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## *Union Issues in the Solid Waste Industry*

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### **Summary**

Union membership in America has been in a downward spiral for the past 50 years. However, this does not mean that the private solid waste industry can rest easy. Because the type of work performed by industry employees cannot be sent abroad to reduce labor costs and the nature of the business is recession-resistant, unions recently have targeted solid waste companies. Specifically, the International Brotherhood of Teamsters, the largest union player in the field, has publicly vowed to unionize private solid waste companies nationwide and has expended significant resources to achieve that goal. Recently, it announced its separation from the AFL-CIO to pursue a more aggressive organizing strategy. Solid waste companies will certainly continue to be a high priority for new Teamster organizing.

This paper reviews the methods used by unions to organize companies, the procedures by which unions become certified as repre-

sentatives of employees for collective bargaining purposes, and the bargaining process itself. It also addresses recent strikes in the industry and the ways employers can prepare in advance to reduce the impact of a strike. Finally, the paper looks at management initiatives that should be used to reduce the possibility that employees will seek union representation.

### **Background**

Labor unions have existed in America since the 1800s. By the mid-1950s, at the height of the labor movement, roughly 35 percent of the American workforce was unionized. While union ranks have fluctuated since, there has been a significant and consistent decline in union membership over the last 50 years.

According to the Bureau of Labor Statistics, 12.5 percent of wage and salary workers were members of a labor union in 2004.<sup>1</sup> All states in the Middle Atlantic and Pacific regions reported union membership

rates above the national average. In contrast, states in the Southeast and Southwest tended to have far less union density.

Given the steady decline in union membership throughout the country, the private solid waste industry should not be concerned about new organizing efforts, right? Wrong.

The Teamsters boasts that it represents over 25,000 private solid waste industry workers.<sup>2</sup> And it is not content to stop there. In 2004, Teamsters President James P. Hoffa said: "It is the priority of the Teamsters Union to bring justice to solid waste workers throughout the country."<sup>3</sup> While the Teamsters' past indiscretions may cloud its definition of "justice," it has certainly initiated efforts to organize the private solid waste industry, including a two-day strategic planning session in the Fall of 2004 aimed at the industry's three largest companies—Waste Management, Allied Waste, and Republic Services. The Teamsters have appointed a National Solid Waste Coordinator, Ed Jacobson, to

<sup>1</sup> Bureau of Labor Statistics, Union Members Summary, [www.bls.gov/news.release/union2.nr0.htm](http://www.bls.gov/news.release/union2.nr0.htm) (Jan. 27, 2005).

<sup>2</sup> Waste News, Teamsters Target Trash Industry, [www.wastenews.com](http://www.wastenews.com) (Mar. 29, 2004).

<sup>3</sup> International Brotherhood of Teamsters, Teamsters To Hold National Solid Waste Strategic Planning Meeting, [www.teamsters.org](http://www.teamsters.org) (Oct. 2004).

spearhead its organizational efforts.

It is not surprising that the industry has become a high-profile target of union organizing efforts. First, the industry is recession-resistant. Second, unions have lost many members due to companies moving jobs abroad in order to reduce labor and regulatory costs and the industry provides unions with an opportunity to get new members. As a result, other unions have thrown their hat into the ring, including the Operating Engineers, the Longshoreman, and the Machinists.

### Union Organizing Tactics

Before addressing the process of union organizing, it is necessary to have a basic understanding of the relevant federal statutes and administrative agencies you will encounter along the way. In 1935, Congress enacted the National Labor Relations Act (NLRA), which is a federal law designed to regulate employer, union and employee conduct. In conjunction with this statute, Congress also established the National Labor Relations Board (NLRB or “the Board”), which is an administrative agency charged with implementing the policies of the NLRA.

While often employees will seek out unions for representation, recent history has shown that unions are taking a more proactive approach to organizing. For example, unions have employed a “top down” approach whereby they target employers vulnerable to adverse publicity campaigns and political pressure. In those cases, unions aim their campaign at the larger corporation (specifically, the Board of Directors and shareholders) rather than individual business units, with the hope they can force the corporation to voluntarily agree to recognize the union without proceeding through a Board-conducted election.

