Management

What are three ways an employer can legally discourage employees from organizing?

a. Good communication, from suggestion programs (boxes for employees to write questions to be answered by top management, e.g., Winn-Dixie's "I want to know" program, in which the chief executive officer personally responds to any question within 24 hours; anonymous questions can be answered in company newsletters or publications specifically geared for that purpose) to reward programs. In the latter, employees compete for the best idea for cost-cutting or similar measures to simply training supervisors in how to best field questions and issues around which union organizing attempts focus and how to proclaim the company's union-free philosophy without interrogating the employee in the process.
b. Active participation, from joint employee–management quality teams dealing with specific workplace issues to bonus incentives for every employee when both the company and the individual employee exceed their performance objectives to employee representation in the development of critical personnel policies (e.g., the disciplinary system).
c. Instituting an internal grievance appeal process to remove the last (assuming "a" and "b" are followed) appeal the union has.

Summary

Employees under the National Labor Relations Act have the right to organize into labor organizations and to seek representation for the purpose of collective bargaining with their employers. The NLRA and subsequent court and NLRB decisions define the processes for this representation. The NLRB is given wide authority to determine on a case-by-case basis an appropriate unit of employees—one of similarities and interests for collective bargaining purposes. In the public sector the question of appropriate is often moot since employees' right to organize is specified by profession—teachers, police officers, fire fighters, and so on.

The initial step is usually taken by a group of employees or a union organizer. Unions generally have three methods by which they can be recognized to represent employees: voluntary recognition by an employer when a majority of the employees sign authorization cards; an NLRB directive; or, the most common, a secret-ballot representation election. The organizing drive conducted by a union wishing to represent a unit of employees is very important. Tactics used by unions to organize and by companies to resist unionization have become much more sophisticated—such as salting an employer. Management can, and usually does, try to convince the employees to vote against the union in an election, but must carefully follow "TIPS" and "FORE" during the campaign. The NLRB strives to hold a fair election—one in which all employees have a "free choice" without undue pressure by either the union or management. If a union receives a majority of those voting in the election, it is certified by the NLRB as the exclusive bargaining agent for the bargaining unit of employees for at least one year, and then begins to bargain a first contract with the employer.

Unions are structured into four levels; locals, nationals, internationals, intermediate, and federations. In the past most unions were either craft or industrial, however more recently the differences have become blurred as many national unions have organized workers outside of their traditional roots, and thus today many are mixed unions, and include not only workers of different crafts and unskilled industries but private and public sector members in some cases. Local union officers include president, vice president, secretary/treasurer, business manager, and stewards—for many members the union person they interact with most. Stewards, because they serve a dual commitment to both management and the union and handle most grievance issues, are highly valued.

CASE STUDIES

Case Study 4-1 Salting

The Company is engaged in the business of removing or cleaning hazardous waste. Most of its employees fall into three categories; (1) field technicians who are unskilled laborers; (2) drivers and operators of trucks; and (3) field supervisors who go out into the field and are in charge of jobs. The driver and equipment operator positions require commercial driving licenses (CDL). All parties agree that the people who are called field supervisors are employees and *not* supervisors within the meaning of Section 2(11) of the act.

The Union was engaged in organizing companies in the area handling hazardous materials. The Union sent a letter dated March 9 to the Company indicating (a) that it was commencing an organizing drive; (b) that the NLRA precluded the employer from restraining or coercing its employees; and (c) that it would be distributing literature to its employees at various projects. Subsequently, the Union began leafleting to the Company's employees on their way into and out of the workplace.

On March 21, the Company placed a help-wanted ad, seeking to hire operators who had CDL licenses and H&T (hazardous material handling endorsements). The Union sent two members, Castillo and Rivera, to apply for a job. And even though neither had the required commercial driver's license, they were allowed to fill out applications and were interviewed. They both were told that they could have jobs as field technicians, and arrangements were made for them to get a drug test. Neither informed the Company that they were members of a union or that they intended to organize employees on behalf of the Union. They were "covert" salts and were instructed to keep their union membership secret until the appropriate time. Castillo and Rivera were told by the Union that if they obtained jobs, the Union would make up the difference in the wage rate paid by the Employer and the wage rate that they had been getting from being employed as shop stewards at union employers. Also, the Union agreed to provide them with any benefits not provided by the Company. They started as field techs on April 16 or 17.

On the morning of April 13, the Union sent teams of union agents into the Company's office to apply for work at the Company as "overt" salts. The overt salts went to the Company's facility in pairs, wearing union clothing and carrying recording devices to record what was said during the application process. When the overt salts entered the facility, they asked the Company's receptionist for employment applications and advised her that it was their intention to organize the Company. She responded that the Company was not interested in becoming a union shop, but informed the applicants that they could apply for one of the available driver positions but that, in order to apply for such positions, they would have to produce driver's licenses with CDLs and HAZMAT endorsements. Although some of the applicants indicated to the Receptionist that they possessed those licenses, it is undisputed that, in fact, none of them did. When none of the individuals were able to produce the required licenses, she advised them that they could come back and fill out applications when they had obtained them. One of the applicants then inquired whether he could fill out an application for a field technician position. She told him that the Company did not have openings for field technicians at that time, but that he could complete an application and she would keep it on file. He did not, however, complete an application. None of the applicants returned to the Company after April 13, nor did they make any further attempt to apply for employment with the Company.

The Union filed an unfair labor practice charge against the Company for refusing to hire or consider for hiring the union members in violation of the NLRA.

In order to establish a refusal-to-hire violation the Union must establish the following elements: (1) that the Company was hiring, or had concrete plans to hire, at the time of the alleged unlawful conduct; (2) that the applicants had experience or training relevant to the announced or generally known requirements of the positions for hire, or in the alternative, that the employer has not adhered uniformly to such requirements, or that the requirements were themselves pretextual or were applied as a pretext for discrimination; and (3) that antiunion animus contributed to the decision not to hire the applicants. In order to establish a refusal-to-consider violation the Union has to show (1) that the Company excluded applicants from a hiring process; and (2) that antiunion animus contributed to the decision not to consider the applicants for employment.

The Company argued that none of these applicants had the qualifications necessary to be hired as drivers. Nor were these "overt salts" actually looking for employment. All of them had full-time jobs at the Union, as business agents, organizers, or dispatchers. When they were invited by the office person to submit applications for nondriver jobs, accompanied by their social security cards and driver licenses, they never followed up on this invitation and not