CONSIDERATIONS IN DOUBLE-BREASTED OPERATIONS
This material is used for seminar discussion only. It should not be relied upon for legal opinion as it is general in nature and is not being provided for the purpose of rendering legal advice.
I. FACTORS TO CONSIDER IN DECISION TO OPERATE OPEN SHOP

Before a contractor decides to go open shop, he needs to make a careful decision of the pluses and minuses in staying with the union operation and the cost of changing to an open shop or double breasted operation. Unfortunately, contractors often times start in a direction to go open shop and retreat back into a collective bargaining relationship. When that is done, the cost of the effort and the cost of retaliation that will follow are high.

The decision to operate open shop is a business decision which needs to be carefully considered before being undertaken. In making this decision, several aspects need to be considered.

A. Analyzation of Marketplace. In order to determine if an open shop operation makes sense, there needs to be an in-depth analysis of the type of building projects sought and the capacities of the proposed new companies. Many times people believe an open shop contractor automatically will obtain more business. This is definitely not true in every locale. In some locales, union work is preferred.

B. Labor Strength and Climate. In different locales the strength of the unions varies. Their ability to mass public sympathy and picketers often can influence the contractor’s decision to become open shop. Their strength may often times have the ability to affect the market place and deny jobs to the contractor. The unions may be able to effectively prevent a contractor from finishing jobs. These are all valid considerations in reaching a decision to go open shop. The analysis needs to include a realistic review of the strength and pressure that the local union leadership can develop.

C. Manpower Availability. In determining whether to go open shop, there needs to be a practical consideration of availability of field force and management personnel. In some areas it is difficult to acquire effective, trained personnel without resort to the union. It may also be difficult to attract the type of field management people that are necessary to effectively operate a business. It may be difficult to find skilled field employees who do not have union sympathy. This can be fatal because if an organizational effort is made, an open shop company can quickly become a union company.

D. Suppliers and Materialmen Availability. Before entering the world of the open shop contractor, the general contractor needs to make sure there are suppliers and subcontractors who can perform the various aspects of a job.

Control of subcontractors and materialmen may be a problem. If the subcontractors will not perform on a job or material cannot be delivered because of union pressure, it is a difficult task to remove them off the job (by terminating their subcontract) and replacing them with others who will perform and possibly with whom you do not have the necessary skills.
E. **Financial Status.** The time it takes to become an effective open shop operator needs to be clearly understood. The start-up time can be costly as during this time there is going to be duplication of equipment, manpower and efforts. These delays take the form of start-up time expended by employees who are not actively in production but are involved in the prospecting and early organizational work. In order to carry this new cost, the company needs to make a reasonable commitment of funds to that effort. In this regard, these funds should be invested in the open shop company so that it is not financially dependent upon the union entity as that may get to be a significant factor in the maintenance of the separateness of the two companies.

F. **Legal Status.** Before undertaking an open shop endeavor, the company needs to analyze its collective bargaining agreements. It is not unusual for them to have work preservation clauses and successorship language which may inhibit the ability of the company to go open shop. In addition, the company needs to take a look at its association obligations and make sure these obligations do not interfere with their desire to go open shop or do not commit the open shop entity to any contractual relationships. A careful review of all these documents needs to be made at the very outset to make sure that no inhibitions exist.

G. **Bonding Capacity.** One of the factors that is always of concern is the financial dependency of the open shop operation on the union operation. In this regard, it is always best to have the open shop entity having sufficient bonding capacity to perform its jobs, especially during its early years. While it is not disastrous to have bonding guaranteed by common stockholders of the union and nonunion company, it is far more preferable to have the non-union company having its own financial responsibility.

H. **Withdrawal Liability from Pension Plans.** The passage of the multi-employer amendments to ERISA in 1980 made it imperative that a company contemplating an open shop course look at its potential for unfunded withdrawal liability. This liability can arise whenever there has been an effective withdrawal from a multi-employer plan. The plan defines this withdrawal for the construction industry as when the employer ceases to have an obligation to contribute under the plan and contrives to perform the same type of work in the jurisdiction of the Collective Bargaining Agreement or resumes such work within five (5) years without renewing the obligation to contribute at that time.

