

E *The Childcare Professional* EXPERIENCE

May 2010
Volume 4 Issue 2

A Quarterly Journal for Childcare Providers Discussing Legal, Administrative & Professional Issues

On the Inside...

Unions Page 1

Children's
Book
Corner Page 2

Pigs Aplenty,
Pigs Galore
By: David M. McPhail

Vacation
Time
Payout Page 3

Boys in
ECE
Settings Page 7

Where in the
World... Page 8

When a Union Approaches Your Staff

This article originally appeared in Volume 4 Issue 2 of the National Child Care Bulletin. Recent questions into our office have prompted us to rerun the article. Enjoy!

In recent months, a number of child care agencies with which we have regular contact have experienced some union organizing. We thought it might be helpful for you to know the basic rules when such activity occurs.

Everything management and its agents say or do to persuade employees to vote "no union" can and will be subject to post-election scrutiny by the National Labor Relations Board (NLRB) in connection with its administration of the National Labor Relations Act (NLRA). If the NLRB concludes that improper or unlawful conduct took place during the pre-election period, the results of the election may be set aside and a new election ordered.

I. What Management May Not and Should Not Do:

The following campaign conduct should be avoided by management, including all members of your supervisory staff.

1. Threats—You may not threaten to discharge anyone because he/she joins or supports a union, nor may you threaten to subcontract certain work if the union is successful. The most prevalent threat is a threat to the economic welfare of the employees, indicating a loss of benefits if the union wins or the possibility that the agency may close if the employees select a union.

Obviously, threats of any type of violence would be grounds for the election to be set aside. In fact, it may be grounds for the entry of a bargaining order by the NLRB forcing the employer to recognize a union regardless of the outcome of an election or how many employees wanted the union. Moreover, you should refrain from telling employees that unionization will force the company to lay off people, require a re-

duction in vacations, or break time or otherwise adversely alter benefits and privileges presently enjoyed.

2. Interrogation or Questioning—The right of management to question employees is a very limited one and must be devoid of coercion. The mere calling of employees into your office for the purpose of campaigning can be sufficient interference with the employee's free choice and can thereby void an election. Generally, if you want to convey non-coercive statements orally you should do so in open spaces, e.g., a cafeteria, etc., which are not considered the loci of management authority, or individually at an employee's place of work, e.g., their desk, work station or classroom.

In addition, do not ask employees about confidential union matters, meetings, etc. Some employees may, of their own accord, tell you of such matters. If it is not unlawful to listen, but you should not ask questions to obtain additional information.

Do not ask employees what they think about the union or its representatives or how they intend to vote. You should not inquire whether or not particular employees support a union or have signed union authorization cards or petitions.

3. Promises of Benefits—You may neither grant nor offer wage increases or other inducements to employees during the period of a union organizing drive unless such wage increases are part of an established pattern known to the employees.

While the wage increase is the most common benefit granted for the purpose of discouraging unionization, any benefits such as additional rest periods, more overtime, and better working conditions fall under the same prohibition.

4. Withholding of Benefits—Just as you may not grant benefits unless the

Continued to Page 4

CHILDREN'S BOOK CORNER

By: Janice Nielwocki

The other day while rummaging through a box of old books, I came across Pigs Aplenty, Pigs Galore by David M. McPhail. Once a favorite of my boys (now grown), I turned the pages and was quickly reminded as to why it was such a popular choice, not only for my sons, but for my preschool class as well.

Pigs Aplenty, Pigs Galore begins with a rather ordinary man sitting down to read a book; however, what occurs next is anything **BUT** ordinary! His home is quickly invaded by pigs of all shapes and sizes, dressed in various costumes and up to various shenanigans. As the story progresses, pigs arrive in droves, from other countries and by assorted means of transportation, and take over the man's house. When the man has reached his limit of pigs (literally) he sends them on their way, only to have them beg to stay. He concedes, letting the pigs remain but only if they clean the house. After some additional pig antics, the man settles down to sleep, only to have the pigs invade his dreams as well!

This is truly a funny story, full of clever rhymes and comical illustrations. The verses flow easily, allowing children to quickly pick up the rhyming pattern. (You undoubtedly will be asked to read this book again, so don't be surprised to have the children join in the fun by finishing the rhymes with you!) The accompanying illustrations, colorful, vivid and at times down right hysterical, genuinely complement the humorous storyline. You can't help but smile as you see pigs in underpants, pigs flying in on airplanes and pigs tossing pizzas! You may want to linger on each page, so as not to miss a single "piggy" detail.