Recently, unions have attempted to use the media as a weapon to target companies. For instance, several unions enlisted the help of “Dateline” to investigate allegations (which turned out to be false) concerning a supermarket chain’s products and treatment of customers. Unions have also made an effort to attack the public image of companies, known as “corporate campaigns.” For example, a union has expended significant time and resources attacking Wal-Mart’s health in-

surance coverage for employees in a thinly-veiled attempt to establish a foothold within that company. Often, such corporate campaigns serve to drive down stock prices even if the union’s goal of organizing is not met.

Another organizing method used with some success is “salting.” This is where a union organizer applies for a job with an employer for the sole purpose of organizing its employees. Last, unions have become technologically savvy in an effort to reach a broader base of potential members through the internet and specific union websites.

### Card Check Agreements and Union Representation Petitions

Now that you know the methods used by unions to organize employees, we turn to how they actually get their foot in the door. A tactic that has become increasingly popular is pressuring employers to enter into card check recognition agreements. In these agreements, employers agree to forgo an NLRB-conducted election and negotiate with the union as the employees’ representative if the union is able to collect signed authorization cards from a majority of employees. Authorization cards are simple documents signed by employees stating that they wish to be represented by the particular union. Employees are easily pressured to sign these cards by union organizers.

Unions often ask the employer to remain neutral (refrain from expressing positive or negative views concerning union representation) when soliciting cards. The card Union Organizing Tactics check/neutrality agreement path is preferred by unions because studies have shown that unions’ success rate in organizing employees under this method is significantly greater compared to their success rate in NLRB-conducted elections. This is because employees only hear one side of the story and that story is often misrepresented. Employees are sometimes coerced into signing cards and sign them believing the union will then leave them alone. Unfortunately, employees do not realize that they have a legal right not to join a union. During an election campaign, employers are permitted to inform employees of this right as well as other legal rights protected by federal law.

The traditional method for determining

union representation is through an NLRB-conducted election. A union files an election petition with the Board that must be supported by a sufficient “showing of interest.” This showing of interest is met by evidence that at least 30 percent of employees in the unit the union is attempting to organize wish to be represented by the union. Typically, a union will not proceed to this stage unless there is support from a majority of employees.

Sometimes a union representative or employee will approach a member of the management team and hand him or her signed union authorization cards. It is imperative that the manager or supervisor refrain from inspecting the cards. The NLRB has held in a number of cases that supervisors reviewing cards and expressing their belief that the signatures are genuine can constitute voluntary recognition without the need for an election. Thus, if presented with this situation, management should simply tell the presenter of the cards to contact the NLRB.

Once a petition is filed with the NLRB, a hearing will be set within the next 14 days. The hearing is primarily used to resolve issues concerning which employees are eligible to vote in the election. Usually, the employer and union will agree to the group of voting employees without proceeding to a hearing. Then, an election date will be set within 42 days of the date after the petition was filed. Ultimately, employees will vote in a secret ballot election and the union must obtain a majority of the votes counted to be successful. A tie goes to the employer. Employers prefer secret ballot elections over a card check because it ensures employees will have the opportunity to vote their conscience with little fear of retaliation by the union.

In between the time a petition is filed and when the election is held, often known as the “critical period,” an employer is permitted to run a campaign (including speeches and written communications) to express its views on why it does not believe a union is necessary. However, supervisors must be careful of what they say and how they say it to avoid running afoul of the NLRA. The acronym “TIPSS” can help supervisors remember certain prohibitions:

- **Threaten.** Supervisors cannot threaten employees with harm or retaliation (economic or otherwise) if they decide to sign a union

card or join or vote for the union.

•**Interrogate.** Management cannot ask any employee whether he or she favors the union, has signed a union authorization card, or has attended a union meeting.

•**Promise.** Supervisors cannot promise any benefits or rewards (e.g., wage increases, bonuses, etc.) for refusing to sign a union card or voting against the union.

•**Solicit.** Management cannot solicit grievances from employees about working conditions while expressly or impliedly promising corrections.

•**Surveillance.** Supervisors cannot conduct unlawful surveillance (e.g., parking outside a union meeting) of employees or even give the impression of surveillance.

In addition to the specific conduct outlined above, the general rule is that once a petition is filed, an employer may not make changes in wages, hours, and working conditions. The exception to this rule is where the employer can show such changes would have been made even in the absence of the petition. Basically, employers must act as they would in the absence of a union campaign. It is vital for an employer to conduct itself lawfully because violations of the NLRA during the critical period may block an election from proceeding or even overturn an election won by the company.

