

field questions and issues around which union organizing attempts focus and how to proclaim the company's union-free philosophy without interrogating the employee in the process.

b. Active participation, from joint employee-management quality teams dealing with specific workplace issues to bonus incentives for every employee when both the company and the individual employee exceed their performance objectives to employee representation in the development of critical personnel policies (e.g., the disciplinary system).

c. Instituting an internal grievance appeal process to remove the last (assuming "a" and "b" are followed) appeal the union has.

As an employer can legally discourage organizing?

union, from suggestion programs employees to write questions to be answered management, e.g., Winn-Dixie's "I want to know" program, in which the chief executive officer responds to any question within 24 hours; questions can be answered in company publications specifically geared for that purpose. In the latter, employees are encouraged to write questions or suggestions for cost-cutting or similar ideas. The best idea for cost-cutting or similar ideas is rewarded with a cash prize. The company also provides training supervisors in how to best

against the union in an election, but must carefully follow "TIPS" and "FORE" during the campaign. The NLRB strives to hold a fair election—one in which all employees have a "free choice" without undue pressure by either the union or management. If a union receives a majority of those voting in the election, it is certified by the NLRB as the exclusive bargaining agent for the bargaining unit of employees for at least one year, and then begins to bargain a first contract with the employer.

Unions are structured into four levels: locals, nationals, internationals, intermediate, and federations. In the past most unions were either craft or industrial, however more recently the differences have become blurred as many national unions have organized workers outside of their traditional roots, and thus today many are mixed unions, and include not only workers of different crafts and unskilled industries but private and public sector members in some cases. Local union officers include president, vice president, secretary/treasurer, business manager, and stewards—for many members the union person they interact with most. Stewards, because they serve a dual commitment to both management and the union and handle most grievance issues, are highly valued.

STUDIES

4-1 Salting

is engaged in the business of removing or cleaning hazardous waste. Most of its employees are unskilled laborers; (2) drivers of trucks; and (3) field supervisors who go out into the field and are in charge of driver and equipment operator positions require commercial driving licenses (CDL). The meaning of Section 2(11) of the act.

The Union was engaged in organizing companies in the area handling hazardous materials. The Union sent a letter dated March 9 to the Company indicating (a) that it was conducting an organizing drive; (b) that the NLRA precluded the employer from restraining or coercing employees; and (c) that it would be distributing literature to its employees at various locations. Subsequently, the Union began leafleting to the Company's employees on their way in and out of the workplace.

On March 21, the Company placed a help-wanted ad, seeking to hire operators with valid CDL licenses and H&T (hazardous material handling endorsements). The Union members, Castillo and Rivera, to apply for a job. And even though neither had a valid commercial driver's license, they were allowed to fill out applications and were interviewed. They both were told that they could have jobs as field technicians, and arrangements were made for them to get a drug test. Neither informed the Company that they were members of the Union. They were "covered" by the Union. They were instructed to keep their union membership secret until the appropriate time. Castillo and Rivera were told by the Union that if they obtained jobs, the Union would make up the difference in the wage rate paid by the Employer and the wage rate that they had been getting as employees of the Company. Also, the Union agreed to provide the health and welfare benefits not provided by the Company. They started as field techs on April 16 or 17.

On the morning of April 13, the Union sent teams of union agents into the Company's office to apply for work at the Company as "overt" salts. The overt salts went to the Company's facility in pairs, wearing union clothing and carrying recording devices to record the application process. When the overt salts entered the facility, they asked the receptionist for employment applications and advised her that it was their intention to apply to the Company. She responded that the Company was not interested in becoming a union company. She informed the applicants that they could apply for one of the available driver positions. In order to apply for such positions, they would have to produce driver's licenses with valid HAZMAT endorsements. Although some of the applicants indicated to the Receptionist that they possessed those licenses, it is undisputed that, in fact, none of them did. When the individuals were able to produce the required licenses, she advised them that they could come in and fill out applications when they had obtained them. One of the applicants then inquired if he could fill out an application for a field technician position. She told him that there were not have openings for field technicians at that time, but that he could complete an application and she would keep it on file. He did not, however, complete an application. None of the overt salts returned to the Company after April 13, nor did they make any further attempt to obtain employment with the Company.

The Union filed an unfair labor practice charge against the Company for refusal to hire and to consider for hiring the union members in violation of the NLRA.

In order to establish a refusal-to-hire violation the Union must establish the following elements: (1) that the Company was hiring, or had concrete plans to hire, at the time of the alleged unlawful conduct; (2) that the applicants had experience or training in the field, or met the announced or generally known requirements of the positions for hire, or in the field; (3) that the employer has not adhered uniformly to such requirements, or that the requirements were themselves pretextual or were applied as a pretext for discrimination; and (4) that antiunion animus contributed to the decision not to hire the applicants. In order to establish a refusal-to-consider violation the Union has to show (1) that the Company excluded the applicants from the hiring process; and (2) that antiunion animus contributed to the decision not to hire the applicants for employment.

The Company argued that none of these applicants had the qualifications to be hired as drivers. Nor were these "overt salts" actually looking for employment. They were invited by the office person to submit applications for nondriver jobs, according to their social security cards and driver licenses, they never followed up on this invitation.

attempt to apply for employment. Furthermore, the Company, having around four laborers (including union salts Castillo and Rivera), did not field technicians. But simply, they were not qualified for the jobs and not apply for jobs for which they were qualified, but which were not that the Company's decision not to hire or consider for hire the "overt" by antiunion animus for when the two "covert salts" applied for jobs not qualified, the Company allowed them to complete the application in fact, hired as field techs. In addition, the Receptionist's statements that want to be a union shop clearly showed the antiunion animus amid the

Power Vac, Inc. and Laborers International Union of North America, Local 78, 354

Company's treatment of both the "covert" and "overt" salts applications for the recommended counter-salting steps for employers. "covert" or the "overt" salts in this case satisfy the NLRB ruling that employment must be genuinely interested in seeking employment before under the NLRA? 's opposition to becoming a union shop indicate that there was antiunion to consider the "overt" salts for employment?

Inclusive Representation

lay laid off more than 100 employees because of an economic recession. already provided that laid-off employees would accrue "continuous service" and would retain continuous service credit for an additional five-year the union negotiated additional benefits for these laid-off employees. One a commitment by the company that these laid-off employees would be "employment opportunities" with the company in the event positions opened up. later, in 1992, the company needed employees, and it notified the former and them interviews. Some were rehired. However, 16 former employees who members were not rehired. They sought the help of their union in filing a company, claiming that the company had violated the contract by not union declined, saying that because these union members were no longer company, they were not part of the bargaining unit and the union had no duty to the 16 former employees argued that under the agreement negotiated they were employees, they had acquired certain protections and that it was to enforce those protections. Because the former employees could not without the union, the negotiated protections would be meaningless if the sent them. The 16 former employees sued the union.

ACF Industries, 149 LRRM 2693 (1995).

that the union has no duty to represent these former employees, they cannot enforce against the company. Discuss why this result is fair or unfair to all company, the union, and the former employees.