

In the Shadow of the Employee Free Choice Act

Prepared for
Pennsylvania Homecare Association
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A. Potential Increase in Union Organizing

1. Union Desperation
2. Economic Downturn
3. Results of Presidential Election
 - a. Potential for new legislation
 - b. Composition of the NLRB



B. Union Tactics

1. Insider organizing
2. Salting
3. Smaller units
4. Advocacy litigation
5. Informational and/or area standards picketing



B. Union Tactics

6. Pressure on customers and other business partners
7. Public relations campaigns
8. Internet campaigns
9. Corporate campaigns
10. Neutrality agreements
11. State Councils



C. Union Process

1. Currently, there are two ways for union to represent employees
 - a. Voluntary recognition
 - b. NLRB supervised election



C. Union Process

2. Voluntary recognition

Permissible only if good faith belief of majority representation



C. Union Process

3. Election Process

- a. Union can petition NLRB for election if:
 - i. 30% of eligible employees in
 - ii. Appropriate bargaining unit
 - iii. Sign authorization cards



C. Union Process

3. Election Process (continued)

- b. Appropriate bargaining unit
 - i. Unit does not have to be the most appropriate bargaining unit
 - ii. It must be only "an" appropriate bargaining unit
 - iii. Key is "community of interest"



C. Union Process

3. Election Process (continued)

c. Authorization cards

- i. Means employee has designated the union as his/her representative – A decision
- ii. Does not mean only that employee wants more information, etc.
- iii. Do not expire
- iv. Almost indestructible



C. Union Process

3. Election Process (continued)

d. Themes

- Wages
- Benefits and Premium contributions
- Defined Benefit Pension Plans
- Voice
- Respect
- Power
- Change
- Dependability of a Contract
- Fairness/Sameness of Treatment
- No Risk Trial



C. Union Process

3. Election Process (continued)

e. How Unions Get Cards Signed

- Truth is not required
 - i. Promises
 - ii. Threats
 - iii. Purpose/use of Card
 - Election
 - Get information
 - Expression of Interest
 - iv. You can trust me, because your dog likes me



C. Union Process

3. Election Process (continued)

f. Practical considerations

- i. Unions usually will not file petition unless at least 50% of eligible voters have signed cards
- ii. Unions tend to file petitions for smaller units because easier to get cards and higher win rates



D. Campaigns

1. Length

- a. Usually, 4 to 6 weeks
- b. Election must take place within 45 days of petition (unless hearing over unit)



D. Campaigns

2. Modes of communication by employer and union
 - a. Oral discussion
 - b. Written leaflets and memos
 - c. Meetings (on and off site)
 - d. Home visits (union only)
 - e. Telephone contact (union only)
 - f. E-mail and Internet campaigns
 - g. Videos
 - h. "Special Help"



D. Campaigns

3. Nature of campaign
 - a. Adversarial
 - b. Personal



D. Campaigns

4. Employees' vote

- a. Secret ballot
- b. Supervised by NLRB representative
- c. Union wins only if "50% plus 1" of those who vote (not eligible voters) in fact vote for the union



E. Potential Risks Of Election (Even If You Win)

1. Time consuming
2. Expensive
3. Adversarial
4. Distraction from business purposes



F. Potential Risks Of Union (If You Lose)

1. Time consuming
2. Expensive — legal and other fees
3. Adversarial
4. Distracting — negotiations, consultations, grievances, etc.
5. Loss of flexibility (anti-competitive)
6. Loss of fairness



G. Realities of a Union

1. Emptiness of union promises (no duty to honor any union promise; employer's only obligation is to bargain in good faith)
2. Reality of collective bargaining (terms and conditions of employment subject to give and take of bargaining; while employees could end up with more, they also could end up with the same or less)
3. Risks and costs of strikes (if union engages in economic strike, employees ordinarily do not receive pay from the employer, are not eligible for unemployment compensation and can be "permanently replaced")



G. Realities of A Union

4. Union dues (required under most contracts as a condition of continued employment)
5. Potential loss of humanity (for example, if union insists on strict compliance with the contract, it is more difficult for employer to make exceptions for employees who deserve them)
6. Potential loss of jobs (for example, if union strikes, customers may find another provider during the strike; if they don't come back after the strike, then work and jobs could be lost)
7. Potential harm to clients (for example, if union strikes and the client cannot find a replacement, the client may suffer)



