2019 Membership Information Packet

CUE

a community for positive employee relations

What is CUE Inc.?

Thanks for your interest in learning more about CUE, Inc. - an organization for positive employee relations. We are a non-profit member-driven association committed to helping employers create and maintain a healthy and independent workplace culture through positive employee relations.

In 2018, more than 600 labor and employee relations professionals attended our Spring conference in Tampa and our Fall conference in Minneapolis. CUE conference attendees gather to network with industry peers via educational and networking opportunities, and to stay current on the cutting-edge issues developing in labor and employee relations.

Let's set up a short phone call to discuss CUE and the advantages of membership and pricing in more detail. I'd be happy to call you, or I am always available at 1-863-370-3560.

Michael VanDervort Executive Director

Top 4 Challenges We Help Employers With

Employee Engagement & Culture.
To keep employees engaged with the company to increase retention.

"Finding ways to relate to the new generations coming into the workforce and blending their fresh ideas with the more seasoned employees."

Legislative & Political Updates.
Provide timely updates on issues that come from the myriad of agencies both federal & state that affect the employee/ labor relations dynamic.

"Keeping up to date with the changing NLRB legal issues & case decisions."

Union Avoidance. Creating a culture where unions simply are not necessary.

"Keeping the organization focused on PER strategies and efforts even when there are no obvious union organizing attempts under way."

Training/Networking. Continuous leadership, supervisor and employee training versus the "one & done" approach.
"Providing proactive training and information to our management team in the field & home offices."

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Here's the real deal on CUE

We work hard to create formal and informal educational and networking opportunities for our members throughout the year. We do this with a wide array of service offerings

- ✓ **Conferences @ a substantial member discount**
- ✓ **CUE Website and Private Membership Portal**
- ✓ **LinkedIn Networking Group**
- ✓ **Labor Alerts, Weekly Labor Newsletter & Social Media Updates**
- ✓ **Member Networking Resources, including peer to peer networking**
- ✓ **Free Access to Legal and Consulting Expertise via Labor Lawyer Advisory Committee and CUE Consultants Advisory Committee**
- ✓ **Employer Briefings and Training**
- ✓ **Regional Meetings / Webinars**

SUBSTANTIAL MEMBER CONFERENCE DISCOUNT*

	Price	Savings	
2019 Non-member Rate	$1450 per attendee		*Membership must be active and in good standing to get member discounts
2019 Member Early-Bird Rate (Spring conference available through January 18, 2019)	$875	$575 per attendee (40%)	Small business and medium size members recoup their membership fee if one person attends one conference per year.
2019 Member Rate	$950	$500 per attendee (34%)	Large employers recoup their membership if 5 people attend one of our 2 annual conferences.

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HOW WE HELP MEMBERS VIA NETWORKING

Fortune 100 Employer asked:

- "Do you have any materials, or know of members that do, on advising new employees in right to work states of their right not to join a union already on site? Same for employees in bargaining units in states that become right to work states, so they know they the choice now?"

Outcome – 6 CUE members responded with best practice information that was shared with the member.

Fortune 100 Employer asked:

- "I 'm reaching out because I am working on an initiative regarding campaign strategy. I'm looking to speak with individuals at organizations who have gone through union campaigns (ideally recently) to better understand the strategies, tools and external resources they used. I am particularly interested in any technology solutions (i.e. apps, dark sites) developed and used in the process.

Outcome – CUE connected member with members as well as LLAC and CCAC resources who will assist with best practices at no charge to member

HOW WE HELP MEMBERS VIA NETWORKING

I'm a research fellow…(of a Fortune Global 500 company)... which is a think-tank research organization for….. In particular, my role is to conduct research to develop HR and ER policies as well as practices for … (a Fortune Global 500 company)…

I am preparing a short report on ER climate in South Carolina for our …. factory planned there. Part of it is case studies of union elections in the area: Electrolux in TN, Boeing in SC, and Nissan in MS.

I thought that it might be useful to conduct a case study with these three cases about what's in common and what is different and the implications for ER strategy of …factory planned in South Carolina.

Outcome – CUE connected member with local LLAC and CCAC resources and provided 5 hours of local labor market information sharing at no charge to member

- Atlanta
- Orlando
- Dallas
- Philadelphia
- Toronto
- Charleston
- Boston

REGIONAL MEETINGS

2017 CUE Member Survey: Member Voices

Dr. Fiona Jamison, CEO, Spring International
Walter Orechwa, CEO, Projections, Inc.
CCAC Members

People Insights That Drive Performance

Summary of Findings

61 CUE has a strong Net Promoter Score among its *primary* members

89 CCAC / LLAC members see the highest NPS

Top three reasons to join and stay a member of CUE

- Conference
- Networking
- Updates

Cost of CUE is on target – the same or less than other conferences / events that members attend.

