

**JOBSITE  
LABOR  
RELATIONS  
MANUAL FOR  
SUPERVISORS**

**OPEN SHOP COMMITTEE  
AGC OF WASHINGTON**

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## INTRODUCTION

This handbook will serve as a summary of your rights, responsibilities, and liabilities as a supervisor. It is impossible to anticipate every question or situation which may arise in connection with union or employee activities. You should therefore seek clarification and assistance in handling unusual problems from your employer. The material in this handbook should, nevertheless, provide you with the basic information you need.

## WARNING

This handbook was produced for the use of management and front line supervisors only. It may be a violation of the Labor Management Reporting and Disclosure Act to show this Manual to non-supervisory employees.

## GENERAL RIGHTS OF EMPLOYEES

Federal law gives employees the right to engage in union activities and the right to refrain from such activities. These activities include the right to campaign for or against a union, to strike or refuse to strike, to vote or refuse to vote for a union, and to participate or decline to participate in union meetings. They may exercise these rights without interference or fear of reprisal from either the Company or the union.

Federal law also protects the rights of the Company to continue its normal operations despite union activity and to speak freely with its employees concerning unionization. However, as discussed below, these rights are limited because federal law treats the Company as holding a great deal of coercive power over employees.

## YOUR STATUS AS “SUPERVISOR”

A “supervisor” is defined under federal law as “any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay-off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.”

Any individual needing this definition is not considered an “employee” subject to the protection of the National Labor Relations Act (“NLRA”). You are, instead, treated as an agent of the Company which is responsible for your acts. Therefore, it is essential that you understand what you can and cannot do as an agent of the Company.

## GENERAL GUIDELINES FOR SUPERVISORY CONDUCT

Before examining specific situations contained in the Manual, you should be aware of the following general rules. The following actions by you are prohibited with regard to employees:

1. THREATENING employees about or because of union activities.
2. INTERROGATING employees about their union activities or union activities of others.
3. PROMISING employees unscheduled increases in wages or other benefits in return for opposing the union or refusing to engage in union activities.
4. SURVEILLANCE of employees, such as attempting to overhear discussions regarding union activities, attending or attempting to watch union meetings.

The key word is “TIPS.”

AVOID:       Threatening  
                  Interrogating  
                  Promising  
                  Surveillance

In addition to these four general restraints, the following restrictions also apply to your conduct:

Discrimination: You may not discriminate against employees on the basis of their union activities or beliefs in any respect with regard to hiring or any other condition of employment. For instance, you may not terminate or transfer an employee to a less desirable job or location due to his or her union activity.

Interviews: You are not permitted to call individual employees or small groups of employees into an enclosed area, such as your office, for the purpose of discussing the union issue with them. This is considered improper even if no promises or threats are made since it will appear that you are placing undue pressure on them. However, if the subject of the union arises while you are with employees in an enclosed area for another reason, you may discuss the matter with them. Likewise, if an employee comes to you on his or her own initiative to discuss a union question while you are in an enclosed area, you are free to engage in a discussion.

While it is important to understand the above restrictions, it is equally important to realize that there are other things you can do and say which are entirely proper. Federal law states that “the expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, or graphic or visual form, shall not constitute or be evidence of an unfair labor practice under any provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit.” You are, therefore, free to discuss the union issue with employees provided no threats or promises are made, and provided that you do not call them into your office for such discussions.

GENERAL PREPARATION FOR ANY JOB SITE INCIDENT

- A. Have This Manual Available
- B. Obtain an Instamatic Camera
- C. Have a Job Diary Available
- D. Have a Job Site Diagram Available Which Defines the Job Site and All Ingresses and Egresses

I. IF A UNION REPRESENTATIVE SHOWS UP:

- A. Check the union agreement for the terms of the visitation clause (if any)
- B. Ask for identification.
- C. Ask the reason for the visit.
- D. Limit the location and scope of the visit based on work needs and safety.
- E. If you're non-union, keep non-employees off the job site, especially during working time. Explain that the representative may talk to the workers after work or when they leave the job site for lunch. This policy may only be lawful if you keep all visitors off the job site.

II. IF REBOUND/NORTHWEST FAIR CONTRACTS SHOWS UP:

- A. Treat them as you would any visitor.
- B. Allow access to employees in a nondiscriminatory manner off the premises.
- C. Do not treat them as a state or federal representative.

III. IF PICKETS SHOW UP:

- A. Take pictures of pickets;
- B. Record incidents in job diary including time, place, legend on bib, how many, what they said, extent of work stoppage, etc.;
- C. Ask the pickets why they are there;
- D. Ask the union representatives what the Company can do to end the picketing;
- E. Ask other employees what the pickets said to them; and
- F. Set up a dual-gate system, if possible.

