



Labor Relations Institute, Inc.

HOW TO WIN (AND PREVENT) A 5-DAY ELECTION:
Strategies for Success in a Changed Labor Law Environment



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By Phillip Wilson, President and General Counsel, LRI

Card-check. Quick elections. Mail-ballot elections (the “postcard-check”). Mandatory interest arbitration. Equal access to company property by union organizers. Employer speech restrictions. These are the so-called “compromise” provisions of the Employee Free Choice Act (EFCA) being floated by organized labor and its supporters in Congress. What steps can a company take today to prepare?

Our advice: Be where the ball’s going to be, not where the ball is.

Here’s what you’ll learn: (1) Our best guess about where the ball is going to be; (2) How to structure your Jump Team™ and Tripwire Team™ for the new environment; (3) Why focusing on anything other than “tripwire” training for supervisors is a waste of valuable time and energy; (4) Communication tips for a compressed campaign cycle; and (5) Recommended tools for your “communication ladder.”

THE EMPLOYEE FREE CHOICE ACT: WHERE THE BALL IS TODAY

The EFCA as introduced has three basic provisions. First, it requires companies to recognize a union if a simple majority of employees sign authorization cards (called “card check”). This takes away the current process of National Labor Relations Board (NLRB) supervised elections in virtually all cases. Second, the EFCA requires mandatory arbitration of the first collective bargaining contract if it has not been agreed upon within 90 days. Finally, it increases penalties against employers. That’s where the ball is.

The best guess today is that unions have plenty of support for this version of the bill in the House of Representatives, but do not have the 60 votes needed to get that legislation passed in the Senate. However, they are attempting to put together a derivative of the original bill in order to secure the 60 votes. Because these offshoots of the EFCA are the future, that’s where the ball is going to be.

| Current NLRA Process | Proposed EFCA Process |
|----------------------------------|---|
| Card-signing 30% Interest | Card-signing 50% + 1 Interest |
| Petition for Election | Petition for Election |
| 42-Day Campaign | 4-Day Campaign |
| Secret Ballot Election (50% + 1) | Secret Ballot Election (50% + 1) |
| Negotiations (No Guarantee) | Negotiations (130 Day Guarantee) |

Congress and the Employee Free Choice Act

Now that Al Franken is seated, the Democrats control 60 votes in the Senate. That is a critical number. Once there are 60 votes in favor of any piece of legislation in the Senate, the majority can vote to end a filibuster. Right now there are a number of moderate Senators who do not support the EFCA. That is why we are even discussing a derivative version of the bill.

Today unions are looking for a piece of legislation that 60 senators will support. The most critical of these senators is Arlen Specter of Pennsylvania. Arlen Specter used to be a Republican. Recently, he announced a



switch to the Democratic Party. Specter's vote is absolutely critical to get the super-majority required to stop a Republican filibuster.

Prior to switching parties, Specter gave a speech on the floor of the Senate making his position extremely clear about what he did and did not support with respect to amending the nation's labor laws. Basically, he is opposed to card check. He is opposed to mandatory arbitration as described in the EFCA but said he would support a process called baseball arbitration. Specter is in favor of the increased penalties.

Specter also supports allowing unions access to company property when they have achieved a minimum level of support by show of authorization cards. Currently, unions may generally access employees away from work but employers may only do so while employees are at work. Specter would allow union access to employees on the employer's property while they are at work under certain conditions. That is a major change in the current framework.

A number of moderate democratic senators have stated they either have problems with the current EFCA or are opposed to it outright. Each of these senators, like Arlen Specter, has said their opposition is not premised on resistance to any type of reform in America's labor laws. Instead, they say the EFCA is the wrong vehicle for reform and are open to other, less extreme, labor reform legislation. This is telegraphing to the labor community that they would vote for a compromise version. Arlen Specter is currently negotiating with Senator Tom Harkin from Iowa, the sponsor of the Senate version of the EFCA. They are looking for some sort of derivative version of EFCA legislation that can get 60 votes. The New York Times reported on July 17th, 2009 that they are close to achieving that acceptable "compromise" version.

Employer Requirements

What will the likely compromise look like?

1. Quick Elections: Today union election campaigns last about 40-days from the date a petition is filed until a secret-ballot election is conducted. During that period each side tries to educate the employees about the relative advantages and disadvantages of unions. Since there are a number of Democratic senators who have stated their opposition to card check, what seems likely is some sort of compressed election period.

Unions want to do everything that they can to prevent companies from talking to employees about unions. If they don't get card check, a compressed election period at least limits a company's opportunity to dispute the union message. The compressed timeframe will likely be between five and fourteen days. This drastically reduces the time employers have to effectively communicate with employees.

2. Union Access: A second major change employers should prepare for is some sort of union organizer access to employees on company property. Companies may also be required to disclose the content of their communication to employees. In addition, employers may be prohibited from holding "captive audience" meetings where employees are required to listen to an employer communication about unions.