I. **Commitment of the Company.** Many times people under-estimate the difficulty and cost of starting and maintaining an effective open shop operation. The company needs to at the outset, commit a fixed quantity of time and money that it is willing to spend in this regard. A company cannot lightly undertake this project as it will invariably resort to shortcuts which create a long-term risk of litigation and make a successful defense of the position unlikely.
II. METHODS OF ESTABLISHING OPEN SHOP COMPANIES

Before attempting to establish an open shop operation, the cost effort and adaptability of the different methods for operating open shop need to be considered. Each one bears its own legal consequences and practical problems. They must be thoroughly analyzed in order to select a method that best fits the individual operation.

A. Converting a Union Company to an Open Shop Operation. The primary advantage in this method is that when completed, the company is completely free from any labor contract involvement and interactions with labor unions. Of course, this does not avoid the possibility of organizing efforts. The primary disadvantage is that completing this process can be quite time consuming and costly. The process involves long negotiations, possible strikes and possible replacement of union workers. The results may be long and drawn out and may involve many legal expenses as well as practical expenses.

Many times companies misunderstand the obligation to bargain. It is not as simple as taking the position that a contract is no longer desired. The expiration of the contract does not automatically end the bargaining obligation.

Clients considering this alternative must consider that numerous costs are involved. The cost of legal fees are often times very small in comparison to the practical costs involving guards, replacement of workers, security system, securing jobsites, delays in performing on jobs and lost jobs. Unfortunately, if the union is determined, these costs can go on for long periods of time.

Any contractor who is considering this alternative should make sure the following steps are taken:

1. All contracts should be reviewed and timely notice of contract reopening and termination given. Many contractors have found out they simply cannot go open shop as they must avoid the automatic renewal provisions contained in many collective bargaining agreements. Many times contractors also do not examine their participation agreements with employee trusts. These trust agreements many times contain provisions that bind them to the Collective Bargaining Agreement and their automatic renewal provisions.

   If, in fact, the company is involved with an association, timely notice needs to be given to the association of the withdrawal of bargaining rights and the notice of reopening of the contract with a similar notice being given to the union. It is very usual for union contracts to require at least 60 days notice of reopening.

2. Withdrawal from bargaining groups. The NLRB has often ruled that if you are part of a multi-employer bargaining group, you must give notice of withdrawal to that bargaining group prior to the time required by the bylaws of that group and prior to when negotiations begin. The NLRB has said that except by mutual consent, a company is not permitted to abandon a bargaining unit of an association except under unusual circumstances.
The United States Supreme Court has ruled that an impasse in bargaining is not an unusual circumstance (Bonnano Linen Services v. NLRB).

To be valid, a withdrawal notice must meet the time requirements, must be in writing and must express an unequivocal intent to abandon the multi-employer bargaining group.

The notice also needs to be timely under the terms of both the Collective Bargaining Agreement and the bylaws of the association, thus an in-depth review of both needs to be made to assure that proper notice is given.

3. The bargaining obligation, which results from the timely opening of a contract and the timely withdrawal of an association, is an ongoing obligation. It does not end with the termination of the contract. The company that has withdrawn needs to recognize its obligation to bargain. The only way to avoid this obligation is through a decertification which is a process initiated by the employees, or if there is objective proof that a majority of the employees do not desire a union. This objective proof can take many forms, such as lack of checkoff or lack of union activity.

Another method whereby the bargaining obligation can end is through the repudiation of a prehire agreement. A prehire agreement is where the company and the union entered into a contract prior to any employees being hired and thus a valid election or voluntary recognition never occurred. In this situation, the employer can simply reject the contract at the end, assuming that proper notice of the reopener was given and the proper withdrawal from the association made.

