



Labor Relations Institute, Inc.

HOW TO WIN (AND PREVENT) AN AMBUSH ELECTION

The Strategies and Tactics Needed to Win Elections Now



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By Phillip B. Wilson¹, President and General Counsel, LRI

The wheels are in motion: the Ambush Election rule is coming. In December 2014, National Labor Relations Board (NLRB) Member Nancy Schiffer's term will expire. This will leave the Board with only four members, two Democrats and two Republicans. Board Chairman Mark Pearce will not allow Schiffer's term to expire before acting on the proposed "ambush election" rule change that drastically impacts businesses' ability to successfully fight and win union organizing campaigns.

What you'll learn in this White Paper:

- (1) How the "ambush election" rule will impact union elections;
- (2) How to structure your Defense Team™ for the new environment;
- (3) The two critical types of training for front-line supervisors (they're not what you think);
- (4) How to effectively communicate to your workforce in a compressed campaign cycle; and
- (5) The recommended tools to assess your risk and identify problems early.

HOW "AMBUSH ELECTION" RULEMAKING SHRINKS THE ELECTION TIMELINE

When the Employee Free Choice Act (EFCA) failed to pass in 2009 union officials were devastated. But the NLRB found a clever way to counteract that setback. The Board used its regulatory power to propose a rule to "streamline" the normal election process. This rule gives Big Labor at least one item on its wish list: a shortened election cycle that will likely leave employers with three weeks or less to educate employees on the realities of unionization.

Most people know very little about unionization, and unions use this fact to their advantage in their organizing campaigns. Union

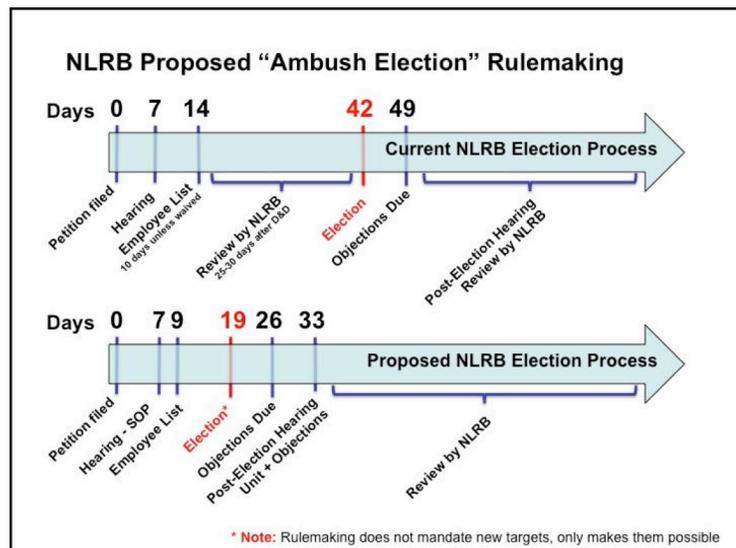


Figure 1 – Ambush Election Rule Summarized

¹ I couldn't have produced this white paper without a lot of help. I'd like to thank Austin Clary, Greg Kittinger, Meghan Barnett and Nancy Jowske who provided very helpful feedback and editorial suggestions. Nancy especially provided many great suggestions and edits that significantly improved the final paper. Thanks to each of you.



officials know that the less time a company has to respond to union organizing, and the more uninformed the voters are, the better the chances the union will win an election. Although not as valuable a prize as “unionization by card-check” (that’s what unions tried to get through EFCA), a shortened election cycle is not an unwelcome consolation prize for Big Labor.

The NLRB initially proposed and adopted the streamline election rule in 2011 (and briefly enacted it in 2012) but those actions were invalidated because not enough Board members voted on the rule. The Board then withdrew its initial rulemaking proposal and re-proposed the identical rule in 2013.

So what does this new rule do? Let’s compare the current election process to the proposed process.

The Current Process: Figure 1 compares the current timeline to the proposed one. The top arrow shows the process today. Once a petition is filed, the Board aims to hold a hearing in about seven days (unless there is a stipulation or consent agreement between the parties – most of the time there is).

After a hearing or a consent agreement an employer then has seven days to provide to the NLRB a list of all the names and addresses of the affected employees. This is called an *Excelsior* list. The Board immediately shares that list with the union who gets at least 10 days with the list before the election, unless the union waives that right. The Regional Director is then supposed to schedule a 25 to 30 day waiting period between a hearing decision (or consent agreement) and the election.

The NLRB blames this 25 to 30 day waiting period for the “delay” in the current process. (Delay is in quotes because the Board’s current target for holding elections is 42 days from the filing of a petition, and last year the average election occurred within 38 days.) Once the election is held, both sides have seven days to file objections to the election. An objection sets in motion a post-election hearing and review process.

The Proposed Process: The proposed NLRB election process looks like the timeline illustrated by the bottom arrow in Figure 1. It differs from the current process in four key ways:

1. An initial hearing is required within seven days.
2. The employer must file a Statement of Position on any issues regarding the election prior to the hearing.
3. The *Excelsior* list must be produced in just two days and requires at least twice the information.
4. The 25-30 day waiting period is eliminated.

The required Statement of Position (SOP) must outline every single issue the employer believes is in play in the case. If an issue isn’t raised in that initial SOP, you, as the employer, are barred from ever raising that issue in the future. The SOP is a high-pressure document and one you would have to generate in a week. Any unit or jurisdictional issues that you have, anything that you ever want the NLRB or a Court of Appeals to hear, must be captured in that initial SOP. That’s a very tough requirement, especially for small employers who aren’t already represented by labor counsel.

Under the existing process employers have seven days to produce the *Excelsior* list (the employee list with names and addresses); under the proposed rule that list must be produced within two days

This new employee list is *much* more detailed. In addition to name and address it must also include each employee’s phone number, email address, department and shift.



of either the hearing or a stipulation. And under the new rule the employer must deliver *much* more detailed information on impacted employees than just their names and addresses. Under the new rule the *Excelsior* list must also include each employee's phone number and email address if you have it (even employers who don't issue email addresses today often require employees to register for benefits or training using a personal email address – that probably counts). Further, it must include each employee's department and shift. And if there are errors on the list, your election could be overturned! To recap, the Board is shrinking the time you have to provide the list by 70% *and* more than doubling the amount of information that you must include.

