

How Good are your Supervisors?

1. February 2011 By Steve Palazzolo

So how good are your supervisors? I'm not talking about how good are they at making widgets? If you have been reading this blog, you know that I don't think that is their job anyway. I'm talking about how good are they at dealing with your employees. If you don't know, might not be to long before you have a chance to find out. What am I talking about? I'm talking about union avoidance, that is what I am talking about. You see, a real union avoidance program is not about getting the word out to employees after the union comes knocking at your door. We will want to do that, but that is only a very small part of a real union avoidance program. A real union avoidance program is about making sure that your supervisors know what they are doing. Making sure that they know that their job is to make your employees feel appreciated. To motivate your workforce so it is happy and productive and so it does not feel like it needs some outsider to take care of its problems for it.

Now, for last 20 years of so, that hasn't been a real concern for most companies in the U.S. The union membership rate for private employers has been in a steady decline so that today it is at its lowest rate since they have been keeping records. But as we told you, when Secretary Solis announced these statistics, she also made it clear that the administration was going to back organized labor. And we noted that if it could not be done legislatively, the administration would find another way. And so it begins.

On January 28, 2011 the National Labor Relations Board issues a decision in *Parexel Int'l, LLC.*, 356 NLRB No. 82 (2011). In *Parexel*, a nurse was fired when she suggested to her supervisor that all employees at the company should quit and come back in order to get a raise. The nurse had been told by another employee who had quit and then returned to work that he had been given a raise to come back to work. This was not true. After the nurse complained to her supervisor and suggested to the supervisor that others should quit and come back to get a raise, she was interviewed by the companies HR director. The HR director asked the nurse if she had discussed this issue with any of her coworkers. When she said she had not, she was fired. The ALJ found that the nurse was fired to prevent her from talking with other employees but found that there was no "protected concerted activity" and so he upheld the discharge.

The Board overturned the ALJ's ruling. The Board held that it does not matter in a case like this if there is protected concerted activity. Rather the Board held that ascertaining ones wages compared to other employees is a core right protected by Section 7 of the Act. And any action that has the effect of suppressing these rights is a violation of Section 8(a)(1). The Board held:

The judge declined to find a violation because, in his view, [the nurse] had not yet engaged in concerted activity. He opined that Board law requires that an employee must have already engaged in protected concerted activity in order for the Board to find that she was unlawfully discharged to prevent protected concerted activity. We disagree. If an employer acts to prevent concerted

protected activity - to “nip it in the bud”- that action interferes with and restrains the exercise of Section 7 rights and is unlawful without more.

What? That’s right. I’m going to borrow a phrase from one of the partners here who sent the article around that clued me into this: Looks like “not only can you not fire someone who engages in protected concerted activity, but you can’t fire them if there is a possibility that they might engage in it.” (Thanks Rob!).

So what does all this mean? Well, for one thing it is proof that the administration was not kidding when they implied that they were going to help organized labor. And another, it’s time to train those supervisors. Don’t wait until something happens. The problem is that this stuff is not intuitive. Having supervisors with common sense is not going to be enough. I mean who would have guessed this result?