3. Baseball Arbitration: Finally, companies should be prepared for some sort of interest arbitration requirement. Since Arlen Specter has already said he is in favor of baseball arbitration that may become part of any "reform" legislation. Baseball arbitration simply means that at the conclusion of negotiations, before there is an arbitration case, each party is required to present a final offer to the other party. That final offer is



shown to the arbitrator. The arbitrator simply picks one final offer or the other. Exactly when that interest arbitration would go into effect or what would trigger interest arbitration isn't clear. But it's likely that after some period of time, perhaps six months, unions will be able to invoke mandatory interest arbitration. It's possible that it would only be a remedy for bad faith bargaining. That is, the NLRB could order interest arbitration as a penalty. That dramatically changes the way bargaining agreements are negotiated under the current system. Thus, employers need to understand how interest arbitration works and how they communicate to employees about labor contract negotiations in this new environment.

STRATEGIES FOR BUSINESS: "LABOR RELATIONS JUDO"

As unions have watched their membership decline over the last several decades, they have learned this key lesson: when unions go head-to-head with a company that treats its employees well and communicates the facts about union membership vs. a direct relationship, unions generally lose.

Big Labor uses the rhetoric of trying to "level the playing field" to push for the EFCA and additional reforms. The result will be a field now decidedly tilted in favor of unions. What do you do when you walk onto the field, and your opponent is a big bully who has rigged the rules of the game, and is a relative of the referee? You use the momentum of your opponent against him, or what we call **labor relations judo.**

There are two aspects to employing an effective "judo" response, one structural and the other tactical. Let's look first at the structural aspects. What can a business do *before* the bully walks onto the field, to be proactive, to protect itself and make itself better able to resist union organizing activity?

STRUCTURAL PREPARATION

The three components of your structural preparation are:

- 1) A pre-built and pre-staged **Campaign Defense Plan**
- 2) A properly structured and trained **Campaign Defense Team**
- 3) An effective **Communication Pipeline**

Campaign Defense Plan Components

- **Role descriptions**
- **Action checklists**
- **Timetables and sequences**
- **Materials and use instructions**
- **Reference material**

ONE: Campaign Defense Plan

By the time you recognize the need for a counter-union organizing campaign, it will be too late to formulate a plan, determine the staff assignments, train staff to the details of the plan, and then execute. You will be organized by a union and choosing your collective bargaining team by then! Your plan must already exist, all staff must be trained, and all of the support materials must be pre-positioned to be available within minutes of the decision to execute. In the past, it was possible for many companies to wait until they faced the act of a filed petition for a union election before they sat down to formulate their counter organizing strategy. In the new labor law environment, that luxury no longer exists.



The Plan and all of its components need to be immediately accessible by everyone on the Campaign Defense Team, preferably via a secure website so you don't even have to wait for shipping the material. It is beyond the scope of this paper to describe all the details of your Plan, and it should be customized for your own organization. But whether you develop a plan from scratch or use a tool like our **Campaign-In-A-Box**, this is the type of Plan you need in place before union organizing activity hits.

TWO: Campaign Defense Team

The bulk of our discussion of structural components deals with the *people* involved in this process, because it is the hinge point of an effective strategy, and it is not well understood by many companies. The proper structure of a Campaign Defense Team has three layers.

Defense Team Layers

- **Jump Team™**
- **Facility/Unit Leads**
- **Tripwire Team™**

Layer One: Jump Team™

The first layer is the upper management group responsible for **driving the execution of the Plan**. This generally consists of staff from HR, operations, and administrative functions. We call this layer the Jump Team. The name is derived from the idea that where a company has multiple facilities or locations, this team may need to gather and deploy to the exact location where the union organizing drive is occurring, whether that is across town or across the country. This group is responsible for creating and/or customizing the Campaign Defense Plan to fit the needs of the location, maintaining a high level of readiness for Plan execution, and training the other layers of the Team.

Layer Two: Facility/Unit Leads

The second layer is what we call Facility or Unit Leads – this is the “tip of the spear” in your organizing campaign defense. At least one trained Facility Lead per location is required, and this person is often a plant or store manager. The Facility Lead is trained to **run the first 24-48 hours of the Campaign Defense Plan** upon execution, while the Jump Team assembles and proceeds to the location to take over upon arrival. The Facility Leads are generally trained by members of the Jump Team.

Layer Three: Tripwire Team™

In this new labor law environment where time is everything, the **third layer is the most critical component**. This layer consists of your front line supervisors and managers and is **the part of the Plan that almost everyone gets wrong**. There is some misunderstanding about the utilization of front line supervisors in a proper Campaign Defense Plan, and getting this right is critical to your success.