Looking again at the timeline, under the new process the union continues to have a 10-day period with the employee list (unless they waive it) before an election. But the Board eliminates the 25-30 day waiting period prior to an election, instead saying that all appeals will be handled after the election. With this waiting period eliminated, employers could be facing an election just 19 days after the union petition is filed. And if the union waives its right to the ten days with the employee list (as they might with a small unit) your election period could shrink to as few as nine days.

Like the current process, objections are still due within seven days of the election. However, under the proposed process both pre-election issues (like unit issues affecting less than 20% of the eligible voters) and election objections would be handled at a post-election hearing held within 7 days of the objections being filed, or within 14 days of the election date. This is a much quicker turn-around than what we typically see now. From an administrative standpoint, it will be very interesting to see if the Board can actually meet this goal.

Keep in mind, the proposed rule does not mandate all of these targets, but it does make them possible. The NLRB is not saying that elections have to happen in 19 days or in 21 days, but by getting rid of that 25 to 30 day review period, the election cycle will shrink substantially. While elections could happen in less than 10 days, **we believe under the new rule elections will happen between 21 and 25 days after a petition is filed.**

A NEW PLAYING FIELD REQUIRES A NEW STRATEGY FOR WINNING

As union officials watched their membership numbers decline over the last several decades, they learned this key lesson: when unions go head-to-head with a company that treats employees well and communicates the facts about union representation versus a direct relationship, the union loses.

Like poker players, employees exposed to a unionization attempt have “tells.” If your supervisors notice these “tells” early in the process union organizers never get the chance to bluff employees into signing cards.

In order to counteract this reality, Big Labor uses the rhetoric of “leveling the playing field” to push for more and more limits on how, what and when employers can communicate to their employees about unions. Union officials know that anything that limits employer speech tilts the field decidedly in their favor. Unfortunately this is exactly what unions get with the ambush election rule. Under the Board's new rules, employers will have *less than half the time* to educate their employees on the realities of unionization.

That's why this new playing field requires a new avoidance strategy. Companies that don't change their strategy in response to – and where possible to *take advantage of* – these new election rules



will be at the mercy of union organizers. We have been preparing employers for ambush elections since these rules were first originally considered by the Board in 2011. Below I outline the four key strategies LRI has developed for winning an ambush election.

These four key strategies for winning in an ambush election environment are:

- 1) A pre-built and pre-staged **Campaign Defense Plan**;
- 2) An **Early Detection and Effective Escalation Plan** for union organizing activity;
- 3) A properly structured and trained **Campaign Defense Team**; and
- 4) An effective **Proactive (“Left of Boom”) Employee Relations Strategy**.

STRATEGY ONE: Campaign Defense Plan

With possibly no more than three weeks from petition to vote, by the time you feel the urgent need for a counter-union organizing campaign plan you won't have time to create one. In that shortened election window you must be ready to act on your plan immediately and hit the ground running.

But having a plan is not enough. All of the support materials required by your plan must be pre-positioned and available in the field within minutes of the decision to execute. In the past you could get away with waiting for a petition to drop before formulating how best to respond and developing the tools to execute your plan. In the ambush election environment that luxury is gone.

There are five key components to an ambush election Campaign Defense Plan strategy:

- 1) **Pre-built communication material** (presentation decks, video content, handouts, postings, background research, etc.) on a range of anticipated campaign topics customized for your company and for each union likely to approach your employees;
- 2) **Easily modified components** that can be cut or combined based on the specific issues and time frame for any campaign event;
- 3) **A pre-built plan for communicating to all potential audiences** (including remote employees, part-time or casual employees, customers, community stakeholders, etc.);
- 4) **Pre-staged materials that are trigger-ready to distribute to any location in your organization** (this is typically done through a website); and
- 5) **A business continuation plan** that accounts for the massive amount of employee communication that your leaders must accomplish in a very short period of time. (And if you don't think about this in advance you may be put in the horrible position of choosing whether to serve your customers or educate your employees!)

Below we will run through several tactics you should consider as you craft your most effective Campaign Defense Plan strategy.

STRATEGY TWO: Early Detection and Effective Escalation

In an ambush election environment the only way to lengthen the “campaign” period is to detect an organizing drive as soon as possible. Better yet, you can avert a campaign entirely by detecting card signing activity before enough signatures have been gathered to file an election petition. There are two key components to this strategy – early detection and effective escalation.



First, your supervisors must be equipped to recognize the behavioral signs of organizing activity. Like poker players, employees exposed to a unionization attempt have “tells.” If your supervisors notice these “tells” early in the process union organizers never get the chance to bluff employees into signing cards. And you get the chance to educate employees about the law and realities of unions well before an organizer has frightened them into believing a union is the only answer to their workplace issues.

But noticing the “tells” is not enough. You also need a well-planned and effective escalation plan to collect, process and investigate that information from supervisors. It’s every employer’s worst nightmare and we see it far too often – a new client comes to us blind-sided by a union petition, only to learn that supervisors actually knew for some time about the organizing activity and did not report it. Often those supervisors just didn’t realize that what they knew was critically important to the organization, or they just didn’t recognize the signs of union activity for what they were. It’s even more frustrating to find out your supervisors knew something was very wrong but didn’t know whom to tell. Or worse, they reported it to someone who did not take the threat seriously.

In the new ambush election environment there is *zero* room for error.

In the new ambush election environment there is *zero* room for this kind of error. Early detection through Tripwire™ Training for supervisors coupled with a thorough effective escalation plan can insure you don’t lose precious response time or missed opportunities to get out ahead of a problem before it becomes a genuine crisis.

Below we review specific tactics used in the best Early Detection and Effective Escalation strategies.

STRATEGY THREE: Campaign Defense Team

With a shortened campaign window you won’t have time to get site leaders or even your existing rapid response team up to speed. Putting the right people on the ground as quickly as possible is the hinge point of a winning approach to ambush elections. Don’t make the same mistake so many other companies make. Consider these three components of the most powerful Campaign Defense Team strategy:

- 1) **Properly structure your team** based on key factors like the type of anticipated activity, availability of internal talent, a range of backgrounds and abilities and the potential use of external resources;
- 2) **Properly train your team** with a laser-focus on *consistent skill building* so team members can deliver best on *exactly* what they will be asked to do;
- 3) **Structure “Left of Boom”² activities** for your Defense Team that maximize your investment in their training and keep their skills sharp and battle-ready *before* they are called to a “boom”

² Working “Left of Boom” means taking proactive steps to prevent a “boom” event. “Left of Boom” refers to a timeline leading up to a “boom” event (things that happen after the boom event are called “Right of Boom”) and comes from the military response to improvised explosive device attacks in the Middle East. To learn more about how your company can apply these proactive strategies to avoid “boom” events like union organizing campaigns, see our white paper Left of Boom which you can find at <http://LRlonline.com/left-of-boom>



event. (And as an added bonus, these structured “Left of Boom” activities help your team members detect and even prevent organizing activity before it gains traction!)

