

Counsel to Counsel

NOVEMBER/DECEMBER 2009



ON THE COVER

Supply-Side Solution:
HD Supply, Inc. and Ford & Harrison LLP

In this issue:

- Best Practice From Vulcan Materials Company:
Turning Down the E-Mail Volume
- Outsourcing Deals: Savings Are Fleeting Without
Proper Preparation

letter from martindale



Naturally, the appeal of outsourcing grows in tight economic times, as cash-strapped companies look to find efficiencies anywhere they can. But outsourcing is no panacea, and unpleasant surprises await the unwary.

“Failure to appreciate the complexity of an outsourcing transaction and manage the process correctly can negate those savings, and even increase the cost,” Greenberg Traurig, LLP’s Alan N. Sutin tells *Counsel to Counsel* in this issue’s Global Perspective. It’s an appropriate warning in an era where financial miscalculations are inherently magnified.

On the other hand, a well-conceived, well-executed outsourcing arrangement can be a true win-win. Take, for example, HD Supply, Inc., the subject of one of this issue’s Profiles in Partnership.

HD’s Labor Relations Team was able to hire a six-person team from Ford & Harrison LLP and their sister firm, F&H Solutions Group LLC, to handle the company’s labor relations management for about what a single in-house employee would have cost.

That’s the kind of solution that maximizes quality and value at once, and fulfills the initial promise of sending work outside the company.

Please share with us your thoughts on outsourcing, or any of the other article topics at counseltocounselmag@martindale.com.

Jeff Scott
Vice President, Managing Director

contributor profiles

Elissa J. Glasband
Partner,
Patton Boggs LLP



Metadata is the technological “paper trail” that can, in certain instances, make or break your case. Extracting it during the e-discovery collection process can be tricky. Work with IT and other experts at the outset, or suffer the consequences.



Norman Jetmundsen
Assistant General Counsel
and Assistant Secretary,
Vulcan Materials Company

Vulcan Materials isn’t the only company with literally millions of e-mails stored in various formats and locations. Their step-by-step approach is sure to help others establish parameters and processes that work.

Michelle De Blasi
Partner,
Quarles & Brady LLP



The current array of financial incentives are encouraging U.S. businesses to look to on-site solar power as a means of reducing energy costs. While the concept of turning sunlight into electricity seems simple enough, executing the contract is anything but.

On the cover: Pictured from left are Susan V. Stucker, HD Supply, Inc. and Dawn Siler-Nixon, Ford & Harrison LLP. Photo by Jay Carlson. Story on page 4.

InsideCounsel

222 S. Riverside Plaza, Suite 620
Chicago, IL 60606
cafred@insidecounsel.com
202-370-4821

LexisNexis® Martindale-Hubbell®

121 Chanlon Road
New Providence, NJ 07974
counseltocounselmag@martindale.com
800-526-4902, ext. 2156

Counsel to Counsel is presented by LexisNexis® Martindale-Hubbell® in association with InsideCounsel custom media, 222 S. Riverside Plaza, Suite 620, Chicago, IL 60606. Copyright 2009 by LexisNexis. All rights reserved. No reproduction of any portion of this publication is allowed without written permission from LexisNexis.

The views expressed herein are the views of the contributing author(s) and do not necessarily reflect those of LexisNexis or its affiliated companies. LexisNexis, the Knowledge Burst logo, Martindale-Hubbell and *martindale.com* are registered trademarks of Reed Elsevier Properties Inc., used under license. © 2009 LexisNexis, a division of Reed Elsevier Inc. All rights reserved. LCC0025-0

Supply-Side Solution

HD Supply, Inc. and Ford & Harrison LLP

By Steven Andersen

Preventing systemic labor and employment problems is always an ongoing, prospective process. By the time patterns emerge, their causes tend to be deeply embedded and difficult to root out. So to stay ahead, the most effective in-house counsel always have an eye on the horizon, scanning for the next big risk. That's no small task, and it helps to have trusted outside assistance.

