

SUPERVISOR SCARLETT, IN THE BREAKROOM, WITH THE UNION CARD:

FINDING THE CULPRIT IN LABOR WHODUNITS

DISCLAIMER

The information and related discussion is not intended as legal advice and is for general informational and educational purposes only. While we hope it is informative, it also does not fully address the complexity of the issues or steps employers must take under applicable laws—which are also subject to change, even frequently, with or without prior notice. You should not act upon any information provided without seeking professional legal counsel tailored to your specific situation. For legal advice on these or related issues, please consult qualified legal counsel directly.

PLAYERS

WHO?

WHAT?

WHERE?

JOHN STELLWAGEN
PARTNER | PORTLAND



JOHN STELLWAGEN
PARTNER | PORTLAND

EDEN VASQUEZ
ASSOCIATE | PORTLAND



EDEN VASQUEZ
ASSOCIATE | PORTLAND

DAVE WORLEY
PARTNER | SEATTLE



DAVE WORLEY
PARTNER | SEATTLE

PART ONE: FOUNDATIONS





COVERAGE, AND THE NON- UNION WORKPLACE

CASE FILE

Hypothetical

A 200-employee manufacturer with no union and no organizing history. On a Sunday, a shift lead posts to a private Facebook group of about 40 coworkers: “Corporate is shorting us on overtime. [Supervisor] Scarlett is a bastard for cutting pay in this economy. Nobody should sign up for the mandatory Saturdays until they fix it.” Six coworkers react with thumbs up emojis, and two comment in agreement, also badmouthing the supervisor Monday morning the company terminates the shift lead and the other two employees who commented for insubordination and the shift lead for disclosing internal pay practices.

CASE FILE

Question

Walk us through how you would analyze this before the company pulls the trigger.

What are the two or three facts you most want to know?



**THE INDIVIDUAL GRIPE
THAT MAY NOT BE ONE**

CASE FILE

Hypothetical

An employee emails HR alone: “I have talked to a bunch of people in the warehouse and everyone thinks the new attendance points system is unfair. It makes it harder for employees with medical issues to get seniority or a promotion.” No coworker joins, and nobody else raises it. Three weeks later she is disciplined on unrelated performance grounds and claims retaliation.

CASE FILE

Question

Is that email protected? What if it turns out she never actually spoke to anyone?

Other concerns?

PART TWO: THE NON-U**NION WORKPLACE**





**A HANDBOOK NOBODY
HAS EVER ENFORCED**

CASE FILE

Hypothetical

Two handbook provisions, in place for years and never enforced against anyone. The first requires employees to “maintain a professional and respectful tone in all communications concerning the company, its employees, and its clients.” The second directs employees to “treat salary and personnel information as confidential.” A union files a charge attacking the handbook itself, with no discipline to point to.

CASE FILE

Question

How do those provisions fare under *Stericycle*, and would either survive if the Board returned to the *Boeing* framework?



A ROUTINE SEVERANCE AGREEMENT

CASE FILE

Hypothetical

A single employee is terminated in a nonunion workplace for ordinary performance reasons. The company offers its standard separation agreement: mutual non-disparagement, confidentiality as to the terms of the agreement, and a savings clause reciting that nothing in it limits the employee's rights under Section 7 or her ability to file with or assist the Board. She signs, takes the money, and never complains.

CASE FILE

Question

Is that agreement lawful today, and does the savings clause do the work the drafter hoped it would?



THE OUTBURST, AND THE COMPETING OBLIGATION

CASE FILE

Hypothetical

At a meeting about a controversial schedule change, an employee stands up, swears at the plant manager, calls him a liar in front of 30 coworkers, and walks out. The company has fired two people in the past three years for profanity directed at a manager. This employee is the most visible union supporter in the building.

CASE FILE

Question

Is he protected? Does the answer change depending on whether the Board applies *Lion Elastomers* or *Wright Line*?

PART THREE: ORGANIZING AND ELECTIONS





**THE RAISE THAT WAS
ALREADY PLANNED**

CASE FILE

Hypothetical

A plant manager notices employees gathering in the parking lot after shift and two employees ask him “how the union thing works.” The company budgeted a market-adjustment raise in January and planned to announce it next week.
Nothing has been filed, and no one has seen a card.

CASE FILE

Question

Does the company announce the raise, delay it, or announce it with an explanation?

And may the plant manager ask the two employees what is going on?



WHAT THE SUPERVISOR SAID

CASE FILE

Hypothetical

At a regular staff meeting Supervisor Scarlett tells her team: “I have been through this before at my last company. If the union gets in, everything goes on the table in negotiations and you could end up with less than you have now. And honestly, we are like a family here. We have always been able to work things out directly.”

CASE FILE

Question

Take it line by line. What is lawful, what is close, and what draws a charge?

**RECOGNITION DEMANDED,
AND A BAD WEEK**

CASE FILE

Hypothetical

A union demands recognition claiming signed cards from 30 of 50 employees. The company declines and files its own petition within two weeks. During the campaign Supervisor Scarlett tells two employees the plant “could end up closing” if the union wins, and the company fires an open union supporter for a timecard violation it had overlooked twice before.

CASE FILE

Question

Lay out the exposure. What is the realistic worst case, and how quickly does it arrive?

PART FOUR: AFTER THE **U**NION ARRIVES





THE FIRST SIX WEEKS AFTER A NARROW LOSS

CASE FILE

Hypothetical

The union wins 26 to 24. No contract, no ground rules, first bargaining session not yet scheduled. Six weeks in, the insurance carrier raises premiums, and the company applies the same increase in employee contribution it applied at all seven of its other facilities. In the same week it wants to terminate an employee under an attendance policy that predates the election.

CASE FILE

Question

Which of those two actions requires bargaining, and what does the company do if the union will not meet in time?



THE STRIKE THAT CHANGES CHARACTER

CASE FILE

Hypothetical

Bargaining stalls over wages and the union strikes. The company hires permanent replacements and keeps running. Two weeks later the regional office issues a complaint alleging that the company unlawfully refused to provide wage data the union had requested a month before the walkout.

CASE FILE

Question

What just happened to those replacements, and what does the company owe the union?

PLAYERS

WHO?

WHAT?

WHERE?

Contact Us

Website: www.millernash.com
Email: john.stellwagen@millernash.com
eden.vasquez@millernash.com
dave.worley@millernash.com
Address: 1140 SW Washington St, Ste. 700 Portland, OR 97205
Phone: 503.224.5858