OFFENSIVE BARGAINING

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BARGAINING TACTICS FOR LEVERAGE

- Difficult employers
- How to win first contracts
- How to win successor contracts
- Defeat difficult issues
- Raise issues to our advantage
- Use the law
- Offensive and aggressive

- Legal Rights
- Use Status Quo
- Use Mandatory/Non-Mandatory and Illegal subjects
- Information Requests
- Bargain over difficult issues
- Create unfair labor practices
- Create uncertainty
- Create bargaining leverage

ABUSE OF BARGAINING RELATIONSHIPS

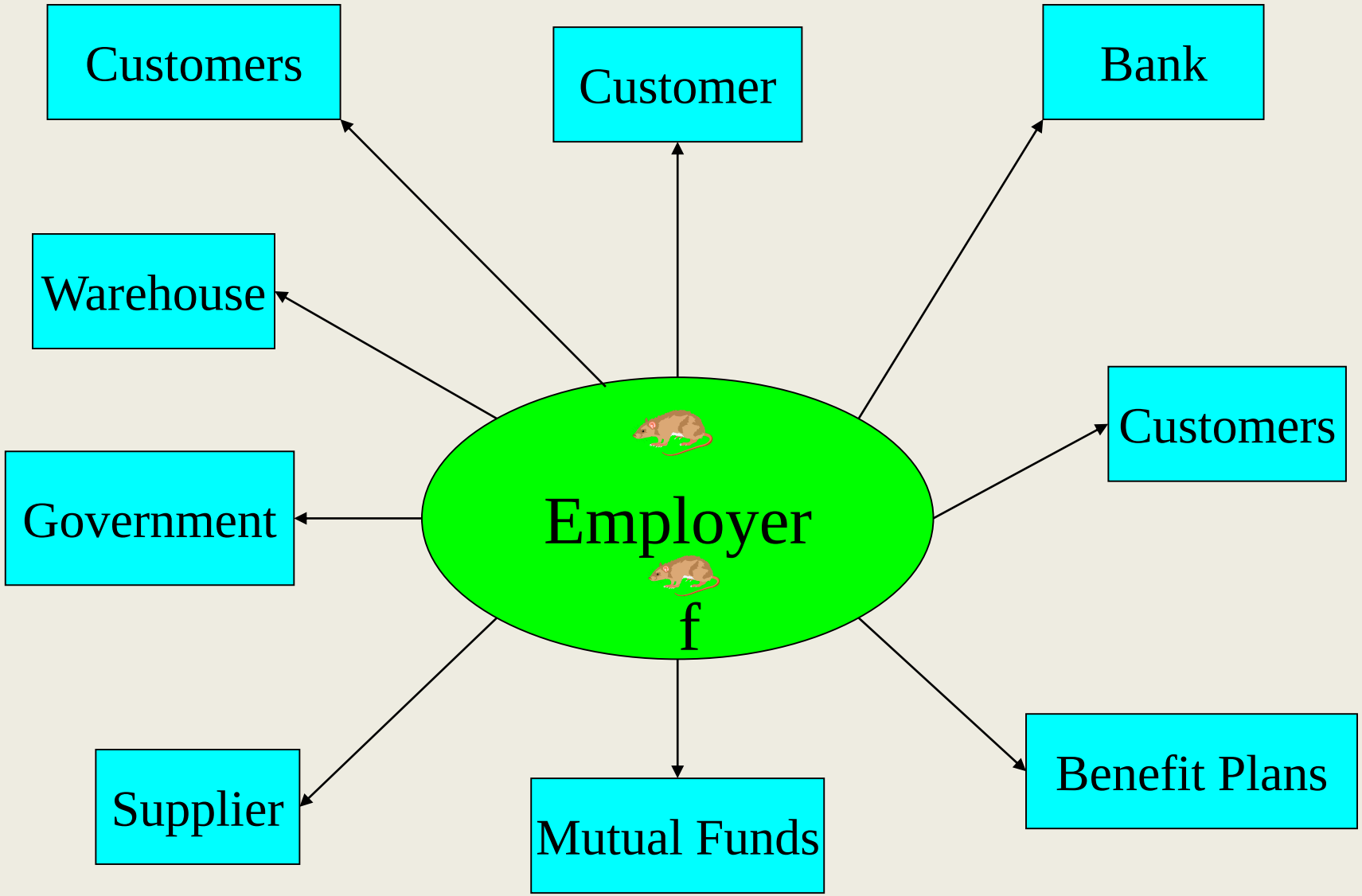
VARIOUS LAWS GOVERN BARGAINING

- NLRA
- RLA
- CSRA
- State laws
- No law

WE'VE LOST THESE WEAPONS

- Secondary boycott
- Sit Down strikes
- Quickie strikes
- Recognitional picketing
- Closed Shop
- Union security