Each company has a unique set of circumstances that will define exactly how their team should be structured. There are several common (and very costly) mistakes we see companies make.

The most common mistake is a “one-size-fits-all” approach. The strongest teams are tailored to the most likely targets of activity, and how internal talent will *actually be used* in a campaign. Too often companies train using a shotgun approach: they train far too many people to do things they will never realistically be asked to do, such as lead a campaign or write a 25th hour speech. They then spend far too little time building into their teams the real “how to” skills needed to win – and even avoid – a union campaign.

And there are some companies that, frankly, should not even try to build an internal defense team. You could save your organization money and time by first exploring if an internal defense team really makes sense for your organization. (We can help. Schedule a strategy call with us to talk through your company’s needs and resources.)

It's also far too common for a company to hold a one-time response team training event, then cross “campaign readiness” off the to-do list once that training event is over. The reality is that very few organizations have enough union campaign activity to keep a Defense Team sharp. And too many companies have a false sense of security about their team because of this “one and done” mindset. Consistent reinforcement of critical skills, couple to a plan for continually refreshing those skills in a “Left of Boom” context **helps ensure that your organization gets full return on its training investment even if you never face an ambush election.**

Learn more below about key tactics and considerations in building, training and maintaining the readiness of your Campaign Defense Team and how that team can consistently add value to your organization.

STRATEGY FOUR: Proactive “Left of Boom” Employee Relations

The most important component of your strategy to create a work environment where employees approached by union organizers tell them to “get lost.” This is what we call living “Left of Boom” or creating the kind of work environment where a “boom” event (like a union organizing drive) is most unlikely. You will never face a union petition in a work group where employees see no value to the hyped benefits of unionization. And should you find yourself in a campaign, you’ll want to be able to remind employees of what they stand to lose and all the advantages of a direct working relationship with their leadership team. That all adds up to building a work environment where employees feel

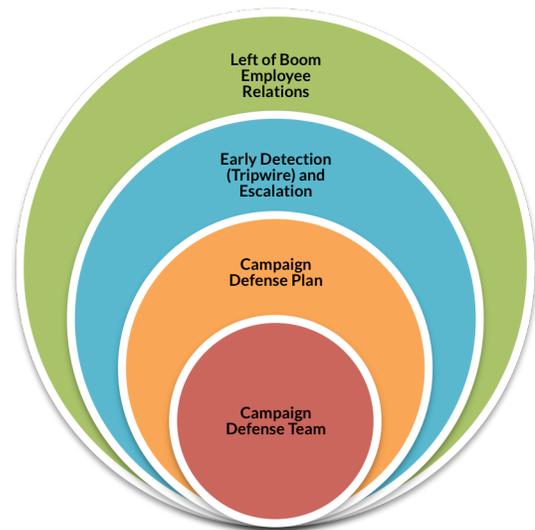


Figure 2 - Four Ambush Election Strategies



engaged, heard and valued by their leaders. While this topic is much larger than the scope of this white paper, the key points of a Proactive “Left of Boom” Employee Relations strategy include:

- 1) **Teaching leaders to practice Approachable Leadership™** – The latest research shows that approachable leadership, more than any other factor, drives discretionary effort (organizational citizenship behaviors or OCBs) and employee engagement on the job. To build engagement where it really starts, train your leaders to engage in the three key behaviors of approachable leaders.
- 2) **Regularly measure net promoters in your organization** – A key measure of engagement or vulnerability is the net number of promoters (vocally positive employees) in your company. The higher the number of promoters the less likely you’ll face employee relations “boom” events like union organizing campaigns (oh, and your business results will improve too!)
- 3) **Know and take action on the real issues** – When your leaders talk to employees (for example, asking the three Approachable Leadership™ questions) or after you survey employees or conduct focus groups, make sure you fully understand the issues and consistently follow through on what you now know. Follow up and follow through – both steps are critical to building employee engagement that can outlast an aggressive unionization attempt.
- 4) **Consistently communicate your employee relations actions and strategy** – It isn’t enough to take action on the issues. Part of your regular follow-through must include communicating back to employees. This is not about bragging or taking credit. It’s about fostering and maintaining a regular two-way dialogue about their ever-changing work environment. The only truly successful and responsive employee relations strategy starts here – as a two-way dialogue between you and the people who will ultimately determine its success – your employees.

HOW TO WIN AN AMBUSH ELECTION: THE TACTICS

Now let’s take a deeper look at some of tactics you might use to implement each of these four strategies outlined above for winning (and avoiding) campaigns in an ambush election environment.

Strategy One: Campaign Defense Plan Tactics

Your Campaign Defense Plan requires pre-built communication materials that are easily modified, and a plan for delivering those materials rapidly to any group of employees anywhere in your organization. Those materials must have two key attributes:

1. **The right content:** You need up-to-date persuasive messaging for any union organizing events; and
2. **The best delivery methods:** The right communication pieces and platforms in place and ready to distribute your messaging effectively, with impact and to any location ASAP.

"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 Senior Consultant Joe Brock, former Teamsters Union Organizer and Officer



For most companies, a cloud-based communications solution is the best answer for delivering up-to-date content and communications pieces quickly to anywhere in the organization. A web-based hub serves as the your library for all communication and training materials – talking points, articles, videos, handouts, fliers, research, calendars, checklists and plans – and provides immediate accessibility from any site to the information and updates critical to each step in a Campaign Defense Plan. The web hub can house not just your communication pieces but the tools and tactical support required by your Campaign Defense Team to engage in an effective counter-organizing campaign. Such a hub can also allow for real-time editing and control of materials by those overseeing the campaign.