Although most companies know that supervisors are important, **most focus training resources on the wrong topics and provide limited resources to the topics where they should focus**. This is getting worse in the lead-up to the EFCA.



A front line manager’s job is a very difficult juggling act. They have one foot in the day-to-day operations, and the other in management. Many are promoted directly out of the hourly ranks and tend to relate better to their employees than they do to management. A weak or new supervisor will commonly respond, “I don’t know why those guys make decisions like this. They don’t really understand how things work but I can’t really do anything about it. I just have to do what I’m told.”

Through lack of ability, experience or training, frontline supervisors often fall into traps and make mistakes. When faced with the daily pressures of getting products out the door, maintaining high quality levels, responding to customer issues, and handling paperwork and reporting requirements, there is a tendency to gloss over mistakes and avoid learning opportunities.

The primary reason that people pay lip service to supervisor training is because it is a difficult task to implement effective training that doesn’t interfere with normal work processes, and that provides learning experiences that are quantifiable, memorable and actionable.

So what does this mean to your structural defense? How is it possible to add yet another layer of skill sets to your supervisors’ repertoire without overwhelming them, and decreasing their overall effectiveness?

**KEY CONCEPT:
TRIPWIRE TEAM™ TRAINING**
Reduce the scope of your labor relations training; create a “tripwire team” – then focus any additional training resources on creating a positive workplace.

The key is to reduce the scope of what you ask our front line supervisors to do. As far as union organizing is concerned, most companies try to make miniature labor law experts of these already over-taxed managers! As a labor attorney I can tell you this strategy is difficult to do well. Labor law is incredibly complex. In the next few months, even we labor lawyers are going to have a tough time advising clients because the law will be in such a formative state. Don’t misunderstand me. I’m not saying to avoid your labor attorney – quite the opposite, you’ll need your labor attorney on speed-dial. But limit the scope of your training, no matter who does it.

The NLRB is constantly moving the goal-posts based on its political make-up and various factual situations. Because labor law can be so fluid, don’t try to train supervisors to learn a bunch of labor law. This can even hold true for your upper management and HR managers.

What is the proper mindset when considering how to best utilize these front line supervisors in proper union organizing defense? **We suggest a concept called Tripwire Team™ Training.**

The idea of creating a “tripwire” is to train supervisors to recognize the sometimes subtle behavioral signs of union organizing, and then have them “push the silent alarm button,” so that the Jump Team can then enter the picture and ascertain the proper response. **We learned the effectiveness of this type of training by watching how supervisors react to learning about how campaigns actually work from the former union organizers on our team.** Once they get a picture of what is going on “behind the curtain” they begin to notice behaviors and vulnerabilities that they would ignore before.

What are the advantages of the tripwire approach? First, it’s easy to do. The training should focus on how organizers attack companies and what goes on behind the scenes. It should include simulation of exactly what’s happening when a union organizer picks out and begins meeting with employees. The focus should be



heavily weighted on employee behavior. This type of training teaches supervisors what types of behaviors are going to change inside their plant or facility when organizing activity hits.

An additional value of this approach is that beyond simply predicting union activity, focusing on behavioral issues will also provide early warning signs of other kinds of potential problems in the work place, from substance abuse and alcoholism, to harassment or bullying, to personality conflicts between employees.

Why does this work? There are certain behaviors that change when these types of events are going on behind the scenes. If you can train supervisors and managers to be skilled at recognizing the behavior change, you can get early warning of all of these events.

This type of training is different than standard “early warning signs” drill. We are not talking about stumbling across meeting notices of employees meeting off property, or finding authorization cards in the bathroom, or getting strange requests from employees. Those are indeed “signs,” but they are typically later-stage signs. **The early tip-off comes from observing behavior, not “things.” The idea is to understand what happens during organizing – the behind-the-scenes agendas involved – and then translating that into how it would present itself in workplace behavior.**

"In a world of quick elections, employers must be quick to recognize that they're in the game... You're not going to get a second chance in a world of quick elections."

LRI Consultant Joe Brock, former Teamsters Union Organizer and Officer

Here’s an example. Suppose a union meeting occurs one night, run according to typical organizer playbook. They are asked to do various things by the organizer – they are often told to keep things quiet and are encouraged to assume the worst about their management team. The employees who attended will behave differently the next day. If supervisors are properly trained to pay attention when “something doesn’t feel right” about how employees are behaving, we have created the tripwire.

The supervisor’s job is simply to notify the Jump Team of these incidents as they happen. If it appears that the unusual behaviors are more widespread and/or consistent over a period of time, it’s the Jump Team’s turn to drill down to get at the issues behind the behavior.

I’ve seen supervisors go through training on all the TIPS and FOE rules related to employee union communication, and the nuances of labor law. I’ve done the training hundreds of times myself. I’ve watched overburdened managers just shrink under the weight of labor law training, even when you try to make it as simple as possible. It’s complicated stuff. For somebody who’s not a lawyer, asking them to become comfortable talking about these issues when they’re worried that they’ll get themselves or their company in trouble, is asking a lot.