H. Employee Free Choice Act (EFCA)

1. Passed the House on March 1, 2007 (House Bill 1696)
2. Failed by cloture vote in Senate on June 26, 2007 (Senate Bill 842)
3. Introduced again in March, 2009
 - a. There may be sufficient bi-partisan support to defeat Cloture
 - b. Support from President Obama



H. Employee Free Choice Act (EFCA)

4. Essential elements of House Bill
 - a. Certification of union by NLRB as a result of card check confirming majority status; no election



H. Employee Free Choice Act (EFCA)

4. Essential elements of House Bill (continued)
 - b. The employer and union must begin negotiations not later than 10 days after the certification order by the Board



H. Employee Free Choice Act (EFCA)

4. Essential elements of House Bill (continued)

- c. If after 90 days from the date bargaining commenced there is no agreement reached by the employer and the union, the Federal Mediation and Conciliation Service (FMCS) is to be notified and mediation is to begin



H. Employee Free Choice Act (EFCA)

4. Essential elements of House Bill (continued)

- d. If after 30 days from the date of the notice to FMCS no agreement is reached, the FMCS shall appoint an arbitration panel.
 - i. The arbitration panel will determine the terms and conditions of a contract covering the employees
 - ii. The length of the contract would be two years



H. Employee Free Choice Act (EFCA)

4. Essential elements of House Bill (continued)
 - e. Compensatory damages for discrimination against an employee: back pay, if the discrimination was discharge, plus two times the amount in liquidated damages



H. Employee Free Choice Act (EFCA)

4. Essential elements of House Bill (continued)

- f. If an employer is found to have willfully or repeatedly interfered with union activity or discriminated against an employee for engaging in union activity during the time of organizing and until the date of the first contract, the employer may be fined up to \$20,000 for each violation



I. Responding to Questions or Comments about Unions

1. You do not have to be neutral
2. In fact, you can and should make clear that you do not want a union or believe one is necessary



I. Responding to Questions or Comments about Unions

3. In responding, you can:
 - a. Convey your opinions
 - b. Share your personal experience
 - c. Provide factual information



I. Responding to Questions or Comments about Unions


4. However, you must refrain from:

- a. Spying
- b. Promising
- c. Interrogating
- d. Threatening




J. What Employees Expect from the Employer

1. Competitive wages
2. Good benefits
3. Job security
4. Safe working environment
5. Vision



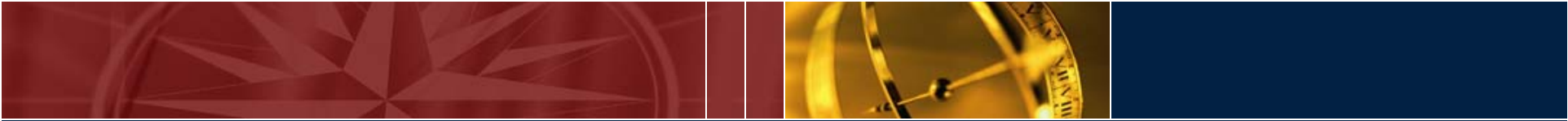
K. What Employees Expect from Their Supervisors

1. Explanation of expectations for them in terms of performance and behavior, letting them know when they are meeting them and when they are not meeting them.



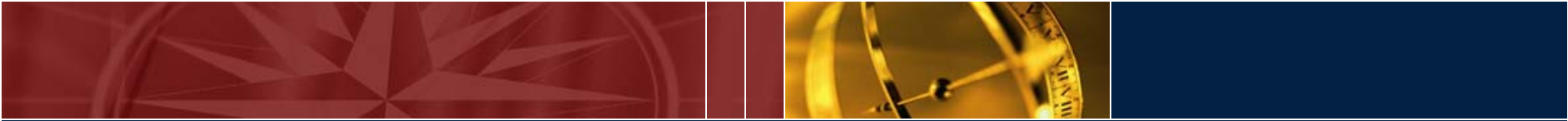
K. What Employees Expect from Their Supervisors

2. Fair and consistent treatment among employees (but recognizing that differences in treatment may be permissible if legitimate, non-discriminatory reasons).