If this situation does occur, if employees are on the payroll of the company, the union has a valid option of petitioning for an election. If, in fact, the employees who are on the payroll favor a union, an election could be disastrous as a union certification could then occur and the bargaining obligation would then be established. Thus, it is very obvious that before a rejection of a prehire agreement is made, the employer had best be sure that, in fact, the majority of his employees don’t favor a union. The best alternative, of course, is to have a situation where there aren’t any employees and there is a history of having stopped using employees from certain crafts. In those situations there have been several rulings which would justify repudiation and the union does not have any alternative as there are no employees to petition for an election.
Even though a company is obligated to bargain, it is not required to arrive at an agreement. It must negotiate in good faith. The question of what constitutes good faith bargaining is a nebulous one, but, basically, you must consider alternatives proposed by the unions, you must make proposals of your own, all in an effort to arrive at a Collective Bargaining Agreement. Time must be taken to adequately consider these issues and an effort must be made to provide necessary data to permit the union to consider all of the issues at hand. It is almost certain that if impasse is reached, there will be numerous challenges as to whether good faith bargaining occurred. Thus, patience is required as there will be many meetings, notes need to be prepared to reflect those meetings, and many alternatives must be proposed to adequately document the movement made by the company and the alternatives considered by the company.

If an impasse has been reached, the company has the right to implement its last best offer or continue to observe the contract terms. Most likely, an implementation of the last best offer will occur. In this case, the company needs to be aware of several problems. The first problem is finding adequate replacements. The wage structure proposed in the last best offer needs to be sufficient to permit the hiring of adequate skilled replacements. Second, the insurance package needs to be proposed in a fashion that would permit the employer to provide its own insurance package. The union-provided insurance will be available for some time during the strike, but once it is clear an impasse has occurred, such insurance will stop as the health and welfare trust will reject the coverage.

Third, any pension plan proposed by the company needs to be in such a fashion as to permit the company to establish such a pension plan. It is very unlikely that a trustee of a union plan will continue to accept the funds of a company on strike for too long a period of time after impasse is reached.

The law is very clear that once employees walk off, they may be replaced. In Iowa, the advertisement for replacement must reveal that a labor dispute is in process and the people are being hired as strike replacements.

Replacements can be hired on either a temporary or permanent basis. When they are hired, they need to be advised what the arrangement entails. It is often times good to give them a written statement as to their wages, hours, and working conditions and the nature (permanent or temporary) of their employment.
It is essential that an employer not commit any unfair labor practice during this entire process. If they do, they run the risk of back pay.

It is essential to spend considerable time planning each step of the negotiation process and documenting every step that is taken. In addition, communications with employees and the unions need to be carefully monitored and controlled by a limited number of people to avoid making statements that could lead to an unfair labor practice charge.

4. **ERISA Consideration.** Since the 1974 Employment Retirement Income Security Act (ERISA) and its 1980 amendments, a construction employer participating in multi-employer pension plans may be charged a withdrawal liability when the company ceases to have an obligation to contribute through the plan but continues to perform the same type of work in the labor contract area or resumes such work within five (5) years without renewing its obligation to contribute to the plan. A partial withdrawal liability can also occur where an insubstantial amount of contribution is made. The extent of withdrawal liability depends upon the employer’s proportionate share of the plan’s unfunded vested benefit liability. Plan administrators provide data to compute such liability.

If the withdrawal liability is too great, it can be a significant deterrent against the use of an open shop company. It can also be the reason for the unionized company to slowly reduce its volume as the nonunion company increases its volume. Care must be taken to avoid a partial withdrawal liability.

Another consideration to avoid a liability is to start working outside of the geographical area covered by the pension plan.

B. **Same Company – Different Geographic Locale.** Another method for operating an open shop company is to divide a company’s work based upon geographic area.

Before selection of this alternative, all collective bargaining agreements need to read to determine if there are any contractual restrictions upon starting companies in other locales without recognition of the union. In all likelihood, the Agreements will specify the geographic area covered by the Agreements.

Since this method usually involves a single company operating in two separate locales, there is nothing to prevent a union from picketing the nonunion company as it is not a separate employer protected by the double breasted provisions of the NLRA.

One of the practical considerations is the difficulty in having manpower and the duplication of costs. Another practical consideration is the fact that the company can be unionized in its nonunion locale like any other company.
C. **Double Breasted Operation.** The essence of a double breasted operation is to establish two companies which, for labor law purposes, are considered to be separate employers. The reason for the popularity of this approach is that it allows owners to operate in the same area union and nonunion. It also provides each company with individual protection of separate employers under the secondary boycott provisions of the NLRA.