Neutrals


Customers
Customer
Bank
Warehouse
Customers
Government
Employer
f
Supplier
Mutual Funds
Benefit Plans

Small road

r

Rat

gate

alley

Main road

Union and Main gate

EMPLOYER WEAPONS

- Lockout with temporary scabs
- Fire strikers for misconduct
- Encourage resignations
- Permanent scabs
- Hard Bargaining
- Two gate system
- Withdrawal of Recognition
- Weak NLRB

UNION WEAPONS

- Strike
- Limited boycotts

- How do we expand them?
- Comprehensive Campaigns
- Information
- Speech

- Technology

Section 9(a)

AGREEMENT MUST BE 9(A) NOT 8(F) ALLOWED IN CONSTRUCTION

AGREEMENTS OUTSIDE OF CONSTRUCTION ARE 9(A)

NLRA

THERE ARE RULES
WE CAN USE THEM TO OUR ADVANTAGE
OR IGNORE THEM AND LOSE

UNION CAN STRIKE ANYTIME

FIRST CONTRACT NEGOTIATIONS

No need for impasse or notice

LIMITS ON STRIKE SUCCESSOR CONTRACT

- After CBA expires
- GIVE 8(d) Notice-60 and 30
- Open contract pursuant to CBA
- Follow internal procedures
- No non-mandatory subjects
- Do not need impasse

LIMITS ON LOCKOUT

- 8(d) Notice-60 days and 30 days
- Party opens contract
- Contract has expired
- No ULPs
- Must be to support lawful bargaining position
- Does not end until union gives up

SECTION 8(D)

For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours and other conditions of employment, or the negotiation of an agreement or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession.

BARGAINING LAWS…

…DO NOT REGULATE SUBSTANTIVE TERMS

EXCEPTIONS

- Union security
- Hot cargo clauses

- ERISA
- HEALTH CARE
- FLSA
- STATE LAW-Minimum Standards
- Public Sector Restrictions

UNION OR EMPLOYER CAN MAKE DEMANDS AND STICK BY THEM

HARD BARGAINING

"does not compel the making of a concession"

EMPLOYERS INSIST ON IMPORTANT ISSUES

- Wages
- Benefits-Employer Control
- No Defined Benefit Plan
- Union security
- Seniority
- Merit system
- Management rights

UNIONS CAN DO OPPOSITE

- Insist on less important
- Even very unimportant
- So long as “mandatory”

- Can insist on unimportant issues
- Can insist on issues which management doesn’t want to talk about
- Raise technology and difficult issues

UNIONS CAN RAISE NEW AND DIFFICULT ISSUES

- Automation, Artificial Intelligence, Technology
- Harassment
- Temporary employees
- Customer control
- Data use and breaches
- Joint control of employees
- Immigration

MUST BARGAIN WITH INTENT TO REACH AGREEMENT

- "We will not sign an agreement."
- "We will never agree to anything."
- "We will not be union."
- "We will close the plant before we sign an agreement."

Must Bargain with Intent to Reach an Agreement

"WE WANT A CONTRACT, AS LONG AS IT IS ON OUR REASONABLE TERMS."

"WE NEED SOME SUBSTANTIAL CONCESSIONS TO REMAIN COMPETITIVE."

This is usually not truthful. They don't want a contract

SURFACE BARGAINING

- Useless doctrine
- Means bargaining with intent to avoid agreement
- Employers Can Do It Lawfully
- So Can Unions!

WITHDRAWAL OF RECOGNITION-FIRST CONTRACT

- After one year
- Objective evidence of lack of majority support
- Usually a petition signed by majority
- No employer involvement
- No ULPs which affect objective evidence
- Recognition bar reinstated
- Decertification election

WITHDRAWAL OF RECOGNITION-SUCCESSOR AGREEMENT

- Any time near end of 3 year agreement
- Any time after 3 year agreement
- Objective evidence of lack of majority support
- Usually a petition signed by majority
- No employer involvement
- No ULPs which affect objective evidence
- Recognition bar reinstated
- 8(f) when agreement expires

SUCCESSOR AGREEMENT

- Bargain union to impasse
- Members cease paying dues
- Implement last proposal
- Create frustration
- Withdraw recognition

Union is BUSTED!

