

ABA SECTION OF LABOR AND EMPLOYMENT LAW
Annual CLE Conference
Philadelphia, Pennsylvania

IN-HOUSE COUNSEL TRACK MATERIALS
November 8, 2007
2:00 p.m. to 5:30 p.m.

IN-HOUSE TRACK SPEAKERS/FACILITATORS:

Norman M. Gleichman Deputy General Counsel SEIU Washington, D.C.	Joel Katz Vice President & Associate General Counsel CA, Inc. Islandia, New York
Richard F. Griffin General Counsel IUOE Washington, D.C.	Allegra J. Lawrence-Hardy Sutherland Asbill & Brennan LLP Atlanta, Georgia
Nancy E. Hoffman General Counsel and Director of Legal Services CSEA/AFSCME Albany, New York	Brian L. McDermott Ogletree, Deakins, Nash, Smoak & Stewart, P.C., Indianapolis, Indiana
Lindsay Johnston Vice President of Human Resources- Eastern Division Comcast Cable Oaks, Pennsylvania	Eric D. Reicin Vice President and Deputy General Counsel Sallie Mae, Inc. Reston, Virginia
	Jonathon A. Segal Wolf, Block, Schorr, and Solis-Cohen LLP. Philadelphia, Pennsylvania

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SCENARIO 1A:

DIVIDED LOYALTY: A CONFLICT FROM THE BOARD ROOM

John Smith is a senior member of Global Universal International, Inc. (“GUI”). He’s worked with the company for over 15 years, and has regularly sought your advice as in-house counsel on a variety of legal issues related to the welfare of the Universal Division, of which John is the VP in charge. You believe that there has never been any question that the advice John sought from you was intended to be used solely for the benefit of GUI. Three weeks ago, during a meeting of the senior management, accusations were raised against John over questionable accounting practices coming out of his division. A recent addition to the organization, Rick Janes, presented a series of spreadsheets showing questionable transfers of liquid assets approved by John without any apparent oversight by the CEO or the Board of Directors.

The CEO is troubled by the reports, and orders a full scale investigation. There is no secret that Mr. Janes was brought into the company by the CEO to “shake-up Universal.” It is possible he sees this as an opportunity to place someone he considers more loyal than John into John’s VP position; however, John, being a longtime employee, has friends of his own on the Board of Directors, including the current Chairperson, who actually would like to promote John into the CEO’s slot. The Chair is about to override the CEO’s decision to investigate when word of the accounting discrepancy hits the news media. As a result, government regulators have noticed an audit which may result in full blown civil and criminal investigations into the accounting practices of the company.

The Chair, recognizing the legal realities of the situation, attempts to do damage control by placing John on indefinite leave. However, the Chair offers your services as counsel to John to aid him in both the internal investigation as well as any outside inquiry by the government. The CEO objects to your participating in either respect on John’s behalf, arguing that as the company’s senior counsel, it would create a conflict of interest. The Chair also would like to put Rick Janes on leave given his belief that Mr. Janes’ allegations are “false and misleading” against John.

Questions to Consider:

1. Is it possible for you, as senior company counsel, to represent John during either the internal or external investigatory process?

2. Is the CEO's consent necessary to allow you to represent John during the investigations?

3. If, in the context of representing John, you learn that he has committed criminal conversion of company assets in the past, are you obligated to report those actions to government authorities during an ongoing investigation? If not, are you required to report them to anyone?

4. Can you represent the Company if John has told you accounting facts through your dealings with him over the years of representing the Company?

5. Discuss the Sarbanes-Oxley ramifications concerning putting the executives on leave.

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AUTHORITY AND RESOURCE LISTING

SCENARIO 1A:

DIVIDED LOYALTY: A CONFLICT FROM THE BOARD ROOM

ABA Model Rules of Prof'l Conduct R. 1.7.

- (a) Except as provided in paragraph subpart (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:
1. the representation of one client will be directly adverse to another client; or
 2. there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.
- (b) Notwithstanding the existence of a concurrent conflict of interest under paragraph subpart (a), a lawyer may represent a client if:
1. the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representations to each affected client;
 2. the representation is not prohibited by law;
 3. the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding by a tribunal; and
 4. each affected client gets informed consent, confirmed in writing.

ABA Comm. on Prof'l Ethics and Grievances, Formal Op. 202 (1940).