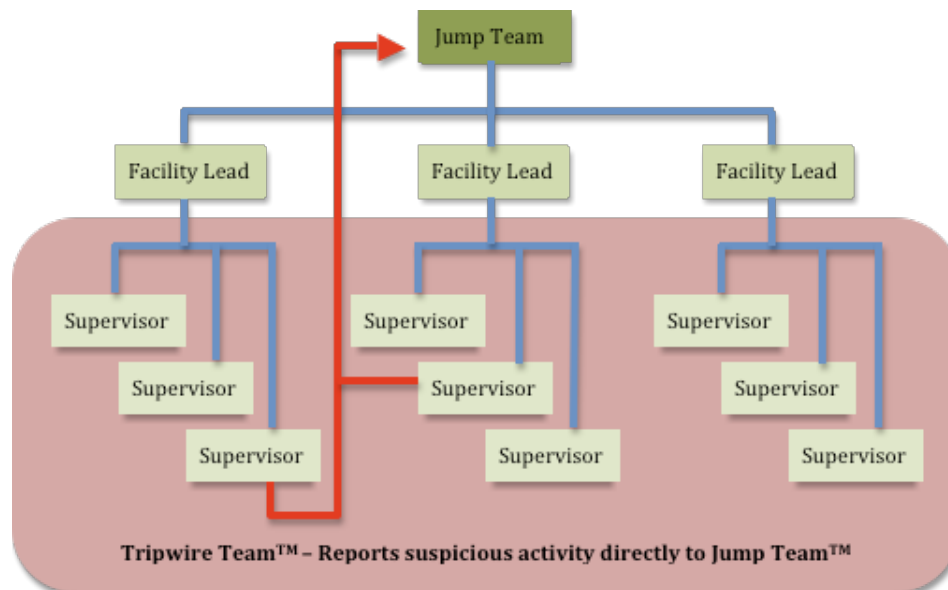
There are 3 critical advantages to implementing the Tripwire Team™ concept. First, supervisors are more likely to sound the alarm because a) they have no fear of messing up due to fear of legal liability, and b) they haven’t had to “cross the line” to management’s side in the eyes of their employees. **You are much more likely to get notice of activity under this Plan.**

Second, you know that issues get handled by the most skilled people available. The other problem with training supervisors to “handle” incidents with employees is that you may never learn about

these incidents. An over-confident supervisor will simply assume the issue is taken care of – even if it was handled poorly – and never give you the opportunity to know about the activity until it is too late.

Third, you can focus your training investment more productively. If you limit your labor relations training investment on the simple task of creating a Tripwire Team™, the rest of your training resources can then go into training them to be great supervisors. Talk to them about creating a positive work environment, teach them coaching skills, support them in being good managers, and don't worry so much about making them good at handling labor issues. The investment that you make in creating good positive leaders far outweighs anything that you're going to get in terms of labor law training.

The Campaign Defense Team then looks somewhat like the diagram below. Obviously, this structure is modified for the small or single-location company.



A note about chain-of-command. You'll notice that we describe the "tripwire" front line supervisors contacting the Jump Team™ rather than the Facility Lead when they suspect organizing activity. There are two reasons for this. First, it allows for the anonymity of the supervisors to their potential immediate superiors, thereby increasing the likelihood that they will actually respond appropriately. In other words, they won't be singled out as someone "crying wolf," or face the fear of retaliation from their immediate supervisor for drawing attention to a potential problem at the facility.

Second, it is possible that the Facility Lead may very well be a partial cause for the employee unrest creating the climate for organizing activity in the first place. Either way, if the front-line supervisors know they have the authority to respond directly to the upper management Jump Team™ group, it is much more likely that such reporting will actually happen. Part of the Jump Team™ training highlights this aspect, so that the nature of this feedback loop is protected.

THREE: Communication Pipeline

The final structural preparation involves a **communication strategy focused on rapid deployment.** There are two core capabilities required by the new environment: (1) the ability to distribute your messaging



quickly across your organization; and (2) the ability to respond to union organizing events at any location at any time.

For most companies, the Internet is key to developing or enhancing these two capabilities. A web-based hub as the repository for all communication and training materials – articles, videos, handouts, fliers, research, calendars, checklists and plans – provides immediate accessibility from almost anywhere to the information critical to every step in a Campaign Defense Plan. This hub is also dual-purpose. A visible front-end can be designed for constant communication and interaction with your employees. Materials can be pre-loaded to this front-end that remain hidden until needed (we’ll discuss this more when we get to tactics). A secure back-end can house all of the material and plans required by your Jump Team™ to engage in an effective counter-organizing campaign.