DECERTIFICATION-NLRB ELECTION

- Any time near end of 3 year agreement
- Any time after 1 year of negotiations
- 30%
- Usually a petition signed by majority
- Employer can file “RM”
- No ULPs which affect petition
- Offensive Bargaining can defeat

BARGAINING PATTERNS

sectoral
Single employer-single union
Multi-Employer
Multi-Union
Consensual
Can Change
Historic Patterns
Coordinated bargaining

MULTI-EMPLOYER

- Consensual
- Withdraw time at end of agreement
- Withdraw before negotiations begin
- Cannot force employer out of group
- Can propose different terms for different employers or groups of employers

IMPASSE

- Parties deadlocked and not willing to move on important issues
- NLRB considers failure of bargaining
- Requires good faith bargaining
- Objective standard
- Permits Implementation of last proposal only
- Can implement part of last proposal
- Cannot implement anything different

UNION WEAPONS

OFFENSIVE TECHNIQUES

- Union engages in offensive bargaining
- Avoid impasse
- Create unfair labor practices
- Trap employer into unfair labor practices
- Take advantage of unfair labor practices
- Make bargaining more difficult
- Raise difficult issues

LEGAL ISSUES

- Status Quo
- Mandatory/Non-mandatory
- Illegal subjects
- Impasse/implementation
- Information requests
- Unfair labor practices
- Uncertainty

STATUS QUO

UNILATERAL CHANGES

NO CHANGES UNTIL

BOTH PARTIES AGREE ON THEM

OR

VALID IMPASSE REACHED

First contract and successor contract bargaining

No Changes

- Everything remains in place
- Wages, benefits and all working conditions
- Even after contract expires
- Very long time
- Contract defines conditions to remain in place

- *NLRB v. Katz*- Undermines Union to allow such changes before bargaining is completed

What is Status Quo?

- First Contract: employer's conditions as of date of recognition
- Dynamic status quo
- Status quo is all of the terms of the expired agreement except what can be changed
- Agreement is terminated but terms of CBA continue to govern
- Past practice-Raytheon/DuPont

EXCEPTIONS TO STATUS QUO

- **No-strike – No-lockout**
- Union security
- Arbitration
- Non-mandatory subjects
- Management rights clause
- Waiver of bargaining clauses

MANDATORY SUBJECTS OF BARGAINING

- Must bargain about
- Cannot refuse to discuss
- Cannot change and are subject to unilateral change doctrine
- Subject to information requests
- Do not have to reach agreement

MANDATORY SUBJECTS OF BARGAINING

WAGES	BENEFITS	OVERTIME	SENIORITY
VACATIONS	SAFETY	DURATION	GRIEVANCE
HOURS	SEVERANCE	PROFIT SHARING	LEAVES
DISCIPLINE	SUB CONTRACTING	ACCESS	DISCRIMINATION
DRUG TESTING	SUPER SENIORITY	MANAGEMENT RIGHTS	CLOSURE
NO-STRIKE	LOCKOUTS	BARGAINING UNIT WORK	UNION SECURITY
INCENTIVE PLANS	RULES	BULLETIN BOARDS	REST BREAKS
Technology	Social Media	Electronic Monitoring	Many other issues

MANDATORY SUBJECTS OF BARGAINING

- Safety shoes
- Use of elevators
- Hand soap
- Parking
- Microwave ovens
- Smoking rules
- Surveillance cameras
- Tool lists
- Vending machine prices

More Items

- Tools
- Parking
- Reimbursement
- Training
- Flu shot for health care workers
- Tattoos
- GPS
- Wearability devices
- Phone apps

PRICE AND SIZE OF POTATO CHIP BAG

THE VALUE OF
UNCERTAINTY

Toilet paper

- 2 ply to 1 ply
- Is this mandatory subject?
- Toilet paper challenge

Bargaining Over Discipline

Suspension, Demotions or Termination

Where Exercise of Discretion

Be Tactical-Wait to File a ULP

- Six months to file
- No need to file to engage in ULP strike
- No need to file to make point with employer
- Employer can remedy if you file ULP
- Can file and withdraw

Mid-Term

- During the Term. Unilateral change
- Deferred to Arbitration
- Arbitrator determines if change
- Language –Management Rights often used
- Collyer Doctrine
- Deferral Doctrine-8(a)(3)
- Can also be modification of CBA, 8(d)
  - Contract coverage doctrine

CONTRACT LANGUAGE

- “During the life of the agreement.”
- MOB
- “Will pay $$$ per hour.”
- “Annual increases”
- Increases on specified date.
- Contract requires status quo.
- Past Practice.