Over the past three years, unions have prevailed in over 55 percent of Board-conducted elections (these statistics do not reflect those cases where a union withdrew its petition prior to the election).<sup>4</sup> However, employers in the waste service industry have had recent successes in such elections well above the national average. Since 2004, industry employers have won 33 of 58 elections — a winning percentage of 56 percent. Some of the largest elections with respect to the number of employees voting include: Republic Services of Indiana versus the Auto Workers Union (180 to 70); Allied Waste versus Teamsters Local 728 in Denver (164 to 77) and Waste Management versus Teamsters Local 379 in Woburn, Massachusetts (59 to 43).<sup>5</sup> Based on these figures, it is evident that companies in our industry have proven to be a formidable foe despite the unions' targeting of the industry.

### What Happens if the Union Wins an Election?

In general, if the union wins an election, the employer and the union will meet to attempt to negotiate a collective bargaining agreement covering the terms and conditions of employment for employees who voted in the election ("the bargaining unit"). Examples of typical bargaining subjects include wages, work schedules, retirement and pension provisions, health insurance, vacation, holidays, absenteeism, disciplinary procedures, and mandatory alcohol and drug testing. Recent and substantial increases in the costs of health insurance has been a hot button topic for parties during negotiations. In addition, key issues such as wages, retirement, no strike/lockout prohibitions, management rights, and union security language often prove to be significant hurdles in the parties' attempt to reach agreement. Employers are advised to plan a bargaining strategy before sitting down with the union and to remain consistent in the execution of that plan throughout negotiations.

Ordinarily, employers choose to negotiate contracts solely on behalf of themselves. However, there are situations where a group of employers join multi-employer associations to negotiate a single contract covering the separate entities. While this structure may provide employers with increased bargaining power through pooled resources, it can sometimes backfire because the multi-employer association is only as strong as its weakest link.

There are very few hard and fast rules in the area of collective bargaining. Instead, the actions of parties are governed by the flexible and ever evolving standard known as "good faith." Under the NLRA, the employer and union are required to bargain in good faith. Should either party believe that the other has not bargained in good faith, it can file an unfair labor practice charge (ULP) with the Board claiming a violation of the NLRA. In the event of such an allegation, typically the Board will determine whether a party bargained in good faith after analyzing all of the circumstances surrounding the party's conduct both at, and

away from, the bargaining table.

Although the NLRA does not compel either party to agree to a contract or require the making of a concession, the Board regularly looks to a general willingness to make concessions as evidence of good faith. Conversely, the courts and the Board will often treat an absolute refusal to grant any concessions as a showing of bad faith. Because the laws governing bargaining are so vague, there is truly no substitute for the instincts and savvy that can only be gained from actually participating in the negotiation of a union contract.

There is no bright-line test as to what constitutes bad faith bargaining. However, there are some examples of automatic violations of the duty to bargain in good faith, including bargaining directly with employees, refusing to sign a written agreement reached by the parties, and sham bargaining—where a party merely goes through the motions of negotiations with no intent to reach agreement.

### Reducing the Risk of an Unfair Labor Practice

There are a few techniques employers can use to minimize the likelihood of a ULP or at least to successfully defend against such an allegation. They include:

- Make proposals in writing to prevent mischaracterization.
- Document your requests for frequent negotiating dates and convenient negotiating times to preclude allegations of stalling.
- Note any tentative agreements reached by the parties in subsequent written proposals.
- Keep accurate and contemporaneous notes during negotiations because they will serve as valuable evidence in the Board's review of any charges.
- While parties typically negotiate over language issues first and reserve economic issues for later, it is important to focus on major outstanding issues to avoid getting bogged down in minutia.
- Insist upon proposals from the union to avoid delay and the mistake of negotiating against yourself.
- Promptly respond to relevant information requests made by the union.

<sup>4</sup> The Labor Research Association, *Union Elections: Certification Elections (1990-2004)*, [www.laborresearch.org](http://www.laborresearch.org) (2005).

<sup>5</sup> Labor Relations Ink, [www.lrlonline.com](http://www.lrlonline.com) (2005).

