




**2022 IFA SUMMER  
BOARD OF DIRECTORS'  
& FORUM MEETINGS**

**JUNE 26-28, 2022**


**Issue Free = Union Free: Current State of Labor Law in America**



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**Presented by:**



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## Key Takeaways

1. The Union threat is real.
2. Select first line and second line supervision carefully and fully invest in their employee engagement skills.
3. Decide if your company will have a position on unions and what that position is going to be. Do that RIGHT NOW.
4. Define your company positively before the union defines you negatively.
5. If you begin a positive employee relations campaign when the unions shows up, you have lost.
6. Do absolutely NOTHING to AVOID a union. Do absolutely everything to make yourself a better company.

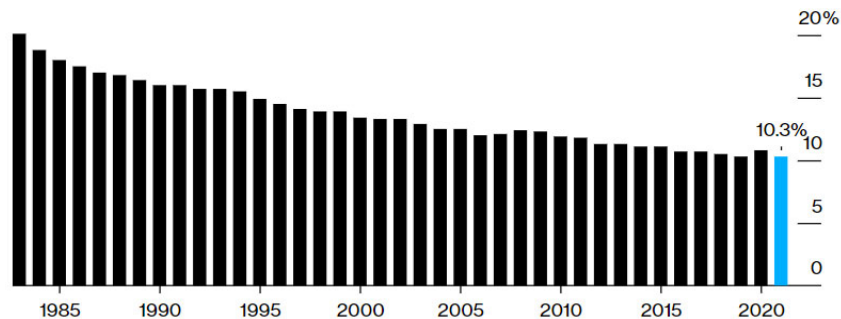


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## Where Did We Come From?

- Union membership is at an all-time low.
  - 1983 = 20.1% | 2021 = 10.3%
  - Private Sector Union Membership Rate = 6.2%



Source: Bureau of Labor Statistics



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## Where Are We Going: NLRB

- **Joint Employer Rulemaking**
  - Rule expected this Summer
- **Reversal of *SuperShuttle***
  - Worker status under NLRA
  - *The Atlanta Opera, Inc.* = pending
  - *XPO Logistics*, 21-RC-289115
    - Independent owner-operator truck drivers found to be employees
- ***Cemex Constr. Materials Pacific***
  - Brief filed by GC's Office on April 11, 2022
  - GC's Office wants to overturn (5) precedents
    - Captive Audience
    - Voluntary Recognition / *Joy Silk*
    - And more

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## Where Are We Going: AFL-CIO



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## Transformation of America's Workforce

- Employees have power
  - Job Openings (as of April 30, 2022) = 11.4 million
  - Number of Job Seekers (April 2022) = 6.5 million
- Post-Pandemic Exhaustion
  - Workers are still recovering from COVID-19
    - Front line workers: employees working from home (clients demand 24/7 service)
  - Loss of pandemic benefits
  - Children back in school
  - \$ 3.7 trillion in savings – being drawn down and destroyed due to inflation and end of government subsidies

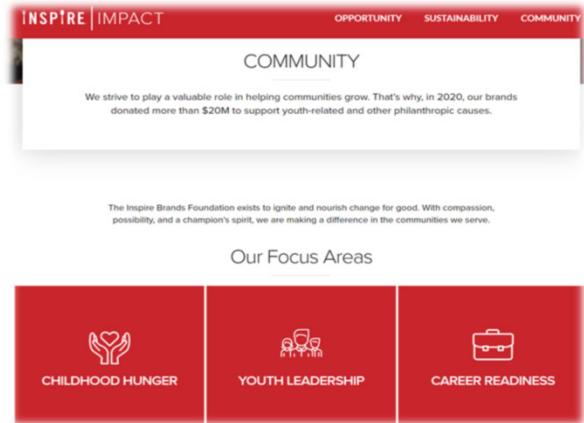


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## America's "New" Workforce: Generation Z- What's Important to Gen Z Workers?

- Diversity, Equity & Inclusion Initiatives
- A seat at "the table"
- Corporate Social Responsibility
- Feeling as though they are contributing to a greater purpose
  - Not just a job, but a sense of building a better life through employment
  - Strengthening the community
- Constant recognition and "hand holding" by management



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## What is Causing Rise in Union Petitions?

- Organizing is organic
  - It is inside out from employees as opposed to outside in with organizers
  - Grassroots organizing
- Social Media
  - Instagram, TikTok, Facebook, Reddit, GroupMe, WhatsApp and so much more!
- **Poor leadership / ineffective managers**
- **Lack of investment in training**
- **Employees do not have a voice**
- **Gen-Z pursuing their idealistic dreams**



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## What is Causing Rise in Union Petitions?

