

# Employment Law Chapter 15

- **Chapter Issues:**
  - **Employment at will**
  - **Substance Abuse**
  - **Worker Safety and Health**
  - **Workers' Compensation**
  - **General Regulation of Labor Markets**
  - **Major Labor Relations Acts**



# Employment-At-Will

Employers can hire and fire who they want; employees work-at-will and may quit when they want

- **Statutory Exceptions**

- NLRA, Civil Rights Act, Federal and State Whistleblower laws
  - Whistleblower laws work very poorly

- **Public Policy (Courts) Exceptions:**

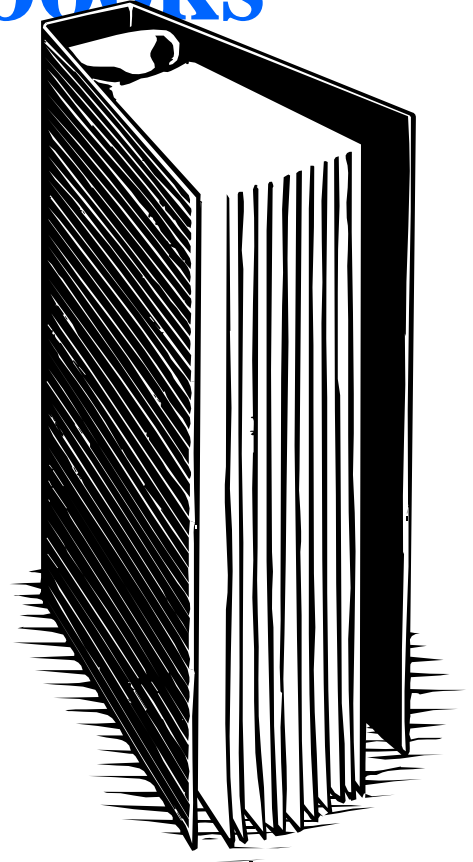
- Refusing to violate laws
- Important public duty (jury duty)
- Public right (filing for workers' compensation)
- “Whistle Blowing”

- **Contractual limits to at-will**

- Union contracts, Handbooks, Tenured professors.

# Contractual Limits: Employment Handbooks and Manuals

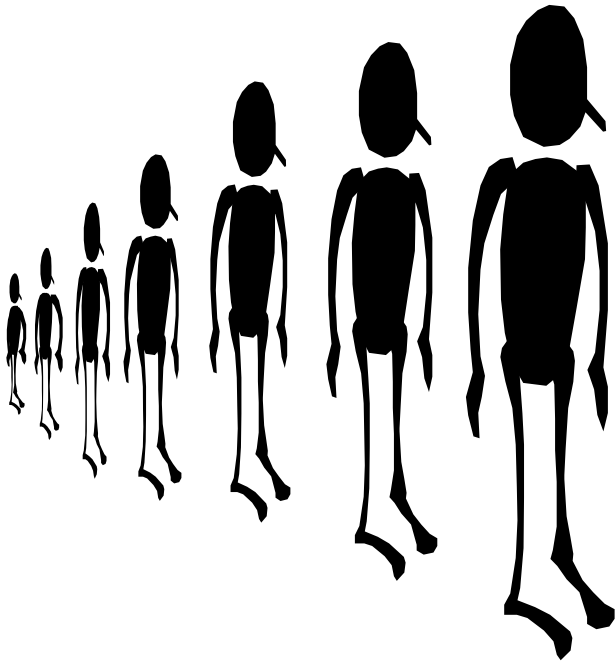
- May be interpreted as creating express or implied contract that may limit presumption of employment at-will
- Most specifically state that there is no contract.



# Other Employment Issues

- Fraudulent Inducement
- Covenants Not to Compete
- Letters of Recommendation for Former Employees.