It is not always easy to find a book that you can read to very young toddlers as well as older children, but Pigs Aplenty, Pigs Galore seems to delight all ages. You may find yourself reading it over and over and consequently dreaming of whimsical pigs!

CONGRATULATIONS!!!

Our office would like to take a moment to recognize and congratulate

RON

on becoming a full voting member

of the

NACCP

Board of Directors

For information on becoming an

NACCP member

to explore NAC Accreditation

and to take advantage of the

quality training opportunities

please visit the NACCP website

www.naccp.org

The Childcare Professional **EXPERIENCE**

Publisher

Ronald V. McGuckin and Associates
Post Office Box 2126
Bristol, Pennsylvania 19007
(215) 785-3400 Childproviderlaw.com

Editor

Dawn K. Martini, BS Ed

Contributing Writers

Ronald V. McGuckin, JD

Dawn K. Martini, BS Ed

Jason D. Dalton, JD

Janice A. Nielwocki, BS

Guest Writer

Tymothy Smith

Copyright 2006 RVM & Associates All rights reserved. Reproduction in whole or in part without permission is prohibited. The Experience provides information about current developments, trends and issues. It does not offer solutions to individual problems and it should not be construed as legal or professional advice or opinion. You should obtain competent legal advice for an individual issue or problem.

VACATION AND PAID TIME OFF

By: Janice Nieliwocki

In today's tough economic times, many employers, due to decreased revenues and budgetary constraints, are making the difficult decision to lay-off or terminate employees. Termination of the employee-employer relationship can bring many uncertainties, one being whether or not the former employee is entitled to payout of unused vacation time.

It may surprise you that there are no federal laws that require employers to *offer* vacation time to its employees. However, many employers voluntarily provide vacation pay as a benefit to their employees. Vacation pay is usually based upon an agreement between the employer and the employee, either through an employment contract, collective bargaining agreement or company personnel policy. It is this very agreement, and applicable state laws, that will determine the payout of unused vacation time.

Generally speaking, if the employer promises to provide vacation time or the employee is covered by the employers vacation policy, the employee has the right to be paid for the vacation *as long as the employee obeys the employer's policy*. This policy must be documented in the employee handbook or policy manual along with the consequences for violating the policy. Thus, it is of utmost importance that employees read all vacation policy information as outlined in the

employee handbook or policy manual as well as *follow* the policy in order to maximize the prospect of receiving the vacation pay. Both employers and employees should familiarize themselves with state laws regarding vacation benefits and vacation pay.

It has generally been agreed that if the employee fails to follow the employers policy regarding vacation, the employer may deny the employee his/her vacation pay. However, certain states, and some courts, now seem to be taking a different view on this, offering additional protection to the employee.

The Wage Payment and Collection Act in a number of states define wages as "compensation for labor or services rendered by an employee, including fringe benefits" (i.e. earned vacation). In turn, the employee would be entitled to be paid for earned but unused

vacation time payable upon termination even if the employee failed to follow the employer defined conditions regarding the policy. In some states the vacation pay must be included in the employee's final paycheck.

What does this mean for employers and employees alike? As stated previously, employers and employees need to check the state laws where the business operates regarding vacation benefits and vacation pay. In an effort to be proactive, many employers are reviewing and consequently rewriting or eliminating policies that restrict payout of earned but unused vacation time for things such as failure to give notice. Employees need to know the employer's policy and familiarize themselves with the state laws to ensure they are being fairly compensated if facing termination.



CHILD CARE PROVIDER RETAINER PROGRAM

Ronald V. McGuckin
and Associates
is current accepting a limited
number of new clients!

The Child Care Provider Retainer Program offers special discounted rates to Private Child Care Agencies, Corporate Agencies, Head Start Programs, Family/Home Based Providers, and School Age Programs. Head Start Programs may also receive In-kind contributions through participation in the Retainer Program.

Retainer Program is available to Programs in PA and NJ.
We also offer Consulting Agreements to programs in all states.