Force Employer to Bargain About Tough Issues

- Union can put on table difficult issues
- Technology
- Changes in work processes
- Subcontracting and outsourcing limitations
- Competiveness

NON-MANDATORY

ANOTHER UNION WEAPON

NON-MANDATORY

- Parties may bargain about subject.
- Parties may refuse to bargain.
- Parties can bargain and then stop.
- Must comply with during agreement.
- No unilateral change doctrine.
- Not subject to information request.

NON-MANDATORY OR PERMISSIVE

- Scope of bargaining unit
- Recording negotiations
- Benefits for retirees
- Waiver of access to NLRB
- Interest arbitration
- Internal Union affairs
- Membership in Union or management negotiation teams
- neutrality

NON-MANDATORY OR PERMISSIVE

- Settlement of ULPs
- Applicants
- Favored nations (sometimes)
- Waiver of past grievances
- Split up multi-employer or multi-union bargaining group
- Waive vested rights such as earned vacation
- Local negotiations/Modify master agreement
- modify agreement during term of agreement

NON-MANDATORY OR PERMISSIVE

- “Core Entrepreneurial Decisions”
- Closure
- Relocation
- Advertising
- Management Rights
- Technology
- Bargain effects but not decision

NO IMPASSE

NO VALID IMPASSE WHEN EMPLOYER INSISTS ON NON-MANDATORY SUBJECT OF BARGAINING

IMPASSE

- Union must put employer on notice that it objects to bargaining about non-mandatory subject.

Management's Rights

Except as otherwise expressly limited by any provision of this Agreement, the Employer reserves and retains its rights with respect to the management of its business in all of its phases and details, including, without limiting the generality of the foregoing, its rights to determine all matters the employer's operations and business; the methods, processes, equipment and materials to be employed; **the nature and extent of advertising, to determine what services to offer, to determine the price of the services,** the right to select the jobs it bids upon and to determine the work to be performed including work assignments....

Union Rights

Except as otherwise expressly limited by any provision of this Agreement, the Union reserves and retains its rights with respect to the representation of the employees of the business in all of its phases and details, including, without limiting the generality of the foregoing, its rights to insist that no changes be implemented in working conditions unless the employer first bargains and reaches written agreement with the Union before implementing any such changes. This includes all matters concerning the employer's operations and business which have a direct or indirect effect on wages, hours or any terms and conditions of employment. This specifically includes all use of technology, artificial intelligence or automation.

Zipper Clause

The parties agree that they have bargained about or had the opportunity to bargain about all subjects which have any affect or could have any affect on wages, hours and working conditions. They agree that during the life of this agreement they will not be required to bargain nor will they bargain about any subject or matter concerning or relating to wages hours our working conditions. All matters shall be governed only by the terms of this agreement. Neither party shall take any action which would trigger or allow any bargaining during the life of this agreement.

How would an employer react? What about members?

The Union and the Employer recognize that wages and benefits are not adequate to provide a decent standard of living. Employees shall be allowed to supplement their income taking home supplies and materials for their own use.

ILLEGAL SUBJECTS

- NLRA
- Union- 8(e), union security, members only
- Employer-State and federal laws governing employment
- State and federal laws governing the conduct of the business

ILLEGAL SUBJECTS

- Food and Drug
- Hours of Service-Drivers
- No following specifications
- False claims, cheat government
- Health care facilities
- Public Works
- Affordable Care Act
- Likely non-mandatory except effects

Illegal Rules

- Employer establish illegal rules.
- Union finds them.
- Union objects.
- Employer insists on rules.
- Violates 8(a)(1)(interference) and (5)(bargaining)
- Create problems for Employer.

Illegal Rules Under NLRA

- Employee handbooks
- No solicitation
- Confidentiality
- Social Media
- Media Contact
- No criticism
- Internet or intranet usage

Employees must discuss their problems or concerns with the employer before discussing their problems with outsiders or any other employee. Any employee who violates this rule shall be subject to discipline.

No solicitation

"No employee shall engage in solicitation for any purpose or organization at any time on the employer's premises."

"No employee shall engage in solicitation for any organization at any time unless permission has been granted."

Media Policy

- Employees may not discuss any company business with representatives of the media or respond to press inquiries. Only managers may discuss the company with the press. Any employee who violates this rule shall be subject to discipline.

Social Media Policy

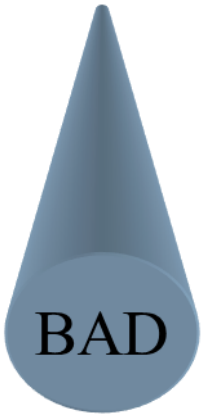
"Think carefully about 'friending' co-workers...on external social media sites."