As to be expected, the bargaining process does not always run smoothly. Often, to gain a bargaining advantage, the union will file a ULP with the Board alleging that the employer has violated the NLRA. Typically, those charges come in one or more of the following three forms:

- Section 8(a)(1) of the NLRA makes it unlawful for an employer to interfere with, restrain, or threaten employees from joining or refraining from joining a union or engaging in group activity related to their employment conditions. These cases generally arise from unlawful threats (e.g., “If you continue to support the union, we’ll close this facility down and you will be out of a job.”) or interrogations about an employee’s union activities.

- Section 8(a)(3) of the NLRA makes it unlawful for an employer to discriminate against an employee to discourage membership in a labor organization. These cases usually involve disciplinary or termination decisions.

- Section 8(a)(5) is the provision of the NLRA that compels an employer to bargain in good faith, as described above.

A more powerful tactic used by unions to achieve its goals during bargaining is a strike. In the past few years, unions have employed this economic weapon against employers in the private solid waste industry with increasing frequency. In January 2005, approximately 180 Teamsters’ members went out on strike against Waste Management in Mercer County, New Jersey. The strike lasted 34 days. In August 2004, Teamsters Local 350 went out on strike against GreenTeam/Zanker for five days in Sunnyvale, California.

In March 2004, approximately 50 members of Teamsters Local 439 went out on strike against Stockton Scavenger for eight days. In May 2004, some 280 members of Teamsters Local 533 in Reno, Nevada, went out on strike against Waste Management for a week. In August 2004, approximately 400 City employees, including garbage workers, went on strike in Billings, Montana for 11 days. In 2003, 19 members of Teamsters Local 142 struck Enterprise Trucking & Waste Hauling in Gary, Indiana for more than two months. Among the key issues leading to the strikes were wages, health insurance co-payments, and mandatory overtime.

In October 2003, 3,300 Teamsters members went out on strike when negotiations stalled with the Chicagoland Refuse Haulers Association, a multi-employer bargaining association comprised of 16 solid waste companies. The strike, which received national media attention, was settled after eight days, with health care the primary contested issue.

### Preparing for a Strike

Given the recent increase in strikes directed at the industry, it is critical for employers to have comprehensive no strike prohibitions in their collective bargaining agreements. But because most strikes occur during negotiations for a first contract or after a contract expires, it is important for employers to prepare for a strike in advance of a breakdown in negotiations. An employer has the absolute right to operate during a strike. In order to maintain operations, there are several steps employers can take. In an economic strike (initiated to bring economic pressure to bear during negotiations), employers are free to hire permanent replacements. In a ULP strike an employer may hire temporary replacements. The employer can place ads in newspapers to hire replacements. Some states require employers to alert potential hires that a strike is in progress.

Unionized employers can also inform striking employees of their right to cross a picket line. Upon request, employers may provide employees with information explaining how they can resign from the union to avoid incurring penalties that may be levied against them by the union for crossing a picket line. Employers must refrain from encouraging, threatening or instigating employees to invoke such resignation procedures.

If the prospect of a strike increases, employers should be prepared to use supervisory and management personnel to assume employees’ duties during a strike. Employers Recent Strikes in the Private Solid Waste Industry with multiple facilities may also consider using employees from other locations to fill in while a strike persists. Subcontracting is another viable alternative for employers to pursue to assure that operations continue in the event of a strike.

In many instances, employers with multiple

facilities have workers covered by different collective bargaining agreements often with other unions. In the event of a strike at one facility, employees covered under different contracts may choose to honor the striking employees’ picket line and refuse to provide services to the employer. This is known as a sympathy strike. Should the employees engaged in a sympathy strike violate a broad no-strike clause in their own contract, such activity is not protected by the NLRA and they may be disciplined or permanently replaced.

The general consensus is that nobody wins in the event of a strike. However, an employer’s ability to continue effective operations during a strike will allow it to bargain from a position of strength during negotiations that seek to bring the work stoppage to a quick and favorable resolution. It is simply human nature for striking employees to become discouraged if, while standing on a picket line, they watch their employer continue to do business. Thus, it is crucial for employers to have a strike plan prepared for immediate implementation should such an event arise.

### Union Decertification

Employees may become dissatisfied with their union representation for a variety of reasons. Often, employees will circulate a petition saying that they no longer wish to be represented by their union. Employees may only rid themselves of union representation via a petition one year after the union wins an election and is certified and no contract is reached, or after a contract has expired. It is important that management personnel not instigate, assist, or participate in any way with respect to the circulation of such petitions.