# Substance Abuse In The Workplace



- Alcohol the worst
- 13.6% of all adults have experienced alcohol addiction or abuse in their lives
- 8% of workers are alcoholics
- 5-10% of adults involved in abuse of illegal drugs or improperly dispensed drugs
- One in six of workers have substance abuse problem

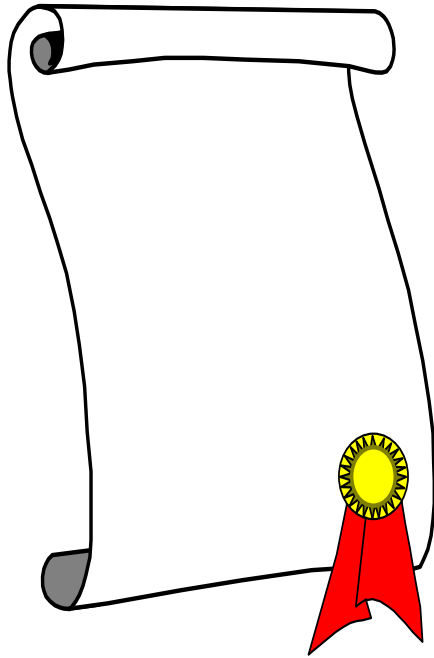
# Consequences of Substance Abuse



**Reduced productivity & higher insurance expenses cost employers over \$100 billion per year**

- **Safety Issues ~ workers under influence of alcohol or other drugs are 3.6 time more likely to be injured or to injure another**
- **Insurance Costs are about double for families with an alcoholic**
- ***Exxon Valdez Case--1989* oil spill off coast of Alaska**
  - **Billions of dollars in clean-up costs and losses to the environment (and Exxon's reputation)**

# Drug-Free Workplace Act



- **Requires all companies of more than \$25,000 worth of business with the federal government to certify they have “drug-free” workplace:**
  - **Published policy statement**
  - **Establish drug awareness program**
  - **Make known availability of program**
  - **Require employees to notify employers of any drug related convictions**

# No universal federal law.

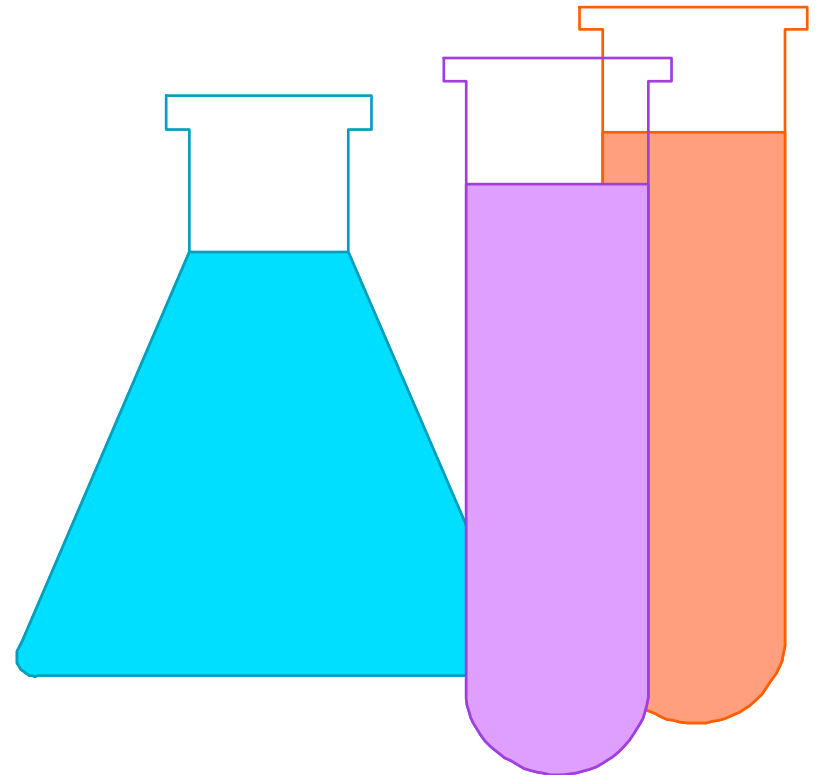
## State Law Varies on Drug Issues

***Example: Iowa—Employees May Be Tested IF:***

- Employer has “probable cause”
- Employee poses safety danger
- Drug test sent to *state approved lab*

**Connecticut & Minnesota allow:**

- Random testing in “safety sensitive jobs”



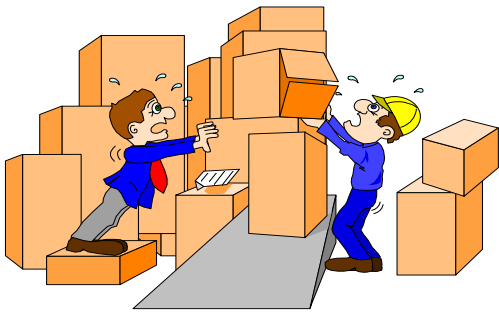


# Elements of Substance Abuse Policy

- Pre-employment screening usually OK
- Safety sensitive jobs
- Notification
- Voluntary nature--employee *knew* of policy
- After accidents--OK
- Reasonable suspicion--*document this well in employee file*
- Make policy clear
- Check with attorney