Dozens of major employers have already opted to build their communications plan on our Campaign in a Box platform. Campaign in a Box meets the four critical communication requirements of an effective ambush election Defense Plan strategy:

- 1) **Pre-built legally compliant communication material;**
- 2) **Easily modified persuasive message “packets” that can be shuffled and configured to suit your audience, the issues in your campaign and your campaign time frame;**
- 3) **A step-by-step plan for communicating to all potential audiences through a range of avenues with support built in for your campaign team; and**
- 4) **Pre-staged material readily available to any location through a Campaign in a Box web hub.**

Tips for Adapting the Campaign in a Box Platform to a Shortened Election Timeframe

We structured the Campaign in a Box materials into the same six core communication “phases” or topic areas LRI has used so effectively for decades to win thousands of five-week election campaigns. (Our approach has become the industry standard!) Those six topic areas are: Card Signing; The Union as a Business; Collective Bargaining; Union Democracy; Strikes; and Voting.



Figure 3 - English Version of CIAB Presentation

However with ambush elections in mind, we designed the Campaign in a Box content into “packets” of the most persuasive points to present on each topic, the points our consultants have seen make the difference in LRI managed campaigns year after year. This structure makes it possible to reconfigure Campaign in a Box presentation materials to suit the needs of an accelerated campaign, with a mix of topics if necessary into the same week or even the same meeting. So while we keep each topic area distinct, you have access to all six phases at all times to pick and choose the message “packets” that work for you.

All of our communication tools are designed in PowerPoint files, as opposed to long-form video presentations. There isn't time in an ambush election environment to use long-form video to communicate to employees because it “crowds out” other more effective group and one-on-one conversations. Videos are more difficult, time-consuming, and expensive to edit than PowerPoint decks. In addition, PowerPoint decks can include much of what video has to offer (animation and even video clips) without the drawbacks and it's



much easier to keep that content fresh and current. Further, PowerPoint presentations can be quickly and easily modified – entire sections can be removed or time-shifted based on whatever is happening in your campaign. Long-form video just doesn't have the same flexibility.

Your campaign team has the freedom to tailor your meeting presentation to make the best use of critically valuable face time with employees. You can build these reconfigured decks on your own, or LRI can support you. You can move through your tailored presentation at your own pace. You can also pick and chose from a range of support materials for each topic including short videos, handouts, "Take Action" cards, documentary proof of key points, postings, checklists, and more.

A Campaign in a Box hub also includes all the research material and other documents from outside sources that strengthen your arguments. Government documents, documents from the unions themselves, information from the National Labor Relations Board, media stories, and interviews with union insiders all help inform voters and lend credibility to your position. A shortened election period won't have room for fat; it will demand you hit the ground with your most persuasive points and the most compelling evidence to back those points up.

Today's union landscape is constantly changing and a shortened election period will likely energize unions like nothing in recent memory. That means you can't assume you already know the union or unions that might try to unionize your employees. Campaign in a Box provides presentations customized for all of the top unions, and materials can be customized to other unions on request. This provides you with union-specific and more relevant arguments regardless of who comes knocking on your employees' doors.

Campaign in a Box presentations can also be customized with client branding and other items unique to the specific campaign like pictures from the local community or sports teams. This allows the materials to connect in a way that used to only be possible with very expensive custom video presentations. Your communications can have the look and feel of in-house productions fueled by the campaign experience and expertise of LRI.



Figure 4 - Spanish Version of CIAB Presentation

Regardless of what you rely on, the Campaign in a Box platform or your own self-generated communications materials, it is critically important that all your campaign communication content has been pre-approved by your legal team and anyone else in your organization who oversees consistency of communication and protection of your brand. Finally, make sure all communications are translated into the languages your employees use – there won't be time to translate messages when the campaign begins.

Murphy's Law dictates that you're going to find out about organizing activity at the worst possible moment with very little time to react. (Unless you have a robust and vital Left of Boom strategy, but more on that later). Should the worst happen and you get a petition in a shortened election environment having the right materials available at a moment's notice anywhere in your organization will be absolutely critical to any chance of success.



Unless you have the resources and capacity to build and vet effective, accessible, easily adaptable, legally compliant materials specific to a range of unions and campaign circumstances on your own, consider the Campaign in a Box platform. If you don't already own Campaign in a Box, you can request a preview of one of our CIAB sites and I strongly encourage you to do so. Even if you already have campaign tools created and housed online you can probably get some great ideas by taking a no obligation tour of Campaign in a Box.

Strategy Two: Early Detection and Effective Escalation Tactics

Train Your Supervisors on the Right Stuff

A front line leader's job is a difficult juggling act. They have one foot in the day-to-day operations, and the other in employee relations. Many are promoted directly out of the hourly ranks and may relate more with their employees than they do management (sometimes this is why they don't take organizing rumors seriously – in extreme cases they may even naively support an organizing effort). And even the best performing supervisors can be overwhelmed by everything they are asked to do each day.

KEY TACTIC: 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.

However your front line leaders are your key line of defense in an ambush election environment. Early warning signs or "tells" may be your only hope to get out in front of a unionizing attempt on your employees. So how do supervisors fit into your Early Detection and Effective Escalation Strategy when they already have so much on their plates?

Let's start here – one key to success is to *avoid trying to make your already over-taxed managers and supervisors into labor law experts!* As a labor attorney I can tell you this doesn't work. 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, to the information and skill-building your supervisors and site leaders need most.

The NLRB is constantly moving the goalposts based on its political make-up and various factual situations. It is a full-time job just keeping track of all the new decisions around what the Board considers protected concerted activity (they have a web page dedicated to developments in this one area alone!). Because labor law can be so fluid, don't try to train supervisors to learn a bunch of labor law that could change tomorrow.

Tripwire™ Training

How do you best utilize front line supervisors in an effective union organizing defense? We recommend a concept called *Tripwire™ Training*.



The “tripwire” concept relies on supervisors trained to recognize the subtle behavioral changes that happen as union organizing occurs (like the poker “tell”) or those behaviors that signal deep eroding morale problems in the workplace. Supervisors also know to “push the silent alarm” when they spot these signs so you (or a member of your Campaign Defense Team, more on that later) can investigate the situation and decide on next steps.

We have seen the impact of Tripwire™ Training by watching how supervisors react to learning about how campaigns actually work from the former union organizers on our consulting team. Once supervisors get a picture of what is really going on “from the other side” they begin to see how an organizing attempt will change behaviors in the work place, and how their routine interactions with employees could be playing into the organizer’s hands.