Over two thirds of members who responded are likely or very likely to attend either or both of the next conferences.

Reasons for non attendance are scheduling, budget, rotation of attendees and location.

Members see value in the conference. **83%**

Members also see value in their overall membership. **72%**

Members are looking for more tools, resources, case studies, white papers, training opportunities, regional meetings, and webinars.

In their own words…

How would you describe CUE to a business associate?

Excellent source of information for maintaining an issues free workplace. Provides for opportunities to connect with other business people facing the same workplace challenges as me.

CUE has a tremendous wealth of information in maintaining a positive employee relations culture. The members are very knowledgeable in their field and always willing to share.

A fantastic organization where like-minded peers can learn best practices from each other on important topics (union avoidance, employee engagement, etc.)

A nationwide network of top HR Professionals, Lawyers and consultants committed to Positive Employee relations and Union Free Education.

CUE is the only place you can go to network and learn exclusively about positive employee relations and labor relations. The people are incredible. It's a "can't miss" meeting.

Excellent Organization for "state of the art", timely, information for creating and/or maintaining a positive employee relations environment in support of a union free workplace, provides excellent networking opportunity for HR professionals.

Networking, tools, education for the "people" side of business.

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CUE Newsletter for Friday, June 28, 2019

News from the CUE Community

Early Bird Registration for Las Vegas Ends Sunday

No extensions. No excuses. You gotta register by Sunday to get the best price for the conference and ensure that you experience **No FOMO! Less than 15 tickets remaining!** Register for Fall 2019 Early Bird Registration here by June 30.

Note from the Director

Traditional Work Stoppages on the Rise

The number of U.S. workers involved in work stoppages, which includes strikes and lockouts, was the highest of any year since 1986, according to Bureau of Labor Statistics data released earlier this year. For workers fighting with their employers over economics and contract language, striking is often the last option available and is not to be taken lightly due to the loss of wages and other financial hardships. Workers can also be replaced in some circumstances.

The impact on employers can be significant as well. The Stop & Shop strike earlier this year cost the company about $100 million.

Employers and employees who operate in a unionized environment understand that a work stoppage could occur during collective bargaining, and prepare for such events.

The same is not true for employers who are union-free, even in an era when employees of non-union companies are more prone to speak out publicly against employer policies, as reported by USA Today.

"Not happy with the leadership at your company?

You may not have to keep your mouth shut anymore. Gone are the days when speaking up got you automatically fired.

Employees, especially millennials, feel increasingly emboldened to publicly criticize their employers, organize protests and pursue change at the top on issues such as gender equality and immigration.

Among the latest examples: home goods seller Wayfair, and technology companies Google and Amazon."

Work Stoppages as a Means of Protest

Hundreds of employees at the online furniture company Wayfair walked off their jobs

centers.

The walkout was the culmination of a week of back and forth between some employees and the company leadership.

The employees, organized under a newly formed group called Wayfair Walkout, drew widespread support on the internet from prominent politicians such as presidential candidate Sen. Elizabeth Warren, D-Mass., and Rep. Alexandria Ocasio-Cortez, D-N.Y., and from many Wayfair customers, who took to social media to swear off shopping at the furniture giant until the company rectified what they see as aiding a grave injustice. Locals unaffiliated with Wayfair also joined the walkout to show their support for the protesting employees.

At Amazon, some 8,000 employees concerned about climate change have signed onto Amazon Employees for Climate Justice. The worker group won the support of two independent shareholder advisory services for a proposal pressing Amazon to account for its emissions and has continued to advocate for action since the company and investors rejected the resolution in May.

About 100 Google employees urged the organizer of this weekend's San Francisco Pride parade to kick the company out of the celebration, escalating pressure on the internet giant to overhaul its handling of hate speech online.

Google in turn warned workers not to protest against the company if they are marching with Google's official contingent. Doing so would violate the company's code of conduct, according to internal memos viewed by the people. The Verge reported the memos earlier.

The company's actions may violate federal labor law protecting workplace activism, as well as a California law protecting employees' political activities, according to University of California at Berkeley law professor Catherine Fisk. "Maintaining the policy would chill speech that is protected by law," she said.