# Polygraph Protection Act (1988)

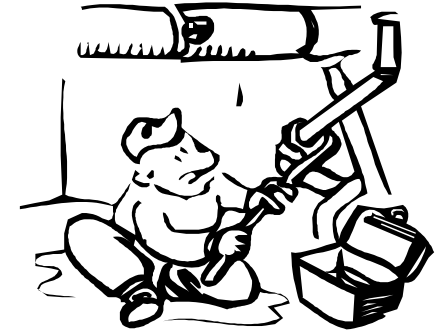
- Generally, prohibits the use of polygraph tests in the employment area.
- Exceptions
  - Investigations of crimes on the job (employer must have a reasonable suspicion of a particular employee)
  - Federal and State governments;
  - National defense employers;
  - Security services that protect public health (guards at nuclear power plant);
  - Drug Manufacturing and distribution companies;



# Worker Safety & Health

- Occupational Safety and Health Act of 1970 (OSHAct) created Occupational Safety and Health Administration (OSHA)
- Safety Inspections
- 4th Amendment prohibits most searches without warrant (but warrants usually easy to get)
  - *Marshall v. Barlow's Inc.* (Administrative warrant simple to obtain—requires little justification)
- Employees can refuse to work in unsafe area without punishment by employer
  - *Whirlpool Corp. v. Marshall* (Unsafe screen 20' above plant floor)
- Penalties can be stiff!

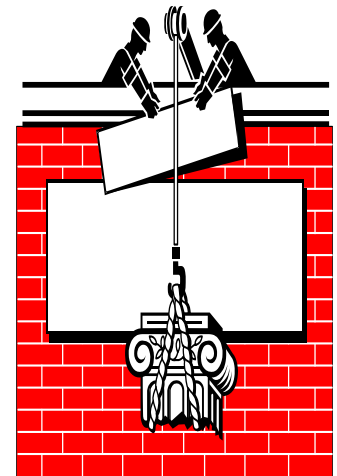
# OSHA's Toxic Substance Standards



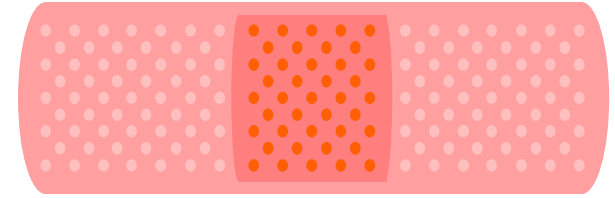
- Asbestos, vinyl chloride, coke-oven emissions, and other industrial carcinogens
- “Must adequately insure to the extent feasible... that no employee will suffer material impairment of health or functional capacity”
- Every health standard issued by OSHA has been attacked by labor and industry
- OSHA must show “significant health risk” before it can regulate (*Ind. Union v. Am. Petrol. Inst.*)
- Cost-benefit analysis is not required to justify a standard; standards need be “technologically feasible”. (*Am. Textile Mfrs. v. Donovan*)

# Hazard Communication Standard

- “Worker-Right-To-Know Laws”
- Written Communication Standard
- Labels for chemical containers
- Material Safety Data Sheets (MSDS)
- Employee Training Programs
  - Concerning requirements under the law
  - Training to detect hazards, protect themselves in emergency actions
- 



# Workers' Compensation



- States enact workers' comp laws to provide employer paid insurance for work-related accidents; gives employers immunity from tort suits by employees

## **Objectives:**

- 1) provide benefits to work-accident victims regardless of fault**
- 2) provide a certain remedy and relieve tort litigation**
- 3) protect public and private charities from burdens**
- 4) reduce fees to lawyers and expert witnesses**
- 5) encourage safety w/accident rating based premium**
- 6) provide open communication of accidents for future safety improvements**

# INDIANA'S WORKERS COMP

- Loss of (in weeks)
- Thumb, 60; Index finger, 40; Second finger, 35; Third finger, 30; Little finger, 25
- Hand, below elbow, 200; Hand, above elbow, 250
- Both hands, both feet, or total permanent disability, 500 (\$441,000)
- One testicle, 50; both 150.
- Maximum per week, now, is \$882.