Over 25 years of Experience Representing Child Care Providers

For Information about how to Become a Retainer Client
Please contact Dawn Martini at (215) 785-3400

Continued from Page 1

employees have reason to expect them as part of an established pattern, you may not withhold pay raises or benefit increases if you would have given such increases in accordance with an established plan.

The NLRB will ascertain if employees have reason to expect improvements in wages or benefits in accordance with past practice. If so, the increases must be given. Any increases, however, must be comparable with those given in past years to avoid the appearance that excessive improvements have been made to discourage unionization. You should consult counsel before deciding whether to grant or withhold improvements in wages, hours or working conditions.

5. Surveillance—Any attempt to spy on employee union activities, or even creating the impression of spying on such activities, or other acts of surveillance are considered by the NLRB to be inherently coercive and will be declared unlawful. Moreover, a fear of reprisal for union activity is generated according to the NLRB, where management gives the impression of spying. This is sufficient violation of the Act even though no actual spying took place.

Therefore, no members of management including subordinate supervisors should attend union meetings or park their car in the vicinity of a union meeting hall for any reason.

Do not engage in any activity which would indicate that the employees are being kept under surveillance to determine who is and is not participating in the union campaign effort. For instance, do not compile a list of union button wearers, do not poll employees, etc.

You should also avoid making statements to employees indicating

that you know which employees favor the union. If you tell employees, for example, that you know who started the union organizing attempt, this will be considered an effort to create the impression of surveillance.

6. Opinions and Predictions—Predictions such as the possibility of contracting out certain operations or a reduction in overtime or in steady employment have been considered threats sufficient to set aside an election. Care must be taken to refrain from making statements that can be construed as warnings of inevitable dire consequences if unionization should come to the company. Factual statements regarding the company's ability to meet union promises and demands should be left to top management, for they alone have all the facts and access to legal advice as to how such facts may be presented.

Do not say that your agency will never negotiate with a union, never agree to wage increases or that existing benefits will be canceled if the union wins an election. Specifically, you must avoid creating a sense of futility and hopelessness among the employees.

7. Misrepresentations—A fair amount of latitude in the dissemination of campaign propaganda is allowed by the NLRB. However, a substantial departure from the truth by a party in a position to have knowledge of the facts which influences the choice of the employees can be grounds for setting aside an election. This is particularly true when it happens just prior to the election. Timing is of central importance here, for where the other side has a full opportunity to rebut alleged misrepresentations and the employees are capable of evaluating the statements, the NLRB will not set an election aside on such grounds.

When it comes to dispensing information, it is imperative that management provide information that is correct, straight forward, and promptly disseminated. Therefore, it is important that any rumors be brought to the attention of those responsible for running the campaign so that they can be checked and the correct facts reported back to the inquiring department head, supervisor and ultimately to the employees.

8. Equal Treatment of Employees—All employees must be treated alike. Distinctions between pro-union and other employees in the assignment of overtime or other desirable work must be avoided. The same precaution holds true with respect to disciplining employees and the assignment of less desirable work.

During this critical time it is imperative that supervisors clear all proposed disciplinary action through top management and that counsel be advised as to all proposed discipline. This is particularly true of anticipated discharge cases. It is always a wise personnel practice to refrain from discharging any employee at the time such action originally appeared to be warranted. Rather, it is better to suspend employees engaged in serious misconduct immediately, as opposed to discharging them, for this enables you and other members of management to determine all facts. It also permits not tempers to cool and gives the reasoning process a chance to operate fully. The above advice is especially applicable during a union election campaign.

9. No Solicitation/Distribution Rules—Since working time is for work, you may prohibit employees from engaging in union solicitation during working time on agency property. However, non-working time is an employee's own time and no rule, whether in writing or

oral, against solicitation by employees can extend into meal time, coffee breaks, or other rest periods. If in the past you have limited employees from distributing literature of any kind at work stations, in classrooms, etc., you can continue this limitation. You may not, however, forbid employees from distributing union literature during non-working time in non-working places unless you can demonstrate that such distribution is creating a substantial safety, sanitation or litter problem. Of course, you may and should keep outsiders off all agency property at all times.

If you have allowed distribution of solicitation, e.g., for charities, sunshine clubs, etc., in the past you may not prohibit those activities now just because a union is organizing your employees. No rule is valid if it prohibits union solicitation or distribution, but allows such activity for other purposes.