"Report to management any unusual or inappropriate internal social media activity."

"Don't comment on any legal matters including pending litigation or disputes."

LIMIT ACCESS TO NLRB

"As a condition of employment, all employees must agree to use the employer's internal arbitration procedure for all employment related complaints."



Internet Use

- Purple Communications
- Only email now but can expand
- Only non-work time but can expand
- Does Employer Restrict Use?
- Monitor Use
- Ask for electronic storage
- Discrimination

Rules

- Cannot walkout without permission
- Courtesy to fellow employees
- Not talking to anyone about accidents
- Cannot return to premises before or after work
- Cannot disclose investigations

Proposal

The union proposes that _____ rule or practice be rescinded immediately.

If employer refuses to rescind, unfair labor practice

Further Aggressive Tactics

Proposal

The union proposes that _____ rule or practice be rescinded immediately.

If employer refuses to rescind, unfair labor practice

Put in Writing Everything

If either party requests, the agreement must be put in writing and signed. Section 8(d)
Examples:

List of items in vending machine
Schedules
Diagram of facility
Routes of each driver
Every detail

PARTIES MUST MEET AT REASONABLE TIMES AND PLACES

THIS MEANS NOT OVER THE PHONE.

Not Conference Call

Another Weapon

GUARANTEE

EMPLOYER WILL MAKE CHANGES

THE UNION HAS TO TO CATCH THE CHANGES!

NEVER, NEVER
AGREE TO IMPASSE

YOUR GOAL IS

ALWAYS TO
AVOID IMPASSE

UNFAIR LABOR PRACTICES

1. No good faith bargaining
2. No impasse
3. No implementation
4. Unfair labor practice strike
5. No lockouts
6. No withdrawal of recognition
7. No decertification

UNFAIR LABOR PRACTICES

STRIKES

Pickets

No Permanent Scabs

Quickie Strikes

For each and every unfair labor practice

BIG LIABILITY IF ILLEGAL IMPLEMENTATION

1. Back pay
2. Back benefits
3. Back payments to trust funds
4. Restore conditions
5. Unwind changes

OFFENSIVE TACTICS

- Apply pressure to employer
- Catch employer mistakes
- Make bargaining difficult
- Use law to apply pressure
- Avoid strikes
- Unfair labor practice strikes

ANOTHER GREAT UNION WEAPON

INFORMATION REQUESTS

EMPLOYER MUST SUPPLY INFORMATION NECESSARY AND RELEVANT TO BARGAINING

Very, Very Broad Right to Information

INFORMATION REQUESTS

THE THEORY IS THAT PART OF BARGAINING IS TO EXCHANGE INFORMATION TO SUPPORT POSITIONS AND TO REACH AGREEMENT

INFORMATION REQUESTS

BE VERY AGGRESSIVE

REQUEST ALL NECESSARY AND RELEVANT INFORMATION

THE REQUEST ITSELF WILL FORCE THE EMPLOYER TO RETHINK ITS POSITION

INITIAL REQUEST

FOR PURPOSES OF BARGAINING PLEASE PROVIDE THE FOLLOWING INFORMATION: FOR THE PERIOD _____ _____TO PRESENT.:

1. A LIST OF CURRENT EMPLOYEES INCLUDING THEIR NAMES, DATES OF HIRE, RATES OF PAY, JOB CLASSIFICATION, LAST KNOWN ADDRESS, PHONE NUMBER, DATE OF COMPLETION OF ANY PROBATIONARY PERIOD, AND ANY RECORDS OF DISCIPLINE.;

2. A COPY OF ALL CURRENT COMPANY PERSONNEL POLICIES, PRACTICES OR PROCEDURES;

3. A copy of all company fringe benefit plans (including the plan document and summary plan description) including pension, profit sharing, severance, stock incentive, vacation, health and welfare, apprenticeship, training, legal services, child care or any other plans which relate to the employees;

INFORMATION REQUESTS

1. Always ask for more than you think you are entitled to
2. Don't ask for everything at once
3. Justify requests
4. Goal is to have employer refuse or delay in providing

INFORMATION REQUESTS

- Burdensome
- Create delay
- Avoid impasse
- Create unfair labor practices
- Obtain information which reveals ULP's
- Obtain information to be used against employer

HEALTH AND SAFETY ARE MAJOR CONCERNS OF THE UNION. WE ASSUME THAT THE COMPANY AGREES WITH THESE CONCERNS. THE COMPANY RULES STATE THAT SAFETY IS A PRIORITY.