# General Regulation of Labor Markets

- Restrictions on Immigration
- Fed. Min. Wage Requirement
- Occupational License & Regulation
- Family & Medical Leave
- Warning Employees of Plant Closings
- Employee Retirement Plans
- See “*Laws in Europe Restrict Employment at Will*”  
(Laws in Europe are very different from the U.S.  
Management options much more restricted)





# Federal Minimum Wage Rules

## Fair Labor Standards Act

- \$5.15/hour minimum wage.
- Time and ½ Overtime after 40 hours/week.
  - There has been a change to regulations that would allow employers to reclassify workers as administrative or managerial to avoid overtime pay.
- Equal Pay Act
- Child Labor Law

# Unemployment Compensation

- Federal / State unemployment insurance plan
- Funded by tax on employers
- Employers are rated based on layoffs.
- Benefits are relatively low and run out at some time
- Usually cannot quit, but must be fired.

# Social Security

- Retirement benefits;
  - Disability benefits;
  - Survivor benefits.
- 
- Funded by a tax on employers and employees.
  - Must have worked a certain amount before eligible, except survivors.

# Restrictions On Immigration



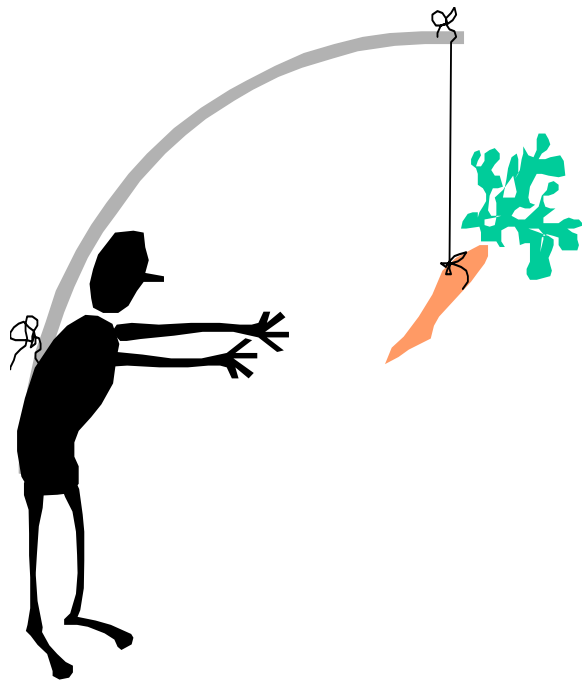
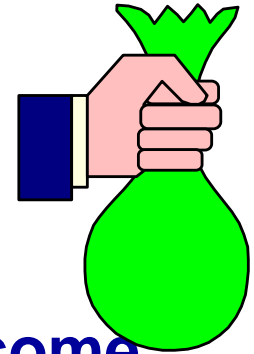
- **Immigration Reform & Control Act**
- **Can't hire illegal immigrants**
- **Employers must gather documents showing evidence of right of employees to work in the U.S.**
- **Fines & criminal Penalties**
- **see <http://www.ins.usdoj.gov>**

# Family & Medical Leave

- Family & Medical Leave Act
- Private employer's with 50+ employees
- All government jobs
- 12 weeks *unpaid* leave
  - after childbirth or adoption
  - care for seriously ill child, spouse, parent, or self
- Exempts “key” employees-  
-10% highest paid that would cause economic harm to employer



# Retirement Plans



- **Employee Retirement Income Security Act (ERISA)**
- **Guarantees expectations of retirement plan participants--protects benefits after reasonable length of employment**
- **Protects workers in case of closing--will still get their benefits**
  - Big issue now due to collapse of some major firms—employee's retirements tied up in company stock

# Major Labor Relations Acts-- Unions in America



- 1932 Norris-La Guardia Act:
- Federal Courts can't issue injunctions in nonviolent *labor disputes*--insures right to strike, picket, quit work, etc
- prohibits “yellow-dog contracts”

# ERISA Rules

- Fiduciary duty;
- Records and Reporting
- Investment restrictions (% in employer stock)
- Mandatory vesting
- Actuarial Funding required
- Pension Benefit Guaranty Corp.
  - Employers pay premiums; mitigates loss.
- Does NOT apply to 401(k) plans!!





