

# Labor Relations Law UPDATE



From the Steptoe & Johnson LLP Labor Relations and Employment Group

March 1, 2006

## SEIU Looks South and Southwest for New Union Members

The Service Employees International Union, a founding Change to Win member, hopes its organizing victory with 4,700 Houston janitors will be a catalyst for organizing bids in 17 Southern and Southwestern states. SEIU Executive Vice President Eliseo Medina said that the SEIU's goal is to duplicate its Houston success in Florida, Arizona, North Carolina, and Tennessee. Since last summer, Medina has headed the SEIU's organizing efforts in 17 states in the South and Southwest. The SEIU currently has active organizing campaigns taking place in Miami, Florida, North Carolina, Texas, Tennessee and Arizona. Medina noted that work in those states is a long-term proposition for the SEIU because unions, until recently, had given-up on organizing employees in the South. "The [Houston] campaign," Medina emphasized, "signals to other cities in the South and Southwest that workers can be organized."

*"This should be a positive virus for everyone throughout the U.S. and Canada to catch."*

## UNITE HERE Announces Nationwide Campaign Objectives that Include Phoenix, Arizona

UNITE HERE, another founding member of the "Change to Win" coalition, said that it wants to narrow wage differences for its members in the hospitality industry working in different parts of the country. To achieve that goal, the union has launched a campaign dubbed "Hotel Workers Rising." John Wilhelm, president of UNITE HERE's hospitality division, said the average pay for members in "lightly unionized" cities, such as Phoenix, is around \$7 to \$8 an hour, while members in heavily unionized cities, such as New York, make around \$18 to \$19 an hour. Wilhelm hopes members in strong union areas will pressure employers in less-unionized cities to raise wages and benefits. Commenting on the "Hotel Workers Rising" campaign, an internal employee union organizer working at a hotel in Los Angeles stated, "This should be a positive virus for everyone throughout the U.S. and Canada to catch."

## Pro-Company Union Avoidance Campaigns: What To Expect With the First Sign of Organizing Activity!

With two of the seven founding unions of the "Change to Win" coalition publicly announcing organizing drives in the Southern and Southwestern states, local employers in that region must be ready to act when the first signs of organizing activity are observed if they want to remain union-free. But what can a company do to legally respond to the threat of unionization? Can an employer wage its own "counter-campaign?" If so, how can an employer effectively conduct a counter-campaign without isolating dissident employees and committing unfair labor practices?

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Steve Wheelless and Tom Stanek from Steptoe & Johnson's Labor Law group just returned from Vermont where they waged a highly successful union-avoidance campaign for an international manufacturing company. Steve and Tom were called to assist the company after the International Association of Machinists targeted the company as part of an intensive organizing effort. The IAM reportedly had 20 out-of-state, professional organizers working in pairs "on the ground" in

Vermont driving the union's organizing effort. Over the course of a few months, the IAM organizers rallied enough support to file a petition for a union election with the National Labor Relations Board. However, after a four week, intensive, on-site pro-company counter-campaign created and directed by Steve and Tom, the IAM withdrew its petition for election rather than face defeat at the ballot box.

How does a union know to target a particular company (like the Vermont manufacturing company) for an organizing campaign? Sometimes unions identify the non-unionized employers in a given area and

"test the water" with a few employees to see if there is any interest in unionizing. Typically, however, a disgruntled employee (who oftentimes was a member of a union at a former employer) calls the union, complains about recent changes at his new employer (e.g. new management, compensation changes, benefits cut-backs, etc.), and asks whether the union can help. (Recent changes make an employer "ripe" for unionization. Have you had any?)

In response, the union typically will send professional organizers to talk to employees about the recent changes and will explain how the union can "fix" things. However, to do this, the union does not simply talk to the employer and say that it is there to organize a group of employees. Instead, the organizers operate in a stealth-like fashion, meeting with different groups of employees over the course of weeks (if not months) before the employer even knows that they are there. (In our recent Vermont campaign, the company did not learn of the IAM organizing activity until a little over a week before the union filed its petition for an election.) If the organizers perceive that the employees are interested in organizing, they will

ask the employees to sign an "Authorization Card" and/or a "Petition." Organizers typically minimize the legal effect of those signatures and suggest that, by signing, the employees are only demonstrating their interest in learning more about the benefits of unionizing. However, once the organizers get signatures from at least 30% of the targeted employees, they can file a petition with the NLRB and demand that a union election be held.

If the union files a petition for an election with the NLRB, the petition identifies the employees the union is proposing

[continued](#)

### Pro-Company Union Avoidance Campaigns (cont.)

for the “bargaining unit” – the group of employees who would vote on the union issue and whose employment could be governed by a collective bargaining agreement. If the employer does not contest the identity of the employees in the bargaining unit, the NLRB will conduct an election within 42 days after the petition was filed.

This process moves very fast and employers are almost always at a disadvantage. Unions typically campaign for weeks (if not months) before filing a petition for an election. Employers usually have only a month (or, at most, two) to win the “hearts and minds” of their employees. During those precious weeks, employers need to aggressively educate their employees about unions so that they can make an informed decision after hearing both sides of the story. However, employers need to do this without isolating employees or coming across as “bashing the union.” This is a delicate line that employers must walk if they have any chance of winning the election.

Some signs that a union may already be targeting your employees include: low employee morale which appears to be spreading; employees distinguishing themselves from management in a “we” versus “them” manner; and groups of employees talking together and then leaving

when a supervisor comes nearby. If this is happening in your company, don’t wait. Be proactive and adopt proven union-avoidance strategies now. Remember, once the union files a petition for an election, you will have an uphill battle and time is not on your side!

*Despite the broad general legal statements and examples provided above, individual factual situations may cause our (or another attorney’s advice) to vary from the general. Always consult with experienced labor counsel before taking any action on union issues.*



Step toe & Johnson’s Labor & Employment Law group represents clients in complex and high visibility labor relations matters nationwide. Step toe & Johnson’s Phoenix office has 14 attorneys with over 100 years of combined experience focusing on labor and employment law. If you want to subscribe to Step toe & Johnson’s Labor & Employment Law Update or get further information, send an e-mail to Step toe & Johnson partner Steve Wheelless at [swheelless@steptoe.com](mailto:swheelless@steptoe.com) or call him at 602-257-5234.

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