



Every workplace leader should receive training in techniques to motivate, coach and counsel employees in a manner that is understood to be fair. Part of this training should include how to identify and respond to early warning signs of union organizing.

A Motivated and Union-Free Workforce: An Employer's Holy Grail

Never before have North American employers – large and small in a variety of sectors and industries - been under attack by trade unions seeking to organize employees. Spurred on by the current recessionary times, many of North America's largest unions have redoubled their efforts to identify and recruit new members. However, in Canada and the United States, where union density is low relative to Europe and parts of Asia, remaining union-free is essential for employers to remain competitive and profitable.

The strength of a union's organizing campaign is fundamentally rooted in its ability to identify and exploit employee discontent. Happy and motivated employees have no need for, or interest in, promises made by a union.

In our experience, the key to remaining union-free is strong local leadership. Leaders who understand their primary objective is to develop a highly engaged and motivated workforce, and do whatever it takes to ensure employees trust them and believe they are treated fairly.

This may sound simple, but it's not. Developing and sustaining a motivated workforce requires *on-going, strategic and consistent* effort on the part of all levels of management. This includes a commitment to a proactive **Motivated Workforce Program** tailored to the employer's unique culture and workplace.

In our experience, every ounce of effort expended establishing and maintaining a motivated workforce is rewarded tenfold!

Six Components of a Motivated Workforce Program

1. Accept What We Already Know

Happy employees are motivated employees; and motivated employees are the foundation of a strong union-free culture, essential to enable North American employers to recruit and retain top talent at every level of the organization, and remain profitable and competitive.

2. Leadership

"The first responsibility of a leader is to define reality. The last is to say thank you. In between, the leader is a servant." (De Pree, "Leadership Is An Art").

Statistics show, and we know from experience, the overwhelming majority of employees who choose to leave their employer do so because they are unhappy with their leader, not their rate of pay. Employees are loyal to employers who provide a positive and supportive work environment, where respect is paramount and challenging work available.

It is therefore no surprise that the single most common factor underlying every *successful* union drive is *unengaged, unmotivated, local,*

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workplace leadership. The CEO and executive team have important influence on corporate culture. However, the local leaders (*i.e.*, managers, assistant managers, co-ordinators, *etc.*), have the greatest day-to-day effect on employees and the most significant and direct impact on their happiness and morale. Identifying, promoting or hiring a workplace leader is therefore one of the most important decisions an employer will make.

3. Training

Once hired, every workplace leader should participate in proactive, **motivated workforce training** designed specifically for the employer's culture.

Every leader should be trained in methods and techniques to motivate, coach, direct and counsel employees in a manner that is consistent with company policy and understood by employees to be fair. This includes a commitment to demonstrating to employees that they are valued – each and every day. Leadership training should also include ways to identify and effectively respond to early warning signs of union organizing.

Even the most experienced leader will benefit from refresher training. And any leader who refuses or belittles this learning opportunity is not the right person for the job.

Employers who wait to take this kind of action until after union organizing has begun will have waited too long.

4. Open Communication

Proactive employers work consistently to promote and encourage open communication at every level of the organization. Many make effective use of district managers or third party assessment consultants to periodically check the “pulse” of employees.

Once issues are uncovered, strong managers follow up promptly using a protocol that ensures employees know they have been heard and experience positive change immediately. Delay in addressing and resolving workplace concerns leaves an informational void, causing uncertainty among employees, which union organizers are eager to exploit.

5. Even-Handedness and No Favouritism

Very often during a organizing campaign, a union will tell employees who feel mistreated that their managers are “playing favourites” and a collective agreement will eliminate favouritism. A common example is the promise a collective agreement will contain provisions outlining how hours of work and/or overtime will be distributed; and if violated, the union will file a grievance to achieve financial compensation.

The way to avoid an allegation of favouritism is to create and implement clear, transparent and consistent workplace policies, and to ensure a common understanding of them. This does not mean that local leaders cannot and should not exercise discretion or manage individual workplaces flexibly. The two concepts – consistent transparency and flexible discretion - are entirely compatible.

6. Respect and Dignity

Once a **motivated workforce program** is in place, the management team must work with local leaders to ensure all employees are treated with respect and dignity. Leaders must also be willing and able to make decisions which may not be popular, but are nevertheless respected and fair.

