Ambush Rulemaking, Email
New NLRB – New Challenges
Agenda

• NLRB Update
  – Ambush Election Rulemaking
  – Purple Communications

• Next Actions for Employers
  – Preparation for Ambush Elections
  – Email best practices
What’s Happening?

• NLRB adopted Final Rule on Ambush Elections
  – Published in FR on 12/12
  – Goes into effect on 4/14/15
  – Likely to face legal challenge
  – Republicans are threatening to block funding

• Purple Communications
  – Published 12/11
  – Overturns Register Guard

“Send lawyers, guns and money to get me out of this.” Warren Zevon
Key Changes:

- Petition: electronic, served on parties, must include show of interest at filing
- Notice: Employer required to post pre-election notice
- Show of interest: GC asked to consider electronic showing of interest
- Employee list: name, job class, shift, work location due 1 day prior to hearing; address plus personal phone (cell) and email address, due 2 business days after unit determination
- Unit hearing: only to determine if election appropriate – all other issues deferred – did not adopt the “20% rule”, RD and Hearing Officer have broad discretion

* Note: Election period can be shorter if union waives 10-day rule on voter list. Rulemaking does not mandate an election within a certain period of time.
Other Issues

• Employee privacy
  – Use of disclosed information (phone, email) limited to representation case matters
  – No specific penalty for non-compliance

• Electronic signatures
  – Board says they are OK
  – Asks GC to suggest practical way to accept
Purple Communications

- Overturns *Register Guard*
- Presumption that employees with email access have right to solicit using employer email system during non-work time
  - Non-employees can still be restricted from *employer* email
  - Employer can only limit access for employees with special circumstances
- Can monitor email communication
- Applies retroactively
Next Actions for Employers

• Watch the legal challenges, but assume the rule is happening

• Review email policy
  – Assume it can be used for organizing
  – Key issue: discrimination for limitations during work time

• Ambush preparation
  – Review last webinar
  – Risk assess (internal and external)
  – Prepare defense team
  – Tripwire™ Training for first level leaders
  – Approachability training (http://ApproachableLeadership.com)
Shameless Plug

- Available at Amazon.com
- Paperback or Kindle version
- Covers in-depth the suggested ambush response
- Makes a great door-stop or sleep aid!
Next Actions

• Schedule a demonstration of Campaign in the Cloud toolbox: 800-888-9115
• Watch the Approachable Leadership™ keynote: ApproachableLeadership.com
• Download free Tripwire Sample (Under Hot Topics on LRIonline.com)
Post-Election Hearing (covering all pre- and post-election matters)

Optional Review by NLRB

**Proposed NLRB Election Process**

- Days 0 8 9
- Petition filed
- SOP Hearing
- Employee List
- Election* (Note: Election period can be shorter if union waives 10-day rule on voter list. Rulemaking does not mandate new targets, only makes them possible)
- Objections Due
- Election
- Post-Election Hearing (covering all pre- and post-election matters)
- Optional Review by NLRB

**Current NLRB Election Process**

- Days 0 7 14
- Petition filed
- Hearing
- Employee List
- Review by NLRB
- Election
- Objections Due
- Post-Election Hearing
- Review by NLRB
Micro Units

• “One Lesson” – unintended consequences
  − Fractures bargaining units
  − Unions win battles, lose war

• What should I do?
  − Unit analysis
  − Segment vulnerability assessment by potential micro-units
  − Ultimately doesn't change overall Left of Boom strategy
Joint Employer

- GC McDonald’s Memo
  - Authorizes complaints as “joint employer” with franchisee
  - Actual memo hasn’t surfaced
  - Analysis from *Browning-Ferris*
    - GC wants “direct or indirect control” standard

- Applies to temps, contractors

“Gonna raise hell at the union hall... Rip this joint, gonna save your soul, round and round and round we go” Rolling Stones
Joint Employer

• “One Lesson” - unintended consequences
  – Limits “sideline” behavior of franchisor
  – Increases resources, consistency of response
  – Increases unit sizes (bad for union) but multiplies targets (also bad for union)
  – Pokes the bear
Noel Canning

• SCOTUS: 2012 recess appointments invalid

• NLRB
  – “Around 100 cases” to re-review
  – July 18, 2014 - NLRB ratifies recess actions
    • Is this valid?
    • Memo and press release don’t jive
    • Representation case and ULP decisions?

“When I am king you will be first against the wall, with your opinion which is of no consequence at all.” Radiohead
Winning Ambush Elections

• Risk assessment
• Structuring your Defense Team
• What to train frontline leaders
• Campaign In the Cloud (CITC)

“It’s a shootout at the plantation, it’s so hard to understand.” Leon Russel
External Risk Assessment

- Eye in the Sky
- Site labor climate assessment
- Site selection

“I’m on the outside” Oingo Boingo
Internal Risk Assessment

- Engagement Research
- Manager Interview (MDI process)
- Focus Groups
Deep Dive Risk Assessment

- Deep Dive process for high-risk locations
  - Great use for Defense Team
  - Includes focus group, structured interviews, structured observations

"I’m in too deep" Matthew Sweet
Defense Team

- Big Mistake: Training too much
- **Limit scope** to what team will actually be asked to do
  - deep dive assessment
  - work disruption
  - PCA intervention
  - Cardsigning material from CITC
- Save **everything else** for Just in Time training
Benefits of Limiting Training

• Increased skill
  – More “reps” and practice
  – No overload

• Lower cost
  – Reduces overall training time
  – Saves resources for follow up training

• Higher ROI
  – Focus on skills that will actually be used
Training First Level Leaders: Tripwire™

• Tripwire Training
  – Don’t try to make labor lawyers
  – Focus on noticing behavior change

• Two actions
  – Ask “what’s up?”
  – Escalate
Ambush Election Rulemaking

• **Before** December 2014
  - Nancy Schiffer term expires
• **After mid-term elections** (probably)

“You’re going to make me lonesome when you go” Bob Dylan
Training First Level Leaders: Approachable Leadership™

• “One Ring” of leadership
• Research-based leadership model
  – “Happiness has pit stains”
  – Environment that encourages OCB
• 3 simple questions:
  – Do you have what you need What would make work better Where are you going?
  – More at ApproachableLeadership.com

“I’ve got a question for you.” Rhett Miller
Campaign in the Cloud (CITC aka Campaign in a Box)

- Pre-built
- High-impact (animation, videos, documents)
- Legal – Updated regularly
- Union-specific, translated
- Easy to modify (PowerPoint) message “packets”
- Step-by-step communication plan
- Pre-staged securely on the web
Campaign in the Cloud

Union Spending: Your Dues Dollar

Spending on Individual Members

You pay $300.00 dues/year

Teamsters International (IBT)
based on Department of Labor 2010 LM-2 filing

No refunds, no returns!
Campaign in the Cloud

La Línea de Base de la Unión

La membresía de los Teamsters ha bajado por 1/3 (desde el 1975)

Los gastos de los Teamsters se a duplicado (desde solo 2001)

Los miembros de los Teamsters pagan 80% más en cuotas que desde 2001

Fuente: IBT LM-2 Informes, EE.UU. Departamento de Trabajo
Other Ambush Tips

• Speed is the key
  – Everything prepared in advance
  – Only time for minor tweaks

• Fewer days = no room for error
  – Almost no time for fence-mending
  – Consider use of campaign experts
    • Make sure to select now
    • Have more than one identified