

# **Managing in a Union Environment: The ABC's of Positive Union Relationships**

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# Managing in a Union environment

- To be successful, there must be a shared understanding between management and the Union about the terms and conditions of employment and a willingness to play by the rules.
- Knowledge is power:
  - Know your rights and obligations
  - Know your union
  - Know your people



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# **Know your rights and obligations**

- If you do not understand your rights, you risk ceding power and control to the Union.
- Rights / Obligations
  - Contract
    - Express terms, side-letters, arbitration awards, past practices, unspoken agreements, bargaining history
  - Employee Handbook and other generally applicable policies
  - Law
    - NLRA, federal and state employment laws



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# Know your rights and obligations

- CBA Management Rights Provisions
  - Is your management rights clause robust or weak? Is it general or specific?
  - NLRB shift from “clear and unmistakable waiver” to “contract coverage” will allow for more leeway in taking unilateral action. M.V. Transportation, Inc., 368 NLRB No. 66 (2019).
    - In the past, an employer would need to point to a specific right to justify an action, while now the employer can utilize a more general right.



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# Contract Coverage

- In M.V. Transportation, Inc., the employer implemented a new light duty policy. The Union claimed that the employer did not have the specific right to implement new policy. However, the management rights clause contained the rights to “manage the business” and “assign all schedules, work hours, and work shifts,” and “assign employees.”
- The Board found that the general right to manage the business and assign schedules meant that the change was “covered” by the contract and was not a unilateral change.



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# **Know your rights and obligations**

- What if something is not “covered” by the contract?
  - Check for a zipper clause
  - If one is not present, an employer can conceivably bargain to impasse with the Union over the new issue and then implement it.



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# **Know your rights and obligations**

- Don't forget your obligations under the contract!
- Don't be afraid to test or push the boundaries of your rights, but taking an action that is prohibited by the contract can backfire.
  - Can result in a Union win in the grievance / arbitration process
  - Can lead employees to trust the Union more than management
  - Can lead to additional adverse results depending on the scope an arbitrator's award



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# Know your Union

- Another key to having a positive relationship with the Union is to understand its perspective and interests.
- What does the Union want?
  - Contract on autopilot
  - No (or only minor) complaints from employees
  - Consider the Business Agent's position, such as his term in office
- Remember, the best day for a Union business agent is a day without phone calls from angry members
- They don't like spending \$\$ on lawyers any more than you do!



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# Know your Union

- How to maintain a positive relationship:
  - Keep an open line of communication
  - Keep the Union informed of major changes
- Union representatives do not like surprises
  - It can be helpful to try to get the business agent on board with a change before he hears about it from a mob of angry members.
  - If the business agent hears about a change from members, he is more likely to challenge the move (or feel “boxed-in” to challenging the move)



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# Know your Union

- Part of knowing your Union's interests can depend on the industry and the current economic climate.
  - Are you a contractor in the building trades in a large city? If so, you may need to compromise on some issues to maintain the relationship (that you are likely stuck with).
  - Making a change that touches on a major issue prioritized by the Union? If so, the Union may be concerned about area standards more than an issue your shop.
    - E.g., "most favored nations" clauses in CBA's.



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# Know your Union

- Consider when to stand on your rights vs. cutting slack
  - E.g., strict adherence to time limits in grievance process
  - Settling grievances
    - Non-precedential settlements
    - Fine from a legal perspective; what about employee relations perspective?
  - Union access to facility / meetings on company property
    - CBA standard vs. NLRA standard vs. “common sense”



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# **Know your Union**

- YOU GOT TO KNOW WHEN TO HOLD 'EM, KNOW WHEN TO FOLD 'EM.

<https://www.youtube.com/watch?v=7hx4gdlfamo>

- TRUST IS A TWO-WAY STREET.



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# Know your employees

- Good management practices foster a good relationship with a Union
  - The same issues that cause employees to turn to a Union will continue to create tension when a Union is present
- Arbitrary or unfair actions by managers will lead to increased discontent and tension
- Treating employees fairly and equally goes a long way to further a positive Union relationship



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# Case Study

- Employer A has a Union problem (or, is it a management problem?)
- The Union has been entrenched for decades with the same attorney
- There is weak leadership with confused lines of command that lead to a lack of decision-making and finger-pointing. There is a lack of aggressiveness on major issues, but strong aggression toward relatively minor issues (e.g. concentrating on minutiae about a few hours of PTO paid out at retirement)
- All issues quickly become full-scale warfare (i.e., grievances and charges).



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# Case Study

- Employer A is constantly reacting to Union complaints instead of making positive changes within their management rights.
- Employer A's labor relations becomes effectively driven by the Union instead of management.
- How to fix this?
  - Designate a lead person with authority to deal with the union
  - Let the lawyers do their jobs. Sometimes counsel can deal with conflicts with less emotion and find a working solution.
  - Build on deals made by counsel to foster a working relationship going forward
  - Let the Union know what the priorities are and stick to them. Be aggressive where it counts and let the minor items go.



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# **THE END!**

- QUESTIONS??



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