National Tooling & Machining Association
NTMA PRECISION
Business Management Advisory
For Precision Custom Manufacturers

LR06 **File: LABOR RELATIONS**

THE NLRB CAN WORK FOR EMPLOYERS, TOO

SUMMARY

NLRB elections and union campaigns are often puzzling procedures to small business owners. These two processes are frequently looked upon by business people as hopelessly weighted toward union interests - and, therefore, it doesn't pay for employers to "fight back." Nothing could be further from the truth, as this BMA indicates. By understanding how the NLRB operates and views union elections, an employer can design strategies to promote the company position and educate employees about the "other" side of unionization. But unless an employer understands how he or she can legally use the resources on hand, according to NLRB interpretations, there is a potentially fatal advantage to the union.

SOME OBSERVATIONS ON NLRB ELECTIONS

From time to time, employers express the opinion that unionization of their plants is inevitable, and seem to believe the success of unions in National Labor Relations Board elections show that an employer stands little chance of winning an NLRB election. A recent survey, however, indicates the following:

- Chances of employer success in a Labor Board election are not as poor as it is commonly believed.
- Many Labor Board elections are decided by a very small margin of votes.

The latest NLRB election report shows that unions won 48% of the elections in which they participated. In a significant percentage of the cases, a union was already acting as the collective bargaining representative of the employees and the election was the result of an attempt by a second union to secure a change of representatives through an NLRB election.

Next, an undetermined percentage of the cases involved situations in which a union was already representing the employees and no question concerning representation existed, but the employer or the union desired the legal protection of a formal "certification" by the NLRB, which can be secured only through an election.

Finally, an additional (and probably substantial) percentage of the cases involved situations in which an election was agreed upon or ordered by the NLRB, and the employer merely sat back and made no effort to persuade employees to vote against the union. (An affirmative vote for the union is almost a foregone conclusion under such circumstances).

What then can we say about an employer's odds in an NLRB election? Substantially better than 50-50.

THE LABOR BOARD'S "30% RULE"

Some interesting facts appear from an analysis of NLRB decisions. As you know, the NLRB will not conduct an election unless the union requesting it produces evidence that at least 30% of the employees have signed cards authorizing the union to represent them. You would, therefore, expect that such a union would almost necessarily secure at least 30% of the vote when a secret - ballot election is cast. This is not true in a surprising number of cases. Employees are prone to sign union cards when pressured to do so only because they want to be "good fellows," or because they feel obligated to a fellow employee who buys them a glass of beer or pays their bowling fee (usually from funds supplied by the union) or in many cases because of fear of violence or ostracism. But when the showdown comes, many of those employees cast their secret ballot in opposition to the union.

That conclusion is buttressed by an analysis of the latest NLRB election report. For the industrial group, including machine tool manufacturing, in better than one-third of the elections which the unions lost, they were unable to obtain 30% of the votes. And the figures show that when a union has signed less than 50% of the eligible voters to authorization cards, the union wins only 19% of such elections. This also suggests that it is in the employer's interest to use every and all possible legal means to forestall the union from signing employees to authorization cards.

THE IMPORTANCE OF A SINGLE VOTE

We have always stressed the importance of fighting for each single vote, whether it be in Labor Board or political elections. Particularly when the voting unit is small, the importance of securing every possible favorable vote cannot be overemphasized.

The law provides that a union must win a "majority representation."

This means that a "tie vote" results in a loss for the union. Unless you think that a tie vote is improbable, remember that in one recent case where there were some 20,000 eligible employees, the vote came out in an exact tie. Never lose sight of the fact that every vote is valuable.

MANY EMPLOYERS ARE STILL UNAWARE OF THEIR RIGHTS UNDER THE LAW IN OPPOSITION TO ORGANIZING EFFORTS

It is indeed surprising to find that many employers still are of the belief that during organizing attempts, they must "remain mute, like a sheep waiting to be shorn." Of course, that has never been the law.

The National Labor Relations Act, as amended now expressly permits that the expression of "any views, argument, or opinion or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of any unfair labor practice under this Act, if such expression contains no threat of reprisal or force or promise of benefit."

Within the above bounds (which require careful delineation), an employer is entirely free to express his or her opinions. (See BMA entitled "Employer Rights When the Union Tries to Organize Your Plant" for additional details.)

THE LABOR BOARD'S 24-HOUR RULE

In 1953, the Labor Board announced its so-called "24-hour rule," which is applied by the Board only in election cases.

The rule itself has been misunderstood by many. Basically, it provides that the Labor Board will set aside an election whereby an "employer or union makes election speeches on company time to assemblies of employees" within 24 hours before the election is scheduled to begin.

It is important to note that the rule does not prohibit speeches within the 24-hour period on or off the company's premises if attendance is voluntary and if the speech is made during the employee's own time. Nor does it prohibit distribution of literature or posting of notices during the prescribed period.

Remember that during this 24-hour period, however, you are perfectly free to talk with any of your employees as long as this is done on an individual basis. Don't be victimized and give up during this very crucial time in your campaign.

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