

# union kNOW

A publication devoted to enhancing the union-free status of clients and friends of Jackson Lewis.

Fall 2003

## More Elections, More Union Wins in 2002

These statistics are even more alarming because the number of elections conducted by the NLRB increased in 2002, as well – for the first time since 1998. That means not only more employees voted for unions, but also more employees signed authorization cards allowing unions to file more petitions for elections.

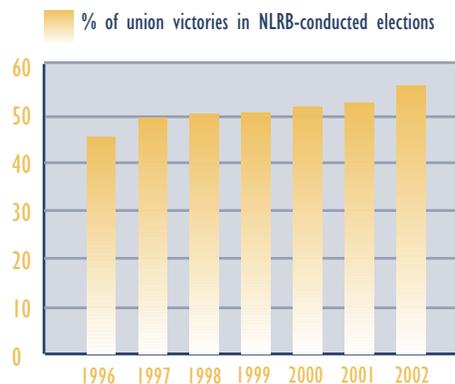
What accounts for this increased interest in union representation? Americans are worried about the economy and their jobs, skeptical about corporate America in the wake of months of scandal, and, according to a national survey conducted in 2002, more receptive than ever to joining unions. The survey, conducted by Peter D. Hart Research Associates for the AFL-CIO, indicated that for the first time since 1984 (when the AFL-CIO first asked), 50 percent of workers who do not already have a union say they would join a union tomorrow if given the chance. That number is up from 42 percent last year.

The survey sampled the views of 900 adults and non-managerial workers whose responses led to the conclusion that workers today view unions more favorably than they have in the past two decades. Indeed, 50 percent of the union-free workers said they wanted to join a union. Among those surveyed, 39 percent expressed negative views of

If you listen to Stewart Acuff, the AFL-CIO's Director of Organizing, you would believe the union movement is on its last legs. (See, *If The Unions Don't Like It, It Must Be Working*, on page 2.) However, the statistical evidence is quite to the contrary.

For the *sixth straight year*, union victories in elections conducted by the National Labor Relations Board have increased – unions won 56% of these elections in 2002. This latest disturbing number is highlighted in the graph below comparing annual union win rates since 1996:

### Union Win Rate in NLRB-Conducted Elections



### IN THIS ISSUE

More Elections, More Union Wins in 2002. . . . .	1
If the Unions Don't Like It, It Must be Working. . . . .	2
Be Alert for Outside the Box Tactics . . . . .	2
A Fox in the Henhouse. . . . .	4
Online kNOw-how. . . . .	5
Nurturing Your Supervisors . . . . .	5
Inoculate Your Employees to the Union Virus Early. . . . .	6
Can You Hear Me Now? . . . . .	7
When a Union is Already in the House . . . . .	7
Employers: Solicit Issues Now, Or Forever Hold Your Peace . . . . .	8

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(continued on page 2)

(More Union Wins,  
continued from page 1)

large corporations, up from 25 percent last year, and 58 percent had a negative view of CEOs. Labor experts say these numbers reflect a critical shift toward workers believing that union representation is necessary to safeguard them from the excesses of corporate executives and the brunt of economic downturns.

### Lesson for the Union-free Employer

Sometimes statistics do not tell the whole story. Despite the recent good showing, organized labor is still worried about the bigger picture and its loss of “market share.” However, perhaps it is employers that should be worried. Unions have become more successful at getting employees to sign cards and at winning elections in part because many employees, particularly younger workers, supervisors and managers, have had no real experience with a union and may not be informed about the costs, commitments, obligations, and restrictions of union membership. Generalized concerns about fair treatment, the lack of trust in management, and the accompanying increase in complaints about benefits, wages and personnel procedures, add up to greater interest in union representation. Given this climate, identifying areas of employee relations vulnerability and remediating the weaknesses are critical to maintaining an issue-free and union-free workplace.

## If The Unions Don't Like It, It Must Be Working

**G**ood news!?! Stewart Acuff, the AFL-CIO's Director of Organizing referred to above, is blaming employer counter-organizing efforts for labor's continuing “poor” showing in its efforts to gain new union workers. Unfortunately, Acuff's complaint seems to ignore the facts, as our lead article illustrates. In 2002, the Federation had its second-most successful organizing year ever. It added more than 500,000 new members and enjoyed the highest win rate in decades in NLRB-conducted elections – better than 56%.



outreach to workers) and adopt a strategic approach to organizing. One strategic initiative by unions is to organize workers in jobs and industries related to the unions' traditional target groups. The Union of Needletrades, Industrial and Textile Employees, for example, traditionally organizes textile manufacturing employees. Using a new approach, UNITE currently is attempting to organize employees of apparel distribution firms and industrial laundries, two industries which use but do not manufacture apparel. UNITE's nationwide effort to organize Cintas, the nation's largest uniform laundry service, is a clear example of this approach.

