

# GOLF CLUBS AND THE UNIONS

## PART 2

The inevitable question arises, "What are my rights if a union begins organizing my employees? What are my obligations? What can I do? What can't I do? What will happen if I do something illegal?"

First get advice from an expert. You will be drawn rapidly into an area outside your general experience and you will be dealing with a union agent who is trained and usually good at his job. How much will expert advice cost? Rates vary. But you can always ask beforehand how much the cost will be. Almost certainly it will cost less in the long run because you will be able to avoid costly mistakes.

Almost any union could be involved in organizing golf club employees. No law says that a specific union must represent golf club employees. Some of the most active in organizing golf clubs have been the Service Employees International Union, the Laborers Union and the Teamsters Union for maintenance personnel. Hotel and Restaurant Workers Unions and Culinary Workers have organized some kitchen and clubhouse employees.

Is the golf club industry a union target? Unlikely. Usually the club employees contact a union for help. This is one reason why a variety of unions represent golf clubs. On rare occasions one union may try organizing all the golf clubs in a metropolitan area.

What laws apply? The Taft-Hartley Act is the Federal law. It provides a more extensive scheme for the conduct of labor relations than state laws. If your club is covered by the Taft-Hartley Act and, therefore, within the jurisdiction of the National Labor Relations Board (NLRB), state labor laws would not apply.

The NLRB exercises jurisdiction over clubs in which the annual

In this concluding part of the series on unions the rights of employees and the rights of management are explored

by THOMAS P. BURKE

gross revenues are \$500,000 or more, exclusive of membership dues and initiation fees. (This jurisdiction standard should not be confused with the Wage and Hour Division of the United States Department of Labor, which includes membership dues and initiation fees to determine dollar coverage.) If gross is less than \$500,000, the club is subject to the law of the state in which it is located. Any attempt to discuss state labor laws here would be useless, because state laws vary dra-

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matically. The State of California, for example, has only a general statement that employees have the right to organize and engage in concerted activities. New York State has extensive labor laws fashioned after the Wagner Act, the Federal law prior to its amendment in 1947.

### RULES UNDER FEDERAL LABOR LAW

Basically Federal labor law allows employees to engage in activities collectively on their own behalf or to seek a union to represent them without fear of interference or reprisals from their employer. Once the employees have chosen a bargaining agent, the employer must meet and bargain in good faith.

### WHAT THE EMPLOYER CANNOT DO

The employer may not interrogate employees about the union. This includes questions to find out whether employees want a union, why employees want a union or which employees favor a union.

The employer is prohibited from making any statements or taking any action considered threatening. A statement that if the union is successful, the club would be closed is an illegal threat. One classic example of the illegal threat was the case of an owner who was so incensed that his employees were unionizing that he placed a "For Sale" sign on the front gate.

The employer may not legally make any promises during an organizing drive or other inducement to vote against the union. This includes promises of wage benefits or other improvements in working conditions, as well as granting benefits. There are some exceptions to the granting of benefits, but the legal complexity of that issue overreaches the scope of this article.

An employer may not force those employees favoring a union to work at a disadvantage compared to employees who are against a union. Nor may he make union adherents work longer hours or transfer them to lower paying jobs or fire them. It is not unlawful to discharge a union adherent if the discharge is unconnected with his

union sentiments.

An employer may not attempt to listen in on employee discussions of the union by either attempting to attend a meeting, a gathering or sending a "spy," or even creating the appearance of attempting to learn about union activity or union discussion.

During a union organizing drive, union literature of solicitation from fellow employees may be distributed. The employer is entitled to enforce rules, but not rules created for the first time during the organizing drive, which limit distribution of literature and union solicitations to nonworking hours. The employer may not interfere with the employees' right to discuss the union or to distribute literature to other employees during break time, lunch time or before or after work.

The employer may stop a union agent from entering his premises to solicit and distribute literature. These limitations must be established without discrimination. A prohibition against solicitation and distribution of literature during working time or by nonemployees should apply to all types of solicitation and distribution of literature.

Under the National Labor Relations law supervisors are agents of the employer. They are a part of management. Any statement or act within the above prohibitions by a supervisor will be attributed to the employer.