What are the advantages of the Tripwire approach? First, it’s easy and fun for your supervisors! The training starts by getting their attention with “What’s at Stake” – a peek into how their work lives would radically change if a union gained representation of the people they supervise. The focus then shifts to how union organizers influence and exploit employee dissatisfaction, disconnection and lack of trust. This peek into how organizers really work and what’s really happening “on the other side” engages and motivates supervisors to learn and change far more than even the most entertaining lecture on labor law.

Tripwire™ Training focuses on how employee behavior changes in the presence of union activity of any kind. Supervisors learn to recognize the behaviors that change inside their plant or facility when organizing activity first creeps in and before it really takes root. But let’s face it – it is unlikely even in this union friendly environment that a supervisor will actually ever witness the signs of an organizing attempt. The good news is that the same focus and attentiveness it takes to notice the “tells” of an organizing attempt translate directly into important skills a supervisor can use every day.

"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 Senior Consultant Joe Brock,
former Teamsters Union Organizer

Attention to behavior change also provides early warning of other developing problems in the work place. Employee behavior will change for many reasons, from simply dealing with daily work challenges, to failing change initiatives, to more personal issues like substance abuse and alcoholism, harassment, bullying, or personality conflicts between employees. Tripwire™ trained supervisors are taught how to use their new observational skills every day, and not just to spot a union campaign, but to prevent one.

This type of training is different than standard “early warning signs” drills. We are not talking about stumbling across union meeting notices, 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 how union organizers manipulate employees’ emotions – the behind-the-scenes agendas at work – and then translating those union tactics into how they would influence and shape workplace behaviors.

Here’s an example. Suppose a union meeting occurs one night, run according to the typical organizer playbook. Those employees in attendance would be emotionally prodded by the organizer – perhaps to keep things quiet while recruiting more supporters or to no longer trust anything their supervisor



says. Some employees might become more cautious, withdrawn or secretive; others may be overly energized and falsely “empowered” by a union meeting and the sunny promises of the union organizer. Bottom line – most employees who attended will behave differently the next day and those behavioral changes will be noticeable to a supervisor who pays closer attention when “something just doesn’t feel right.”

Once that behavior is noted, the supervisor follows the next step of the Escalation Plan in a format that makes sense for your organization. If it appears that the unusual behaviors are more widespread and/or consistent over a period of time, it’s the Defense Team’s turn to drill down to get at the issues behind the behavior.

I’ve seen thousands of 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. Expecting leaders to comfortably talk about these issues while trying to remember all the legal landmines is asking a lot.

There are 3 critical advantages to implementing the Tripwire™ concept. First, supervisors are more likely to sound the alarm because they have less fear of messing up due to fear of legal liability. By simplifying what you’re asking them to do you are much more likely be notified of activity.

Second, we want issues handled by the most skilled people available. The other problem with training supervisors to “handle” all incidents without reporting them is you may never learn about important events or clusters of events that point to developing problems. An over-confident supervisor may simply assume an 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 (see the tactics under Strategy 4 below). Talk to them about creating a positive work environment, teach them to be Approachable Leaders™, 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 out of labor law training.

Share an Effective Escalation Plan with Site Leaders

It is often unclear whether a company is actually experiencing union organizing – after all, unions want to keep the company in the dark for as long as they possibly can. Therefore you should also train site leaders on your escalation plan. Your escalation plan makes certain leaders in the field understand what’s at stake, the early warning behaviors of organizing and the consequence of not reporting those signs as they occur. A clear cut Escalation Plan gives your leaders the guidance they



Figure 5 - Sample Escalation Plan



need to report out, not determine on their own whether an event is a big deal or not. It tells them exactly what they should do and who they should call when they recognize an early warning sign so that information isn't lost to the wrong command stream.

When activity is reported you should have clear guidelines of exactly how the organization will intervene based on the observed activity. Figure 5 shows an example Escalation Plan. This document outlines 3 escalation levels with examples of the internal and external “triggers” that leaders will observe in each level. Behind this document there are numerous other outlines and checklists leaders can use to determine next actions to consider based on the observed warning sign behavior.

Campaign Defense Team Tactics

As discussed earlier, the most common mistake we see companies make is to invest in training a large “rapid response” team without fully thinking through exactly what their team will eventually be asked (or entrusted) to do. A second related mistake is the “one-and-done” training approach that does not account for team turnover and keeping skills fresh and knowledge up to date in a rapidly changing environment. Here are some tactics for getting the most out of your investment in a Campaign Defense Team.

Train Defense Teams to Handle Proactive Activities

Most companies (thankfully) have very few – if any – election campaigns. Those that do have regular campaigns either have a full-time staff or standing relationships with trusted advisors to deal with those events. This means many companies who train a Defense Team to use during an NLRB election campaign are training them in skills they may have little chance to ever use.

Does this mean you should not train a Defense Team? It depends a lot on your specific situation. The first thing we do when asked to conduct Defense Team training is ask, “Do you really need a Defense Team?” and the next question is, “What will this team *realistically* be asked to do?”

An internal defense team makes the most sense for larger, multi-facility organizations with limited internal campaign experience and higher than average internal or external risk of organizing. Some

KEY TACTIC: PROACTIVE DEFENSE TEAM ACTIVITIES

The Two Key Questions:

1. “Do you really need a Defense Team?”
2. “What will this team *realistically* be asked to do?”

organizations should strongly consider an internal defense team: organizations that are vulnerable to a coordinated campaign with attacks on multiple sites simultaneously; employers that have sites with a very large number of employees; and employers with a highly specialized workforce or culturally unique workforce. Decision makers should also consider whether the company is able to comfortably turn to outside consulting resources during an organizing event.

Some organizations, such as those with high profile brands, or those with political or cultural sensitivities, or those with existing union relationships may need to rely less on outside consultants and more on well-trained internal resources. These organizations in particular should train an internal Defense Team.



Once you've decided that a Defense Team makes sense for your organization, the next step is to focus in on what that team is truly going to be asked to do. In reality, the vast majority of companies faced with a campaign will turn to internal or external subject matter experts and the Defense Team members will likely serve as support. It makes little sense to spend time training a Defense Team in these companies on all the aspects of running a winning campaign.