[Susan V. Stucker](#), director of legal, labor and employment law at [HD Supply, Inc.](#), has a lot of ground to cover. The contractor- and industrial-supply arm to The Home Depot, HD Supply has nearly 16,000 employees nationwide, in a diverse range of jobs. When Stucker wants advice on the shifting labor and employment landscape, she calls on [Dawn Siler-Nixon](#) at [Ford & Harrison LLP](#).

“What I try to do with Susan is bring any new issues to her attention as they arise in a way that doesn't just alert her, but explains how it affects her business,” Siler-Nixon says. “You don't want to be caught in some type of litigation because you failed to recognize changes and take appropriate action.”

The issue she flags may be a legislative tweak, such as recent revisions to the Family and Medical Leave Act, or a case ruling that



From left, Susan V. Stucker, HD Supply, Inc.; Dawn Siler-Nixon, Ford & Harrison LLP

sets new precedent. Or it may be looming legislation with watershed potential.

The pending Employee Free Choice Act (EFCA) could have a massive impact on labor relations and dramatic consequences

for employers. While the most incendiary aspects of the proposed legislation were recently defused, no employer wants to be caught flat-footed by such a significant new law.

Determined to be proactive, Stucker and Siler-Nixon collaborated on an innovative solution that addresses the core concerns of EFCA and raises the bar for internal best practices at the same time.

Free Choice

As the scope and influence of labor unions have declined over the years, employees in some sectors have complained that they have lost significant leverage with their employers, and their wages and benefits have suffered as a result. EFCA, designed to facilitate and streamline the organization process, is an attempt to balance the scales, according to its supporters.

But critics argue the bill goes too far. Many employers feel that under EFCA, unions could use pressure tactics that would steamroll employees into organization

without a fair and open election process. Employees, they say, have the right to hear the company's position and make a decision based on full and accurate information.

Photography by Jay Carlsson

HD Supply, Inc.

[HD Supply, Inc.](#) is a diversified wholesaler of products and services to professional customers in the infrastructure and energy, maintenance, repair and specialty construction markets. With nearly 16,000 employees in 900 locations, HD Supply is among the largest wholesalers in North America.

[Susan V. Stucker](#) is director of legal, labor and employment law at HD Supply, where she designed the company's union awareness strategy. Stucker advises 11 lines of business and the HD Supply global support center, responding to organizing efforts and participating in bargaining agreement

negotiations. She is [Peer Review Rated](#) and can be reached at susan.stucker@hdsupply.com.

Although the most controversial “card check” provisions—which would effectively quash the traditional union campaign process—were reportedly dropped from the bill in July, EFCA still has the potential to tip the scales significantly to the side of unions, and smart companies are bracing for a range of possible outcomes.

As she tracked the issue, Stucker drew upon her previous professional experience.

“I had come from Sprint, which formerly had a local telephone group which was heavily unionized, so I was very familiar with that world,” she says. “HD Supply has stayed predominantly union-free.”

Still, a new law could have big impact on the company down the road. So Stucker and Siler-Nixon spent a lot of time discussing their options. Their conversation addressed not only anticipating the ultimate form of the law itself, but also the ideas and concerns behind it.

“I think the real crux of the issue is that employees feel like they need to be heard,” Siler-Nixon says. “Going out and making sure that not only are employees being heard but that something is actually being done about the issues that they raise is going to head off most problems. When a union representative comes to them and says, ‘I want you to sign this card, and it will be all better when the union’s here,’ they can say, ‘No, it’s great now. The employer does look out for us. They’re interested in our needs and our concerns, and they take action.’”

The Right Skills

The two concluded that the best way to head off aggressive unionization, under EFCA or otherwise, was to have someone constantly engaging employees about their concerns, addressing those concerns directly where possible and cultivating open lines of communication. It’s a straightforward and rational solution, but the shape that job eventually took was unique and new to Stucker.

“It’s nothing the VP of HR and I would have thought up on our own,” she says.

Given the uncertain economy, it wasn’t the best time to add a full-time position. But the need was significant enough that HD Supply began a search nonetheless. It proved difficult, however, to find someone with the right blend of legal, labor and human relations experience.

“We weren’t landing a lot of people with the right skill set,” Stucker says. “People say they’ve got labor experience, but often it just isn’t true. And now with this new law, everybody makes that claim.”