#### IV. HOW TO SET UP A DUAL GATE SYSTEM

- A. Plan ahead for location of gates.

Plan ahead for gate locations which are wide enough and accessible enough so that employees and suppliers can use the gates. Generally, gates should be widely separated with reserved gate (used by primary employer and other non-union subcontractors) in non-prominent location.

- B. If job is big enough, have signs printed ahead of time.

The language used on the reserved gate — that is, the one which will be used by the non-union employer, should read as follows:

<p style="text-align: center;"><u>RESERVED GATE</u></p> <p>This gate reserved for the sole and exclusive use of (non-union companies' names), their employees, agents and suppliers. All other companies' employees, agents and suppliers use other gate/gates located at (insert street or other identifying location).</p>
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The “reserved gate” heading should be in large letters which can be easily read from a distance. The remainder of the message should also be clearly legible.

Each time you have a reserved gate, you should designate and post another gate for all other employees to use. This should be referred to as the “neutral gate.” The “neutral gate” should read as follows:

<p style="text-align: center;"><u>NEUTRAL GATE</u></p> <p>This gate is to be used by (union companies' names), its agents and suppliers only. No other persons may use this entrance.</p>
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- C. Install reserved gate and neutral gate. Set up directional information if necessary.
- D. Take pictures of both gates when set up and note time and date taken. Record this information in job diary.

- E. Immediately notify union that reserved gate has been established with diagram of location of gates if necessary. This should be sent by certified mail or telegram. Give copies of letters to pickets. Use the language set forth in Attachment 1.
- F. Maintain the dual-gate system properly.
  - 1. Make sure neutral gate remains “untainted.”
  - 2. If union claims that neutral gate is “tainted,” contact the union to determine nature of “tainting.” Either deny gate violation or take steps to ensure that it will not happen again. Notify the union by certified letter that neutral gate is now “clean.” Use the language set forth in Attachment 2.
- G. Continue to record the exact wording of language on the picket signs, take pictures of the picket signs, and keep track of picketing activity and contacts with neutral employees. Keep records of work stoppage.
- H. Inform pickets and union business representative when you will be off job for any length of time.
- I. If there is an “Observer” at the neutral gate:
  - 1. Record and photograph all instances of “observer” behavior which is inconsistent with “observer” status (i.e., carrying picket, threatening neutral employees, handbilling, carrying camera, statements that “observer is a picket,” etc.).
  - 2. Talk to union subcontractors, business agents and “observer” himself.
  - 3. If there is work stoppage, notify neutral employers by letter that, by law, an “observer” is not a picket.
  - 4. Consider hiring a security guard to monitor the sanctity of the neutral gate and informing the union of this. Continued insistence on a union “observer” would appear specious.

V. IF APPLICANT SHOWS UP:

A. General Rules

1. You cannot discriminate on the basis of pro- or anti-union membership or beliefs of the applicant.
2. Job applicants — even if they are union business agents — are protected under the National Labor Relations Act.
3. The reasons for hiring or not hiring an applicant have to be uniformly applied.

B. Application Form

1. Should not ask about union status of applicant.
2. Should require complete references.
3. Should call for written permission by applicant to allow the employer to contact past references.
4. Should allow a refusal to hire or consider an applicant in the event the application is incomplete or false in any respect.

C. Interview Location

1. Avoid crowded, working trailer with distractions.
2. Avoid giving applicant access to proprietary work schedules, employment needs, etc.

D. Applicant Questioning

1. Be consistent.
2. Don't volunteer information which is not absolutely necessary for the interview.
3. Don't ask whether the applicant has worked for a union employer.
4. Don't ask the applicant how they feel about a union.

5. Even if asked, don't give your opinion about unions.
6. Watch out for the "friendly" applicant.
7. If asked whether the company would ever "consider going union," respond as follows: "By law, the Company can choose to sign a union agreement. We have chosen not to sign a union agreement because we feel that is a choice to be made by the employees in an election if they so choose."
8. Don't make any written comments or marks on the applicant which have nothing to do with the applicant's qualifications.
9. Have a neutral basis for justifying hiring or not hiring an applicant.

VI. IN A UNION ELECTION CAMPAIGN REMEMBER:

- A. Abide by the ‘TIPS’ Rule.
- B. Do not accept or review authorization cards provided by employees or union representatives.
- C. You may give your opinion if:
  - 1. It is solicited;
  - 2. You state that it is your opinion and not the Company’s;
  - 3. You know what you are talking about; and
  - 4. You have Company witnesses if possible.
- D. Examples of Permitted Statement

You may make an accurate and truthful statement to your employees if the statement does not contain an express or implied threat or promise. For example, you may:

- 1. Tell employees that the Company is opposed to their being represented by a union and that the Company believes that having a union would not be in their best interests or the best interests of the Company.
- 2. Tell employees that the law gives them the right to refrain from supporting or joining a union and that the union may not threaten or coerce them into supporting or joining a union.
- 3. Tell employees of the many benefits they presently enjoy without having a union.
- 4. Explain to employees the Company’s policies with respect to pay adjustments, promotions and transfers; remind them of the progress that has been made in these areas in recent years and assure them that these policies will be continued as before.