**Training supervisors – the eyes and ears of every employer – about the early warning signs of union activity is essential.**

Acuff complains of specific employer actions the AFL-CIO believes blunt effective union organizing:

- *use of labor counsel or consultants (the AFL-CIO estimates 90% of employers do this)*
- *use of mandatory group and one-on-one meetings with employees to discuss the union (the AFL-CIO estimates 70% of employers do this)*

Acuff also claims employers faced with union organizing increasingly avoid unionization by threatening to close or move their facilities and fire union organizers.

To boost unions' organizing success rate, Acuff recommends union leaders follow two imperatives: focus on the fundamentals of organizing (personal

### Lesson for the Union-free Employer

Acuff's lament underscores the need for employers to respond swiftly and decisively at the first hint of union organizing. Training supervisors – the eyes and ears of every employer – about the early warning signs of union activity is essential. As manufacturing jobs continue to evaporate, unions are eyeing other industries, such as health care and retail, as the primary source of new union members. Preventive training programs for supervisors are especially important for employers who may have been off the union radar screen because their industries have not traditionally been the focus of organizing.

## Be Alert for Outside the Box Tactics

Even the most committed union-free employer will have to agree that the organizing strategies employed by some unions are somewhat ingenious. An example of a union using new tactics is UNITE which often has gone more than the extra mile to develop organizing approaches that deliver a punch where it is not expected. As noted above, the union's recent efforts have included reaching into industry sectors beyond the clothing and textile industries, such as apparel retail and distribution, laundries, and uniform suppliers. At a recently-concluded meeting, the union approved its "campaign for the future," including a substantial dues increase to be used almost exclusively for organizing; a commitment to support local organizing and bargaining through demonstrations, boycotts, and corporate campaigns; and building alliances with community, civil rights groups, and others.

In one recent campaign against an already-organized employer, UNITE began investigating whether the Immigration and Naturalization Service had been tipped off about the immigration status of some union organizers. To support its allegations that INS raids had been instigated by the employer to retaliate against the organizers, UNITE began submitting Freedom of Information Act requests in the late 1990's. The INS initially denied the requests, arguing that the disclosures could interfere with an ongoing investigation and enforcement proceedings. A subsequent lawsuit by UNITE resulted in the INS turning over more than 1,325 documents.



**A workforce with a sizeable immigrant component will be more susceptible to the union's message, whether or not a union already is in the house**

But the union still was not satisfied. Although the parties settled the substantive issues, UNITE requested attorneys' fees for its troubles. Its request was denied by a federal trial court and most recently by the U. S. Court of Appeals for the Second Circuit in New York. Whether that is the end of the fight or merely the end of another round remains to be seen.

### Lesson for the Union-free Employer

The tactics employed by UNITE in this mixed union and union-free workplace represent a sophisticated approach far beyond the traditional processes for airing and resolving grievances between labor and management. As part of the strategy, the union selected an employee population where the number of immigrant workers is high and where the message to the union-free workers would be that the union understands their issues and has the power to take some action against the employer.

Immigrant workers, particularly where the concentration within the workplace is significant, often reflect the values of their native countries, where the role

and influence of organized labor may be viewed much differently. Among those workers, the union may appear to understand the employee culture better than management. In fact, the union may have cultivated the ability to communicate with workers in their native language, further reinforcing for the workers that it is the union, and not management, who can speak to – and for – them.

For employers, the lesson is obvious: a workforce with a sizeable immigrant component will be more susceptible to the union's message, whether or not a union already is in the house. To discourage union snooping and to solidify management's message, it is critical for employers to have crossed all the "t's" and dotted all the "i's" regarding I-9 work authorization forms and other documentation required by law and administrative agency regulations. Employers also must make an effort to learn about and understand the cultural mores and values of the worker population; key to this is the ability to communicate the employer's message in a language the employees easily understand. Demonstrating the ability to "speak the same language," whether literally or figuratively, will help employers counter the misinformation and misconceptions the employees may harbor about unionization, while earning their trust and respect.

## A Fox in the Henhouse

When an employer agrees to remain neutral while a union attempts to organize its employees, the situation is more akin to a fox in the henhouse than a level playing field. Add card-check recognition to the mix, and the fox turns into a wolf. The National Right to Work Legal Defense Foundation recently filed an action on behalf of six employees of a company challenging such a double trouble agreement between the Steelworkers Union and a private investment firm which holds controlling interests in the corporate stock of the company, as well as various other enterprises.