According to an article in the Wall Street Journal, boundaries are breaking down between political and business issues that employees, especially Millennials and younger employees want a hand in addressing. Referring to this developing trend as "The New Labor Movement", the article points out how Employees, especially younger ones, increasingly expect the places where they work to reflect their moral, cultural and political values, and they are becoming more vocal in their demands—often using social media and online job-discussion forums—when they feel employers fall short.

The rise of websites and blogs where employees can share concerns about corporate policy has given added momentum to some organized efforts.

The concurrent rise of employee activism and growing use of communications technology in the workplace is no accident, according to Mark Kramer, a Harvard Business School lecturer and co-founder of FSG, a consultancy that advises companies on their social-impact strategy. "Social media enables employees to communicate without going through official channels, which didn't happen before to the same degree," says Mr. Kramer.

Experiencing this type of activity creates a difficult situation for employers, raising many questions.

Who responds to these types of internal protests?

Does the activity constitute protected concerted activity?

What is the potential PR fallout?

It's clear that even as traditional labor activity remains somewhat slow, there are many challenges for internal labor relations practitioners to deal with. Are you prepared for an internally driven protest? You might sleep better at night when you can answer these questions. That's all for this week. Let me know what you think. - Michael

Hot Links and Headlines

Leadership, Organizing and Technology

In Defense of the Rank-and-File Strategy

Was Stop & Shop strike a turning point?

Pro Tip: How to Maintain Your Skin-Care and Self-Care Routines During Workplace Bargaining

Health care workers describe staffing crisis at Whiting

They Are Calling This A "Bloodbath" For The $800 Billion Trucking Industry As U.S. Economic Activity Dramatically Declines

'I'm not out here': Facebook fishing trip video dooms worker's FMLA claim

Open Forum: Uber, Lyft ready to do our part for drivers

How bosses are (literally) like dictators

Chipotle Employees Can Now Earn an Extra Month of Pay

NEW MUSEUM UNION PUSHES FOR CONTRACT AT EXHIBITION OPENING PROTEST

WeWork and its HR head sued for gender, age discrimination

Using the 'Sleeves Up' Hiring Method to Instill a Solid Company Culture

How millennials are changing corporate giving

Uber tweaks its driver app amid rising tensions over worker rights

Tesla Is Blocking Its Employees From Accessing an Anonymous Social Network for Workplace Complaints

Platform Organizing: Digital Tools for Worker Communication

Are we all In search of tribal identities?

Why Younger Generations Are Embracing Labor Unions

Canada 

UPDATED: B.C. port workers, maritime employers ratify new contract

Federal unions speak out against P3; new pilot for care workers offers respite; and Manitoba nurses protest health-care changes

Flexibility is the new norm, and it's time for employers to embrace 'Generation Flex'

Mexico's Senate ratifies new NAFTA amid Trump tariff cease-fire

Trump and Trudeau discuss USMCA final details in Washington DC

United States 

UFCW grocery workers vote on strike authorization

"If you lost by 29 votes, would you walk away and give up?" one United Auto Workers official observed after the votes were counted in the latest of three votes in Chattanooga. The UAW lost, 833-776, but a shift of 29 votes could have changed the outcome. The tally by the National Labor Relations Board indicated approximately 70 employees did not cast a ballot.

Pritzker's AFSCME deal gives 12% automatic raises, $2,500 bonus to state workers

'People Are Crying When They Come Into Work:' Unions Protest OPM-GSA Merger

Union Report: One Year Later, It's Clear — the Janus Effect Is Not Yet What Either Side Had Hoped for, or Feared

Trump Labor Board Chief Targets Agency Watchdog in Complaint

Albertsons and Kroger Workers Authorize Strike

Martha's Vineyard Bus Drivers Plan To Strike Friday

Little Big Burger Workers Negotiate Mail-in Union Election at Every Oregon Store

Mitsubishi Motors to relocate North America HQ to Tennessee

GE Reaches Four-Year Tentative Agreement With 11 Unions

Wages for 12,000 local employees on line when Ford, United Auto Workers begin contract talks next month

Las Vegas 

[Finding a fair wage in Las Vegas]

[Las Vegas to be inundated with casino picketers]

Europe and the rest of the world

[France: Former executives at France Télécom go on trial over staff suicides]

[UK: Why do employees turn to trade unions?]

[Mexico's Workers Can Finally Choose Unions. Old Unions Are Pushing Back.]

[2.5bn workers engaged in informal economy –ILO]

CUE Legal Alert – NLRB Makes Independent Contractor Status a Little Less Risky

By John T. Lovett, Esq.