There are several advantages to implementing this strategy. **In a short-election environment, it is imperative to be able to communicate in a proper sequential or logical manner very quickly.** Holding onsite meetings, especially across a widely dispersed organization, may tax your management capabilities. In addition, **if equal access is a component of the law, you may need channels other than employee meetings through which to communicate.** In all cases, you will need a strategy that within minutes can make available a broad range of information and materials, both for the employees and for the team running the counter-organizing campaign. In our estimation, a web hub is simply the most effective means of achieving this end.

"There is a saying, 'a lie has speed, but the truth has endurance.' If I was a union organizer today, I would be salivating at the prospect of a quicker election... Whenever I got a quicker election [as a union organizer], I was always much more successful in winning those elections."

LRI Consultant Joe Brock, former Teamsters
Union Organizer and Officer

An additional process required in setting up such communication channels and venues is to “train” your employees in the way you want them to use these channels. Information should change regularly enough that they are always curious about what new material might be available. This is particularly the case with “pull” communication tools as opposed to “push” communication tools.

“Push” tools include newsletters, emails, text messages and employee meetings – employees will get the message unless they actively choose to ignore. “Pull” tools require the employee to seek out information – bulletin boards, and particularly web sites. **It is vitally important that the visible, employee-centric side of the web hub be a dynamic site – with new information available constantly.** Employees need to be in the habit of looking to see what’s new, and what is new should be apparent within a glance. Old-style, static web sites and pages are as useless for these purposes as a bulletin board that only gets changed once a year or so.

Another key is to **keep each new piece of communication short and to the point.** People are used to reading text messages, not essays! Short paragraphs, and pages consisting of only several paragraphs of text, are enough for one new piece of communication, or post. A short 2-3 minute video or audio clip. A link to a current news story with a bit of comment. Even if you have a longer message to deliver, break it up into sections and feed it out over time. You will dramatically increase your readership. Use pictures – maybe just the picture of a newspaper or ULP headline, or a recent strike or company that filed bankruptcy.

Also **focus on outside sources to strengthen your arguments.** Government documents, documents from the



unions themselves, information from the National Labor Relations Board, and media stories, interviews with union insiders, all lend credibility to your position. It is very persuasive. It's one thing to listen to the promises of a union organizer (a salesman) – it's another to encounter hard documentary evidence.

The ease with which you can lead readers to such outside, social proof is a core advantage of a web-driven strategy. In the blink of an eye, a reader can click on a link and instantly access outside corroboration of your point of view. Whether they are downloading a PDF of a union constitution, or reading the latest news story of a local corrupt union official, it greatly expands the value of your web material far beyond the content you place on your site, while at the same time increasingly the credibility of the content. Masters of persuasion and psychology, such as Robert Cialdini (author of *Influence*), tout heartily the power of such social proof. What this really reinforces in an organizing campaign is that there is valuable information from outside sources that should be explored before making a decision to sign an authorization card.

A properly structured and used web site can become the central hub for communication. Whether or not employees have access to computers at work, most now have access at home. Make the content sticky and interesting. There should be fun things that employees can do. There should be things that their kids or their spouses can do. It should be a place that is fun and engaging, and that people are going to return to. Finally, makes sure all the material is translated into all the languages spoken in your workforce – you'll have not time to translate materials if you are faced with a campaign event.

Interestingly, this “pull” communication can be converted by new technology into “push” communication, and because of the nature of the process, if done right it almost guarantees that the employees will access the material. The use of RSS feeds, and SMS (text) messaging can create a dynamic where every time a new piece of information is added to the site, the employees are notified of the addition or change. Because they are the ones selecting these options, they are much more likely to react to the alert and check in to see what the new information is all about. Using tools like “comments” and “send to a friend” adds to the stickiness of the site, and increases the likelihood that your employees will be frequent visitors.

Murphy's Law will dictate that you're going to find out about organizing activity at the worst possible moment, and you're going to have very little time to react to it. Having your material available at a moment's notice is going to be absolutely critical to have any chance of success. This is the value of the pre-built, pre-staged Plan we call the “Campaign In A Box.”

Here is how **an effective union organizing defense plan** is constructed in this new labor law environment:

- You have a complete, **pre-built and pre-staged Campaign Defense Plan** (Campaign-In-A-Box) that includes all materials and execution instructions, and a hub designed to provide access by each member of the Campaign Defense Team for the materials they need.
- You have an assigned and trained **Jump Team™ of first responders**, who know how to run the Plan from start to finish. This team typically consists of trained in-house personnel, usually from HR & Operations departments, often bolstered by outside legal or union consulting counsel.
- You have a point person trained at each facility (**Facility Lead or Unit Lead**) who knows how to implement the first 24-48 hours of the plan.
- All of your **front-line supervisors are trained as a Tripwire Team™** to alert the Jump Team™ that suspicious activity has been detected.