A supervisor is anyone who has either the authority to hire and fire or may effectively recommend hiring and firing. He can also transfer, suspend, lay off, recall, promote, assign, reward or discipline other employees, can direct them or adjust their grievances or effectively recommend such action. The exercise of his authority in judging

such cases should not be merely routine or clerical. An effective recommendation is made when the supervisor's superior makes no independent investigation, but follows the recommendation. The manager should also know that the conduct of a nonsupervisory employer can be attributed to the employer. An employer tells a nonsupervisory employer, for example, to tell other employees that union advocates will be discharged. The employee becomes a ratified agent of the employer and any threats are attributed directly to the employer.

#### TYPES OF UNION RECOGNITION

The National Labor Relations Act defines three types of recognition: Voluntary recognition by the employer, recognition after a union election is held and NLRB ordered recognition.

Voluntary recognition results when a union presents proof that a majority of employees wish to be represented by the union and the employer agrees to recognize the union on that basis. This can happen unintentionally. Last year, a golf manager was approached by

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a union business agent who offered to prove that a majority of the club's employees wanted his union to represent them. The manager, unaware of his legal rights, agreed to recognize the union. Thereafter, under the National Labor Relations Act, the club was obligated to bargain in good faith, even

though the club had the right to make the union prove the employees' interest by insisting on a secret ballot election.

Recognition after an election is more common. The NLRB will conduct a secret ballot election after a petition is filed. If a majority of the employees voting vote for a union, then the employer must recognize the union. If the vote results in a tie, or less than a majority, then the employees have chosen no union and no further elections can be conducted for one year.

Recognition by order of the National Labor Relations Board is relatively rare. Such an order can result even though the employer wins the election, if the employer had committed substantial unfair labor practices. The board then decides a free election cannot be held in the future and orders the company to recognize the union, despite the election results.

#### PROCEEDINGS BEFORE THE NLRB

When a union has been able to procure the signatures of at least 30 per cent of the employees in an appropriate unit, the union can petition for an election. The NLRB usually holds an informal conference or alternatively a formal hearing to determine if the unit of employees sought by the union is appropriate. A unit is appropriate when all the employees named in the union's petition have a so-called "community of interest," which includes the same supervision, the same wage and benefit policies and the same working conditions. Job interchangeability also can prove common interest.

In a golf club, usually two appropriate units are found: maintenance personnel and kitchen and clubhouse personnel. It is possible to have a single appropriate

*continued on page 43*

## UNIONS from page 41

unit if the factors mentioned previously were present. However, this can only be determined on a case-by-case basis.

Once the appropriate unit is determined and a time and place set for the election, the employer and the union may proceed to campaign. Under the National Labor Relations Act, but not under certain state acts, such as New York, an employer is entitled to conduct an anti-union campaign, but he must refrain from threats, promises, interrogations and other dire consequences if the union were to win. He also must refrain from misrepresentations. If the employer does engage in such conduct and wins the election, the union is entitled to file objections to the election. If the objections are well-founded, the election results will be set aside and a new election held.

### UNFAIR LABOR PRACTICE PROCEEDINGS

Separate from objections to the conduct of an election are so-called unfair labor practice proceedings. If the employer violates the National Labor Relations Act by engaging in the illegal activities mentioned previously, he will be subject to a variety of remedies, depending on the nature of the illegal act. For example, if an employee has been discharged because he engages in union activities, normally the employer would be ordered to reinstate the employee with full back pay reduced only by the amount he earned at other jobs. This can be extremely expensive because the final results of a discharge case can take two to three years. In other situations unlawful interrogation or threats and promises will result in the employer posting a notice that he agrees to stop such conduct. If further illegal conduct results,

the case can be reopened and enforcement sought in a Federal Court of Appeals. Violation of a court order would subject the employer to contempt of court.

### COLLECTIVE BARGAINING

If the union wins the election, the employer must bargain in good faith. This obligation requires the employer to attempt to reach agreement with the union concerning wages, hours and employee working conditions. However, the employer need not make a concession or agree to any specific proposal. It should be noted, however, that the legal obligations of bargaining in good faith require a give-and-take posture.

### MANDATORY SUBJECTS OF BARGAINING

The employer is required to bargain about any mandatory subject, which includes mainly wages, benefits, hours of work, work rules, work requirements, seniority, causes for discharge, grievance procedures and much more. This does not mean that these items must be in every collective bargaining contract or that the employer must agree to these items. It simply means that they are subjects about which you are required to bargain.