Prior to formation of a double breasted operation, there are serious financial and manpower considerations which must be evaluated. In establishing separate companies, there may be substantial duplication of expenses creating additional financial burdens for each company. Maintaining separate offices, clerical staff, accounting departments, estimating departments, etc., can create tremendous financial burdens. As will be discussed later, some of the expenses may be shared by the two companies within certain guidelines.

Once of the major financial concerns in establishing a double breasted operation is the cost of maintaining separate personnel within the companies. In order to have a sound double breasted company, there must be strong persons available to run each company. This may require division of personnel within an existing company, or hiring of additional personnel. Depending upon workloads and competence of people, it is not uncommon for there to be a misalignment in establishment of personnel between companies.

There are numerous legal considerations involved in establishment of double breasted operations. As we discuss in part 4, there are strict legal requirements in establishing or maintaining a double breasted operation. In essence, the most critical aspect is that the two entities remain as separate as possible in order to remain a valid double breasted operation.

D. **Construction Manager of Broker Arrangement.** If an employer chooses to not have employees covered by collective bargaining obligations, there is of course no obligation to negotiate with the union. This route has eliminated the employers of any obligation to bargain and it can repudiate its Collective Bargaining Agreement. This method is effective except it does place the employer in a position of not having as close of control over the operation as it would with its own employees and supervisors.

III. **HOW PROBLEMS MAY ARISE**

A. **Contract Obligations.** In establishing separate companies, the goal is to have one employer which will perform work under union agreements and one which will remain open shop. As long as the companies remain essentially separate, the contract obligations of the union company will not be imposed upon the nonunion company.
It is not uncommon for labor unions to attempt to impose, either through the courts or the NLRB, contract obligations of the union company upon the non-union company. Typically, the union will allege that the nonunion company has breached the agreement with the union in not paying wages and fringe benefits, as well as not abiding by the working conditions established under the union agreement. In order to be successful in claiming that the nonunion company is obligated to the union company’s contract, the union must establish that the two companies are either alter egos or a single employer.

In recent years, unions have attempted to insert what is known as an anti-dual shop clause in collective bargaining agreements. An example of such a provision is found in the National Pipeline Agreement:

*If and when employers shall perform work by this agreement under this own name, under the name of another, as a corporation, company, partnership, enterprise or any combination, including a joint venture, this agreement shall be applicable to all such work performed under the name of employer or the name of any other corporation, company, partnership, enterprise, combination or joint venture.*

Unions have been successful in inserting anti-dual shop clauses in contracts throughout the United States. The Unions have taken their battle to the Congress and have introduced an anti-dual shop bill which is now cleared for debate on the floor of the House. The effect of HR 6043 would be to create a single employer where any of the following conditions are present:

1. Performance or supervision is the same or similar work;
2. Location in the same or in different geographical areas; and
3. Any direct or indirect common ownership, management or control.

B. **Association-Created Obligations.** If you are a member of an association, you may be asked to assign your bargaining rights to that organization. When this is done, the particular contractor will be bound to any agreements negotiated by that association. There are three methods to withdraw from the association which have been recognized by both the courts and the NLRB. The first is giving proper notice under the agreement to both the association and the union in a timely fashion. This does not relieve the employer from the obligation to bargain with the union even though it relieves the contractor from the specific agreement negotiated by the association. Second, the union may give permission for an employer to withdraw from the association at any time. Third, if an impasse is reached during negotiations between the association and the union, any one of the employers may withdraw.

The association obligations are no different than the contract obligations discussed above. If separateness is not maintained between the two companies, the association-created obligations of the union company will be imposed upon the nonunion company.
C. **NLRB Violations.** The National Labor Relations Board may question separateness for two primary reasons. The NLRB originated the single employer test to bring the overall operation of small, related entities within the jurisdiction of the NLRB when each entity, considered alone, did not have a substantial impact on interstate commerce. The single employer test can still be employed for this purpose, but as a practical matter, it is seldom used for this purpose anymore since most of the contractors are of sufficient size to be within the NLRB’s jurisdiction.