Instead we normally recommend training and deploying Defense Team members in two key campaign functions: (a) one-on-one and small group communication; and (b) the assessment and coaching of site supervision. In addition, we recommend the training and deploying your Defense Team to meet the more frequent challenges of today's labor environment. They are:

- 1) **Workplace Disruption / PCA Intervention: Think of your defense team as the well-trained eyes, ears and heart of your early detection and effective escalation strategy.** Assuming you've built your team with members from across your geographic span, a Defense Team member can be quickly deployed to investigate and intervene in the wake of workplace disruption or protected concerted activity that may or may not be union related. Especially with the rise of "alt-labor" groups, workplace disruption and incidents of PCA are far more common than even rumors of union activity.

And there are multiple benefits to having trained Defense Team members respond to these occurrences rather than relying on site leaders or field HR. First and foremost, a Defense Team member will be far better equipped to assess the seriousness of the situation. Meanwhile, using your Defense Team in this way provides many more chances to actually use their campaign related skills and deeper understanding of labor law, while keeping those skills fresh under real world conditions. And, of course, the better your organization responds to PCA and disruption, the less likely one of these situations boils over into an actual organizing event.

We recommend training your Defense Team in a legally compliant investigation protocol we developed in response to emerging alt-labor disruption tactics and all the recent attention the Board has given to PCA. An event like a march on the boss or a letter demanding action on an issue usually has nothing to do with a union (although in some cases they are early signs of a union organizing campaign). But when these events are mishandled the next step for frustrated employees is often to seek out union or worker center support. A Defense Team trained in investigation and active listening can jump into the situation, learn what they can, verify that the local leaders are handling things appropriately, course correct them if not, and help rebuild relationships frayed during these events.

In this section of our Defense Team training members work on building the skills needed to effectively conduct these types of interventions. They learn an investigation protocol and how best to work cooperatively with site leaders. We test their active listening skills, give them invaluable expert tips on how to conduct effective focus group meetings and one-on-one interviews. Once trained you can then deploy team members to not only investigate disruptions, but also to sites you identify as "at-risk" based on your own early warning system or reports of early warning signs from the field. This type of training also expands your



capacity to be proactive when circumstances that commonly trigger employee discontent – leadership, operational or policy change for example – impact a location of concern.

- 2) **Don't Sign a Card Interventions: Nothing is more urgent than an effective rapid response to rumors or evidence of card signing activity. With each card signed the union gets one card closer to filing a petition; and with each card stopped your organization takes a step back from the expense, disruption and personal toll of an election campaign.**

A properly chosen and trained Defense Team can have boots on the ground overnight in response to evidence or rumors of card signing activity. Your Defense Team can be the “tip of the spear” in your organizing campaign defense and distributes the capacity to rapidly respond to card signing throughout your organization.

Each Defense Team member should be fluent in the facts about union cards. They should be able to serve as a subject matter expert to small groups, conduct larger meetings and engage in trust-building one-on-one dialogue. But first they need to thorough understanding of the rules of engagement during organizing campaigns, especially TIPS and FOE, and the rules around protected concerted activity.

Our experience tells us that once employees fully understand what a union card does and doesn't do, they are far less likely to sign one. And far more often than not, employees sign cards, not because they truly want a union, but out of frustration, fear, pressure and misinformation. When entering a worksite with card signing activity, Defense Team members need to be comfortable and effective in:

- Offering their own personal authentic perspective on what's at stake;
- The legal implications of signing a union card;
- Common tactics used by unions to convince people to sign union cards;
- How unions misuse the personal information collected on cards;
- The realities of what unions can accomplish today (in contrast to the promises typically made by union organizers);
- Active and empathetic listening to uncover the deep issues that often drive people to think a union is a good idea.

The Defense Team may be assigned other tasks during an actual campaign event but most critically your team needs to be able to stop a card signing campaign in its tracks. Trying to train them on everything there is to know about communicating during a campaign is a nearly impossible task. Since most companies face very few campaigns there is a high likelihood this content will go stale anyway.

While campaign content may go stale or never be put to use, listening, communication and investigative skills can be kept fresh and put to good use everyday. Campaign content can be taught quickly if you have strong communicators with a basic knowledge of the law and how unions work and who have been keeping those skills fresh in the field.



Refresher Training Content

Most companies don't face many card signing campaigns either. This means your Defense Team may not be asked to use what they've learned about union cards until a year or more after you've trained them. In addition, the NLRB is changing the rules around management communication regularly. For this reason it is very important to regularly refresh your Defense Team's skills and keep them up-to-date on the latest union tactics and NLRB decisions that impact them.

Most clients do this refresher training via webinar. While not as good as live, face-to-face training, webinars do provide some interactivity. We regularly present webinars for client Defense Teams where we provide labor law updates plus "hot seat" skills training where we present team members with realistic scenarios and then test their understanding. While it is difficult to simulate a campaign event, especially in a webinar environment, you can challenge trainees with the same types of decisions – and pitfalls – they will face in a campaign, card signing drive or PCA investigation.

Proactive "Left of Boom" Employee Relations Tactics

New Hire Orientation

An ambush election environment forces companies to "time shift" their communications about unions. Since you have so little time to communicate once a petition is filed, you have to do more before a union ever arrives. The good news is that the better job you do up front, the less likely a union organizer will ever gain any traction with your employees.

The earliest and best place to start this communication is during the orientation process. *Depending on who your new hires are, the union may have already conducted its own pro-union "orientation" on their college campus, via social media or through popular culture.* There are two key areas you can cover during orientation. Every company should cover point one, and many should cover both.

- 1) **Direct Relationship:** The first key message for new hires should be the value their new employer places on a direct relationship between employees and management. This is your golden opportunity to explain all the ways each employee has to communicate with various levels of management and direct new hires to opportunities to suggest improvements and report problems. During orientation you should encourage regular discussions about how to enrich the work or develop new skills. You should stress the importance of direct communication to help quickly solve problems, rapidly take advantage of opportunities, take the best care of customers and beat the competition. Every new employee should leave orientation with an appreciation for the direct relationship and an understanding of how a direct relationship enriches his or her work life while benefiting their employer.

But it shouldn't stop there. You should be communicating the value of that direct relationship all the time, with all of your other company news and information: in company updates, through employee recognition, with industry statistics, via social media, etc. These reminders 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 important, your web site. Your employees should be accustomed to a steady stream of content tailored to them and their



learning and listening styles that reinforces their direct relationship to management and the organization.

There are many ways to communicate this content. You should use stories and examples. You can describe the systems that are in place and how to use them; you can illustrate all the different routes that employees can use to resolve issues and which work best for what issues. You can describe humorous examples of how going in a roundabout way to solve a problem created more problems.

