

LITTLER MENDELSON®

A PROFESSIONAL CORPORATION

CHICAGO

MEMORANDUM

TO: Dart Supervisors  
FROM: David L. Christlieb  
DATE: June 28, 2004  
RE: Dos & Don'ts

It is extremely important that supervisors and other management personnel know what you can and cannot say on the issues. The following list is provided as a guideline for use by you and your supervisors during any employee initiated decertification effort.

YOU CAN:

- ① Tell your employees that the Company prefers to be nonunion and that you would like them to vote "NO" [a "NO" vote is a vote against the union in an NLRB election].
- ① Tell your workers that they are free to support the union or not, as they see fit, but you hope they will vote against it.
  - Emphasize that you are not asking employees about their union views or activities, but that you need and want their support.
  - Answer employees' questions about Company policies and discuss the campaign issues, providing you don't threaten reprisals, promise benefits or interrogate them about their union views.
- ① Inform them that if they become members of the union, they will have to pay monthly dues to the union, as well as possible fees, fines and assessments.
- ① Assure them that union or no union, management is going to continue to try to make the Company a good place to work.
- ① Tell employees that there is no reason to think that past progress in wages and working conditions will stop if there is no union. To keep competitive, the Company must continue moving ahead, union or no union.

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- Refer to the union's financial reports (which we can provide to you) and tell employees that if they become union members, much of their dues will be going to pay the salaries and expense accounts of union officials.
- Explain to employees that they will be required as union members to follow the orders of union officials; they will effectively have another "boss."
- Advise the employees that if they become union members, they will have to obey all the union rules found in the union constitution and bylaws.
- ⑥ State that the Company prefers to continue to deal directly with its employees, without intervention by an outside union that has no real interest in the success of the business.
- ⑥ Tell the employees that if they select a paid agent to represent them (the union), the Company will probably have to hire lawyers or other experts to represent the Company. This will be an expense to both of you, and you would rather iron out problems with the employees directly, while both of you keep your money.
- Answer questions from anti-union employees about what they can do to oppose the union, by telling them of their legal right to actively campaign against the union, provided they observe the same rules imposed on the other employees. However, the Company is legally prohibited by law from giving financial assistance to anti-union employees.
- Explain to employees that good faith negotiations can lead to higher wages and benefits, the same wages and benefits, or lower wages and benefits than they now receive.
- ⑥ Tell the employees that you would bargain with the union in good faith and do everything humanly possible to avoid strikes; but if the union called an economic strike, the Company would have the legal right to hire permanent replacements for such strikers.
- ⑥ Point out the indirect costs of unionization that you want to avoid: executive time spent in bargaining sessions; working time of employees spent on union business; cost of hiring lawyers and other labor relations experts. Money spent for such costs obviously cannot go to the employees in higher wages.
- Inform the employees that strikers are not eligible for unemployment insurance compensation benefits. Remind them that they do not get paid by the Company while striking.
- ⑥ Listen sympathetically to employee problems and grievances, but explain to employees that you are legally prevented from making promises of new benefits during the union campaign.
- Enforce lawful no-solicitation, distribution, and access rules, without discrimination between pro-union, anti-union and nonunion activity.
- Immediately report any union threats or intimidation of employees. Charges can then be filed with the NLRB if the coercion is substantiated.

- Administer appropriate disciplinary action for any employee threatening or coercing other employees, whether for or against the union.
- Request union officials to leave the Company's property where you have a lawful no-access rule that is also applied against non-employee solicitors who are not connected with a union. Escort them off the property. Call the police to have them removed if necessary. However, this should be a last resort because you should avoid confrontations.
- State that under most union contracts, employees are expected to take their grievances up through union stewards or agents and not to management directly. The union can usually veto the grievance somewhere along the line. Without a union, employees can take their problems as far up as they have the fortitude to go, and no union official can turn thumbs down on their right to go to management.
- Remind employees that every person put between you and the person you are trying to talk to makes it more difficult to get your point across. Why not dispense with the middleman and talk directly with each other?
- Explain to employees all of the benefits they presently enjoy. Where these benefits compare favorably with the term of a union contract, be sure to emphasize that fact.
- Remind employees that unions can fine members who cross union picket lines, that the union can sue in court to collect the fines, and that judgments for union fines are enforceable through garnishment and attachment, just like any other court judgment.
- Tell employees that signing a union authorization card does not commit them to vote for the union in an NLRB election.
- Inform employees that during the 12 months following certification of an NLRB election which is won by a union, the employees cannot vote the union out in another NLRB election, and if a contract is signed during this period, it acts as a bar to decertifying the union for up to three more years.
- Tell employees about any bad experiences you personally have had with union, but be factual and assure them you are not saying that such things would necessarily occur here.
- Refute any untruths in the union's propaganda.
- Emphasize that your employees are free to vote either for or against the union. The Company will not retaliate in any way against union supporters; thus, there is no reason to vote for the union simply to protect the jobs of open union adherents.
- Tell the employees that you respect their right to do as they wish, but you personally prefer not to have a union at your Company, and you hope they will reject the union.