The neutrality and card-check agreement was entered into in November 2000, when the company agreed “to adopt a position of neutrality in the event that the Union seeks to represent any non-represented employees of the Company.” The agreement sets out some ground rules for organizing and provides that the investment firm will recognize the union as the representative of a particular bargaining unit if a majority of employees in the unit signs union authorization cards. The investment firm agreed to extend the neutrality agreement to any of its enterprises in which it directly or indirectly owns more than 50 percent of the common stock, controls more than 50 percent of the voting power, or has the power to direct management and policies.



The six employees are alleging that the neutrality agreement violates the prohibition in the federal labor law preventing employers from paying, lending, or delivering “any money or other thing of value” to any union and prohibits unions from requesting, demanding, receiving, or accepting any money or other thing of value from an employer. The “thing of value” in this action refers

**... a neutrality and card-check agreement is a dream for the union, exceeded only by an employer inviting a union in to talk to its employees and to sit down at the bargaining table.**

to the revenues from dues and other fees and assessments the union will be able to collect as a result of increased membership rolls under the neutrality and card-check agreement. In a July 29 press release, the NRTWF said the “unprecedented” lawsuit is intended “to overturn an illegal sweetheart arrangement that requires all companies acquired by [the firm] to help impose unionization on their employees.” According to the release, the employees already had rejected union representation several times.

### Lesson for the Union-free Employer

As the fox in the henhouse analogy suggests, a neutrality and card-check agreement is a dream for the union, exceeded only by an employer inviting a union in to talk to its employees and to sit down at the bargaining table. In some instances, employers unsuccessful in countering an organizing campaign among a segment of the workforce will agree to such an arrangement for the remaining union-free employees. The opportunity this provides a union is extraordinary. For that reason, unions increasingly are seeking such agreements and using outside pressure to do so.

Unionized employers must present a steely resolve at the bargaining table and refuse to agree to these proposals (even when the union offers enticing concessions). Also, given the fervor that can result from a union demand for such concessions, employers should be on the lookout for signs of union efforts to engage the sympathy of community, religious and civic leaders, and enterprises such as banks and investment companies doing business with the employer. Such corporate campaigns can build momentum and achieve critical mass faster than the fox can catch its next meal.

## Online kNOw-how

Remaining union-free in the age of electronic communication means employers must become Internet sleuths, visiting and familiarizing themselves with union web sites – both the informational kind and the organizing tool kind. A good place to start is with the AFL-CIO site, [www.aflcio.org](http://www.aflcio.org), the umbrella website for the labor movement and its many affiliated unions. Featured on the site is “Work in Progress,” which reports detailed information weekly on election wins, campaigns in progress, community activism, legislative actions, and other union initiatives. The site also has links to numerous other union websites, along with details and updates on specific AFL-CIO initiatives, such as “Rights@Work,” “Take Action,” and “Bush Watch.”

In addition to [aflcio.org](http://aflcio.org), the number and depth of union-related and sponsored informational and outreach websites has risen dramatically since we first wrote about it in Summer 2002 union kNOw, available online at [jacksonlewis.com](http://jacksonlewis.com). Of the growing list of sites worth a visit, [unionwebservices.com](http://unionwebservices.com) is packed with news and information about national and international labor organizations. The “Resources” page includes “Union Hosting Services” with links to AFL-CIO sites in Colorado, New York, Virginia, Missouri, Georgia, Oklahoma, Kentucky, Washington State, Montana, Oregon and Idaho. There also are links to many other union-related websites, such as [unionist.com](http://unionist.com) (which offers books for “union members, activists and leaders,” including the “Steward Update,” “The Union Member’s Complete Guide,” and “The Union Steward’s Complete Guide”) and [mooneygreen.com](http://mooneygreen.com) (with links to sites about unions and commentary about labor issues).

For specific information about union demographics in a particular geographic area or year, [unionstats.com](http://unionstats.com) is an Internet data resource providing private and public sector union membership, coverage, and density estimates compiled from the Current Population Survey using Bureau of Labor Statistics methods. Also, government websites, such as [DOL.gov](http://DOL.gov), [NLRB.gov](http://NLRB.gov), and [OSHA.gov](http://OSHA.gov), contain libraries of information and statistics about the labor market and related economic data.