# National Labor Relations Act (NLRA)

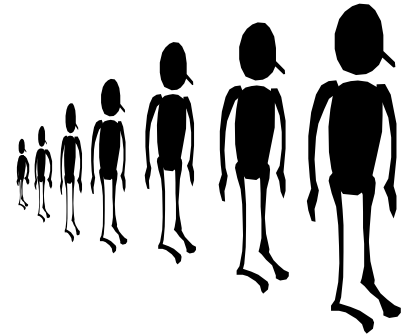
1935 Wagner Act (NLRA): Right of workers to unionize; created National Labor Relations Board (NLRB)

- 1947 Taft-Hartley Act ~ Labor-Management Relations Act: (Amended NLRA) Employers have right to go to NLRB - protects employers. Unions are prohibited from:
  - 1) coercing employees to support union
  - 2) refusing to bargain in good faith with employers
  - 3) carrying out certain kinds of strikes “secondary boycotts,” charging “excessive” union fees, or “featherbedding”
  - 4) going on strike during 30-day “cooling off” period or during 60-day period ordered by the President.
- 1959 Landrum Griffin Act ~ Labor-Management Reporting & Disclosure Act: (Amended NLRA) Increased reporting, regulation of internal union affairs; protect union members from improper actions by leaders through:
  - ~monitoring leadership
  - ~union member bill of rights

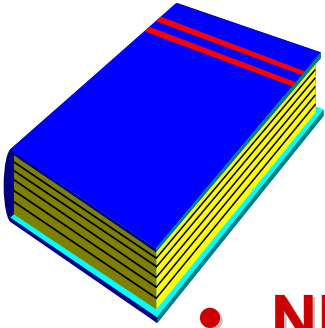
# *Intl. Perspective: German Workers and Employers Belong to Unions*

- **Competitive US economy has limited strength of unions in US**
- **In Germany competition among firms is limited:**
  - most workers belong to trade unions
  - most employers belong to industry associations
  - one collective bargaining agreement traditionally covered all employees and all employers - wages and conditions same at all firms.
- **German companies are now building plants in countries with lower employment costs, including the US**

# Unionization



- **Representation Elections**
- **Employees sign authorization cards - need 30% to go to NLRB for an election**
- **Campaign - by union and management**
- **NLRB supervised election:**
  - more than 50% vote yes?
  - If so, union is certified as exclusive bargaining agent for all employees. If not, union fails.
- **Can also have 30% call for election to decertify union**



# Right-To-Work Laws

- NLRA prohibits ***Closed Shops***--Where Employee must be a union member before going to work
- NLRA prohibits ***Union Shops***-- Where employee must join union as a condition of employment
- ***Agency Shops*** --Majority of employees vote to be represented by Union
  - members pay union dues
  - non-members pay agency fees
- States pass Right-To-Work laws that prohibit ***agency shops***. Have right to work without joining a union, even if majority of workers voted for union

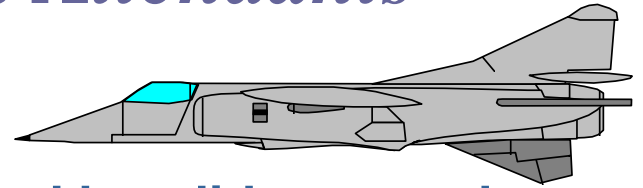
# Collective Bargaining



- **Union is exclusive bargaining agent for employees**
- **Collective bargaining covers whole process from initial contract negotiations up through contract administration**
- **Requires Good Faith Bargaining**
  - **certain subjects mandatory-**
    - **wages, hours, other terms and conditions of employment**
  - **can back up positions with strike by union or lockout by employer**

End of Chapter 15

# *TWA v. Indep. Fed. of Flight Attendants*



- 3/1984 to 3/1986 TWA and union negotiated but did not reach a new agreement to replace contract which expired 7/1984
- Union called for strike; TWA announced continued operations & intent to hire permanent replacements but workers who crossed picket line could continue work
- 1/4 of 5000 attendants continued to work; TWA hired 2,350 new attendants
- After strike was settled, TWA recalled only 197 of striking attendants; by May 1988 only 1,100 had been recalled
- Union sued: 1) Unfair labor practice to hire new attendants & 2) striking attendants had to be rehired because of seniority
- Court upheld TWA; Ct Appeals reversed in favor of union
- Sup Court held this was an “exercise of TWA’s peaceful economic power, a power that the company was legally free to deploy. . . .” Reversed in favor of TWA.