The NLRB is most likely to question separateness in an investigation of an unfair labor practice charge filed against one or both of the companies. Charges which may trigger an investigation can be filed by a labor organization, a group of employees or any individual. The charge itself will be a challenge to separateness and most frequently is couched in terms of a refusal to bargain. If such a charge is found to have merit, the nonunion company may be forced to recognize the union. This requires that the employer either bargain with the union, or that the employer adhere to a collective bargaining agreement. With the former, the employer only has to bargain with the union to reach a collective bargaining agreement. With the latter, the employer must abide by the wages, fringe benefits and working conditions of an existing union agreement. Since this requirement may be applied retroactively, this can have a serious economic impact with an ongoing project.

D. **Pension Trust and Health & Welfare Claim for Benefits.** A finding of the existence of a single employer or alter ego may lead to the extension of all obligations embodied in a collective bargaining agreement to the company which is not signatory to that agreement. This could lead to payments by the non-signatory company for back wages and fringe benefits due under that particular contract.

While unions have attacked double breasted contractors in both courts and the NLRB, the basis for liability is always the new company’s breach of the Collective Bargaining Agreement by not paying required benefit payments. The extent of liability depends upon the length of time in which the new company is operated and the number of employees involved.

Any contractor considering utilizing a double breasted form of operation must take into account the potential exposure to liability under the Employee Retirement Income Security Act (ERISA). In 1974, the ERISA Act set various participation, vesting, contribution and withdrawal liability standards for pension plans. The fundamental purpose of ERISA was to insure the financial integrity of pension plans throughout the country.

In essence, the Act recognizes that past employer contributions have been insufficient to assure payment to employees at the time of retirement. The difference between what the employer paid and what is necessary to assure payment at retirement is generally referred to as the “unfunded liability”. If an employer withdraws from a particular pension plan, that employer is liable for the plans unfunded, vested benefits. The withdrawal liability is triggered if the employer:
1. Ceases to have an obligation to contribute to the plan but continues to perform construction work within the jurisdiction of the Collective Bargaining Agreement; or

2. Ceases to have an obligation to contribute to the plan but within five years resumes the same type of work within the jurisdiction of the applicable Collective Bargaining Agreement and does not resume the contribution obligation.

ERISA does not use the labor law definition of a “single employer” for withdrawal liability purposes. ERISA takes its definition from the Tax Code under which all businesses “under common control” will be treated as a “single employer”. The “common control” involves the degree and nature of common ownership of the business, whether it be a parent subsidiary structure or a brother-sister structure. As a practical matter, the test utilized by ERISA means that all operating entities in a double breasted organization will most likely be considered the “employer” for the purpose of assessing withdrawal liability from an under-funded multi-employer plan.

Complete and partial withdrawal liability rules under ERISA may apply to double breasted operations in several different situations. For example, if a union shop branch went out of business while the merit shop branch continued to perform the same kind of construction work in the same geographic area, a complete withdrawal could be declared. Further, if the contractor’s mix of union and nonunion work in the geographic jurisdiction of the applicable collective bargaining agreement shifted so that only an insubstantial portion of the work remained union, a partial withdrawal could be declared.

The best starting point is for the union division to determine whether or not any multi-employer plans to which it is obligated are under-funded. If the plans are adequately funded to cover all vested benefits, then there is no withdrawal liability to be assessed even if a complete or partial withdrawal occurs. If the plans are under-funded, the contractor should request that the plan trustees advise him of the amount of the potential withdrawal liability so that the double breasting plans can be made accordingly.

E. Demand for Information During Bargaining. During the past several years, a list of questions has been developed by unions which have been sent to contractors seeking information about double breasted operations. The standard questionnaire has 79 questions which seek to obtain virtually every fact of dual shop operations including financing, equipment transactions, employee transactions, customer lists, insurance rates, bookkeeping methods, management responsibilities, corporate organization, ownership, etc.
Federal courts have upheld the right of unions to obtain such information. The United States Court of Appeals in the Fifth Circuit held that where the contractor refused to supply the information relevant to the union’s representation, the company had violated its duty to bargain in good faith under Section 8 (A) (1) and (5) of the National Labor Relations Act. The Labor Board has said that in order to request such information, the union only need establish that the inquiry was relevant to the duty of bargaining. In one instance, the Board has held that an inquiry regarding the possible existence of an alter ego operation in violation of a contract was sufficient relevancy to justify the inquiry.