Share examples of problems that you were able to solve quickly, about fast-prototyping and product launch successes, that allowed you to out-hustle the competition because the direct relationship made true collaboration possible. Or share stories of how your employees resolved customer complaints quickly and directly, helping to cement a customer relationship. Give examples of management and employees working side-by-side to meet goals or serve the community. Emphasize the value of a direct relationship without ever talking about unions.

- 2) **How Unions Work:** The second key message to consider for orientation is a discussion of how unions work. Any company that has a moderate level of internal or external vulnerability (see Tactic 3 below) should talk about unions during orientation. Many companies are reluctant to talk about unions during orientation – they think it is a negative subject and that it makes them look afraid of unions. This is a lot like not talking to your kids about sex or drugs because you are afraid it will give them ideas.

There is really no better time to talk about unions than during orientation. The employee is already in a positive state of mind and getting introduced to everything there is to know about the company and their new role. Waiting to talk about unions until there is a cause for concern erodes your credibility and looks like a defensive “knee-jerk” reaction if you’ve never talked about unions before.

Many companies are reluctant to talk about unions during orientation. This is a lot like not talking to your kids about sex or drugs because you are afraid it will give them ideas.

You don’t need to spend a lot of time on the subject of unions during orientation. You only want employees to leave with a few key perspectives on unions to consider if approached by a union organizer down the road. First, you want employees to see unionization as a business decision, not a “cause” or a decision to be made impulsively or to meet some emotional need. You would prefer your employees see that unions are marketing a service for their dollars and, like any other purchase, it is wise to first understand what the union can actually deliver before making the decision to buy into union representation. Second, employees need to know how to recognize a union authorization card, and the importance of not signing one until they fully understand all the fine print. Finally, they need to have a basic understanding of what it means to have a third party speak for them and how a union impacts the agility of a company and its ability to compete. You should emphasize the importance of getting all the facts and considering all sides of the equation before signing anything.



This message should align with other routine messages about the value of the direct relationship and continue beyond orientation. If you only talk about the direct relationship at orientation, new hires will repeat a value other long-term employees may not share. More importantly, if you don't regularly emphasize the value of a direct relationship it will be taken for granted and perhaps devalued, making it much easier for an organizer to sell the supposed benefits of unions.

Even if new hires don't remember all the details, they will remember that there are two sides to the story on unions and that they need to make sure they have the facts. An advantage to this strategy is that it basically expands the reach of your Tripwire™ approach. If asked to sign a card, your employees are more likely to head to their supervisors to start asking questions if already prompted by you to do so. And when they do trigger your tripwire defenses the union will have lost the advantage of subterfuge and surprise. Further, because many employees will refuse to sign a card until they hear more the union organizers will realize that this is going to be a harder target than expected. When probing a worksite, this sort of resistance and tough questioning is sometimes enough to drive an organizer to seek greener pastures.

Approachable Leadership™ Training

Once you've oriented employees the next most important proactive step is making sure the day-to-day relationship between employee and direct supervisor fulfills the promise. A positive and productive direct relationship starts with Approachable Leadership.

Companies struggle with how to make sure first level supervisors have the skills to create this positive and productive relationship. Most supervisors were promoted because they have the skills and commitment to get the job done. But when it comes to the "people side" of the business many supervisors struggle – even after they've been through a lot of "soft skills" training. Others seem to be born with the ability to lead and engage others, even if they aren't the best "by the book" leaders on your team.

For better or worse the relationship an employee has with your brand is a mirror of the relationship he or she has with their immediate supervisor. What makes the difference? The key is the approachability of your supervisors.

It is beyond the scope of this paper, but you can watch a video that fully explains approachability at this link: <http://LRlonline.com/approachable-leadership>. We've extensively reviewed the latest research on the key behaviors that drive discretionary effort (organizational citizenship behavior or OCB) in the workplace. The most important driver is something your supervisors can easily do every day. We call it Approachable Leadership™ and at its core it is about behaviors that create the space for employees to feel comfortable coming to their leader with problems, needs or suggestions. We emphasize the simple ways a leader can create this space and foster engagement at the frontline level to make approachability possible for (almost) every worksite leader.

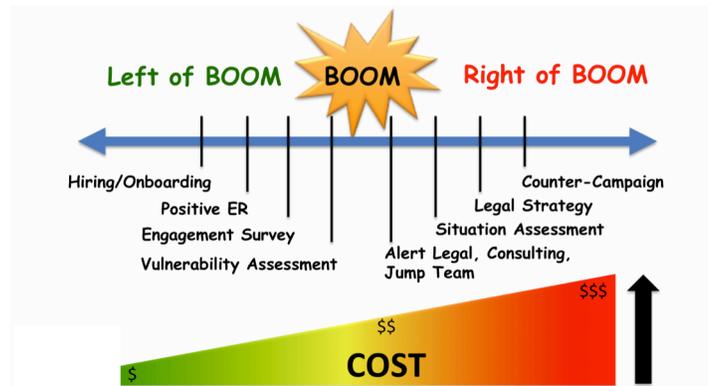


Figure 6 – Left of Boom (for more information see <http://LRlonline.com/left-of-boom>)



The payoff of Approachable Leadership™ goes far beyond the prevention of union organizing campaigns. To start, it significantly increases the chances that supervisors will hear from their employees if unions are sniffing around. But the payoff is much bigger than union avoidance alone. We highly recommend that you take the time to investigate this concept further.

Engagement Survey Using Net-Promoter Metric

One of the easiest ways for a union organizer to get traction with a work group is when there is a big gap between what the employer thinks is happening and what employees are actually experiencing. When you are in enmeshed in the day-to-day challenges of the worksite this gap may be hard to notice. But the bigger the distance becomes between these two views of the employment experience the more likely an organizer will persuasively argue that management is “out of touch” and only the union can speak across that divide.

How can you figure out whether you have a gap? The objective way is to regularly measure employee engagement and the number of “net-promoter” employees in your organization. This gives you a regular reliable “pulse check” on how well your employees think you are doing “walking the talk” around the value of the direct relationship and positive employee relations.

