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My Employer Closed My Office. Where's My Union Representatives?

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Decisions in the workplace are made everyday. Sometimes these decisions require the employer to contact the union who represents their employees; other times they can simply take action without contacting anyone. This issue becomes of particular concern when employers decide to shut down or partially close facilities. So, when does an employer have to bargain with the union regarding facility closings? Let's take a quick look.

Section 8(a) (5) of the National Labor Relations Act ("NLRA") makes it an unfair labor practice for an employer "to refuse to bargain collectively with the representatives of his employees." 29 U.S.C. § 158(a)(5). Section 8(d) defines "to bargain as: "[T]he performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment . . . but such obligation does not compel either party to agree to a proposal or require the making of a concession ...." 29 U.S.C. § 158(d). Thus, the main consideration when a company decides to make a significant change to its business is whether that change is a "term and condition" of employment. If it is then that decision must be bargained over. Generally, the parties of a collective bargaining agreement do not have to bargain over every topic, but they must bargain in good faith over "mandatory subjects," including wages, hours, and other "terms and conditions of employment" 29 U.S.C.A. § 158(d). Since these "mandatory subjects" are very broad, courts have attempted to set various standards for determining whether a specific bargaining topic is considered mandatory.

Typically, the collective bargaining agreement will present specific topics that the union and employer must bargain over. However, absent such provisions in the contract, various cases have provided us with areas that the court feels must be taken into consideration. For example, when an employer decides to close a facility the rule is reasonable clear. That is, employers are entitled to shut down a facility and go out of business for any reason, including an anti-union reason. *See Textile Workers v. Darlington*, 380 U.S. 263 (1965). Similarly, partial facility closings for anti-union reasons do not violate the NLRA either, unless the closing is intended to "chill" unionism at other employer facilities. Additionally, some management decisions, such as choice of advertising and promotion, product type and design, and financing arrangements, have only an indirect impact on the employment relationship, and thus, are not mandatory bargaining topics. *Fibreboard Paper Products Corp. v. NLRB,* 379 U.S. 203 (1964).

In some situations, a union may be able to argue that the employer's decision would have an "effect" on the employee/employer relationship. In such a case, even if the union has "waived" its right to bargain, the employer may be obligated to bargain over the effect of the change. Unlike a decision to close a facility or eliminate part of

the business, an employer must bargain over the “effects on employees” of such decisions. This is generally where employers and unions bargain over severance pay, etc.