F. Secondary Boycott Protections. If an employer operating a valid double breasted operation maintains the degree of separateness necessary to satisfy the NLRB that the two entities are not alter egos, the employer will still be protected against unlawful secondary boycott activity. However, once the double breasted operation is found to be a single employer or an alter ego, the protections available under Section 8 (b) (4) are no longer available.

V. MAINTAINING SEPARATENESS IN DOUBLE BREASTED OPERATIONS

A. Test. Unfortunately, there is no “guaranteed” method for establishment of a double breasted company. When a challenge is made to a double breasted operation, there are four general areas focused on by the NLRB and the courts. They are:

1. Common ownership or financial control;
2. Common management;
3. Integration of operations; and
4. Common control of labor relations

Since common ownership and financial control usually exists, the other three areas are most important with the control of labor relations being the most important.

As more and more functions are assigned to different people, more separateness is created. The reverse, of course, is also true.

The more relations of operations that occur, the more likely a company will lose its separateness. The more they share offices, telephone equipment, finances, bonding capacity, service people and employees, the more likely separateness is to be lost.

B. Checklist of Elements Considered

1. Have two separate corporations with officers and board of directors that are not identical. The stock may be owned by same person(s).
2. Put a different person in charge of labor relations for each company. Give that person the authority to set labor policy, establish compensation plans, and hire/fire his own employees without consulting with officers, directors or employees of the other company.

3. Have different compensation packages, different hiring and firing procedures and different work rules for each company.

4. Do NOT let the same person serve as chief executive officer or general manager of both companies.

5. Do NOT interchange personnel – either hourly or management. If transfers must be made, have the key employee resign from one company and then be hired by another. Such movement should be made only once.

6. Keep separate offices with different stationery, telephone number, address and files.

7. Do NOT let the companies bid against each other. If possible, have each company do a different kind of work. Do not allow one company to lose business to the other, especially the union firm losing to the open shop firm.

8. Keep separate bank accounts, financial records and lines of credit.

9. Do NOT allow communications between companies frequently on routine matters.

10. Have separate equipment for each company with different company names on the equipment. Where separate equipment is not feasible, have one company rent from the other, or place the equipment in a third company that leases to both companies at a fair market value under a written lease.

11. Do NOT subcontract work from one company to the other or allow crews from one company to help finish work of the other.

12. Do NOT use one company’s bonding capacity to guarantee the performance of the other.

13. Each company should have its own licenses and other authorities to do business such as worker’s compensation certificates, employer identification numbers, etc.

14. Association Membership. Allow each company to decide for itself whether to join the same trade association, but each should have its own membership if it decides to join. Avoid exchanging association materials between the companies when only one is a member of the association.
15. Sharing of services such as engineering, estimating, and bookkeeping can be done, but must be done in such a way that each company pays fair market value to the company or the person providing the service. Some authorities say that marketing services cannot be shared, and as the new firm grows, it should develop its own staff capabilities as much as possible.

V. ORGANIZATIONAL ATTEMPTS

Any time a company is operating nonunion, it runs the risk of being organized. This organization can occur in several ways. The union can seek to force the employer to sign a labor agreement without an election. This voluntary recognition route can be enforced by demands for recognition or picketing to force recognition. There are also provisions whereby the employer can simply sign a prehire agreement before any employees are hired. Court cases have held that such prehire agreements are subject to repudiation. Of course, if they are repudiated, the union can always request an election if they can demonstrate the requisite showing of interest (30% of the employees).

The other method for a union election is the formal election process provided for by the NLRA. This procedure is initiated by 30% or more of the employees signing authorization cards which are submitted to the NLRB. If at least 50% plus 1 vote of the employees are cast in favor of the union, the collective bargaining obligation is established.

During the election process, there are certain dos and don’ts that can be engaged in by the employer. A list of these is attached as Exhibit A. Or, it can campaign and express its views and the employees who are in favor or against the union can also express their views.