IN ORDER FOR THE UNION TO DETERMINE WHETHER CONDITIONS ARE SAFE, THE UNION NEEDS THE FOLLOWING INFORMATION: UNLESS OTHERWISE STATED THE INFORMATION NEEDED IS FOR THE PERIOD _____ _____ TO PRESENT. IF THE MATERIAL IS NOT AVAILABLE, PLEASE LET US KNOW. IF THE REQUEST DOES NOT PERTAIN TO YOUR BUSINESS LET US KNOW:

1. COPES OF ALL OSHA 300 LOGS.

2. COPIES OF ALL OSHA FORM 101.

3. COPIES OF ALL MONITORING AND EXPOSURE RECORDS. (SEE 29 C.F.R.§ 1910.20)

4. COPIES OF ALL FORM R (EPA FORM R).

5. COPIES OF ALL TIER I AND/OR TIER II REPORTS OF NON-EXTREMELY HAZARDOUS SUBSTANCES AND/OR EXTREMELY HAZARDOUS SUBSTANCES THESE ARE ALSO KNOWN AS EMERGENCY AND HAZARDOUS CHEMICAL INVENTORY FORMS (TIER I AND II)

6. COPIES OF ALL REPORTS FILED WITH THE GOVERNOR'S OFFICE OF EMERGENCY SERVICES.

7. Copies of all records required to be kept by OSHA. Included are those records which must be kept according to 29 C.F.R. §§ 1910.803; 1910.1018; 1910.1001; 1926.58; 1910.1003; 1910.1004; 1910.1007; 1910.1008; 1910.1009; 1910.1010; 1910 1011; 1910.1012; 1910.1013; 1910. 1014; 1910. 1015; 1910.1016; 1910. 1017; 1910.1028; 1910.44; 1910.1045; 1910. 1047; 1910. 1048; 1910.1450; 1910.1029; 1910.142; 1926.251; 1926.404; 1926.800; 1926.803; 1910.1043; 1926.900; 1926.903; 1926.905; 1910.160; 1910.157; 1910.218; 1910.272; 1910.120; 1910. 179; 1910.180; 1910.181; 1910.268; 1926.550; 1926.552; 1910. 1025; 1910. 66; 1910.68; 1915.7; 1915.12; 1915.113; 1915.172; 1917.23; 1915.25; 1917.45; 1917.116; 1917.117; 1918.61; 1918.93; 1919.10; 1919.11; 1919.12; 1910.95; 1910.217; 1910.96; 1910.134; 910.184; 1910.159; 1910.268; 1910.423; 1910.430; 1910.440 and 1910.255.

MORE EXAMPLES

SENIORITY:
BOSS STYLE

- PROMOTIONS, LAYOFFS, RECALLS AND BIDDING SHALL BE BASED ON SKILL, ABILITY, COOPERATION, ATTENDANCE and PRODUCTIVITY ALL JUDGED IN MANAGEMENT'S DISCRETION.

- SENIORITY WILL BE CONSIDERED ONLY IF ALL FACTORS ARE EQUAL.

SENIORITY: UNION STYLE

- PROMOTIONS, LAYOFFS, RECALLS AND BIDDING SHALL BE BASED ON STRICT SENIORITY BASED ON DATE OF HIRE

Provide this information for the last 5 years:

1. Provide a list of all employees who have been promoted, laid off, recalled or allowed to bid showing why each person was chosen.
2. Describe which factors you took into account on each occasion for each employee.
3. Provide a copy of each evaluation for each employee.

4. Describe the skill, ability, cooperation, attendance and productivity each employee.

5. Compare the skill, ability, cooperation of every employee with all other employees in the bargaining unit.

Employer response:

- Employer will ask that request be in writing
- Employer will ask that union pay costs.
- Employer will ask for confidentiality agreement.
- Employer will ask for information from union.
- Ok let's bargain.
- Delay's employer goal.

UNION COUNTER RESPONSE

- BARGAIN OVER EACH ISSUE BECAUSE THIS MEANS MORE DELAY AND EXPENSE FOR EMPLOYER
- NO IMPASSE UNTIL YOU GET INFORMATION AND HAVE HAD A CHANCE TO REVIEW IT

Competitiveness

- Employers use this rather than claim inability to pay.
- Truitt: If inability to pay, financial books and records must be made available.
- Employer claims "Competitiveness."
- What is present inability to pay?