Then Siler-Nixon proposed a different approach. If you can’t find a single person with the right résumé to be your labor relations manager, why not hire a whole team?

“As I was talking with Dawn, she mentioned that they have experts who could do



the work at a flat rate,” Stucker says. “Depending on what we were planning on paying for the position, it might even save us the cost of benefits.”

Ford & Harrison’s sister firm, [F&H Solutions Group LLC](#), combines HR and labor relations services to supplement the law firm’s legal counsel. To Siler-Nixon, it seemed like a perfect fit for her client’s needs.

“We put our heads together here and thought, ‘Well, we can be your labor

relations management team. You will get not one person, but six people with 150 years of experience collectively in dealing with labor issues, and you wouldn’t have to pay the expenses of hiring a new employee,” Siler-Nixon says. “We pitched that to Susan’s team. She came back and we worked out the specifics, and we’ve been acting as her labor relations management team since the end of February.”

Ford & Harrison LLP

Since 1978, [Ford & Harrison LLP](#) has built a national labor and employment practice. With more than 200 attorneys in 18 offices across the United States, the firm services all aspects of labor and employment law, including litigation, collective bargaining, business immigration and employee benefits. It is now among the largest labor and employment law firms in the country.

[Dawn Siler-Nixon](#) is a partner in Ford & Harrison's Tampa, Fla., office. Her labor and employment practice includes representing employers in state and federal litigation, as well as union campaigns. She is [Peer Review Rated](#) and can be reached at dsiler-nixon@fordharrison.com.

F&H Solutions Group LLC

[F&H Solutions Group LLC](#) is a national consulting firm affiliated with Ford & Harrison that provides comprehensive, specialized nonlegal services in human resources and labor relations.

Jerrold A. "Jerry" Glass is president of F&H Solutions Group, which he founded in 1989 as J. Glass & Associates. He rejoined the firm in 2005, after serving for more than three years as the chief HR officer of US Airways. He can be reached at jpglass@fhsolutionsgroup.com.

Six-for-One

Jerrold A. "Jerry" Glass, president of F&H Solutions Group, says that the decision demonstrates an unusual commitment to employees, not just to employee relations.

"It says that HD Supply is serious about its commitment to have the best environment for its employees that it can," he says. "It isn't just about hiring a law firm to keep unions out, it's about hiring a law firm and a consulting firm to make sure that they do things proactively and the right way."

"I think the real crux of the issue is that employees feel like they need to be heard. Going out and making sure that not only are employees being heard but that something is actually being done about the issues that they raise is going to head off most problems."

Glass, who previously was the chief HR officer for US Airways, says it's always difficult for corporations to create a long-term vision when they are constantly enmeshed in day-to-day employee issues.

"If you make sure you have a work environment that is conducive to positive relationships between employees and management, you don't really have to worry about being unionized, or worry about the Employee Free Choice Act, because your employees are going to be satisfied," he says. "It sounds simple, but it takes a huge amount of work and a tremendous commitment by the employer."

The HD Supply Labor Relations Team is composed of two consultants from F&H Solutions and four attorneys from Ford & Harrison, allowing HD Supply to draw on a great breadth of experience and expertise.

"Obviously, we're not attorneys. We don't try to be: We don't get into issues of interpreting laws or regulations," explains Glass. "But on the flip side, our people have a corporate background and know these corporate issues intimately, so it's a natural fit."

For the client, the team functions as an individual. If an HD Supply employee types "Labor Relations Team" into his or her system, an e-mail goes to all six people on the team, as well as to Stucker.

"Then we respond to that, and our response goes to everyone as well, so we're all on the same page," says Siler-Nixon.

It all comes down to a free and meaningful flow of information, and the simple notion that when a company takes time to really communicate with its employees, it's a lot less vulnerable to unions who might paint a less favorable picture for them.

"You're defensive at that point and nothing you say is necessarily going to work," Stucker says. "You've got to be out front, and communication is the big piece of that pie. You have to make sure that you're not just saying what you think makes sense, but that the employees have heard the message."

 Join the Martindale-Hubbell® Connected conversation