The violation of the prohibitions in this area can cause an unfair labor practice. An unfair labor practice carries with it the consequence of possibly the NLRB establishing the union without an election, the imposition of back pay and reinstatement rights for picketers protesting the unfair labor practice or rerunning the election. Staying open shop can be accomplished by running a company in a way that avoids the employees turning to a union. Care should be taken in the hiring procedure. Items to consider establishing a good labor relation practice area as follows:

1. Job security;
2. Individual recognition;
3. Respect as an individual;
4. Appreciation of job performance;
5. Healthy working relations with supervisors and fellow employees;
6. Good leadership example;
7. Fair evenhanded treatment;
8. Good working conditions; and
9. Fair compensation package
Permissible Action By Supervisors

Management and management representatives can express their opinions that a union is not needed, can answer employee’s questions and can say:

* The law guarantees to employees the right to refrain from assisting a union and if any union agent or other employees threaten employees in any way, the company will take appropriate legal action.

* Inform employees of the disadvantages of belonging to the union, such as the possibility of strikes, union fines, serving on picket lines or union dues and initiation fees which would come out of their pay.

* Inform employees that no union can guarantee jobs or job security.

* Inform employees not to be mislead by false rumors which the union will use to get a part of their paychecks.

* Inform employees of the benefits they now enjoy and remind them that they got these without a union and they do not need a union to keep them or improve them.

* Inform employees that no union can guarantee any employee anything because no company is required to agree to any union demands which it feels are too costly or otherwise unreasonable.

* Inform employees that with a union they lose the right to speak and act for themselves and are required to submit to what the union feels is good union policy whether or not it is good for the employees.

* Inform employees that even though they have signed a union card, this does not obligate them to vote for the union.

* Inform employees of any untrue and misleading statements made by union organizers.

* Inform employees that the duty to bargain with a union does not compel the company to come to an agreement.

* Inform employees about the requirements in the union’s constitution and bylaws which provide for assessments or fines against employees.

* Inform employees of the company right to operate during a strike by the use of subcontractors or strike replacements.
Prohibited Activities by Supervisors During an Organization Drive.

*Must not threaten discharge or disciplinary action if employees engage in union activities during non-working time or if employees should choose a union.

*Must not threaten that the plant or department will be closed, moved or discontinued or that overtime will be eliminated or that the employee will be given a less favorable job, etc. if the employees choose a union.

*Must not promise rewards to employees, such as wage increases, increased benefits, etc. in return for the employees not choosing a union.

*Must not ask employees if they have signed a union card.

*Must not ask employees if they have attended union meetings.

*Must not ask employees how they intend to vote on the question of whether or not they want a union.

*Must not make house calls to the homes of employees to discuss their feelings about the union.

*Must not call individuals into their office to discuss union organization. Discussions should be held at the employees' work station or in the cafeteria or some other neutral area.

*Must not engage in surveillance of employees' union activities (such as spying on attendance at union meetings, etc.) or tell employees that Management is engaging in surveillance of employees' union activities.

*Must not interfere with employees who distribute union literature in non-work areas during non-work periods; e.g., lunch period, rest period, etc. (Remember that employees may not distribute union literature during working time or in work areas where an anti-distribution rule exists.)

*Must not discipline employees who solicit or talk for the union during non-working time. Remember that employees may not engage in union activities, including solicitation for the union, during working time if company has an anti-solicitation rule.

*Must not limit employees right to wear union buttons or insignias even when such buttons loudly proclaim that the interests of the employees wearing them are “for the union”. If there is language on such buttons which would tend to inflame prejudices, appeal to racial issues or might otherwise tend to interrupt efficient and productive operations, the supervisor should take the matter up with the personnel director to determine whether or not a rule might be invoked against the wearing of such buttons and insignia.
*Must not change conditions of employment after union organizational activities become known. Wages and conditions may be changed if necessary in order to hire new employees or if the company has historically made the change at this very time.

*Must not deny or hold up merit or automatic wage increases where the sole purpose is to punish union advocates.

*Must not encourage or take part in the passing out of a petition the purpose of which would be "NOT to have a button". Also putting "Vote No" buttons on employees, thus forcing employees into an open choice against the union must be avoided.

*Must not openly solicit employees to withdraw from the union. A supervisor may give reasons why employees should not continue their adherence to the union and may give reasons why an employee should vote against the union in the upcoming election, but to solicit an outright withdrawal from the union and to pin the employee down is to be avoided.

*Must not tell employees that if the union wins the company will absolutely refuse to bargain with the union or that if the union wins, a strike is inevitable.