Enforcement of a non-solicitation or non-distribution rules during a union campaign is an extremely sensitive task. Before enforcing such rules you should consult with counsel.

10. Business As Usual—An employer may exercise normal management prerogatives if the purpose or effect is not to discourage union activity or penalize employees for their union support. For example, you can fire a pro-union advocate during an organizing drive if s/he is caught stealing property. Be advised however, that you must have a strong case when you fire “for cause” or the NLRB will conclude that you were really firing for other purposes.

The discharge of a union adherent can be discriminatory, even assuming cause existed, if in the past you have been more lenient in correcting similar misconduct. Regardless of the fact that there may be good reasons for terminating an employee, if it can be proven that there is also anti-union animus involved in the discipline, such action will certainly be subject to an unfair labor practice charge which can result in a rerun election if the employee wins. There could also be a reinstatement order for the employee involved, coupled with a back pay award.

11. Twenty-four Hour Rule—Management may not make an election speech to an assembled group of employees on company time within twenty-four hours preceding an election. Even statements which contain no threats or promises are outlawed. Violation of this rule automatically results in an election being set aside. Any proposed variation of this campaign tactic should be cleared with counsel before it is implemented.

II. What Management May and Should Do:

1. Reviewing Existing Policies—Immediately review policies and working conditions within each department in order to correct matters which are the subject

of legitimate employee grievances. This is the most positive step management can take to demonstrate to employees that their interests are being considered and that complaints brought to management are, where possible, being corrected promptly. Cite examples of improvements made that benefit individual employees or a group of employees where possible. Of course, the time to make such improvements is before a union arrives on the scene. After a union petitions for an election, changes could be construed as the granting of benefits during an election campaign in order to influence the employees and should never be undertaken without advise from counsel.

2. Management’s Door is Open—Advise the employees that managements door, up to and including the front office, is always open. If they had doubts before, you hope that they understand now that only by airing their complaints to management can the problem be solved.

3. Emphasize Personal Relationships—Inform employees that you prefer to deal with them individually, on a person to person basis, rather than through the union or any outside agent. Point out to them that it is the union who is an outsider, that it has no stake in the success or failure of the agency; that the union’s only real concern is the payment of union dues and other charges.

4. Point to Existing Benefits and recent Improvements—Inform employees from time to time of the benefits that presently enjoy. This recommendation bears implementation notwithstanding anything that management may have done previously to advise employees regarding their benefits. Few, if any employees working anywhere within the agency have a complete understanding of all the benefits which they now receive.

5. Make Reasonable and Favorable Comparisons—Inform employees how their wages and benefits compare to similar unionized and non-unionized agencies where wages are lower and benefits less desirable. This argument in most cases is better left to top management because it has all the available facts and can present them in a uniform manner to all employees, by way of letters to their homes, on bulletin boards, etc.

6. Unions Cost Money—Point out what current union dues are in the industry. Initiation fees are also usually imposed upon new employees joining the organization after a union successfully organizes a given employer which can be very expensive. Assessments, fines and other charges may be imposed from time to time as the union deems appropriate, provided they are consistent with its constitution and bylaws.

7. Strikes and Work Stoppages—Tell employees that there are other disadvantages to belonging to a union such as the possibility of a strike, serving on a picket line and the one-man or clique rule. There is no guarantee, indeed little likelihood, of recovering income lost during such activities.

The point that should be emphasized to employees is that by favoring a union they may be trading one boss for two.

8. Job Security is a Fiscally Sound Employer—Tell them that no union can obtain more for them than the agency itself is able to give. Point out that although the union may call a strike, money lost by the employees during a strike of any length might take years to make up even if the agency were to give in to the union demands.

9. The Agency Will Not Discriminate—Tell them that the agency will not discriminate. No matter how each employee votes in the election, that whether the union is voted in or not, the decision will not be held against the employee. This is an important point to make throughout the campaign.

10. Be the first with facts—Be sure to verify thoroughly all facts before attempting to advise employees regarding correct information where false or misleading facts have been given to them by the union. The agency should be the organization that employees realize they can trust. Quote the union verbatim, then state the truth, if and where applicable.

