

13 WAYS TO LOSE A LABOR CASE

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DEALING DIRECTLY WITH EMPLOYEES

- DON'T BYPASS THE UNION AND DEAL DIRECTLY WITH AN EMPLOYEE
- GIVE NOTICE AND AN OPPORTUNITY TO BARGAIN TO THE UNION



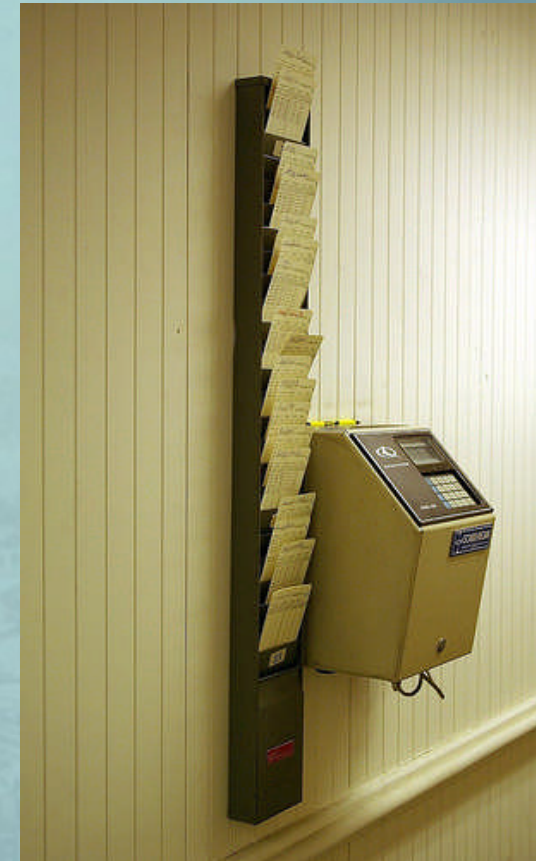
HIRING AND CREATING A NEW POSITION

- CONDITIONS FOR HIRE NO BARGAINING OBLIGATION
- TYPICAL CHALLENGES :
 - TRANSFER OF BARGAINING UNIT WORK TO NON-BARGAINING UNIT MEMBERS
 - IMPOSING NEW OBLIGATIONS ON APPLICANTS WHICH CARRY OVER INTO EMPLOYMENT.



NEW RULES & PRACTICES

- EXAMPLES OF MANDATORY SUBJECTS:
 - HOURS THAT AN EMPLOYEE IS REQUIRED TO WORK;
 - IMPLEMENTING A NEW WORK SCHEDULE;
 - CHANGING JOB DESCRIPTIONS;
 - CHANGING PROMOTION CRITERIA;
 - PERFORMANCE EVALUATION SYSTEMS;
 - DRESS AND GROOMING REGULATIONS; AND
 - IMPLEMENTING A NEW SEXUAL HARASSMENT POLICY.



CHANGING SCHEDULES TO AVOID OT

- IF NO RESTRICTION IN THE COLLECTIVE BARGAINING AGREEMENT, OK TO CHANGE EMPLOYEES' SCHEDULES TO REDUCE OVERTIME COSTS
- PROVIDE NOTICE TO THE UNION OF THE INTENTION TO CHANGE THE SCHEDULE



NEW PERFORMANCE EVALUATIONS

- MUST BARGAIN OVER THE DECISION TO IMPLEMENT OR CHANGE THE PERFORMANCE EVALUATION METHOD, IN ADDITION TO THE IMPACT OF THE DECISION.
- WHENEVER DISCIPLINING AN EMPLOYEE, THE EMPLOYER MUST BE CAUTIOUS TO AVOID INFRINGING ON THE EMPLOYEE'S EXERCISE OF CONSTITUTIONAL AS WELL AS COLLECTIVE BARGAINING RIGHTS
- DISCIPLINE MUST BE COMMENSURATE BOTH WITH THE NATURE OR SEVERITY OF THE VIOLATION, AND AMOUNT GIVEN TO OTHER EMPLOYEES