Where attorneys for one organization learn of past misdeeds by that organization's officers, whom they were asked to represent by the company's board of directors, because the criminal actions were complete by the time the attorneys learned of them, the communications were privileged and could not be disclosed. However, the board of directors could be informed of the officers' actions by the attorney for the purpose of limiting and possibly alleviating liability to the company. Further, no privileged communications could be disclosed solely to protect the attorney unless a false accusation was first made against the attorney.

ABA Comm. on Ethics and Prof'l Responsibility, Informal Op. 1349 (1975).

In-house counsel for a corporation learned that the corporation, acting through its controlling stockholder/officer had bribed a government official, and that there was intent to provide another bribe to that same official as part of an ongoing scheme. The attorney was free to report the act of bribery to government authorities, even though much of the crime had

already been committed, because the crime had not yet been concluded, and the intent had clearly been expressed that another bribe would take place.

Sarbanes-Oxley Act of 2002

<http://www.infolinkscreening.com/InfoLink/Resources/legalissues/sarbanes-oxley-Act.pdf>

OSHA OALJ Law Library Whistleblower Collection Materials

<http://www.oalj.dol.gov/LIBWHIST.HTM>

http://www.oalj.dol.gov/PUBLIC/WHISTLEBLOWER/REFERENCES/REFERENCE_WORKS/SOX_DIGEST.HTM

Association of Corporate Counsel website resources on “divided loyalty”

<http://www.acc.com/php/cms/index.php?id=277>

Association of Corporate Counsel website resources on “whistleblowers”

<http://www.acc.com/php/cms/index.php?id=281>

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SCENARIO 1B:

CONTEST FOR THE PRESIDENCY: LET'S GO TO THE VIDEOTAPE

Walter Reuther is President of the United Workers of the World (UWW). He has held the office since 1991. The UWW represents thousands of Global Universal International Inc. (GUI) workers. Over the years, Reuther has developed a close working relationship with the company's top leaders. The UWW has had a series of nationwide collective-bargaining agreements with GUI. In recent years, the bargaining has been concessionary, and the union has agreed to cutbacks in health benefits and a two-tiered wage structure. In a closely divided vote, the UWW's Executive Board, the highest governing authority in the union between conventions, has just adopted a resolution setting forth guidelines for contract negotiations with GUI for a successor agreement.

Jane Lewis is a UWW member and President of UWW Local 434, UWW's largest affiliate. Lewis is also the appointed Chairman of the UWW's Energy Workers Division, for which she receives an annual salary from the UWW, and a member of the UWW Executive Board. News of the scandal at GUI provides the straw that breaks the camel's back for Lewis. Lewis, a frequent critic of Reuther and his administration, has argued that Reuther has been too cozy with company management, and that his relationships with GUI brass have not produced any benefits for union members. With the revelation of possible corruption at high levels within GUI, Lewis has announced that she will challenge Reuther for the office of President of the UWW at the upcoming December 2007 UWW quadrennial convention. In her press release outlining her campaign, Lewis blasts the negotiation guidelines adopted by the Executive Board as a program of give-backs.

You are an Associate General Counsel of the UWW. Reuther is furious and calls you into his office. He wants to take the following immediate steps:

- Terminate Lewis as Chairman of the Energy Workers Division; and
- Instruct UWW Executive Board members to take no actions that would undermine the Board's decision concerning negotiations with GUI, or face internal union charges.

Reuther also asks you to review a video presentation that will be shown at the UWW convention. The UWW Constitution and Bylaws requires the President to make a report to the Convention. The delegates will elect new officers on the day following the President's address. The video produced by the union's Communications Department will introduce Reuther's delivery of the report, and contains the following elements:

- A biographical sketch of Reuther, beginning with his first becoming a member of the UWW, with photographs of the young Reuther;
- A chart superimposed on a picture of Reuther at the 1998 Convention, showing annual membership increases beginning with Reuther's presidency;
- A list of "legislative and political accomplishments" over the preceding four years;
- A narrative of "important bargaining victories" since 2003;
- Scene of Reuther celebrating with union organizers and workers following a vote count in which the union "won a key organizing drive";
- Footage of Reuther walking a picket line outside of the premises of a large UWW employer during a key contract campaign the year before;
- Still photograph of Reuther shaking hands with the President of the United States at Labor Day festivities, 2004;
- A four-point program to increase membership and win bigger contracts in the coming four years; and
- No mention of the officer elections to be held the following day.