11. Economic Strikers can be replaced—Inform employees that the law permits you to hire new employees to replace those who go on strike for economic reasons. A strike called for economic reasons is simply a strike to get better wages, benefits or to improve other terms and conditions of employment. This is to be contrasted with a strike called to protest the “unlawful” discharge of a union member, etc., referred to as an unfair labor practice strike. If you replace an employee who engages in an economic strike the law requires only that s/he be reinstated to her/his job when the replacement leaves.

12. The election is decided by a majority of those who vote—Explain to employees that if an election takes place, a majority of those who vote (not a majority of all employees in the agency) will decide an election. Therefore, voting in an election is of vital importance to all eligible employees. An election is often decided by as few as one or two votes.

13. No one will know how employees vote—The election will be by secret ballot, supervised by agents of the federal government.

14. Authorization Cards have no significance in the election—No matter what the union says, the signing of a union authorization card or petition before the election does not mean an individual is bound legally or morally to support or vote for the union. The signing of a union card can be compared with the registration process which is required as a prerequisite to voting in political elections.

15. First level holds the key—Remember at all times that the most important single factor in good employee relations is the first level of supervision. Thus, it is imperative to utilize those supervisors who have the greatest rapport with your employees as much as possible in campaigning on behalf of the agency. It is at this level that the employees meet management and where the policies of the agency are carried out. Supervisors who play favorites or show preference should be reported to top management for proper corrective action.

16. Keep a log—Of primary importance throughout the entire period of an election campaign is the recommendation that each manager or supervisor keep a log of all activities which in any way can be related to the union organizational drive. Such a log will prove to be a valuable aid to the memory in the event that conduct participated in now becomes the subject of an “unfair labor practice” charge later. Important developments which occur regarding the union should be reported to top management immediately.

ADMINISTRATIVE SUPPORT RESOURCES FOR CHILD CARE PROGRAMS

Model Personnel Policy Manual for Child Care Agencies: 4th Ed.

Model Parent Handbook for Child Care Agencies

Model Forms for Child Care Agencies

Current Issues in Child



Available at childproviderlaw.com by downloading and completing the ORDER FORM and mailing or faxing it according to the instructions. These are the most valuable and child care specific administrative resources available nationwide.

BOYS IN THE EARLY CARE AND EDUCATION SETTING

By: Janice Nielwocki

It has long been recognized that boys in early education settings can pose a challenge to teachers. Boys are often viewed as rambunctious and physical, which has led to the old adage that "boys will be boys". But there are a wide variety of boys out there and not all boys fit that mold. Statistics show that for many boys, especially young boys, school is not a good fit. It is estimated that boys are about 30% more likely to flunk out of school, are four to five times more likely than girls to be diagnosed with ADHD and make up two thirds of the students in special education.

New research indicates that it is not the rambunctiousness, impulsivity or inattentiveness of boys that is the problem, but rather a traditional education system that fails to address the ways that boys learn. As educators, we want both boys and girls to succeed in school so it is important to recognize the educational needs of boys and perhaps adapt our learning environment and teaching techniques to best address boys' temperament and development.

Undoubtedly, the education system as it stands seems to be a better "fit" for girls rather than boys. This is especially true when looking at early education where often the culture of the classroom is much more feminine than masculine. The vast majority of early educators are female and often the variety of experiences and activities in the typical early education setting are things that appeal to girls much more than boys. The very task of sitting at a table, doing art work and/or writing letters and numbers will engage the interest of girls for a longer period of time than that of boys. In addition, we need to recognize that some early childhood educators have preconceived prejudices against boy's interests in the classroom, which often focus on fighting, fantasy play, and bodily functions.

The changes that have taken place in our education system, where there is now increased emphasis on academics in kindergarten and pri-

mary grades, may be making the situation for boys worse. In order to meet state academic requirements, many schools are limiting playtime and recess, allotting more time for seat work, something boys may find difficult to adjust to.

Some education experts believe that we are simply asking too much of our boys in the early years. The average "kindergarten" boy may be less mature socially and verbally than the average girl of comparable age, thus setting the stage for failure and frustration. In addition, a recent international study revealed that boys start slower in the areas of reading and writing, which poses difficulties for them in our "language-based" elementary classrooms. When boys can't meet expectations in those areas, they quickly develop a sense of inadequacy. The unfortunate result can be disdain and avoidance of reading and writing related activities, which can carry through their school career.