Here's how the system works in execution:

- A supervisor is suspicious of organizing activity, and contacts the Jump Team™
- The Jump Team™ investigates the potential, contacting other supervisors and comparing notes.
- Organizing activity is confirmed – Jump Team™ decides to execute Campaign-In-A-Box.
- Facility Lead is notified and is directed to go to the campaign site (web hub) to download and print the calendar and checklists for the first 48 hours, and to begin working through the checklists.
- Jump Team™ arrives on location to continue the campaign through conclusion.
- If the tactics below are executed correctly, a union organizer will quickly realize that he or she has lost the element of surprise, that your company is a “hard target” and that an election will never occur.

In a quick-election campaign environment, our system is your best chance of successfully defeating a union organizing campaign. Keep in mind that the union effort has typically been underway long before even the front line supervisors pick up on it and can spread the alarm. The union has the momentum. It takes dramatic and decisive action to counter that momentum. If you have implemented the structural changes in our system you can perform “labor relations judo” and snatch the momentum from the union. Your opponent is now looking up at the ceiling wondering what the hell just happened.

Next, let's discuss effective tactics required in the new labor law environment.

TACTICAL RESPONSE

With your Structural Preparation in place, you are now ready to focus on tactics. The “judo” move forces the union to respond to your very quickly implemented campaign. While the union tries to undo the damage your campaign inflicts on its support, you focus on the “union soft spots,” catching them off balance, and sending them packing! There are three tactics we want to highlight:

- 1) The Ladder of Communication Escalation
- 2) Your Campaign “In A Box”
- 3) Walking the Talk

ONE: The Ladder of Communication Escalation

We have used this metaphor to describe effective employee communication strategies for years. There are three rungs on this ladder.

The **First Rung** is the value of a direct relationship between an employee and his/her company. The focus here is on the opportunities that each employee has to communicate with various levels of management; the ability for employees to succeed in income and position by the value of their efforts; the synergy created by a team effort between employees and management that allows a company to excel against its competition, etc. The message is that the company is best positioned to prosper by maintaining this direct relationship, and that this also provides the best opportunity for employees to prosper.

The **Second Rung** is a discussion of the general nature of unions. This includes such issues as what a union authorization card is and what a signature on such a card really means; what it means to have a third party responsible for bargaining for employee benefits; how a union impacts the agility of a company; how strikes can impact both the company and the employees and how and why unions use strikes, etc. The idea is to present the general nature of what third-party representation brings into a company, and why it's important



that employees get the facts and consider all sides of the equation before they would ever sign an authorization card.

The **Third Rung** is intended to persuade employees in the midst of a union organizing drive that union representation is not the best option. This communication is direct, and can be specific to the union, and even the local, running the organizing drive. Included are “Lies Union Organizers Tell;” the true nature and risks of collective bargaining; the scope of union corruption (the more specific the better); the cost of dues to the employee and the costs of restrictive work rules to the company, etc. This often includes video testimony from former union organizers or union officials.

Under current law we’ve taught that the proper use of the “rungs” of this communication ladder was to start on rung one right at Employee Orientation, and reinforce that message constantly. Rung two started only if and when it appeared the company was in a vulnerable position for union encroachment. The assessment of vulnerability typically revolved around such issues as the overall economic climate, industry trends, geographic location, organization of the company, type and/or rate of recent changes within the company, and the recent activity of unions. Rung three started when a union organizing campaign was recognized, and for most companies, this occurred when a petition for union election was filed with the NLRB.

In a 5-day election environment, this sequence is no longer appropriate. The ladder must be compressed to be effective.

Companies should design a strategy for communicating on Rungs One and Two starting from day one of New Hire Orientation. The open discussion of unions needs to be made a part of the standard communication strategy. You want to make sure your employees know two key things:

- 1) signing a union authorization card can have tremendous consequences, like any legal document (a mortgage, a financing agreement, a will), and
- 2) there is a great deal of information that should be reviewed prior to making such a decision.

In other words, even if they don’t remember the details, they may remember that there are two sides to the story. If you have effectively driven home those two points, your employees will at least listen to your side of the story if/when a campaign starts in earnest.

An advantage to this strategy is that to some extent you are expanding the reach of your Tripwire Team™. If asked to sign a card, these employees are likely to head to their supervisors to start asking questions. Thus you’ve triggered your tripwire and the union has lost the element of surprise.

Further, because many employees will refuse to sign a card until they hear more, and have possibly alerted one or more supervisors, the union organizers will realize that this is going to be a harder target than expected. They just might end up deciding not to attack that company at all! Here is the first opportunity to

Campaigning Under “Equal Access” Rules

Some employers say, “I just won’t say anything about unions if it gives organizers access to my employees.” That is exactly what unions want.

The WORST response to “equal access” is to do nothing. It allows the union to run unopposed. A strong, fact-based education campaign is even stronger in the face of rebuttals by unions.