“[W]orkplace fights are . . . about . . . one of the deepest of human emotional needs: **DIGNITY**.”

- Jane McAlevey, *No Shortcuts: Organizing for Power in the New Gilded Age*, 1199 Organizing Conference, February 6-9, 1985, Columbus, OH



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## Million Dollar Question: How do you Respond?

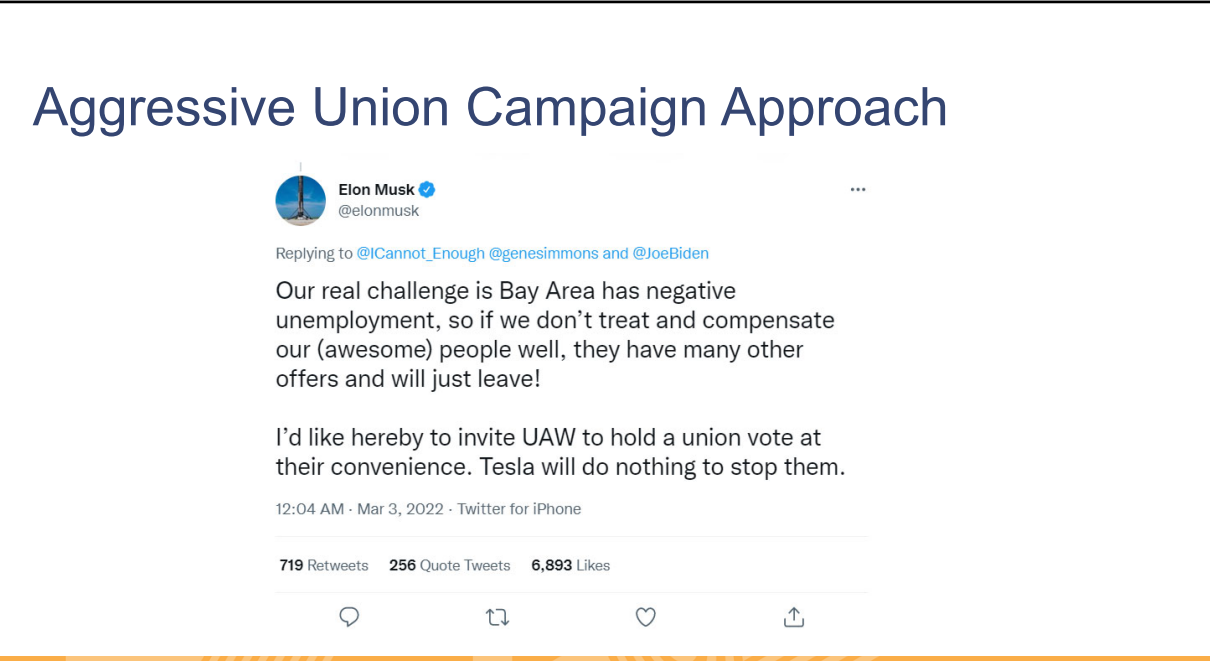
### What is your Company's Position on Unions?




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## Aggressive Union Campaign Approach



The image shows a screenshot of a tweet from Elon Musk (@elonmusk) replying to @ICannot\_Enough, @genesimmons, and @JoeBiden. The tweet discusses the challenge of negative unemployment in the Bay Area and invites the UAW to hold a union vote at their convenience, stating that Tesla will do nothing to stop them. The tweet has 719 retweets, 256 quote tweets, and 6,893 likes. The screenshot is framed by an orange border with a geometric pattern on the left side.

Elon Musk  @elonmusk

Replying to @ICannot\_Enough @genesimmons and @JoeBiden

Our real challenge is Bay Area has negative unemployment, so if we don't treat and compensate our (awesome) people well, they have many other offers and will just leave!

I'd like hereby to invite UAW to hold a union vote at their convenience. Tesla will do nothing to stop them.

12:04 AM · Mar 3, 2022 · Twitter for iPhone

719 Retweets 256 Quote Tweets 6,893 Likes

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## What is Michael Lotito's Position on Union's for the Last 40 Years?

- Your motivation is not to avoid a union. Your motivation is to make a better company.
- Invest in an issue free workplace.
- Make unions irrelevant.
- **ISSUE FREE = UNION FREE.**



The image features a green oval with a black border containing the text "ISSUE FREE = A BETTER COMPANY". The entire slide is framed by an orange border with a geometric pattern on the left side.