1. LIST OF ALL COMPETITORS
2. CUSTOMERS YOU HAVE LOST
3. CUSTOMERS YOU WILL LOSE
4. PRICES FOR GOODS/ SERVICES
5. COMPLAINTS BY CUSTOMERS
6. ALL BIDS OR PROPOSALS

Investment

- Where is product made elsewhere?
- Business Plans
- IT Department
- Investment strategies
- Visit other plants
- Machinery repair, status
- Sales figures
- Production

Other Locations

- What made?
- Costs?
- Wages?
- Benefits?
- Investments?
- Improvements?

- **What Can the Union request that the employer will refuse to provide?**

  Be creative!
  No harm in asking.
  Be ready to justify.
  Remember uncertainty

Employer Requests in Response

- Dangerous for employer.
- Takes time to respond.
- We get to negotiate over requests.
- Can show bad faith.

TERMS of Contract or Employer Policies

"qualified"

Form of management rights

Examples

- “Qualified volunteers”
- “Minimally qualified”
- “Minimal qualification standards for such jobs”
- “Minimal qualification standards for classifications”
- “pre-qualified”
- “If minimally qualified”

DISCIPLINE

Mandatory Subject

Every Incident

DISCIPLINE
New NLRB Case

Norma Rae was given a one day suspension for being two minutes late yesterday. You must bargain before you impose any similar discipline in the future. Call us if you are thinking about any form of discipline and we will arrange bargaining sessions to discuss the proposed discipline.

In order to bargain about the discipline, Please provide the following for the last 5 years:

(1) A list of all employees disciplined including warnings, suspensions, terminations

(2) Copies of all discipline for the last 5 years.

(3) A statement of the reason for the discipline of Norma Rae.

(4) Attendance records, time cards and attendance policies for the last 5 years.

(5) All records of discipline including witness statements.

Witness Statements

Piedmont Gardens-New case

Provide list of witnesses

Provide Witness statements

New and Creative Issues

- Work-Family Issues
- Family Responsibility Discrimination
- Wellness Programs
- Electronic Monitoring
- Bullying in the Workplace
- Sexual Orientation, Gender Expression Discrimination
- Data retention.

New and Creative Issues

- Use of data generated by employees
- Share tax cuts
- All apps and programs used to monitor employees
- Same for work processes
- Plans no matter how far in future to change work

MERIT SHOP SYSTEM

- The Employer shall pay a minimum wage to all employees. All wage increases shall be based on merit determined solely in the Employer's discretion. The amount shall not be subject to grievance or bargaining.

WHAT FACTORS?

Ability	Loyalty	Attendance
Experience	Skill	Aptitude
Training	Discipline	Intelligence
Innovation	Spirit	Fealty
Motivation	Productivity	Speed
Cooperation	Attitude	Expertise
Punctuality	Sophistication	Proficiency
Adroitness	Finesse	Cunning
Versatility	Flexibility	Hygiene
Knack	Discretion	Body odor

AS TO EACH FACTOR:

Rate Each Employee
On A Scale Of
1 to 10

Lutheran Heritage/Boeing

- How would reasonable employee read rule?
- If implemented in response to protected activity
- Prohibits section 7 activity on its face

- Now balance employer and employee interests
- Implementation still unlawful in response to section 7 activity
- Prohibits section 7 activity on its face

Lutheran Heritage/Boeing

- Ask for each use of rule.
- Ask for all drafts of rule
- Ask how each will be applied.
- Ask for each incident where not applied.
- Facts supporting business justification
- Bargain each rule

Confidential or Proprietary Information

- Mandatory or non-mandatory?
- What information is confidential?
- What information is not confidential?
- How does employer ensu
- re confidentiality?
- What confidential information has been inappropriately disclosed?
- Who has access to what information?
- How does employer identify each item of confidential information?
- Bargain over confidentiality of each item.
- Great leverage

INFORMATION REQUESTS TO ASSIST GRIEVANCE PROCESSING

Information to assist Grievance Handling

- Payroll records
- Discipline records
- Statement of reason for discipline
- Witnesses and witness statements
- Jobsite visits
- Evidence in support of employer or union contention
- Two-way street

Contract Clauses to Protect the Union and Organize

Disaffection Petition

The Employer agrees that should it receive any information suggesting that any of its employees no longer support the Union, the Employer will provide that information to the Union within 24 hours of receipt of the information. The Employer furthermore agrees that it will not take any action including the withdrawal of recognition until 30 days after providing such notice to the Union. During that time if the Union offers to present or does present evidence that it actually represents a majority of employees, the employer will disregard any information previously received.

Withdrawal of Recognition

The Employer agrees that it will not withdraw recognition from the union during the term of this agreement.