### Lesson for the Union-free Employer

Unions are not confining their website activities to providing information about recent campaigns – they are using websites to conduct union organizing campaigns! Many employers have felt the sting of the online campaign, often up and running before management has gotten wind of what is going on over the wires, cables, and cells. Indeed, employees may be checking out the campaign chatter right under management’s nose at their work stations and on company-issue equipment. Don’t expect the NLRB to support management’s taking exception since all indications are the National Labor Relations Act protects this kind of organizing activity as much as the more conventional style. At least that is the way the Labor Board has suggested it will interpret the law.

Unions have embraced the high tech era. This is all the more reason why employers can ill afford not to do regular online sleuthing as part of their efforts to remain union-free.

## Nurturing Your Supervisors

Much has been said and written about keeping employees happy as a way for a company to remain union-free, and appropriately so. In a recent survey, 54 percent of workers reported that management is helping them deal with the stress they feel because of the economy, family issues, war and terrorism, and their jobs. But who is listening to the anxieties and fears of the supervisors and helping *them* deal with the day-to-day stresses of their jobs?

To an organization’s employees, supervisors are “the Company.” Nurtured supervisors can create a positive work environment for employees, lessening the facility’s susceptibility to union organizing and complaints of unfairness and mistreatment. Supervisors who feel satisfied and appreciated are more willing, when confronted with employee distrust and suspicion, to communicate a positive message about the company and are less likely to join in or initiate negative buzz about workplace annoyances or the corporate hierarchy.

### Lesson for the Union-free Employer

Recognizing and nurturing good supervisory role models must be done within the culture and values of the particular organization, but there are many rewards that have nearly universal appeal. For example, providing supervisors with enhanced benefits and working conditions can be done lawfully and discretely, so consider giving supervisors extra vacation days or a more lucrative incentive plan. When a supervisor achieves positive results or has shown above-expected

*(continued on page 6)*

## Inoculate Your Employees to the Union Virus Early



**E**mployers serious about union avoidance might take a tip from public health professionals who know that, to stay healthy, individuals must be inoculated against contagious diseases before being exposed to them. In similar preventive fashion, employers should consider administering a dose of company union-free philosophy and reality about unionization to newly-hired employees before they begin work.

Long the approach advocated by management serious about maintaining a union-free workforce, educating employees about the facts of unionization remains one of the best hedges against a union sneak attack on an unaware work force. Rather than being a *tired* approach, preventive training is a tried and true tool to keep your work force union-free. As the recent article “Employers’ Biggest Legal Mistakes” from the online publication *Workforce Week* reminds us, “Employers must constantly communicate with their employees to deal with their grievances. If employees do not believe their employer is interested in their issues, they may look outside the workplace for representation.” (Included in the article’s “Top Ten” list of legal mistakes is “Failing to retain labor and employment counsel to avoid making the first nine mistakes.”)

Among the first tasks of a union organizer is soliciting employees to sign union authorization cards. All too often, uninformed employees are easy prey for these union sales representatives. Employees who lack information regarding the legal significance of signing a union card may be drawn in by an organizer’s sales pitch or by peer pressure, and unwittingly sign a union card. Unless employees have been educated about the power a signed card gives to the union, they may regard it casually and sign it without appreciating its significance.

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**To prevent the risk of uninformed card signing, employers should consider discussing union authorization cards as part of the new employee orientation process.**

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### Lesson for the Union-free Employer

Employees who have been educated about union organizing and authorization cards and who understand the legal significance of a signed card are less likely to be lured casually into signing one. To prevent the risk of uninformed card signing, employers should consider discussing union authorization cards as part of the new employee orientation process. Use a sample union authorization card as a teaching tool so employees know what a card looks like and what it means legally to sign one.

*(Nurturing, continued from page 5)*

effort on a project or problem, recognize his or her accomplishment with a note to the department head or division chief. If the recognition is accompanied by an extra day off or a gift certificate to a good restaurant, the employer has just banked a reserve of supervisory good will.

Including supervisors “in the loop” on key organizational news and information is critical to creating an atmosphere of supervisory loyalty and trust. Nurturing the feeling that supervisors are “in on things” will enhance the cohesiveness of the management staff and facilitate cooperation and openness. Make sure supervisors are given important information, before employees learn about it, through regular and timely communication vehicles that are “for supervisors’ eyes only.” With this kind of nurturing, your supervisors will provide a willing barrier to union intrusion.

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**To an organization’s employees, supervisors are “the Company.” Nurtured supervisors can create a positive work environment for employees, lessening the facility’s susceptibility to union organizing and complaints of unfairness and mistreatment.**

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## Can You Hear Me Now?



To convince employees to support them, unions routinely tout their ability to give employees a “voice” in making decisions about their wages, hours and working conditions. The message to employees is that with a union representing you, the terms and conditions of your employment – like wages, hours of work, benefits, and

work rules – may not be changed without your input and approval.