Questions to Consider:

1. Can Reuther remove Lewis as Chairman of the Energy Workers Division? Would your answer be the same if Lewis's position were elected rather than appointed?
2. Can Reuther issue the instructions to the Executive Board members concerning negotiations? What additional facts might be determinative of the lawfulness of the instructions?
3. Can you advise Reuther regarding the content of the video?
4. Can the video be shown in its present form? If not, what changes would you suggest be made?

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AUTHORITY AND RESOURCE LISTING

SCENARIO 1B:

CONTEST FOR THE PRESIDENCY: LET'S GO TO THE VIDEOTAPE

Labor-Management Reporting and Disclosure (Landrum-Griffin) Act § 101(a)(2), 29 U.S.C. § 411(a)(2).

Title I states, "Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments, or opinions; and to express at meetings of the labor organization his views, upon candidates in an election of the labor organization or upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings: *Provided*, That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations."

***Finnegan v. Leu*, 456 U.S. 431, 437-441 (1982).**

A union may discharge policy-making union employees who opposed the incumbent elected leadership, so long as it does not affect the employee's union membership, because § 101(a)(2) protects union membership, not employment by the union.

***Sheet Metal Workers' Int'l Ass'n v. Lynn*, 488 U.S. 347, 354-355 n.6 (1989).**

Elected officials are protected by § 101(a)(2). Left open the possibility that speech that "contravened any obligation properly imposed upon" an officer might not be protected.

***Dolan v. Transport Workers Union of America*, 746 F.2d 733, 742 (11th Cir. 1984).**

In a pre-*Lynn* case, the Eleventh Circuit drew a distinction between "membership speech," which is protected by Title I, and "officer speech," which is not protected. It is doubtful whether this remains good law in light of *Lynn*.

***Lynn v. Sheet Metal Workers' Int'l Ass'n*, 804 F.2d 1472, 1479 n.5 (9th Cir. 1986), *aff'd*, 488 U.S. 347 (1989).**

The Ninth Circuit rejected the *Dolan* distinction, because "any speech could arguably 'advance,' 'interfere,' or 'affect' an officer's performance of her duties."

***Argentine v. United Steel Workers Ass'n*, 23 F. Supp. 2d 808, 819 (S.D. Ohio 1998).**

Post-*Lynn* district court opinion that rejected the *Dolan* argument.

Labor-Management Reporting and Disclosure (Landrum-Griffin) Act § 401(g), 29 U.S.C. § 481(g).

“No moneys received by any labor organization by way of dues, assessment or similar levy, and no moneys of an employer shall be contributed or applied to promote the candidacy of any person in any election subject to the provisions of the subchapter. Such moneys of a labor organization may be utilized for notices, factual statement of issues not involving candidates, and other expenses necessary for the holding of an election.”

***Donovan v. Nat’l Alliance of Postal and Federal Employees*, 566 F. Supp. 529, 532 (D.D.C. 1983).**

In assessing whether a given union expenditure impermissibly promotes an incumbent’s candidacy, courts look to the “tone, content, and timing” of the communication.

***Herman v. Int’l Union of Bricklayers and Allied Craftsmen*, 160 L.R.R.M. 2999, 3008-09 (D.D.C. 1998).**

Union-funded speeches by two AFL-CIO officials at an international union convention, which “gave high praise to [the incumbent president] and that . . . were made two days prior to the election” did not violate § 401(g)’s prohibition against the use of union funds to promote a candidate.

***McLaughlin v. Am. Fed’n of Musicians*, 700 F. Supp. 726, 735 (S.D.N.Y. 1998); *Donovan v. Nat’l Alliance of Postal and Federal Employees*, 566 F. Supp. 529, 532 (D.D.C. 1983).**

Courts held that union newsletter articles that appeared just prior to officer elections and mentioned the elections improperly crossed the line from reporting official newsworthy activities to promoting or attacking candidates for office.

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SCENARIO 2:

DEALING WITH DISCOVERY:

Approximately one year ago, a nationwide consumer counseling service, Sav-Me Credit, upgraded its computer system to a new top-of-the-line server backed up by the latest operating system. It allowed the company to streamline its operations and provide all of its employees with convenient access from not just their workstations in the office but also from their homes, their laptops, even their handheld devices.

