

News & Types: Employment, Labor & Benefits Update

## Site Selection and Union Avoidance

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Practices: Employment, Labor & Benefits

ABC Manufacturing Co. had a choice to build its American factory in either Illinois or Indiana. It selected Columbus, Indiana, believing that it would be able to avoid unions, since Indiana is a "right-to-work" state. Columbus is located on main highways and local officials spoke highly of its educated workforce.

Unfortunately, just after the grand opening, the human resource manager's assistant saw a leaflet in the men's washroom, inviting employees to a meeting at a local bar. At the top of the leaflet was a logo and the name of a union -- "International Brotherhood of Teamsters."

Could the Company have avoided this scenario in Illinois? In Texas? Maybe not, but if a business understands the laws and conducts due diligence, it could weigh the advantages and disadvantages of different states and specific locations within those states.

### **Due Diligence Statistics**

Consultants and lawyers who have access to specialized software and databases can help companies determine whether they will be more or less vulnerable to a union organizing campaign. When employees want a union to represent them, the employees or the union file a petition with the National Labor Relations Board ("NLRB") to have an election. The NLRB's goal is to have a hearing within 14 days after a petition is filed, and an election within 42 days. Masuda Funai has access to a website that lists a number of different types of statistics. For example, in the 20-mile radius around Columbus, Indiana, the website reports that there was only one election for a union since May 1999. The election was on September 21, 2012 and the company won, with the employees voting against the union and in favor of the company. The union had to wait one year before it could hold another election.

Based upon these statistics, ABC Manufacturing might conclude that locating in Columbus, Indiana would avoid a union organizing campaign. However, the website reports a number of other helpful statistics, including the names and addresses of companies with union contracts, the names and addresses of unions located in that geographical area, the numbers of petitions filed and elections held, and the number and length of strikes and the names and addresses of the unions and companies involved in the strikes. For Columbus, Indiana, the website lists more than 10 companies with union contracts. The website also shows that city is home to the following unions – Teamsters, Electrical Workers, Diesel Workers, Machinists, Bakery Workers, Sheet Metal Workers, Carpenters and Laborers. Therefore, a number of other scenarios might exist. Applicants for jobs at ABC Manufacturing may have previously worked for a company with a union. ABC's facility might be located in the same industrial park as companies where unions represent their employees. ABC's employees could live next door to a member of a union at another company. ABC's employees might visit a local bar after work

where members of unions from other companies talk about the wages and benefits they receive from their companies. Therefore, examining only the number of elections is not sufficient information upon which to base a decision on where to locate a business.

### **Right-To-Work**

Of the 50 states in the United States, 24 are "right-to-work" states. Indiana is a right-to-work state, while Illinois is not. In both states, the contract between the union and company applies to all employees represented by the union. The difference between the contracts in Illinois and Indiana is one provision in the contract, called a "union security clause." In Indiana, this provision is not lawful and unions may not ask companies to include this provision in the contract. In Illinois, this provision is lawful and unions may ask companies to include this provision in the contract. Almost every union in a state that is not a right-to-work state insists on the "union security clause" and most every company agrees to include the provision in the contract. However, although a union may ask for this provision, a company does not have to agree to include it in the contract. The union has the right to strike, if it wants to force the company to include this provision in the contract.

Unions who have this provision in the contract are stronger than unions who do not. The provision states that employees must become and continue to be members of the union. When the employees strike, they do not work, because they must follow the membership rules of the union. If, however, an employee works during a strike, the union may expel the employee from the union and may issue a monetary fine against its member who is an employee who is not striking. The union may also ask the company to terminate the employee, and the company must comply with the union's request. Therefore, in states like Illinois, employees usually do not work during a strike. If the employee resigns from the union, and he is no longer a member, he may work for the company and the union cannot fine him.

In a state like Indiana, the employees do not have to be members of the union. Therefore, when the employees strike, those employees who are not members of the union may continue to work for the company. The union may not issue a monetary fine against these employees who are working for the company during the strike. Therefore, the union in Indiana may have a more difficult time requiring the employees to strike. The right-to-work states have taken a powerful economic tool (i.e., the strike) away from unions, giving companies more power when negotiating union contracts.

Lawyers, consultants and professors debate the power of unions and companies in right-to-work states. Over a period of years, the number of strikes in either type of state may not be significant. More importantly, will a union strike and will that strike force a company to make concessions to the union? In general, workers in the United States in 2014 are much different than workers in the 1930's to the 1970's. Strikes occur less and less frequently. Employees on strike do not receive their wages and are therefore more reluctant to strike.

Companies hire new employees to replace those on strike. At the end of a strike in either Illinois or Indiana, in most cases, the company has to reinstate the employees who strike but only after the newly hired employees quit or the company terminates them.

### **Steps to Avoid Unions**

Therefore, conducting due diligence and considering whether a state is a right-to-work state are only two of a company's considerations. The location of the facility is not an automatic guarantee that a company is or is not vulnerable to a union organizing campaign. Employees can access information about unions on the Internet. Organizers of unions travel throughout geographical areas trying to find companies where employees are angry and want a union. It is important that a company draft and enforce policies that help avoid a union, and pays wages and benefits sufficient to show its employees that they do not need a union's help to obtain higher wages and better benefits. Human resource professionals help implement these policies consistently so that employees believe that the company is treating everyone equally. Finally, supervisors must treat employees fairly, respectfully and with dignity.

A company should not rely upon only one factor when deciding where to locate. Instead, it must conduct due diligence and implement a multi-faceted approach when selecting a site for its facility.