The Employer agrees that it will not withdraw recognition from the union at anytime unless a certification has issued in an election conducted pursuant to section 9 of the Act in which the employer did not assist or in anyway cause or encourage the election petition to be filed.

Potential Supervisor Issues

The employer will not give authority or responsibility to any employee in the bargaining unit to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action.

The parties have agreed upon the attached job descriptions. These job descriptions are intended to describe the authority and responsibility of the employees in each job classification. The employer will not add or subtract any duties or responsibilities to these job descriptions

Bargaining for Neutrality, Recognition

- Non-mandatory
- “vitally affects”
- Transfer of employees
- Transfer of work

- 8(e) problem

Information Regarding Non-Union Locations

- Wage Rates
- Work performed
- Equipment
- Processes
- Benefits
- Investments
- Visit sites

Right to Shirk, Janus

- Mandatory orientation
- Union representation on public boards
- Lost time
- Offices, bulletin boards, lanyards, screen savers, logo
- Public speech in favor of union
- Benefits representatives paid by employer

UNILATERAL CHANGES in EMPLOYER BENEFIT PLANS

SINGLE EMPLOYER PLANS

- Pension
- Health and welfare
- Insurance
- Vacation
- 401(k)
- ESOP
- Training
- Severance
- Life insurance

Pyett

- The grievance procedure shall be the exclusive remedy for all claims under the contract and all claims by bargaining unit members of all claims brought under any state or federal law except workers compensation claims.

OTIS SPUNKMEYER AND PROFIT SHARING

EMPLOYEE HANDBOOK

The Employer maintains a profit sharing plan for the benefit of all employees. Each year management will contribute to that Plan an amount determined by it in its sole discretion based upon the profit of the company and such other factors as it determines.

Confidentiality Rule

You must maintain all information about employees and customers in strict confidence You may not disclose such information to persons outside the company. Any violation of this rule will lead to immediate discharge.

Otis Spunkmeyer

UNFAIR LABOR PRACTICE

LOCAL UNION NO XXXX

SANCTIONED

Note Also: Illegal Subject!

SPD

Summary Plan Description

Eligibility:

You are not eligible to participate if your terms and conditions of employment are governed by a collective bargaining agreement.

OTIS SPUNKMEYER

UNFAIR LABOR PRACTICE

LOCAL UNION NO XXXX

ELECTIVE

(1) Elective Deferrals which means all

that you take out of your wages and

put into the plan up to the legal limit.

NON-ELECTIVE

(2) Non-elective deferrals which means : An amount established by the Employer each year in an amount proportionate to the amount of your wages which you elect to defer for the year.

DISCRETIONARY AMOUNT

(3) A discretionary amount determined at the end of the year in management's discretion which shall be distributed in a proportionate amount according to the amount you earn during the year.

Dear Otis:

Please provide your profit and loss statements for the last 5 years. Thanks.

Your Friendly Union.

Dear Otis:

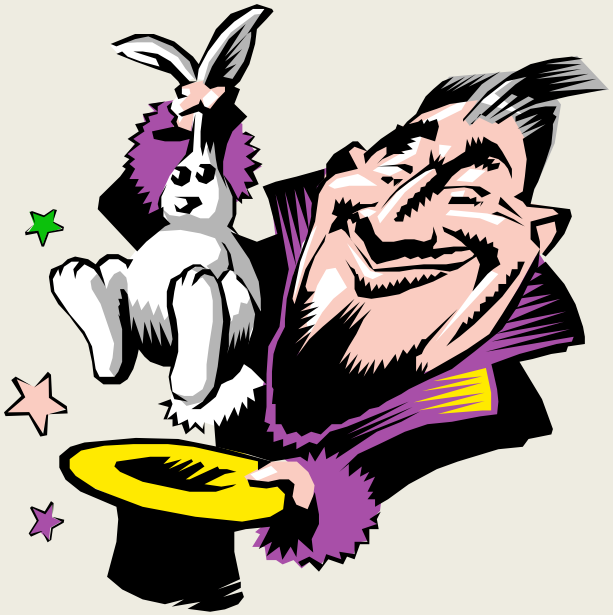
Please do not put any money into the Profit Sharing Plan as a discretionary contribution without bargaining with us as to the amount. Thanks.

Your Friendly Union.

OFFENSIVE BARGAINING

- Avoid impasse
- Create unfair labor practices
- Maintain status quo
- Avoid decertification or withdrawal of recognition
- Make employer very miserable
- Win

THE BEGINNING



- Now go perform some magic
- Be more offensive