If an employer receives a decertification petition from its employees, it generally has two options:

- First, the employer can unilaterally withdraw recognition of the union and refuse to engage in further negotiations if it has objective evidence (e.g., the petition) that a majority of the employees in the bargaining unit no longer want to be represented by the union. The employer should take steps to verify the authenticity of the signatures on the petition.

- Second, the employer upon receiving a petition signed by a majority of the em-

ployees may file an election petition with the Board requesting a decertification election.

Employees can also go directly to the Board without presenting their petition to the employer to request a similar election. In such cases, the same general rules and procedures will apply as in the case where a union files a petition to represent the employees. There is one exception and that is during the campaign stage the employer may tell employees that they will not suffer wage reductions or a loss of benefits if the union is voted out.

In the past three years, employers have won just over one-third of the decertification elections held nationwide.<sup>6</sup> Within the solid waste industry, however, employers have had some recent success. In 2004, employers won four decertification elections against the Teamsters: Biosystems/Stericycle in Massachusetts (11 to 1); Allied Waste in Kilgore, Texas (26 to 22); Santiam Sanitary Service in Aumsville, Oregon (11 to 0) and Deffenbaugh Disposal Service in Omaha, Nebraska (69 to 40). In the same year, unions prevailed in only three decertification elections.<sup>7</sup> Thus, the winning percentage for private waste service companies in 2004 far exceeded the national average.

### Proactive Management Techniques

After reviewing the methods of organization used by the union, the election process and subsequent issues that arise during bargaining, it may be helpful to take a step back and take a look at why employees may seek union representation. Often, employees gravitate towards unions to find protection from what they perceive to be flaws in management. A human resources manager in the solid waste industry wisely stated: "Management has organized more unions than unions ever will." While it is always important to treat employees with respect, there are six general guidelines that managers can follow to limit dissonance within their ranks:

- Communicate and administer company policies in a fair and consistent manner.
- Be a good listener.
- Resolve problems, questions, and complaints promptly.

- Know your employees well, including their interests, motivations, needs, and ambitions.

- Communicate changes and keep your employees informed and involved.

- Provide periodic feedback.

While these principles are not exhaustive, they can serve to limit an employer's exposure to potential union organizing at its facilities. The ability of a company to remain union-free in the private solid waste industry is a reasonable and legitimate goal because union contracts tend to limit an employer's ability to effectively and promptly respond to changing market conditions. In addition, by following these guidelines, employers will likely see less employee turnover and gain a more productive workforce.

#### Sources:

- The National Employer

#### Websites:

- <http://www.acsonline.org/dictionary/labor>
- <http://www.opm.gov/lmr/glossary/index.asp>

#### Glossary:

**AFL-CIO:** The American Federation of Labor (AFL) and Congress of Industrial Organizations (CIO) is a voluntary federation of 54 national and international labor unions.

**Authorization cards:** Documents signed by employees stating that they wish to be represented by the particular union. The authorization card will typically say "I hereby authorize ABC Union, AFL-CIO or its chartered local union(s) to represent me for purposes of collective bargaining." The card generally asks for the employee's personal information, including name, address, phone number, employer name, employer's address, hire date, hourly wage, position or type of work performed, shift and the employee's signature.

**Bargaining unit:** (sometimes referred to as an "appropriate unit"). A grouping of employees that a union represents or seeks to represent and that the NLRB finds appropriate under certain criteria, including commu-

nity of interest, effective dealings, efficiency of operations, for collective bargaining purposes. Certain types of employees cannot be included in units—e.g., management officials and supervisors. All employees covered by the contract are in the unit, but are not necessarily union members.

#### Card Check Recognition Agreements:

Agreements where employers agree to forgo an NLRB-conducted election and negotiate with the union as the employees' representative if the union is able to collect signed authorization cards from a majority of employees.

#### Collective Bargaining Agreement (CBA):

CBAs set forth the conditions of employment of bargaining unit employees, various rights and obligations of the parties to the agreement (i.e., the union and the employer or multiemployer association), the negotiated grievance procedure, dues withholding provisions, and the duration of the agreement.