- Tell employees that there will be no automatic pay increases, no automatic improvements in fringe benefits, and no automatic union contract if the union wins an election. Everything will depend on what happens in collective bargaining negotiations.
- Tell employees that the Company does not have to agree on a contract or on any certain pay or benefits just because some other company has agreed to them.

YOU CANNOT:

- Fire, reprimand, assign to less desirable jobs, or otherwise prejudice the employment status of a worker because of his or her union views or sympathies (or because he or she complains about working conditions).
- Threaten employees in any way to deter them from union activity.
- Retaliate against employees who file NLRB charges or give testimony to the NLRB.
- Say you will close down the Company or move it to another location if your employees vote for the union.
- Cut out employee privileges, suddenly crack down on tardiness or absenteeism, institute tougher work rules, or otherwise attempt to punish employees for union activity.
- Question employees about their union views, activities, or sympathies.
- Question employees about the causes of their dissatisfaction and expressly or impliedly promise to make corrections.
- Ask an employee if he or she has signed a union "authorization card," or attended a union meeting, if he or she intends to, whether other employees have, or why anyone has done so.
- Question an employee as to how he or she is going to vote in an NLRB election.
- Promise or grant employees pay increases or new benefits during a union drive for the purpose of making unionization less attractive to them.
- Engage in spying on employees concerning their union activities. (For example, standing or parking outside of a union meeting place.)
- Give workers the impression you are engaging in spying on their union activities.
- Enforce Company rules strictly against union supporters, while being lenient toward pro-Company employees.

- Connive to make a union supporter quit his job by purposely assigning him undesirable work, or by deliberately imposing intolerable conditions on his employment so that he is pressured into quitting.
- Visit employees at their homes to systematically solicit their support against the union.
- Sponsor or circulate an anti-union petition among the employees.
- Take a poll of employees to see what their views are concerning unionization. (The NLRB has permitted pre-recognition polls in limited circumstances. We could discuss polling limits further, if you believe one may be beneficial.)
- Interview employees in your office one at a time or in small groups concerning their union views or opinions.
- Solicit or assist employees in revoking authorization cards or in resigning from the union.
- State flatly that you will never bargain with the union.
- Say that before you will have a union at the Company you will move, shut down, or go out of business.
- Tell employees that you will definitely never grant the union's demands and that there will definitely be a strike.
- Prevent employees from talking with each other about the union, handing out or signing union cards during their non-work free time, including before and after work, at lunch, or during break times.
- Prohibit employees from passing out union literature in non-working areas on their own non-work free time.
- Stress the inevitability of strikes and incessantly dwell on the probability of violence and personal injury, particularly where the information you mention relates to a different union than the one seeking support from your employees.
- Base your campaign on an emotional appeal rooted in racial prejudice.
- Misrepresent NLRB processes or procedures.
- Promise or give employees special favors for influencing other employees against the union.
- Use third parties in the community to threaten employees or coerce them because of their union activities.

- Carry out necessary layoffs in such a manner as to deliberately weed out union supporters.
- Question employment applicants as to whether they are or have been union members.

The above list does not purport to be exhaustive or all-inclusive, but attempts to cover many of the more common situations and questions that may arise. If you are confronted with a problem for which you do not have the answer, do not hesitate to call me. Needless to say, you should not answer any questions if you are unsure of the answer. Rather than take a risk, simply tell the questioner honestly that you don't know, but that you will get back to him with the answer. We can then discuss a proper and lawful response, which can be relayed to the questioner. I strongly recommend that all employee questions about the union receive a full and prompt response, so that employees will come to rely on the Company for accurate information on this subject.

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