5. Remind them that they may now bring any grievance to the attention of supervision without fear of reprisal or discrimination, and without the intervention of a third party, which intervention could result if they were represented by a union.
6. Tell employees of the disadvantages of belonging to a union, such as the payment of union initiation fees, dues, fines and assessments. You may also remind employees of the possibility of strikes if a union is voted in, together with the loss of income due to strikes. You may also tell employees that if they engaged in an economic strike, the Company could permanently replace them and need not reinstate them until a suitable opening occurs.
7. Tell employees that the union will always out-promise an employer, but can guarantee nothing. While an employer and a union have a duty to bargain with each other after the union is voted in, neither the union nor the employer need agree to anything which they do not wish to agree to.
8. Tell employees that a union is not needed to assure good working conditions, job security and good rates of pay.
9. Tell employees of your experiences with a union.
10. Point out false statements made by the union and provide the correct information.
11. Tell employees that they do not have to sign authorization cards, and that signing an authorization card is like signing a blank check—the employees do not know what it may cost them.
12. If an employee has signed an authorization card and asks how he or she may get it back, you may advise the employee that the authorization card may be revoked by a clear and unequivocal request to the union representative in person or by mail that the employee has changed his or her mind and revokes the card.
13. If an election is held, advise employees that they do not have to vote for the union or support it even though they may have signed an authorization card. You may also affirmatively request employees to vote against the union. You may remind employees that the election will be secret, supervised by a federal agency, and that no one will know how many individuals voted.

14. If there is an election, advise employees that it is vital they vote.
15. Continue to operate normally. You should continue to enforce normal disciplinary policies and procedures. Take care to be accurate in making statements or answering questions. If you don't know an answer, don't guess. Tell the employee you will get the correct information and then do so without delay.

E. Examples of Prohibited Statements

As noted above, you may not make any statement which:

Threatens any employee for supporting or voting for a union; or

Promises an employee any benefit if he or she will work against, vote against or reject the union.

You may not:

1. Promise employees pay increases, promotions, improved working conditions, additional benefits or special favors if the employees oppose the union.
2. Threaten employees with loss of job, reduction in income, stricter discipline, or discontinuance of any privilege should they support the union, vote for it, or select it as their bargaining agent. Indicate that Company facilities will be closed, moved, or that jobs will be reduced if the union is selected.
3. Make any statement that the Company will refuse to deal with the union if it is selected to represent employees.

- F. Employees are free to speak for or against a union as they wish during their non-working time, even though they are on Company premises or a job site. If the Company has no policy against solicitation or talking on work time, it may be a violation of the law to create one in response to a union election campaign.
- G. Employees may not at any time use Company equipment (such as reproduction machines) or supplies to produce literature supporting or opposing the union.
- H. Disciplinary Action

It is important that regular policies concerning discipline be followed during the campaign. Violations of policy should be treated in accordance with past practice. However, it is extremely important that a firm, factual basis exists for any discipline taken, and that any proposed disciplinary action beyond an immediate oral warning be discussed with a Company representative.

- I. Don't question an employee about:
  - 1. his or her other employee's union activity, feeling toward the union, or opinion of the union;
  - 2. how he or any other employee intends to vote;
  - 3. his or any other employee's signing of a union card;
  - 4. how many union cards have been signed; or
  - 5. confidential union matters, such as union meetings, who attended, etc.

## VII. WHAT TO DO BEFORE AND DURING A STRIKE

### A. Before and During a Strike:

1. DO NOT solicit employees not to strike or to return to work.
2. DO NOT poll employees or take a “strike vote.” Asking this is an unfair labor practice. Refrain from even asking general questions such as “What do you think will happen?” If employees volunteer information to you, including their intent to strike or not to strike, or volunteer what others are thinking, you can and should listen and make notes.
3. DO NOT make “private deals” with employees. As long as the union remains the certified bargaining representative of the employees, the Company can only bargain with the union and cannot bargain directly with employees.
4. DO NOT engage in any action which could be even remotely construed as “interrogation.” Keep your questions limited to work needs.
5. DO NOT conduct any surveillance activities at or near any union meetings, discussions, parties, etc.
6. DO NOT interfere with strikers or pickets when you come in contact with them. Avoid talking to them, even if they are your friends, because you may later be accused of saying something you did not say. However, it is permissible to listen to what they say. As a general rule, whenever you come in contact with strikers or pickets, keep a cool head, appear friendly, listen, but don’t make any statements you aren’t 100% sure are legal.
7. DO NOT promise an employee a benefit if he or she refuses to strike or promises to cross a picket line; for example:
  - a. You may not, as a special favor, grant a promotion or pay increase to a specific employee or group of employees.
  - b. You may not promise or give a special work assignment or transfer to favorite employees.