Obviously, as educators, we need to address these concerns and initiate solutions and strategies to help boys succeed in school. Rather than reducing or eliminating recess and playtime, we need to recognize that physical activity is necessary for ALL children and that it actually helps them learn. Eliminating or reducing recess and playtime for boys, may only heighten their active impulses and many boys need to engage in physical activity to release some of the stress they may be feeling in a controlled learning environment. Efforts need to be made to offer opportunities for physical activity throughout the school day which, in the long run, will improve learning, especially for active boys.

There is increased evidence that boys learn "by doing", thus boys can excel if given the opportunity for hands on learning. Educators should strive to include activities that involve touching, movement, building and manipulating which will have a greater impact on boys learning.

Perhaps we also need to put aside our own prejudices and take initiatives to foster boy's interests in the class-

room. We need to allow boys to discuss things *they* find interesting such as sports, science, mechanics or machinery; subjects that otherwise might be unpopular in our feminine based classrooms. Boys who dislike and shy away from reading (or being read to), may be more interested in the task if we allow them to make their own reading choices.

Research shows that boys, whose fathers are actively involved with their son's academic pursuits, will perform better in school, showing higher cognitive competency and higher academic achievement. Father involvement seems to especially have an affect on adolescent boy's motivation in school. Thus, schools need to put in place father initiatives which will promote father involvement in school activities.

Perhaps the most important thing we can do is to try to be more sensitive and understanding of boys in the classroom. We often have the preconceived notion that boys are more aggressive than girls, but this isn't necessarily true. Boys may be more physically aggressive whereas girls tend to be more verbally aggressive. Some experts believe that boys "act out" in school to assert their masculinity in a "feminine" environment.

Talking and listening to boys, rather than lecturing as we often do, can have positive effects in the classroom. Boys undoubtedly need clear limits and rules, and teachers need to be consistent in applying those rules. When rules are broken and discipline needs to be applied, teachers need to do so without humiliation, something that can escalate a boy's adverse behavior. And even though boys may seem difficult, most boys want to please adults, both parents and teachers alike. Boys want to be respected and commended for good effort and a job well done. Educators need to recognize this and compliment boys for the things they do "right" in the classroom.

Most importantly, we need to appreciate boys for the amazing individuals they are!



WHERE IN THE WORLD...

Ron, Dawn and Jan will be traveling to the following cities for Local, State, Regional and National Conferences on the dates indicated. We welcome you to attend the conferences. Information has been provided so you can contact the organization conducting the training/conference.

If we are going to be in your state or area, we welcome you to contact us about coming to your program or organization to do a private training. The cost of bringing us in to your program or organization is significantly reduced because we are already traveling to your area. We certainly don't mind adding a day or two to our travel schedules to work with you.

Contact us at (215) 785-3400 to see if we can visit your program when we are in town.

May 11 and 12 HR BOOT CAMP for Early Care and Education Administrators: San Antonio, TX. For more information please contact Dawn Martini (215) 785-3400

May 19 and 20 HR BOOT CAMP for Early Care and Education Administrators: Boston, MA. For more information please contact Dawn Martini (215) 785-3400

May 15 PAEYC Annual Conference, Pittsburgh, PA. For more information go to www.pakeys.org and view the training calendar

May 21 and 22 Workforce Solutions, McAllen, TX. For information contact Andrea at: andrea.tafolla@wfsolutions.org

May 25 Pinellas County, FL, Personnel Issues Training Day. For information please contact Janice at Janice@childproviderlaw.com

June 1 PA NE Regional Key Directors Training, Buck County, PA. For more information contact Susan Ritter at (610) 437-6000

June 2 PA NE Regional Key Directors Training, Berks County, PA. For information contact Susan Ritter at (610) 437-6000

June 6 and 7 NAEYC Directors Institute, Phoenix, AZ. For information visit www.naeyc.org

June 9, 10 and 11 Cape May Seminars: Your Agency's Personnel Policies and Parent Handbook. For info go to: www.childproviderlaw.com

Other dates and topics are listed there as well. Or contact Dawn in the office to discuss topics and location. (215) 785-3400

June 17 P A NE Regional Key Directors Training, Lackawanna County, PA. For more information contact Susan Ritter at (610) 437-6000

E *The Childcare Professional*
EXPERIENCE