# A question of context: OLRB rules no unfair labour practices by hi-tech firm during organizing drive

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Under Ontario labour legislation, employers are permitted to express their views during a union organizing drive, as long as they do not use "coercion, intimidation, threats, promises or undue influence". In practice, however, it is not always easy for an employer's representatives to know when their words or actions risk running afoul of the law. A recent decision of the Ontario Labour Relations Board, *Christian Labour Association of Canada (CLAC) v. JDS Fitel, Inc.* (November 9, 1999), provides an interesting illustration of how the Board assesses employer actions during a campaign, and the importance of setting the right tone in your response to unionization.

JDS, an Ottawa-area firm that manufactures fibre optic components, experienced the kind of explosive growth in business and employees that attracts union organizers. So it was not surprising when an organizer for the CLAC spoke with JDS personnel on July 6, 1998, and indicated that a major leafletting campaign would begin later that day at several plant locations. After a promising start, the union noted a sharp falling off of employee support by the end of the first week. It attributed this reversal to unlawful actions by management and lodged a complaint with the Board.

**STOCK OPTIONS: BUSINESS AS USUAL**

Among the employer actions attacked by the union was its decision, set out in letters distributed on July 7, 1998, to grant stock options to some 1500 assemblers. The union alleged that this was an attempt to influence the outcome of the drive.

However, the Board rejected this allegation, noting that the evidence established that the stock options had been granted on June 22, and the letter notifying the employees of the plan printed on July 3, before the company knew of the union's plans. The arrival of the union did possibly hasten the delivery of the letters, but this was less problematic than a delay announcing the plan would have been: [T]he employer would have also been open to a union complaint, and perhaps more vulnerable, had they delayed the announcement because of the union campaign, and certainly had they not proceeded at all. [In circumstances where the union could have filed for certification at any time] the employer also had reason to be concerned about the possible onset of the statutory freeze.

[The announcement] delivered beginning July 7, was clearly a "business as usual" decision ... . [It was] clearly very unfortunate timing for the union and undoubtedly had an impact on the attractiveness of unionization for employees of JDS at that time, but this was entirely coincidental and ... the employer had no choice but to proceed with its plans in the circumstances."

## MANAGEMENT'S OPINIONS "TAKEN AS A WHOLE"

JDS acted quickly to get its views out to employees in a series of memoranda indicating its preference that the union be voted down. The Board referred to them as "generally inoffensive" and noted that they specifically advised employees that the choice of unionization was theirs alone.

However, the Board took issue with some of the employer's statements. In particular, it was troubled by the employer's claim that the collective agreement would have to be negotiated from scratch and that the current level of benefits would not necessarily continue, and the suggestion that the status quo would not have to be maintained during negotiations.

The Board was also critical of repeated statements by the employer that employees had the right to ask that their membership cards be returned, along with advice to contact the Board by telephone if the card was not returned promptly. This was misleading, as it implied that there were special protections available to employees seeking the return of their cards.

Despite these reservations, the Board concluded by noting that any problematic statements by the employer had to be viewed along with the rest of the employer's actions: "[I] am satisfied that taken as a whole the events complained of have not constituted any substantial interference with the union. In particular, I note the absence of any threats to job security or actions taken against employee organizers, and I must acknowledge as well the employer's general approach to union activity, which included supervisors being told clearly that while no organizing would be permitted on company time, it was employees' own business what they did on breaks, that all non-company material concerning the union should be removed from company bulletin boards, and that employees were permitted to wear buttons, caps and t-shirts bearing pro- and anti-union slogans. Most importantly, supervisors, and employees, were told that it was up to employees to decide for or against unionization, and nothing in the conduct of the employer since the campaign began had contradicted that message in any significant way."

## In Our View

The union had also complained about the comments of individual supervisors, such as those warning employees of high union dues should the union succeed. In response, the Board stated that these comments, while confusing and even misleading, were not coercive. Given the right of management and its representatives to express its views, such inevitable misstatements could not be considered violations of the *Labour Relations Act*.

By acting early to clarify the extent of its statutory rights and obligations, the employer in this case was able to respond directly but lawfully to the campaign, and to minimize the adverse effects of the inevitable missteps that arise in the heat of the debate. This decision shows that the Board will have regard to the overall nature of the employer's response when assessing the importance of

incidents that can be characterized as minor breaches of the Act.

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