The **CUE** ***Legal Alert*** *is published to communicate legal developments in the labor relations field to its members. It is for general information purposes only and is not intended to provide legal advice relative to any particular factual situation or labor dispute. Questions or requests for advice concerning specific problems should be directed to your legal counsel. Legal Alert is intended for management's use only and any reproduction, distribution or circulation thereof beyond management is strictly prohibited.*

On August 29, 2019, the National Labor Relations Board (NLRB) freed employers from automatic federal labor law violations ("unfair labor practices") over a mistaken belief that an employee is an independent contractor. The NLRB's ruling, however, leaves employers legally exposed if they ***act*** on such a mistaken belief, no matter how honest and reasonable.

Independent contractors play a growing role in the U.S. economy. Yet, few legal criteria generate more confusion and uncertainty than those separating the status of independent contractor from that of employee. The distinction is important under the National Labor Relations Act (the "Act") because independent contractors, like supervisors and managers, are excluded from protection under the Act.

What happened? In *Velox Express, Inc.,* the NLRB determined that drivers operating their own cars to transport medical specimens were employees, not independent contractors as their employer believed. The Board found the drivers were employees largely because they did not control their own routes or delivery schedule. They had little "entrepreneurial opportunity."

NLRB Ruling. A discharged employee, joined by various national labor unions, charged that Velox violated the Act merely by telling its drivers that it considered them to be independent contractors. The NLRB rejected this argument. It observed that Velox had a right, not only to reach its own legal conclusions, but to communicate its legal opinions to those working for it.

So far, so good. Unfortunately, however, Velox also acted on its legal conclusions. Since independent contractors are not protected by the Act, Velox fired the Charging Party for complaining about how the company treated its drivers. Velox also included a "Non-Disparagement" clause in its driver contracts. Velox's actions would have been perfectly lawful if its drivers where independent contractors, as Velox genuinely believed.

Since the Board found the discharged driver to be an employee, however, she was protected by the Act. Velox's actions were, therefore, unlawful. The NLRB ordered reinstatement and backpay, plus revocation of the "Non-Disparagement" clause, and a Notice posting promising no future legal violations.

What it means. Labor law rules are often determined after the "game" has already been played. So, it was for Velox. And so, it will be for many businesses that utilize independent contractors.

Businesses remain free to enter into independent contractor agreements. They can tell their workers they are not "employees," without violating the law even if they are wrong. Yet, they ***act*** on this legal conclusion at their own risk.

The NLRB's decision is *Velox Express, Inc.* also impacts other job categories excluded from protection under the Act. Principal among these are "supervisors," as defined by the Act. A supervisor can be fired for supporting a union, or for criticizing the employer's treatment of other employees. Such actions, however, will be clear violations of the law if the employee fails to meet the definition of "supervisor."

Thankfully, Section 2(2) of the Act offers clarity over the definition of "supervisor" wholly absent from the common law test for "independent contractor." Nevertheless, disputes are not uncommon over whether a "lead person," Charge Nurse, "Assistant Manager," etc. meets the Act's definition for "supervisor." *Velox Express, Inc.* protects against an unfair labor practice charge merely because such a person is inaccurately designated a supervisor.

John T. Lovett, author of this *Legal Alert,* is a Member of Frost Brown Todd LLC, and is honored to serve on CUE's Labor Lawyer Advisory Committee.

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The Times They Are A-Changin': The NLRB Proposes Major Revisions to Its Election and Recognition Procedures

Wayne D. Landsverk
Miller Nash Graham & Dunn, LLP

Longtime labor lawyers know that the National Labor Relations Board (the "Board" or "NLRB") has rarely utilized its rulemaking authority, relying instead on individual cases to formulate its policies. Indeed, for 24 years between 1987 and 2011, the Board engaged in *no* rulemaking whatsoever. The current Board, however, has expressed a "strong interest" in rulemaking because, in its view, addressing these important topics through rulemaking allows the Board to consider and issue guidance in a clear and more comprehensive manner.

Consistent with this preference for rulemaking, last month, the Board published a notice of proposed rulemaking [NPRM] that would adopt three new proposed rules to dramatically change important aspects of NLRB election procedures. The proposals, designed to better protect employees' statutory right of free choice on questions concerning representation, are as follows:

- **An end to "blocking charges" to stall elections and recognition indefinitely.**

  The NLRB has long had a policy refusing to hold an election until any alleged, nontrivial unfair labor practice ("ULP") charges have been dealt with. The rationale has been that unresolved ULPs can interfere with a free and fair election. The blocking charge policy has had the most impact in union decertification elections—in which employees have filed a petition to oust an incumbent union—because unions have routinely used this policy to delay those elections for months and often years by filing serial charges.

