

Union-buster's analysis of IWW



Article about the IWW from union-busting law firm, Seyfarth Shaw LLP which we reproduce for reference.

3. IWW's Union Organizing Campaign against Jimmy John's: The End or a Beginning for More Fast Food and Restaurant Organizing?

Many restaurant employers, in particular owners of fast-food restaurants, rarely think about the possibility of unionization these days. While the National Labor Relations Board (NLRB) is using rulemaking and case precedent to make it easier for employees to organize, the Employee Free Choice Act (EFCA) legislation is basically dead. UNITE HERE, the big player in the restaurant arena, is coming off of a difficult divorce between warring factions, is mired in never-ending hotel negotiations, and seems more focused on organizing larger locations pursuant to neutrality/card check agreements. The percentage of the workforce that is unionized in the private sector is at an all-time low, and while the number of representation petitions against restaurants has increased in the past few years, the numbers are still extremely low in any given year. That being said, fast food restaurant owners and operators should take heed of the recent organizing campaign in Minneapolis against ten Jimmy John's locations. The Wobblies are at it again.

The Industrial Workers of the World (IWW), also known as the Wobblies, a union you may have read about in history class, has never gone away. In 2004, they started organizing baristas at Starbucks, created the IWW Starbucks Workers Union, and have had run-ins with Starbucks at locations in places such as New York City, Chicago, Minneapolis, Grand Rapids, Maryland, and even Omaha. The Wobblies have filed representation petitions and do represent employees in bargaining units in other industries, but usually claim that, because the election system is flawed, they prefer a solidarity unionism model in order to represent its members.

What is “solidarity unionism?” The IWW defines it as a model of labor organizing in which the workers themselves formulate strategy and take action against the company directly without mediation from government or paid union representatives. That is certainly part of it, but based on the IWW’s writings, their approach is much broader. Most notably, the Wobblies are in favor of actively practicing minority unionism and addressing issues from a broader, more global perspective. They see solidarity as drawing the boundary of the “struggle” of the working class as widely as possible. Moreover, the IWW is not a fan of the National Labor Relations Act, traditional organizing or bargaining. They do not care for traditional collective bargaining agreements because they purportedly cede too much power to employers in the form of no-strike provisions and management rights clauses.

The union does not have problems filing unfair labor practice charges, some of which have led to publicized settlement agreements. The union also has no problem taking credit when it allegedly improves benefits for employees by subjecting employers to its solidarity unionism. Most recently the union has claimed that its three year “campaign” for overtime pay on the Martin Luther King Day holiday is the reason Starbucks baristas recently began to receive overtime on that holiday. The Wobblies have a web page for their Starbucks Workers Union that makes for interesting – albeit one-sided – reading.

Last fall the Wobblies, following a model similar to its Starbucks campaign, moved into fast food. They filed a petition to represent employees at ten Jimmy John’s sandwich stores in the Minneapolis area. They also formed an IWW Jimmy John’s Workers Union, and set up the obligatory web page. This time, however, the Wobblies actually pursued a representation petition to an election, and lost by only two votes, 87-85 (or a tie if the two challenged ballots were counted). The Wobblies filed election objections as well as unfair labor practice charges, 21 of which the NLRB Regional Office found had sufficient merit to issue a complaint. On January 10, 2011, the NLRB approved a settlement agreement between the parties. The election will be set aside, while the employer did not admit to any wrongdoing. In addition to having to post a required notice about the case and employees’ rights to organize, the employer will have to hold mandatory meetings with its employees in which an NLRB representative will read the notice in the presence of the franchise owners, or an owner will himself read the notice. If the union decides to file a new petition within 18 months of the settlement agreement, the employer also has agreed to hold the election within 30 days.

On the one hand, the Wobblies lost the election – an election that would have never happened had the EFCA been passed, as the union reportedly had authorization cards from a majority of employees. On the other hand, they are still around, have claimed a victory, and are now asking the franchise owners subject to the petition to negotiate over a “10 Point Program for Justice at Jimmy John’s,” a program which they assert will bring “dignity, respect and justice” to the fast-food workplace. The 10 point program (with many sub-points) includes such issues as: job security; guaranteed hours; paid sick days; overtime pay for working holidays, late shifts, delivering in hazardous weather; pay increases; improved non-harassment policies; affordable health care; parental leave; etc.

If they follow their Starbucks approach, the Wobblies will be organizing (in their own way) Jimmy John’s locations nationwide for years to come, even if they never file another representation petition.

The Wobblies have declared their campaign to be the first union-organizing campaign against a fast-food chain in U.S. history. It likely will not be the last. A similar campaign could have

been started against any fast-food restaurant chain or fast-food operator in the country. All a restaurant needs is one disgruntled employee with internet access or a friend in a union and the Wobblies, UNITE HERE or any one of a number of other unions will be knocking at its front door. Given that these tough economic times have limited upward mobility in the job market, many fast-food employees have worked in the industry for longer than they had anticipated. Consequently, they are primed to take their frustration out on their employers instead of the economy.

Restaurants, just like any other employers, must assume its employees are always subject to union organizing, and take steps to prevent the commission of unfair labor practices by human resources personnel, supervisors or managers who, without proper training, will not know how to respond when confronted with this situation. In that regard, it is crucially important that handbooks and other employment policies be fully compliant with the National Labor Relations Act. Many of the allegations the Wobblies have raised that have resulted in settlement agreements involve such issues as bulletin board usage, employees discussing their pay and benefits, off-duty employee access issues, union buttons, etc. These are all items UNITE HERE has been raising within the hotel industry for years. Violations over such issues can lead to overturned elections, bad press, and give the union the ability to claim victories that could sway employees in an organizing campaign. Supervisors and other management personnel should be trained in understanding what rights employees and unions have under the National Labor Relations Act, and what employers can lawfully do and not do in the event of organizing. Last, and certainly not least, employers, and, importantly, the supervisors who represent them, must practice positive employee relations at all times. Pay and benefits should be as competitive as practical, working conditions safe, harassment policies in place and strictly enforced, and employee views and opinions respected.

While the odds of union organizing in the restaurant industry and, in particular, the fast-food sector may currently be low, the best way of keeping them low and keeping the Wobblies and other unions at bay is to take steps now to insure employees have no reason or desire to organize.

From [Five Key Labor And Employment Issues Hospitality Employers Need To Be Aware Of This Quarter](#)