*A hallmark of our practice is assisting employers to create and implement **Motivated Workforce Programs** tailored to their operations. The result is inevitably a more productive, profitable and, often, union-free workplace. For more information and for assistance please contact Sherrard Kuzz LLP.*

Global Labour Strategies for Multinational Employers

Within the past two years, North American based operations of multinational and multijurisdictional employers have begun to experience the negative impact of **global union federations**. The early results have been increased union organizing and decreased competitiveness of North America operations.

Headquartered primarily in Europe, a global union federation is an international federation of national and regional trade unions whose mandate is to organize workers in specific industry sectors. Although headquartered thousands of kilometres away, global union federations have been able to successfully reach into North America through the application of **International Framework Agreements** (“IFAs”).

Global Union Federations - How They Make Inroads Into North America

Here's how it works: A global union federation approaches a multinational employer headquartered in a country known to be union friendly (*i.e.*, Denmark, France, Sweden, *etc.*). The global union federation encourages the headquarters to sign an IFA containing provisions consistent with the basic themes of the International Labour Organization (“ILO”). These themes include: no forced labour, no child labour, equality, no discrimination, and freedom of association. The employer headquarters, committed to fairness and sound labour practices, signs the IFA, not appreciating the impact it could have on its operations in countries with low union density (*i.e.*, Canada and the United States).

Freedom of association was never intended to silence an employer's right to lawfully express its desire to remain union-free.

The commitment to **freedom of association** has caused the greatest harm.

Traditionally, freedom of association protected workers' rights to join a trade union should this be the majority's wish. Freedom of association was never intended to silence an employer's right to lawfully express its desire to remain union-free.

However, in recent years, the ILO has made concerted and successful efforts to persuade some international, political and business leaders that freedom of association includes **the right to unionize**. This has been interpreted to mean, where a multinational employer has signed an IFA recognizing freedom of association, the employer has agreed to *support* unionization, or at the very least *remain neutral* in the face of union organizing, anywhere in the world the employer operates.

This has hurt North American employers governed by an IFA. Prohibited from exercising their lawful right to express their views against union organizing, local leaders have had no choice but to leave their employees with only one side of the debate – the union's side. The result is almost always a unionized workplace in a primarily non-unionized jurisdiction, and an employer now facing significant, competitive disadvantages.

How to Protect North American Operations

We believe the way to protect local operations is for each multinational employer to decline the invitation to sign an IFA. Instead the employer should develop and implement its own global labour strategy, taking into account the different labour laws and business environment in which the employer carries on business.

Alternatively, if a multinational employer finds it necessary to sign an IFA, at the very least an attempt should be made to write the agreement in a way that recognizes the significant labour relations and business differences in the relevant jurisdictions.

The Components of a Global Labour Strategy

At a minimum, a global labour strategy will include a “**Code of Conduct**” developed and implemented by the employer, outlining its core labour standards and expectations. These generally include a commitment to the ILO themes identified above: no forced labour, no child labour, equality, and no discrimination, as well as compliance with basic occupational health and safety standards. Often, application of a Code of Conduct is extended to third party suppliers as a term of the contract of service between the supplier and employer.

The way to protect local operations is for each employer to develop and implement a global labour strategy, taking into account the different labour laws and business environment in which the employer carries on business.

A global labour strategy may also address a multinational employer’s position with respect to unionization. This can present a challenge where the employer operates in jurisdictions whose laws and norms vary significantly in terms of union influence and density. For example, in parts of the European Union, it is mandated that employee committees or “works councils” be established once an employer has a certain number of employees. In France, 23% of the workforce is unionized. However more than 93% of that country’s workforce is covered by works councils typically dominated by trade unions. The role and strength of unions in these jurisdictions is therefore very different from the role and strength of unions in North America.

The Benefits of Adopting a Global Labour Strategy

Designing and adopting a global labour strategy will benefit a multinational employer in a number of important ways. The process will:

- Educate the multinational employer regarding the labour laws and business environment within the jurisdictions in which the employer operates.
- Ensure the multinational employer understands the potential negative implications of entering into an IFA.
- Reduce the risk the multinational employer will enter into an IFA which will hurt its operations in jurisdictions with low union density.
- Result in a set of protocols and labour standards designed by the multinational employer – not by a global union federation – and tailor-made to reflect the business reality in which the employer operates, as well as throughout its supply chain.
- Insulate the multinational employer from pressure from global union federations to execute an IFA, by demonstrating that a Code of Conduct has already been implemented protecting basic labour rights.
- Foster positive public relations and head off accusations by labour unions and other interested groups that the multinational employer promotes and profits from poor labour conditions particularly in developing countries.