#### Decertification election:

Election of union employees seeking to remove the union as their union representative. Employers receiving a petition signed by a majority of the employees may file such a petition with the NLRB. Employees can also go directly to the NLRB, without presenting their petition to the employer to ask for a similar election. In such cases, the same general rules and procedures will apply as in the case where a union files a petition to represent the employees. There is one exception and that is, during the campaign stage, the employer may tell employees that they will not suffer wage reductions or a loss of benefits if the union is voted out.

#### Economic strike:

A strike initiated to bring economic pressure to bear during negotiations. In such a strike, employers may hire permanent replacements for striking workers.

#### Election petition:

Usually filed by the union with the NLRB requesting that an election be held. The petition must be supported by a sufficient "showing of interest" which means that at least 30 percent of the employees in the proposed bargaining unit.

<sup>6</sup> The Labor Research Association, Elections (Decertifications, Employer Petitions), [www.laborresearch.org](http://www.laborresearch.org) (2005).

<sup>7</sup> Labor Relations Ink, [www.lrionline.com](http://www.lrionline.com) (2005).

**Management rights:** Certain rights, often identified in the “management rights” clause of a negotiated agreement (or collective bargaining agreement), that are not within the scope of bargaining because they are intrinsic to the employer’s managerial role. While the employer is not required to bargain on such matters, it must bargain on their effects if there is an impact on wages, hours, or other terms and conditions of employment. Multi-employer associations: A group of employers that join together to negotiate a single contract covering employees at separate entities.

**National Labor Relations Act (NLRA):** The legal foundation of the American collective bargaining system. Sometimes referred to as the Wagner Act, this statute is the framework for most private sector bargaining that falls under federal jurisdiction. The NLRA guarantees to workers the right to organize unions and bargain collectively and empowers a judicial labor system, the National Labor Relations Board (NLRB or the Board) to conduct union certification elections and to investigate and prosecute violations of employee rights.

**National Labor Relations Board (NLRB):** An independent regulatory commission created in 1935 by the National Labor Relations Act, with five members appointed by the President subject to confirmation by the Senate. The NLRB is intended to protect employees’ rights to unionize, prevent abuses by employers or unions, and oversee elections.

**No strike/lockout prohibitions:** A term in a collective bargaining agreement that prohibits strikes by union members and lockouts by employers. Permanent replacements: Persons that are hired to replace workers out on an economic strike. These replacements will remain employed even after a strike ends. Striking workers are placed on a preferential hiring list and may only return to work once a job is available.

**Salting:** An organizing method used by unions where a union organizer applies for a job with an employer for the sole purpose of organizing its employees.

**Subcontracting:** Where an employer hires third parties to perform some of its services during a strike in order to assure that operations continue.

**Sympathy strike:** In the event of a strike at one unionized facility, employees covered under different contracts may choose to honor the striking employees’ picket line and refuse to provide services to the employer. Should the employees engaged in a sympathy strike violate a broad no-strike clause in their own contract, such activity is generally not protected by the NLRA and they may be disciplined or permanently replaced.

**Temporary replacements:** Workers that can be hired by an employer to replace employees out on an unfair labor practice strike. As with economic strikes, the employer can place ads in newspapers to hire replacements. Some states require employers to alert potential hires that a strike is in progress. Temporary replacements cease working once a strike ends and striking employees return to work.

**Unfair Labor Practice (ULP):** An action by an employer or union that violates any right protected by the NLRA. The most common ULPs are duty to bargain ULPs (usually a failure to give the union notice of proposed changes in conditions of employment) and the most common union ULP is a failure to represent all unit members without regard to union membership.

**Unfair labor practice strike:** A strike related to the filing of an unfair labor practice charge. In such a circumstance, an employer may hire temporary replacements but not permanent replacements. That means at the end of the strike the striking employees get their jobs back.

**Union:** A labor organization that is an organization composed in whole or in part of employees in which employees participate and pay dues, and which has as a purpose dealing with grievances and conditions of employment.

**Union security clause:** A provision in a collective bargaining agreement that protects the union by assuring it income through mandatory membership or fees and/or employer collection of dues or fees. There are various types including agency shop, dues check off and maintenance of membership.

**Voluntary recognition:** The NLRB has held that when supervisors review authorization

cards and make a statement regarding the genuineness of the authorization card, voluntary recognition of the union occurs and no election is needed.