No doubt this message has contributed to turning the tide toward unions. As reported above, the number of union elections and victories is increasing. To be effective in countering this appeal, employers often look for ways to give employees a way to be heard. Despite good intentions, however, many employers are unaware of the restrictions imposed by the National Labor Relations Act, and are surprised to learn that many common mechanisms for employee involvement and participation are unlawful.

Under the NLRA, it is illegal for an employer to “dominate” a “labor organization.” Many employee participation programs meet the definition of “labor organization” because the NLRA defines the term broadly. Generally speaking, any committee which has as its full or partial purpose to “deal with” the

employer on issues such as wages, benefits, personnel policies or other working conditions, is a “labor organization.” For example, a committee of employees which exists in whole or in part to make recommendations to the employer about a smoking policy or incentive plan is a “labor organization” under the NLRA.

The definition of “dominate” under the NLRA is equally as broad. Many common practices, such as allowing the “labor organization” to meet on company premises and paying employees for their participation time, are generally enough to satisfy the definition of “dominate.”

### Lesson for the Union-free Employer

Despite these broad restrictions, it is possible to provide a mechanism for employees to participate without

*(continued on page 8)*

## When a Union is Already in the House . . .

Employers with both unionized and union-free employees face a unique set of issues. While preserving an environment where its union-free employees do not perceive the need for a union, the employer must bargain in good faith and maintain good relations with the union-represented employees. Tricky, yes, but impossible, no.

Many employers successfully execute this delicate balancing act by carefully analyzing the provisions of the collective bargaining agreement and understanding what union-free employees value most in their jobs. Since successful union organizing is typically grounded in a failure of communication between employees and management or the reality or perception of unfair treatment by management, the same

concepts of positive employee relations which benefit union-free employees also may prevent further union expansion within the partially-unionized workforce.

These concepts and practices include:

- **peer grievance review as a preferable alternative to the binding third party arbitration process typically found in a union contract**
- **communication vehicles which provide union-free employees with more direct and timely communication than collective bargaining provides unionized employees**
- **regular employee recognition and appreciation events**
- **where lawful, slightly higher wage increases than those negotiated in**

**the union contract with an announcement of the increases after the effective date of the contract**

- **where lawful, comparable employee benefits with (for example) a slightly higher employer match for employee contributions to a 401(k) or 403(b) plan**

Regardless of the method, a partially-unionized employer will be in a better position to limit further union incursion by demonstrating in actions and words that employees do not need a union to assure fair and consistent treatment. There is no substitute – not even better economics – for treating employees with dignity and respect.

# Employers: Solicit Issues Now, Or Forever Hold Your Peace



Successful union organizing and successful union avoidance have a common core: employee relations issues. The former uses workplace issues as fuel to propel an organizing campaign; the latter eliminates them to preserve a positive, respectful workplace. Employers that succeed in their vigilance to remain union-free regularly and consistently identify and address workplace issues of concern to employees.

Many of those employers have learned that one of the best methods for identifying what those issues are is to meet and speak with employees. But, absent an existing practice of regularly soliciting and addressing employee problems, an employer attempting to do so in the midst of a union organizing campaign will risk an unfair labor practice charge.

## Lesson for the Union-free Employer

Mechanisms for soliciting discussion, such as quarterly employee meetings, periodic employee roundtables, and monthly lunches with the facility manager, conducted on a consistent basis, typically may be continued (and, perhaps, may have to be continued) after a union campaign begins. Such “get-togethers” can provide insight into what issues are spurring the union activity, and, if consistent with past practice, may enable an appropriate employer response. Since union organizing feeds on festering workplace issues, identifying and resolving issues in this way may quickly end an incipient union campaign.

To build a more productive and less vulnerable workforce through talking to employees and training management, an employee does not have to wait until a union organizer arrives with authorization cards and promises of a better tomorrow. Now is an excellent time to begin two-way communications and to train managers on the basics of unionization, the rights of employers and employees, the practical side of dealing day-to-day with a union, and the identification of the early warning signs of organizing activity.

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*(Can You Hear Me Now?,  
continued from page 7)*

running afoul of the law. If handled correctly, none of the following participation methods will qualify as a “labor organization,” whether or not the employer dominates them.

- *peer review, where the peer review committee’s problem resolution is final and binding;*

- *brainstorming groups, which exist to gather information and not make recommendations for action to the employer;*
- *fact-finding groups, which also exist for the purpose of information gathering only.*

By giving employees a voice in the workplace today, there is a greater likelihood of keeping the union’s voice out of your workplace tomorrow.

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