Three months after the upgrade, Budget Buy, Inc., the vendor from whom Sav-Me purchased the upgraded system, informed the company that it has been receiving complaints from some of its other customers over security flaws in the software. Specifically, complaints are coming into the vendor that outside hackers can “tap” into a company’s network through an exploit in the software’s built-in firewall. Worse yet, the way that the software was designed allowed the hackers to cover their tracks, and the virtual break-in would not set off any internal alarms. Consequently, a company wouldn’t know it was hit until after the breach had occurred (and then only if someone went looking for it).

Sav-Me quickly moved to investigate its computer system. To the Chief Information Officer’s dismay, Sav-Me’s expensive new system had been hit by hackers barely six weeks after its installation. The hacker stole thousands of individual account holders’ information, including birth dates, social security numbers, and bank account information. Seeking to limit the damage, the company’s IT department immediately froze access to the system until a software patch (issued by the software’s designer) could be applied. This caused extensive internal disruption in the organization’s own activities. It took several days for the organization to get back to something approaching normal operations.

Sav-Me issued a press release advising the public of the security breach and the loss of information. It also offered to cover the costs of credit monitoring for a year for all affected account holders. Despite these efforts, lawsuits have started cropping up across the country in both state and federal courts. These suits are filed by affected account holders, singly and in groups (and in a few cases as class actions).

In addition to the multiple lawsuits, Sav-Me is now under federal investigation for its recordkeeping and security practices. It also looks as though some state attorneys general may initiate investigations, as well. Subpoenas and written discovery requests have started rolling in, and the investigations are quickly expanding in scope. About 500 of Sav-Me’s employees are represented by Quality Umbrella and Instrument Turner’s Union (“QUIT”) (AFL-CIO). QUIT also has received subpoenas for documents relating to the state attorneys general and litigation

matters. They also have received an “informal” inquiry from a *New York Times* reporter and a senior Member of Congress from a relevant committee.

Sav-Me’s president and general counsel are desperate to get a handle on the voluminous discovery requests coming from all the different jurisdictions, as well as a steady stream of federal agency subpoenas. Union in-house counsel also would like to get a handle on the best course of action in this scenario.

Questions to Consider:

1. What steps should Sav-Me take to manage the multiple discovery requests from the different jurisdictions?
2. Considering the sheer scope of the information disclosures, as well as the fact that the information often being sought in discovery is usually buried deep within electronic servers and/or on some of the thousands of individual desktops, laptops, and Blackberries, is there any way that the organization can minimize the expense of responding to the various discovery requests?
3. How should the in-house counsel and the Company staff the multiple class actions, State AG investigations, and federal investigations? What are the pros and cons of using national counsel versus regional counsel and what outside advisors should be used besides outside counsel?
4. What should the union in-house counsel do differently than the corporate in-house counsel?

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***Zubulake v. UBS Warburg LLC*, 217 F.3d 309 (S.D.N.Y. 2003).**

The seminal case on electronic discovery, outlining a series of guidelines to assist courts and parties in preserving and producing electronic data in response to discovery requests, put forth a seven-factor test to determine whether cost shifting from the responding party to the requesting party is appropriate.

***Semsroth v. City of Wichita*, 239 F.R.D. 620 (D. Kan. 2006); *Toshiba Am. Elec. Components, Inc. v. Superior Court*, 21 Cal. Rptr. 3d 532 (Cal. Ct. App. 2004); *Multitechnology Servs. LP v. Verizon Southwest*, No. 4:02-CV-702-Y, 2004 WL 1553480 (N.D. Tex. July 12, 2004).**

Courts have criticized *Zubulake* for what appeared to be a cost-shifting analysis that favored the individual plaintiff or plaintiffs at the expense of the corporate defendant.

***Wiginton v. CB Richard Ellis, Inc.*, 229 F.R.D. 568 (N.D. Ill. 2004), *Hagemeyer North Am., Inc. v. Gateway Data Sciences Corp.*, 222 F.R.D. 594 (E.D. Wis. 2004).**

Courts have taken the seven-factor test from *Zubulake* and modified or added to it to meet its own sense of fairness.