You can measure engagement a number of ways. You can look at behaviors (measuring OCB activity like making suggestions, volunteering to help out, participation in Kaizen events, etc.) to get some sense of how you are doing. You can hold focus groups or regular communication meetings. You can also survey employees. We recommend also looking at the net-promoter measure. This is a quick measurement (we use three simple questions) to determine whether employees are on-balance positive about the employment experience. This measure correlates to many positive business results. It is also an especially good way to determine whether a union organizer would find your workforce a “hard target” for organizing.

An Employee Engagement Survey is an excellent way to identify “saying-doing gaps” in your employment experience. It provides a baseline and helps you measure whether you are moving in the right or wrong direction. It helps identify your strengths (most people don’t spend nearly enough time focusing on their strong points). Where you find problems it gives you a road map of actions to take to fix them (most people focus on too many problems and end up trying to boil the ocean instead of creating lasting improvement employees can see, feel and point to as a success).

But surveys can’t tell you everything. For a deeper richer understanding of the challenges facing your employees there is no substitute for a well-facilitated focus group.

Surveys and focus groups aren’t right for every company, but every company has to do something to make sure their employment experience is positive and that things are on the right track. In the end, the energy and investment you make in creating a positive workplace will engage your workforce and improve productivity, customer satisfaction and profitability. And engaged employees aren’t interested in unions.

Vulnerability Assessment

The closer you get to “boom” the more your success relies on a warning system. We’ve already talked about the Tripwire™ concept, but you’d prefer to learn about potential issues long before a union organizer starts sniffing around. That is where vulnerability assessment comes into play.



We have also written extensively about vulnerability assessment. You can learn more in-depth about our recommendations here: <http://LRionline.com/vulnerability-assessment>. The system we recommend looks at two types of vulnerability, external and internal. Under each of these two umbrellas there are structural vulnerabilities (things that are unlikely to ever change) and variable ones (things that can and do change). The tactic here is to create a systematic way to compare relative internal and external vulnerability of your location(s) in part so you can best allocate limited resources.

A best practice vulnerability assessment process will look something like this:

- 1) Internal Vulnerability Assessment:** This looks at the structural and variable vulnerabilities inside each location you operate. You might look at factors like turnover (both line level and leadership), hotline calls, employee engagement survey scores, suggestions and complaints (your overall feedback loop), etc. You also might look at things like leadership participation in training and development, employee advancement, participation in volunteer or development activities, etc. Finally you could look at other OCB measures (on-time delivery, quality, productivity, etc.) If you conduct focus groups or something like LRI's MDI™ manager interview process you could include these results in your process. These factors help you map the internal vulnerability of locations against each other.
- 2) External Vulnerability Assessment:** Here you are looking at the structural and variable external vulnerabilities. This may include things like union activity or density in the community, unionized competitors in your area, union penetration in your industry or market sector, your comparative wage and benefits, regulatory environment, etc. You would want to factor in things like the political climate around a site and active alt-labor groups in the area. You may also want to look at whether any key customers, competitors or suppliers are facing anti-corporate activity from unions or affiliated groups. Many of our clients use our Eye in the Sky™ reports for this purpose. These reports flag union activity as it happens near any location you select.

Once you have identified the factors you plan to use, the next step is to develop a map or dashboard that is regularly updated with the latest data. This lets you see at a glance where you should focus your resources and attention. Your hope is that by addressing vulnerabilities early you can avoid ever getting close to a “boom” event in your company.

CONCLUSION AND NEXT ACTIONS

The best way to win an election is the same regardless of the length of the campaign: don't have one. However, the reality is that today, with six weeks to communicate to voters, even a company caught off guard has at least a fighting chance to win a traditional election, particularly with the right campaign support. The same cannot be said if the election window shrinks. If you are faced with an ambush election you are up against some very steep obstacles.

The challenge of the ambush environment is that there is too little room for error. You need a plan, you need expertly informed preparation and you need the right people, properly equipped and trained, to carry out that plan. As the election window shrinks the smart choice is to invest in proactive measures that reduce or eliminate vulnerability. A strategy limited to post-boom activity in



an ambush environment only prepares for a single battle (a battle with everything stacked against you) while ignoring the war. You must make your company a hard target.

There are four key strategies for winning and preventing elections in an ambush election environment:

- 1) A pre-built and pre-staged **Campaign Defense Plan**;
- 2) An **Early Detection and Escalation Plan** for union organizing activity;
- 3) A properly structured and trained **Campaign Defense Team**; and
- 4) An effective **Proactive (“Left of Boom”) Employee Relations Strategy**.

This paper suggests a number of tactics under each of these strategies. You should assess your readiness under all four areas, but if you can only invest in a few things today here is where to focus.

WHAT TO DO NEXT?

Here are three definitive actions you can take right now to prepare for ambush elections:

- 1) Sign up for a guided tour of our Campaign-In-A-Box (CIAB) here:
<http://LRlonline.com/campaign-in-a-box>

Do you have a campaign in a box ready to go? If not, or if you want to compare your current tool to the best available (no brag, just fact), schedule a no-obligation demonstration of our complete Campaign-In-A-Box (CIAB). This one-hour call will walk you page-by-page through a sample CIAB web site, providing downloadable files, and allowing you to assess the completeness, security and value of a CIAB. Whether you are considering purchasing a CIAB or plan on building one using communication tools you already have, you owe it to your company to review our CIAB site. Contact Greg Kittinger at gkittinger@lrim.com or 800-888-9115.

- 2) Watch the video describing Approachable Leadership™ here:
<http://LRlonline.com/approachable-leadership>

Think happy employees are the key to a great business? Learn what the latest research tells us about what really creates engagement at work - and what doesn't. This entertaining and emotional presentation reveals "the one ring" of leadership that is the difference between whether someone will succeed or fail as a supervisor. This presentation explains why focusing on employee happiness causes frustration and fails to deliver results. Learn instead what the most important recent research explains about why some first level leaders succeed while others fail. Discover how approachability acts as the foundation to a high performance workplace and learn three simple questions that transform supervisors into approachable leaders - and may even change YOUR life.

- 3) Download our free Tripwire™ sample exercise here: <http://LRlonline.com/free-tripwire-training-download>



This is an actual exercise from our Tripwire™ training program. Download it to get an idea of what the training material looks like. You can also use to this exercise to train your staff.

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 full service labor and employee relations consulting firm dedicated to developing Approachable Leaders™ and 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 also provides training and consulting services to unionized organizations. LRI's acclaimed products and services have been used in more than 10,000 union elections with a win rate of over 90%.

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