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# Million Dollar Question: How do you Respond?

- Invest in supervisors (selection and training)
- Supervisory Engagement Training and Role Pays
- Implement Strategies to Avoid SALTS
- Card Signing Training
- Establish a Rapid Response Team
- Develop a communications strategy to roll out, *now*



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# Responding Now

## An Issue-Free Primer for Restaurant Owners and Operators

### What is this Primer?

The **International Franchise Association** believes that striving to be issue-free is the key to employees' choosing to remain issue-free.

The Issue-Free Primer for Restaurant Owners and Operators is intended as an outline to help restaurant industry employers deal with the most common questions relating to union organizing and maintaining an issue-free workplace. This document does not constitute legal advice or opinion. This document contains labor relations advice that is intended solely to educate management and is not intended for distribution to employees.

Also, this document is based on current labor laws as of June 22, 2022. Labor laws can change at any time, so employers should seek professional legal advice to be sure that the specific responses discussed below remain valid. Should you need legal advice, contact an experienced labor attorney immediately.

### The Prelim: Determine the Company's Position on Unions

The first thing the company needs to do in its issue-free workplace journey is discuss what position the company wants to take on unions. Some companies welcome unions and agree to neutrality and card check, while others choose not to take a public position out of concern for backlash from investors, the public, shareholders, internal company leaders, the government, or politicians, or due to international union relationships. Other companies are very aggressive in their position, such as, "We do not need a union at our company and will do what we legally can to avoid one." Complicating matters, the restaurant franchisor's union position is not necessarily the same as an individual restaurant's position.

There is no one-size-fits-all stance. Executive leadership should seriously consider the company's position relative to its values, the risks involved, and how to align stakeholders, such as the Board of Directors and key investors. This discussion should involve counsel to be protected by the attorney-client privilege.

Wherever the company lands, being issue-free is a goal for all workplaces. Being issue-free reflects values of dignity, respect and voice. It is an ongoing investment in making the company better.

## What Should Restaurant Employers Do To Build An Issue-Free Workplace?

### Recruit and Invest in Managers that Employees Want to Work for

Recruiting managers that employees want to work for sounds obvious, and yet employees continue to call out bad managers as the reason they seek representation. Managers are the face of the company. They are the ones who make the Company's values come to life (or not) and show employees if its issue-free philosophy is real or on paper only.

Even before there is any sign of organizing, it is vital for employers to invest in recruiting good leaders and training their entire management team on positive employee relations to avoid workplace issues in the first place. This includes, but is not limited to, ensuring the Company has an open-door policy and multiple channels by which employees can suggest areas of improvement and concerns, providing constant feedback to employees, and ensuring managers are visible and assist employees in their daily operations when the Company is experiencing an influx of business. Additionally, managers need to understand why employees tend to want to join unions and why the Company is not unionized. Managers must also be aware of the importance of early warnings and quick response to any card-signing union activity.

### Recruit for, and Yourself Exhibit, These Key Traits of a Good Leader

- Empathetic
- Trustworthy
- Good listener
- Communicates and follows up - "Here what's happening and why it's important" or "I don't know but I'll look into it and get back to you" [and do it!]
- Sets clear goals
- Respects diversity
- Team player, willing to "roll up sleeves"
- Shows appreciation
- Holds employees accountable
- Doesn't lose their cool/temper
- Seeks assistance from HR/legal when needed

Practice Positive Employee Relations Strategies So that Workplace Issues are Less Likely to Form Building positive employee relations to process. Key strategies including to:

### Identifying Your Managers

As stated above, this Primer is intended for managers only. Identifying them is important because they have special duties and responsibilities as the eyes, ears, and mouthpiece of the Company, and because they cannot assist in or promote union activity.

A "supervisor" is defined under the National Labor Relations Act 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 responsibility to direct them, or to adjust their grievances, or effectively recommend such action, if in connection with the foregoing the exercise of such activity is not of merely routine or clerical nature, but requires the use of independent judgment." 29 U.S.C. § 152(11).

For example, a District Manager or Restaurant Manager would tend to be a supervisor because they usually have the authority to hire, fire and discipline employees. Lower-level "managers," such as Assistant Restaurant Managers, might be legal supervisors or not, depending on their duties and authority. The NLRB looks at their actual job functions, regardless of title. Contact experienced labor counsel for guidance.



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## Responding Now

*\*Sample content subject to change*

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# Questions?

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# Thank You!

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