Fed. R. Civ. P. 26.

New electronic discovery standards were put into effect in 2006. Companies are now required to maintain data upon learning of potential lawsuits, and attorneys must try to agree on what information is likely relevant. However, companies can label some data “irretrievable,” signifying that recovery would create an undue hardship.

***W.E. Aubuchon Co. v. Benefirst, LLC*, No. 05-40159-FDS, ___ F.R.D. ___, 2007 WL 1765610 (D. Mass. Feb. 6, 2007); *Cache La Poudre Feeds, LLC v. Land O’Lakes, Inc.*, No. 04-cv-00329-WYD-CBS, ___ F.R.D. ___, 2007 WL 684001 (D. Colo. March 2, 2007).**

Under FRCP 26, to obtain “irretrievable” data, the requesting party is obligated to put evidence in front of the court as to why, irrespective of difficulty or cost, the requested information should nevertheless be provided.

Association of Corporate Counsel website resources on “complex litigation and discovery”

<http://www.acc.com/php/cms/index.php?id=113>

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SCENARIO 3:

TROUBLE ON THE INTERNET:

Chris Smith is a five year employee of Preston's Piano and Harpsichord Emporium and a member of the Quality Umbrella and Instrument Tuner's Union ("QUIT") (AFL-CIO). Chris has long been considered a rabble rouser by both members of management and the upper levels of QUIT. He's young, aggressive, and seems to enjoy provoking arguments with his co-workers simply to get a rise out of them. He has recently decided that he is going to run for office within the union Local, and has mounted an extremely aggressive campaign to oust the current incumbent, long time and well respected employee, Lawrence J. "The Conductor" Klemperer.

One of the key bones of contention between Chris and The Conductor is the question of how hard to push the company in the next round of negotiating over the employer's contributions to the union's welfare benefit plan. Chris believes that the company can afford to put more money into the union's plan, whereas The Conductor believes that the company's financial situation is not currently conducive to a significant increase in those benefits.

Chris created a political campaign website for himself on the internet. It's brought to the company's attention that Chris has posted links to confidential company documents showing the overall compensation structure and compensation plan for the organization, and uses those documents to argue his campaign points. This information is stamped "Confidential-Do Not Disclose" and makes several references to the company's ability to stay competitive with other businesses in its industry, including its cross-town rival, Dave's Discount Dulcimers. Chris also posts other documents stamped "Confidential-Do Not Disclose," however many of those documents are earlier drafts of an executive's presentation to a trade group that had press in the audience. Further, Chris has posted on the website verbatim copies of minutes of his Local's Executive Board meetings; the minutes discuss the Local's collective bargaining strategy in some detail. Company executives are furious that confidential documents were posted on the internet and want to terminate Chris for that disclosure.

Additionally, in order to give himself an apparent edge in the polls, Chris has made some particularly damning accusations about Preston's Piano itself on his web page. The problem is that much of what Chris says about the company is demonstrably false. In one section, Chris even goes so far as to suggest a customer boycott if certain (non-existent) problems are not corrected. The company wants to force Chris to remove the statements from the web page.

The QUIT International Union has long been concerned that campaign websites like Chris's—which are open to the public and easily monitored by employers—may allow employers access to internal debates over collective bargaining strategy and other sensitive

information that may be harmful to the union as an institution. Consequently, the International Union's General Executive Board has promulgated a rule that all such Local Union campaign websites must be password protected in a way which limits non-member access to the websites. When advised of this rule by his Local Union's Election Committee, Chris responds that he is entitled to free speech and to seek support for his positions and his campaign from the public; he also flatly states he will not password protect his website.

While researching the matter concerning Chris, the Company determines that several employees and members of management have Myspace and Facebook pages and several have blogs and others have violated the company's e-mail policy. A Google search finds that several employees also have posted materials on other websites. Many of those pages include information not suitable for the workplace and show members of management "partying" (using legal and illegal substances) and make disparaging remarks about the Company, union officials, and upper management. One page depicts white supremacy activities outside of work. One page depicts hatred of one of the Company's biggest customers. Some of these pages complain about wages at the company, others show union membership with a prior employer, and some of the blogs are sympathetic to the plight of unions. Some of the pages depict these activities prior to joining the company or while the employees were in college or high school.