NEW PROMOTION PROCEDURES

- PROVIDE UNION (OR OTHER BARGAINING REPRESENTATIVE) WITH NOTICE OF ANY PROPOSED CHANGE IN THE PROCEDURES TO BE USED IN MAKING PROMOTIONS
- IF TIMELY DEMAND TO BARGAIN, ENGAGE IN GOOD FAITH NEGOTIATIONS UNTIL EITHER AGREEMENT OR IMPASSE BEFORE IMPLEMENTING THE PROPOSED CHANGES



APPOINTING AT DIFFERENT RATES

- AN EMPLOYER IS FREE TO DETERMINE NON-DISCRIMINATORY QUALIFICATIONS FOR JOB VACANCIES
- ESTABLISHING WAGES FOR ENTRY-LEVEL EMPLOYEES IS USUALLY A MANDATORY SUBJECT OF BARGAINING



CONTRACTING-OUT UNIT WORK

- CHARGING PARTY MUST SHOW THAT:
 1. TRANSFERRED BARGAINING UNIT WORK TO NON-UNIT PERSONNEL
 2. TRANSFER HAD AN ADVERSE IMPACT ON EITHER INDIVIDUAL EMPLOYEES OR ON THE BARGAINING UNIT ITSELF
 3. NO PRIOR NOTICE OR AN OPPORTUNITY TO BARGAIN OVER THE DECISION TO TRANSFER THE WORK.



HIRING CIVILIAN DISPATCHERS

- IF DISPATCHING IS BARGAINING UNIT WORK, ASSIGNING IT TO PERSONS OUTSIDE THE BARGAINING UNIT IS SUBJECT TO MANDATORY BARGAINING TO AGREEMENT OR IMPASSE
- THE UNION MUST PROVE THAT THE WORK ASSIGNED CONSTITUTED BARGAINING UNIT WORK AND THAT THE CHANGE HAD A SUBSTANTIALLY DETRIMENTAL EFFECT ON THE BARGAINING UNIT



NEW SICK AND INJURY LEAVE RULES

- CHIEFS MAY MAKE RULES CONCERNING ELIGIBILITY FOR SICK OR INJURY LEAVE, SO LONG AS THEY DO NOT CONFLICT WITH THE TERMS OF THE COLLECTIVE BARGAINING AGREEMENT



ESTABLISHING LIGHT DUTY

- MAY REQUIRE INJURED OFFICERS TO PERFORM MODIFIED OR *LIGHT DUTY* RATHER THAN ALLOWING TO REMAIN OUT OF WORK
- NOTICE AND AN OPPORTUNITY TO BARGAIN BEFORE INJURY LEAVE ELIGIBILITY CRITERIA ARE CHANGED, OR MORE PROPERLY, BEFORE ASSIGNING SUCH PARTIALLY DISABLED EMPLOYEES TO A LIGHT DUTY POSITION



DEMANDING DOCTOR'S CERTIFICATES

- OK TO REQUIRE A DOCTOR'S CERTIFICATE AS A CONDITION OF AN INJURED EMPLOYEE BEING PLACED ON SICK OR INJURY LEAVE
- IN THE ABSENCE OF ANY CONTROLLING PROVISION IN THE COLLECTIVE BARGAINING AGREEMENT, AN EMPLOYER IS FREE TO PROVIDE THE UNION WITH NOTICE AND OPPORTUNITY TO BARGAIN REGARDING ITS INTENTION TO REQUIRE A DOCTOR'S CERTIFICATE AS A CONDITION FOR SICK LEAVE ELIGIBILITY



REFUSING TO FURNISH INFORMATION

- MUST FURNISH IF:
 - RELEVANT AND REASONABLY NECESSARY TO UNION'S DUTIES
- DURING CONTRACT NEGOTIATIONS AND ADMINISTRATION
- EVEN IF OTHERWISE AVAILABLE TO UNION
- OK TO REFUSE IF LEGITIMATE CONCERNS OUTWEIGH UNION'S NEED FOR INFO