- c. You may not get a special meeting place for employees because they wish to de-certify the union.
  - d. You may not ask employees directly what their grievances are or hold special meetings to elicit employee grievances.
8. DO NOT threaten any employee if he or she states they will strike or refuse to cross a picket line; for example:
- a. You may not threaten an employee with discharge, suspension, or special treatment because of his or her union association.
  - b. You may not attempt to intimidate an employee by subtle threats such as statements that things could “go tough” on an individual or a group.
  - c. You may not threaten to close the business or reduce the workforce as a result of strike activity. You may not ask about union affairs directly. You may, and should, listen to what is said.
9. DO NOT discharge an employee without first making sure it is warranted. Such a termination could later turn into an unfair labor practice.

B. Restrictions on Employee/Members Who Want to Cross Picket Line

- 1. Most union constitutions and bylaws call for the fining of members who cross or work behind a picket line.
- 2. In order to avoid union fines, a union member has two choices:
  - a. Resignation;
  - b. Change in status to “dues-paying only” or “financial core.”

### C. Striker Replacements

1. Temporary replacements: The Company may hire replacements for striking employees on a “temporary” basis for a given period. While these replacements are temporary, striking employees will have an immediate right to their old positions.
2. Permanent replacements: Permanent replacements retain their positions as long as they want to remain with the Company. After the strike, or an unconditional offer to return to work, the striking employees will be placed on a preferential hiring list and obtain their old positions if, and when, openings become available.
3. Unfair labor practice strike: If the strikers successfully prove that the employer’s unlawful acts caused the strike, they may have an immediate right to their old positions even if permanently replaced.
4. Intermittent strikes are not protected.

### D. Unlawful Striker Conduct

You should keep an eye out for the following types of illegal union or striker conduct:

1. Preventing non-striking employees, customers or suppliers from entering or leaving the construction site;
2. Interfering with any of the above while driving to work from their homes or leaving work to go home;
3. Bumping, jostling or hitting a non-striker while going through the picket line;
4. Causing damage to a vehicle or property going through the picket line;
5. Blocking access to the job site with automobiles, railroad ties, glass, tacks, nails, etc., across entrance ways;
6. Carrying sticks, clubs, chains, guns, or piling bricks near the picket line for the use of pickets;

7. Threatening bodily harm to non-striking employees, whether at work or at home;
8. Carrying out threats or assaults and batteries against non-striking employees, customers or suppliers;
9. Attacking company property or a non-striker's real or personal property;
10. Trespassing on the job site;
11. Threatening a non-striker with the loss of his job at the end of the strike;
12. Threatening or insisting that a non-striker's seniority be canceled;
13. Picketing or threatening to picket a supplier or customer who continues to do business with the struck plant.

E. Response to Unlawful Striker Conduct

Have an Instamatic camera ready. Request security personnel, if necessary. Your major function is to obtain evidence so that preventative action may be taken (i.e., restraining order, police action, etc.).

1. Do not use threats, strong language or physical force except when necessary to protect yourself, employees, or Company property. Do not be baited into becoming a participant in the illegal activity — this may turn a union's illegal activity into the employer's illegal activity.

Sample Telegram or Letter Sent Certified Mail

To Union

Advising of Reserved Gate

TO: John Doe  
Union Local \_\_\_\_  
City, Washington Zip Code

On behalf of (name of company), this is to notify you that a dual gate system has been established at the (name and address of project). There is a reserved gate established for exclusive use of (name of company) employees, agents and suppliers, located at \_\_\_\_\_ as shown on the enclosed map. A neutral gate has been established at \_\_\_\_\_, for the use of all other companies' employees, agents, suppliers, etc. Please observe your legal obligation and confine picketing to the reserved gate. Failure to do so may result in legal action for injunctive relief and damages.

Sincerely,

(Your Company)

Copies: General Contractor  
Other Subcontractors

Enclosure: Map

Attachment 1

TO: John Doe  
Union Local \_\_\_\_  
City, Washington Zip Code

We are continuing to utilize the two-gate system as outlined in our letter of (date). We request that you limit any picketing by your labor organization to the reserved gate located at (location). Apparently you have alleged that the neutral gate was violated. We have been monitoring and will continue to monitor the neutral gate to ensure that none of the merit shop employees or suppliers use it. Any alleged violation of the neutral gate has been corrected and the reserved gate system is therefore reestablished. Continued picketing of this gate is therefore improper.

Sincerely,

(Your Company)

Attachment 2