Once a campaign focuses on facts employees make the “pocketbook” decision. A debate – even in a quick election – focuses on facts.



capitalize on the judo maneuver. You reverse the union's momentum by already communicating appropriate information about unions and its potential impact on the lives of your employees.

As we discussed above under the structural considerations, you should be feeding this communication to your employees in an intentional manner. It should be interspersed with all of your other news and information: company updates, employee recognition, industry statistics, etc. And, it should be dispensed by the communication vehicles you intend to rely on if/when you need to ramp up your communication strategies in execution of your Campaign Defense Plan, such as email, newsletters, company meetings, and perhaps most importantly, your web site. Your employees need to be trained to expect a steady stream of content that they want to pay attention to.

There are many ways to communicate this content. You can use stories and examples. You can describe the structures that are in place, and explain all the different routes that employees can use to resolve issues. Describe humorous examples of how going in a roundabout way to solve a problem created more problems.

Share examples of things that you were able to accomplish quickly, about fast-prototyping and product launch successes, that allowed you to out-hustle the competition. Or share stories of how your employees resolved customer complaints quickly and directly, helping cement a customer relationship. These emphasize the value of a direct relationship without ever talking about unions.

TWO: Your Campaign “In a Box”

If you're a one-facility operation this is not nearly as urgent. But the key here is to make sure that you have all of your communications material ready to go. This includes both the materials you need to run your Campaign Defense Plan (checklists, handouts, videos, etc.), and also the “Third Rung” content that we just discussed. If you are a company distributed across a broader region, then as mentioned earlier, a web site is most likely the best repository for your materials.

All three Rungs of your communication ladder should be fleshed out now. If you are properly using your Communication Pipeline as discussed under the structural section, you are already dripping out content on Rungs One and Two, along with good Positive Employee Relations material. The key here is that most of your Rung Three content should also be prepared, and loaded into your pipeline, ready to go the moment it is needed.

There is very little Third Rung content that can't be prepared in advance, and can include articles, audio and video, just like your other content. You can always add data that changes regularly, such as current Unfair Labor Practice charges against the attacking union, local news clippings or recent financial data about that union, etc. When the time comes, LRI organizes and maintains libraries of such current data, so it can be delivered within hours as needed to bolster your communication strategy.

Determine what you will want to say that takes your Rung One & Two communication to the next level. Determine what unions are likely to target you. Find all the relevant content you can – articles, video, audio, cartoons – whatever. Organize the content, place it on your site, but keep it turned off until a union organizing campaign launches against you.

If your current web site technology doesn't allow you to pre-post content, then we highly recommend switching to one of the more dynamic web platforms that will allow this and all other Web 2.0 tools (such as the RSS and SMS tools we discussed earlier). Then, upon the start of an organizing campaign, it is only a



matter of minutes and these important messages are now visible and available to your employees. You can stagger the release in a particular sequence, or if time is really short, make it all available at once – the options are yours.

For those on the Jump Team™, all of the checklists and materials required to execute the Campaign Plan can be hidden behind password protected pages, or simply on another site. In this fashion, it is instantly available to any member of the Jump Team™ from any location. Included in this material is everything your front line supervisors might need to access to answer questions from their employees. Again, you haven't had to train them to be labor specialists. You've only had to train them to be tripwires, and shown them where to go to get the exact answers they may need during a campaign.

THREE: Walking the Talk

It is more important than ever to make sure that your leaders do what they say. **If there is a disconnect between your communication about how you value employees, and the perceived reality, then you are in trouble.** It is important to know *what* your employees value, and how well *they* believe you are doing in the areas that matter to them. You must have a method of constantly assessing whether there is a “saying-doing gap” between your conversations about your employee relations environment and how employees perceive that environment. Once you identify your employee relations weaknesses, you can focus energy in efforts that will pay big dividends. One of the best ways to assess your employee relations “blind spots” is an **Employee Engagement Survey**. In the end, the energy and investment you make into creating a positive workplace will not only help defend your organization from union organizer promises, but most important an engaged workforce will improve productivity, customer satisfaction and profitability.

BRINGING IT ALL TOGETHER

The labor law environment is shifting, placing the momentum in favor of union organizing. Shortened elections and equal access requirements will drastically change the nature of union organizing campaigns, and demand new strategies to effectively counter them. Mandatory arbitration increases the stakes in the outcome of these campaigns. The bully is about to swagger out on the field, knowing he has the referees in his pocket, and the rules rigged in his favor. Even though the investment may not be a current part of your business strategy, it will pay huge dividends in the future. **Take these actions now:**

- Identify a **Campaign Defense Team** and train it
 - Jump Team™
 - Facility Leads
 - Tripwire Team™
- Develop and **Pre-Stage your Campaign Defense Plan:**
 - Campaign-In-A-Box
 - Train your Defense Team in the execution of the Plan
 - Use a web hub to distribute the Plan
- Build or embellish your **Communication Pipeline**
 - Compress Rungs One & Two on the Communication Ladder
 - Develop all of the content required for Rung Three and stage it
 - “Train” your employees to access your Pipeline regularly



- Assess the **Congruence between your Rhetoric and your Work Environment**
 - Measure the gap with an Employee Engagement Survey
 - Implement High-Leverage Actions to close the gap

Labor Relations Institute can help with some or all of these components. You don't have to reinvent the wheel. With experience in over 10,000 union campaigns, and a track record of success (90%+), we know the bully perhaps better than anyone.