# *Who Must Check A Job Prospect's Work History?*

- **Background checks in the hiring process can discover past problems.**
- **Process is costly and sometimes employers find out too late.**
- **However, not knowing about employee's backgrounds present problems as well.**

## **Examples:**

- **Temporary bookkeeper who has pleaded guilty to stealing from another employer**
- **Law firm's information-systems director had embezzled over \$2 million and lacked the 4-year-degree she claimed to have**



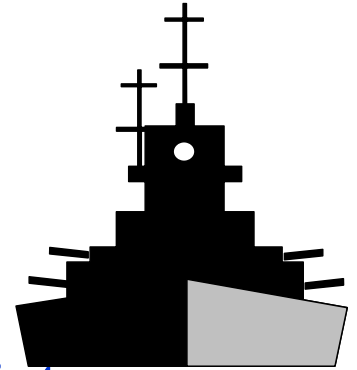


## *Guz v. Bechtel National, Inc.*

Guz worked for Bechtel (BNI) 1971-1993 with a good record. BNI said termination would be for unsatisfactory performance or due to a needed layoffs. Budget for Guz's division was cut and was terminated when the company was doing well. His duties were transferred to other employees. He applied for other positions at BNI but was rejected. He sued, alleged breach of implied contract to be terminated only for good cause and breach of implied covenant of good faith & fair dealing.

- Trial court dismissed, saying he was at-will employee. Appeals court reversed, holding that his longevity, etc. warranted a trial. BNI appealed to California supreme court.
- **HELD**: Reversed for BNI. Employment is contractual and parties may define the bases for termination. There is no evidence that BNI contracted for employment security; BNI had the right to reorganize and terminate employees as needed. Successful service, in and of itself, does not create a contractual guarantee for employment security.

*Jacksonville Bulk Terminals v. Intl.  
Longshoremen's Assn. (in text)*



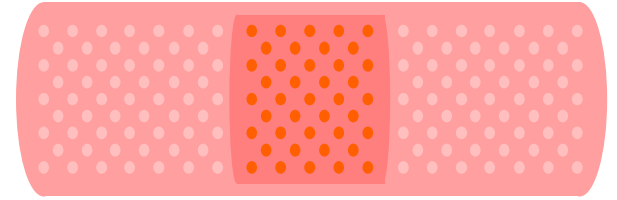
- **To protest Russian invasion of Afghanistan, union told workers to refuse to load goods onto ships that were bound for Soviet Union**
- **Goods sat on dock**
- **Shippers: this is political issue--not labor issue--seek court order to force workers back to work**
- **Supreme Court: Act prohibits court involvement “in any labor dispute” (unless violent); won’t intervene even though motive was political.**

# National Labor Relations Board



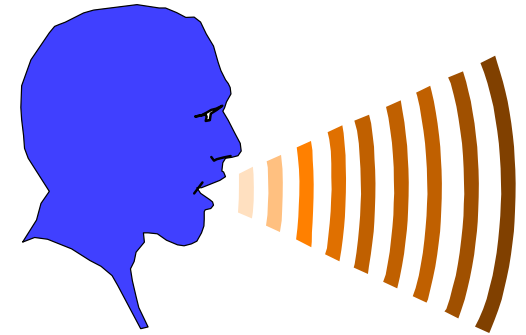
- **Created to monitor unfair labor practices and assure that union representation elections are fair**
- **Jurisdiction: labor dispute “affects interstate commerce”**
- **More than 50,000 cases a year, most are unfair labor charges**
- **“Unfair labor practices” - actions that impede the goals of the NLRA**
- **see also**  
**<http://www.nlr.gov>**

# NLRB Remedies



- **Posting a notice in the workplace**
- **Issuing a cease and desist order**
- **Providing back pay for lost wages**
- **Reinstating dismissed workers**
- **Issuing an order to bargain with the union**

# Unionization and Employer Communications



- **What can employers say?**
- **No threats!**
- **Can express opinion that union would adversely affect company and possibly jobs would be lost as a result (if based on credible estimates of economic consequences of unionization)**
- **Can't close plant in retaliation for a positive union vote to scare workers at other plants**
- **Can (usually) close a plant for economic reasons and reopen in a lower labor cost location**