  The Board's proposal would eliminate the practice of "blocking" the election and instead adopt a "vote and impound" procedure. That is, if a charge were filed alleging unlawful election interference, the Board would nonetheless hold the election, impound the ballots, and wait until after the ULP charges had been resolved to determine whether to open them. If the Board found that the charge lacked merit, the votes would be tallied and the election results would be certified by the Board. If the Board found that unlawful conduct interfered with the election, the Board could void the election and order a "re-run election."

- **Modification of the Board's "voluntary recognition bar" policy.**

When an employer voluntarily recognizes a union as the collective bargaining representative of its employees without an NLRB election and certification, Board policy provides for a "recognition bar" for a "reasonable period" during which the employer and union would engage in collective bargaining and there can be no election to challenge the union's majority status. Under current Board policy, the bar attaches immediately upon recognition, thus effectively preventing employees from having any say in whether they wish to be represented by the union until a "reasonable" period has passed.

Under the proposed modification, the "bar" concept would still exist, but it would apply *only* if two conditions were met: (1) the parties' giving of written notice advising the NLRB's regional office that the union has been voluntarily recognized and the employer's posting of a notice stating that employees have a 45-day period in which a decertification or rival union election petition may be filed; and (2) no filing of a decertification or rival union petition during the 45-day period. If these two requirements were met, a voluntary recognition bar would exist, precluding any challenge to the union's majority for a reasonable period to allow contract negotiations to proceed.

This proposed notification would in fact be a reinstatement of requirements that previously existed under the Bush II Board [*Dana Corporation*, 351 NLRB 434 (2007)] but were eliminated by the Obama Board [*Lamons Gasket*, 357 NLRB 739 (2011)].

- **Change involving construction industry "pre-hire" agreements.**

Section 8(f) of the National Labor Relations Act permits a construction industry employer to enter into a "pre-hire" agreement with a union without any showing of employee majority status, frequently before the employer has even hired any employees. Because such agreements are voluntarily entered into and do not require any showing of employee majority support, they are subject to different rules from conventional labor contracts under Section 9(a) of the NLRA, which require a showing of majority support. Under the rules governing "pre-hire" agreements, such agreements create no "contract bar" to employee or rival union petitions during the term of the agreement and the bargaining relationship may be abandoned by either party upon expiration of the agreement. Consequently, it is typically much easier for an employer to “disengage” from a collective bargaining relationship governed by Section 8(f) of the NLRA than one governed by Section 9(a).

In 2001, in the case of *Staunton Fuel and Material*, 335 NLRB 717 (2001), the Board held that certain language in an 8(f) pre-hire agreement would, standing alone, be sufficient to "convert" the agreement into a conventional

collective bargaining agreement under Section 9(a) of the NLRA, even though there was no evidence that the union ever made any showing of majority employee support. In a later case, the U.S. Court of Appeals for the D.C. Circuit rejected the Board's approach, holding that there must be an actual showing of employee majority support to find that the parties had entered into a conventional collective bargaining agreement rather than a mere "pre-hire" agreement. Despite the Court of Appeals ruling, however, the Board has continued to follow its *Staunton Fuel* approach to the present day.

The Board's proposed rule would adopt the reasoning of the D.C. Circuit. Under the proposed rule, a construction industry labor agreement would not be considered a conventional collective bargaining agreement that would bar an election petition "absent positive evidence that the union unequivocally demanded recognition as the 9(a) exclusive bargaining representative of employees in an appropriate bargaining unit and that the employer unequivocally accepted it as such, based on a contemporaneous showing of support for a majority of employees in an appropriate union. *Contract language, standing alone, will not be sufficient to prove the showing of majority support.*"

Taken together, these proposed rules—which are highly likely to be adopted after a comment period—would make very significant changes in current Board law, and more rules can be expected in the near future. Look for rulemaking in the area of the joint-employer relationship, revision of union "quickie" or "ambush" election procedures, standards for access by union organizers and off-duty employees to an employer's private property, and probably others.

Stay tuned.

Wayne Landsverk is a partner in the Portland, Oregon office of Miller Nash Graham & Dunn, LLP, *This article is for general information purposes only and should not be construed as legal advice. If you have any questions or would like additional information about the NLRB's proposed rulemaking agenda, feel free to contact the author or the labor attorney with whom you regularly work.*