WHAT TO DO NEXT?

Want to know what your company looks like to a real former union organizer? Discover your vulnerability during our 30-minute Union Vulnerability Audit (it's FREE).

Our organization helps companies across the United States and Canada deal with union organizing events. Many of our consultants are actual former union organizers, so they know how things work from the other side because they actually did it. If you'd like to talk to one of our other former union organizers about your unique situation we'd be happy to set it up. We offer new clients a **FREE 30-Minute Union Vulnerability Audit** that we conduct over the phone with you and your key staff. Here is what we accomplish during this fast-paced, no-nonsense session:

- **What to Say About EFCA – and When to Say It:** Is it dangerous to talk to your employees about unions now? What should you say? Use our **simple test to decide whether it's safe for you to discuss unions now**. Plus we give you a script for talking to employees without fear of legal landmines (if you fail our simple test we even **suggest talking points** that don't mention unions).
- **Union Vulnerability:** Are you lying awake at night worried about whether a union organizer is making headway with your employees? We've helped hundreds of clients clear this hurdle **with three specific strategies you can easily implement**.
- **Layoffs and Dealing with "Toxic" Employees:** One or two "toxic" workers can tank your company, especially today where layoffs can trim the best performers while leaving the "knuckleheads" behind. But you can quickly and easily correct problems - **if you avoid this critical misstep**. We walk you through our **three-step process** (which takes literally about six minutes) and show you exactly how to carry this out. This will transform your work environment.

The **30-Minute Union Vulnerability Audit** is conducted by one of our former union organizer consultants, who have organized hundreds of companies and can tell you "from the inside" where your company is vulnerable. This consultation is not a thinly disguised sales presentation; it consists of the best intelligence we can supply in a thirty-minute time span. There is no charge for this call, but the call must be strictly limited to 30 minutes.

To secure a time for this consultation, please call Lisa Erwin at 800-888-9115 and she will advise you regarding available time slots. She will also provide you with a pre-consultation questionnaire that will prepare both you and us to get maximum value in the shortest amount of time.

About the Author:

Phillip B. Wilson is President and General Counsel of Labor Relations Institute, Inc. He also is an adjunct professor at Northeastern State University. He received his J.D. from the University of Michigan Law School and his B.A. (*magna cum laude*, Phi Beta Kappa), from Augustana College.



Mr. Wilson began his career practicing law in Chicago, where he represented companies nationwide in all areas of labor and employment law. He later served as the Director of Human Resources for a multi-million dollar gaming corporation employing over 1,200 people.

Mr. Wilson is a much sought after lecturer and the author of numerous books and articles on labor relations topics including *The Next 52 Weeks*, *Managing the Union Shop*, and *Model Contract Clauses*. He has been invited to testify in Congress on numerous occasions on the subject of union financial reporting requirements.

About LRI:

Labor Relations Institute, Inc. (LRI) is a consulting firm dedicated to protecting the direct relationship between employees and their employers. LRI provides the widest possible range of employee communications products, sophisticated databases and deep intelligence services. LRI clients can secure everything required to monitor their risk of unionization, build positive employee relations, train supervisors, and if necessary, run a winning campaign. LRI's acclaimed products and services have been used in more than 10,000 union elections with a win rate of over 90%.

LRI's **EFCA Tool Kit** is the only **EFCA-specific total communications solution** designed for employers which:

- **Educates company leaders** about the EFCA and its implications.
- **Trains your supervisors** to recognize and respond – quickly and effectively - to the earliest warnings of union card signing activity.
- **Informs your employees and new hires** of the dangers of signing a union card, and explains the advantages of a direct relationship.
- **Provides an instant response** presentation and a management action plan – a counter card signing campaign “in a box” - if union activity is detected.

The Tool Kit is current under the law in effect today. When the Employee Free Choice Act passes, all DVD's and other materials will be replaced to reflect the final provisions of the new legislation. **ALL REPLACEMENT MATERIALS WILL BE PROVIDED AT NO ADDITIONAL CHARGE.** To learn more about the Employee Free Choice Act and making your company a “hardened target” to unions with the EFCA Tool Kit, visit us at <http://www.lrionline.com/efca>

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