- Improve the working conditions for the multinational’s employees worldwide; which in turn raises workplace morale, improves productivity and reduces the employees’ desire for, or the role of, a union in the workplace.

Developing a Global Labour Strategy

When developing a global labour strategy, input should be sought and received from a range of stakeholders, across jurisdictions. This includes the executive management team, local human resource professionals, front line employees, and in some cases employee representatives. Each stakeholder brings a unique and important perspective about the employer’s workplace and the practical implications of any strategy adopted.

IFAs - A Final Word and Tangible Example

As mentioned at the outset, the primary purpose of an IFA is to establish an employer’s written commitment to adhere to core labour standards wherever in the world the employer carries on business. **This may sound similar to a Code of Conduct. However, an IFA is different in two fundamental ways.** First, an IFA is a bilateral agreement negotiated between a multinational employer and global union federation, and as such cannot be amended unilaterally by the employer should the need arise. Second, an IFA almost always includes a commitment – direct or indirect - on the part of the employer to support unionization, or at a minimum to take a neutral position in the event of union organizing in any of the employer’s workplaces around the world.

Today, more than ever, understanding the global implications of labour-related decisions and establishing a global labour strategy for labour standards is critical to the health, productivity and competitiveness of multinational operations worldwide.

The second factor can have significant, negative, impact upon Canadian and American employers. Consider the following example: An Ontario-based employer, with headquarters in Europe, finds itself the subject of union organizing. In response, the Ontario employer engages its lawful right to express to employees its desire to remain union-free. The local union, through global channels, pressures the European headquarters to enforce the terms of an IFA which includes a provision that the employer remain neutral in the face of organizing. The European headquarters, not fully appreciating the impact the IFA is likely to have on its operations in Ontario, instructs local leadership to remain neutral. The result is a unionized workplace in a primarily non-unionized jurisdiction, and an employer now facing significant, competitive disadvantages.

Final Thoughts

As employers continue to expand across borders and jurisdictions, the development of a global labour strategy becomes increasingly important. Today, more than ever, understanding the global implications of labour-related decisions and establishing a global labour strategy for labour standards is critical to the health, productivity and competitiveness of multinational operations worldwide.

The lawyers at Sherrard Kuzz LLP have industry leading expertise assisting multinational and multijurisdictional employers to develop global labour strategies. To learn more or for assistance please contact us.

DID YOU KNOW?

Ontario employers must comply with the **accident reporting obligations** under the *Occupational Health and Safety Act* if a **critical injury is suffered by anyone on the premises, not only workers**. This includes immediately notifying a Ministry of Labour Inspector and securing the scene until it is cleared for release. Similar obligations may apply in other Canadian jurisdictions.

To learn more contact Sherrard Kuzz LLP.

HReview Seminar Series

Please join us at our next HReview Breakfast Seminar:

Accessibility for Ontarians with Disabilities Act

This new law requires provincially regulated employers to comply with the requirements of a variety of training and *Accessibility Standards* - beyond the existing accommodation requirements in the *Ontario Human Rights Code*. Failure to comply may result in an administrative fine of up to \$100,000. Public sector employers must be in full compliance by January 1, 2010; and private sector employers by January 1, 2012.

At this HReview Seminar attendees will learn:

1. What is a *Customer Service Accessibility Standard*?
2. The nuts and bolts of the policies and programs employers must have in place to comply with the Act.
3. The training employers must provide to employees under the Act's regulations.

DATE: Tuesday September 21, 2010; 7:30 – 9:30 a.m. (Program at 8:00 a.m. - breakfast provided.)

VENUE: Mississauga Convention Centre, 75 Derry Road, Mississauga, Ontario L5W 1G3 905.564.1920

COST: Please be our guest.

RSVP: By Monday September 13, 2010, to info@sherrardkuzz.com or 416.603.0700

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