLAYERS, NEW GAME:
“LABOR PEACE” AGREEMENTS

- Neutrality
- Union Access
- Card Check

Traditional Union Organizing
“Ground Up”

- Authorization Cards
- 30% Showing of Interest
- Petition filed with NLRB
- Both sides campaign
- Secret Ballot
- Majority Wins

The New Approach
“Top Down”

- Pressure the Company to agree to Union demands before approaching employees

LABOR PEACE AGREEMENTS

- NEUTRALITY
 - Company agrees not to oppose future unionization efforts

STRICT NEUTRALITY

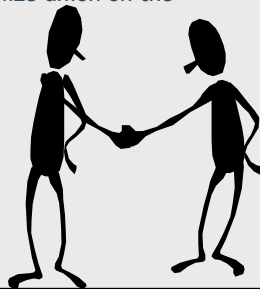
- Company says nothing
- Company allows union organizers access to the property
- Company gives union “free time”

LIMITED NEUTRALITY

- Company expresses its opinion (mildly)
- Company corrects union misstatements
- Company responds to provocations
- Company gives union “equal time”

LABOR PEACE AGREEMENTS CARD CHECK

- Company agrees to recognize union on the basis of cards alone
- NO CAMPAIGN
- NO ELECTION



Why Would Any Hotel Agree to “Labor Peace”?

1. Gain concessions at on property.
2. Political concerns.
3. Union assistance in other areas.
 - a. more business
 - b. overcome political opposition
 - c. financial assistance
4. Pressure from a foreign owned parent.
5. Fear of corporate campaign.

CORPORATE CAMPAIGNS

- Pressure on Boards of Directors
- Pressure on Shareholders
- Pressure on Banks
- Pressure on Friendly Third Parties

UNION TARGETS

“Hotel Workers Rising” - UNITE HERE’s 2006 Summer of Discontent

By Mid-June 2006, Hotels on Strike or Lockout included:

- Chicago
 - Congress Plaza Hotel
- New York
 - Crowne Plaza LaGuardia
 - Hampton Inn New York - JFK
 - Holiday Inn JFK

Ivan Osoria, *UNITE-HERE on the Attack*, Capital Research Ctr. Labor Alert (July 2006).

UNION TARGETS

“Hotel Workers Rising” - UNITE HERE’s 2006 Summer of Discontent By Mid-June 2006, Hotels under Boycott in 9 Cities

- | | |
|-----------|----------------|
| ➤Atlanta | ➤Los Angeles |
| ➤Boston | ➤Miami |
| ➤Chicago | ➤Monterey |
| ➤Hartford | ➤San Francisco |

UNION GAINS

Yields from “Hotel Workers Rising” - UNITE-HERE’s 2006 Summer of Discontent Included:

- 4 year collective bargaining agreement with Hyatt Corporation site in Monterey, California.
Monterey County Herald, (11/17/06)
- A Hilton-UNITE HERE “Partnership for Future Growth” Agreement.
 1. Including card check agreements
 2. Advance of “labor peace” in other cities with collective bargaining
 3. Hilton receiving preferred status as a hotel management company of choice for the union
 4. Binding the two parties to mutually explore enhancing Hilton Hotels’ productivity and competitiveness, especially in food service and restaurant sectors.
Business Wire, (July 20, 2006)
- A tentative agreement for new contract covering 1,550 employees at the Hilton Hawaii Village Beach Resort & Spa, the state’s biggest resort.
Los Angeles Business Journal, (10/16/06)

ACQUIRING ANOTHER PROPERTY? KNOW THE TURF!

- What is “Right to Work?”
- What is “At-Will?”



ACQUIRING ANOTHER PROPERTY? INFORMATION NEEDED FROM PROSPECTS

- Collective Bargaining Agreements
- Side letters
- Master Contracts
- Arbitration Decisions

ACQUIRING ANOTHER PROPERTY? GAUGING THE PROSPECT’S RESOLVE

- Whether the prospect currently operates hotels on a union-free basis
- Whether the prospect has transferred union employees to a non-union facility
- Whether the prospect has opened new facilities in the last 10-15 years that have remained union free
- Whether the prospect has had a union election in the past 5 years

ACQUIRING ANOTHER PROPERTY? GAUGING THE PROSPECT’S RESOLVE

- Whether the prospect has a sophisticated employee relations program
- Whether the prospect utilizes external resources to remain union free

REMAINING UNION FREE

- Match wages & benefits locally
- Keep turnover low
- Treat employees with dignity
- Monitor wage/hour, OSHA and discrimination problems
- Handle complaints well

Questions?

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