### RULES DURING A STRIKE

Under the National Labor Relations Act, the employer may continue operating during a strike, but should not solicit the strikers to return to work. This is an unfair labor practice. The employer may indicate to strikers that work is available and may replace striking employees with other employees, who may be made regular employees. Striking employees can have their jobs back only after making an unconditional offer to return to work and if a job is available. However, if the reason for strike is the employer's unfair labor prac-

tices, such as refusal to bargain in good faith, the strikers, upon an offer to return to work, may return immediately. Strike replacements must be discharged if necessary to make room for the returning employees. Failure to reinstate employees in this instance will result in back pay liabilities.

### BARGAINING STRATEGY

Negotiations should be conducted by someone with experience. Bargaining involves many tactical maneuvers that are best managed by an experienced negotiator. He will be able to give substantial reason for resisting unacceptable contractual language or be able to propose compromises at the appropriate time.

### PREPARATION FOR BARGAINING

The club manager, working with the negotiator, should collect all facts concerning the present employment situation, including current wages, benefits and operational requirements. In addition, facts about clubs in the general area should be gathered for comparison. Then the negotiator and club manager should discuss goals—contract language and economic costs. The relative importance of contract clauses should be discussed. A complete look at the economic structure of the club and the outside limits on wages and benefits should be kept clearly in mind and be well planned.

### TIMING

The union usually requests a first meeting at which they present a proposal. The club's negotiator takes his time to explore the proposal with the union so that he understands clearly all the aspects. The club also may ask the union for collective bargaining contracts with other clubs. After the initial meeting, the negotiator and management carefully prepares a

*continued on page 50*



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50 GOLFDOM MAGAZINE 7/72

## UNIONS from page 43

counterproposal, putting into it the basic structure of the needs of the club. The counterproposal should be prepared with the knowledge that there will be modifications as the give and take of negotiations get under way.

As negotiations begin, a thorough examination should be made of the club's bargaining strength. Primarily, the strength hinges on the attitude of the club membership and the effectiveness of the board of directors. No employer has bargaining strength without the support of the policy makers. It would be foolish to attempt to drive a hard bargain in negotiations only to find out that at the critical moment, when a strike is threatened, that the board of directors will not support the position taken. This would usually mean a higher than necessary settlement

with the union. In this regard, timing of negotiations becomes critical. The club membership may simply not tolerate any delays or interference in the use of the facilities if they occur during periods of heavy use. These matters must be considered in advance because little time for extensive planning when negotiations reach their critical stage will be available.

## CONCLUSION

No article can cover the entire field of labor relations. It will be enough, however, if the reader understands that labor problems can be considerably diminished, if not eliminated, if approached in a reasonable and understanding manner. Furthermore, problems with employees can be avoided more easily before they start than after your employees have chosen a union. □

## MAINTENANCE from page 46

ent system," says one Florida superintendent. "My greens chairman is saying let's try it for a couple more."

Superintendents throughout the nation do not appear alarmed at the growing number of chemical regulations and legislation being proposed or implemented by Federal or state governments. "Most superintendents, aware of today's climate by the public for safe ecological chemicals, have switched to alternatives or replacement chemicals. "Their cost has not significantly affected my maintenance budget and I'm still getting the desired results," says a New York State superintendent. One Oregon superintendent is enthusiastic about the bulk buying of fertilizer in large paper bags. They weigh 600 pounds and suit the fertilization requirements of his course for a year. One suggestion, echoed by several superintendents, was for chemical manufacturers to give superintendents more hard data on the chemical life and decomposition rate of turf materials. Superintendents are also very wary and unsure of the new Department of Labor's Occupational and Safety Health Administration guidelines and the effect this will have on their operations or budget.

One San Diego superintendent

summed up the feelings of the superintendents contacted by GOLFDOM on the present and future status of golf course maintenance budgets. "We have reached a critical operation standpoint," he says, "which means that budgets only have three ways to go. They can be reduced, but the members must be informed of the effect this will have on the playing standards that can no longer be sustained due to these cuts. The budget can be stabilized with only cost of living and inflation increases. This negates any spending for capital improvements and little loose money for new equipment purchases. Or, budgets can continue to increase and correspondingly, so will dues and assessments. I foresee a leveling off or stabilizing of the golf course maintenance budget for this year and next."

One interesting point made by one superintendent was that clubs are no longer asking the superintendent "How much money do you need to maintain the course?" Instead they are working the opposite way. They are analyzing how much money they will have coming in and then disbursing that income accordingly. It is a more inflexible system, but a necessary one to keep club officials within their budgets. □