K. What Employees Expect from Their Supervisors

3. Direction, training, resources, support.



K. What Employees Expect from Their Supervisors

4. Knowledgeable about what they do and how they do it.



K. What Employees Expect from Their Supervisors

5. Being visible, accessible and responsive to needs.



K. What Employees Expect from Their Supervisors

6. Involvement in operational decisions which affect them (whenever reasonably possible), particularly in terms of change.




K. What Employees Expect from Their Supervisors

7. Proactive inquiries about workplace problems and how you can help them solve them (recognizing the range of resources available to you).




K. What Employees Expect from Their Supervisors

8. Genuine recognition and appreciation, giving credit for their ideas and contributions.



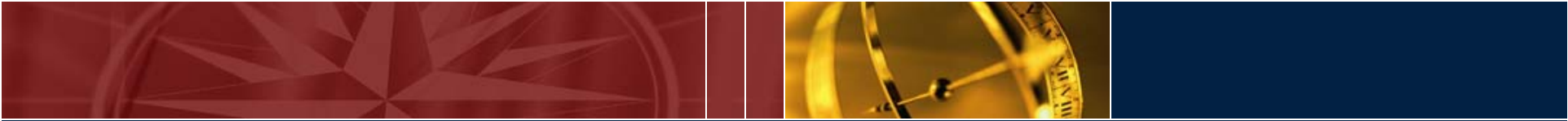
K. What Employees Expect from Their Supervisors

9. Timely, factual and honest non-confidential information about the Employer's business, their wages and benefits and other issues of concern.



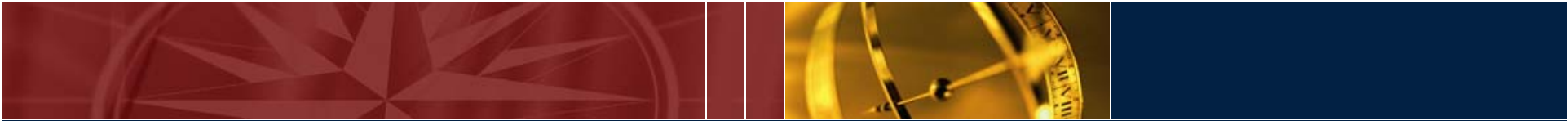
K. What Employees Expect from Their Supervisors

10. Flexibility in accommodating needs, while ensuring accountability and consistency as well.




K. What Employees Expect from Their Supervisors

11. Fairness and objectivity in the investigation of complaints.



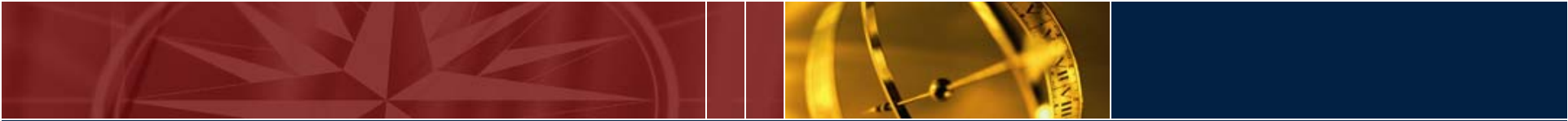
K. What Employees Expect from Their Supervisors

12. Respect and dignity.




K. What Employees Expect from Their Supervisors

13. Dealings without regard to their race, color, creed, age, sex, religion, national origin, citizenship, sexual orientation, marital status, veteran's or military status, handicap or disability, or membership in any other protected group.




K. What Employees Expect from Their Supervisors

14. Protection from sexual, racial, ethnic and all other forms of unlawful harassment and/or discrimination and/or retaliation.



K. What Employees Expect from Their Supervisors

15. No hostile, abusive, intimidating, threatening or demeaning behavior.



K. What Employees Expect from Their Supervisors

16. A positive and inclusive work environment in which they can contribute toward the achievement of the Employer's goals and feel identity with the Employer.

Thank you!



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