After learning about what current employees have on Facebook and on Myspace, the HR department would like to run Google searches on all applicants and create Myspace and Facebook accounts to become "friends" with applicants in order to get access to their pages. One applicant, who is applying to run the Company's operation in India, was found to have engaged in several protests against the ruling party in India while in college.

Questions to Consider:

1. Can the Company discipline and/or terminate Chris for posting the confidential documents regarding compensation on the internet? How will an arbitrator view the decision to terminate and/or discipline Chris if no action is taken against other employees/management?
2. What facts would limit the Company's ability to terminate?
3. Is there an unlawful surveillance issue concerning management monitoring of Chris's website?
4. What about the other employees/members of management?
5. What advice should be given to HR concerning pre-employment screening using the web?
6. What are some of the issues (domestic and international) concerning employee privacy?
7. Discuss the information discovered concerning union membership and union activity.
8. Has the Board recently ruled on changing e-mail policies?

9. Does Chris have a LMRDA-protected right to speak to the public concerning his internal union campaign? To employers specifically?

10. Is the International Union's password protection requirement a "reasonable rule as to the responsibility of every member toward the organization as an institution"?

11. Can internal union charges be successfully brought against Chris for his failure to comply with the password protection requirement? Can he be disqualified as a candidate for this failure?

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IBM Corp. and Richard Hudson, 265 N.L.R.B. 638 (1982); *Bell Fed. Sav. & Loan Ass'n and Int'l Bhd. of Teamsters*, 214 N.L.R.B. 75 (1974).

An employee's Section VII rights to engage in concerted activity to discuss individual wage information is protected, but disclosure of confidential information is not protected.

NLRB v. Knuth Bros., Inc., 537 F.2d 950 (7th Cir. 1976); *Texas Instruments, Inc. v. NLRB*, 637 F.2d 822 (5th Cir. 1981).

Where the NLRB has sought to expand the rights of employees to disclose information deemed confidential by the employer, courts have denied enforcement where the employer was able to state a legitimate basis for the confidential nature of disclosed information.

Labor-Management Reporting and Disclosure (Landrum-Griffin) Act § 101(a)(2), 29 U.S.C. § 411(a)(2).

"Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments, or opinions; and to express at meetings of the labor organization his views, upon candidates in an election of the labor organization or upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings: *Provided*, that nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations."

United Steelworkers of Am. v. Sadlowski, 457 U.S. 102, 108-11 (1982); *see also Kofoed v. IBEW Local 48*, 237 F.3d 1001, 1005 (9th Cir. 2001).

The free speech of union members under § 101(a)(2) is not co-extensive with the First Amendment to the U.S. Constitution. A union may adopt reasonable rules as to the responsibility of members toward the organization as an institution which "need not pass the stringent tests applied to the First Amendment."

Keefe Bros. v. Teamsters Local 992, 562 F.2d 298 (4th Cir. 1977) (statements in public); *Giordani v. Upholsterers*, 403 F.2d 85 (2d Cir. 1968) (letters to government officials); *Maxwell v. UAW Local 1306*, 489 F. Supp. 745 (C.D. Ill. 1980) (communications to employer); *Deacon v. Operating Engineers Local 12*, 273 F. Supp. 169 (C.D. Cal. 1967) (statements published in a newspaper); *Graham v. Soloner*, 220 F. Supp. 711 (E.D. Pa. 1963) (public picketing at the

union hall); *Farnum v. Kurtz*, 81 Cal. Rptr. 924 (Cal. App. Dep't Super. Ct. 1969) (letter written to employer and press); *Boilermakers v. Rafferty*, 348 F.2d 307 (9th Cir. 1965) (distribution both to members and in places where employers and supervisors could get them).

All lend support for the notion that speech to the public, including employers, is encompassed within the protection of § 101(a)(2).

***California Newspapers P'ship d/b/a/ ANG Newspapers*, 350 N.L.R.B. No. 89 (Sept. 10, 2007, released Sept. 13, 2007).**

Newspaper publisher violated federal labor law by implementing a revised e-mail policy without bargaining with the union representing its employees. The union did not waive its right to bargain over the revised policy when it agreed to a bargaining contract containing a "zipper clause" and a management rights clause. The policy prohibited sending unauthorized messages to more than one addressee at a time.

MySpace.com terms of use - <http://www.myspace.com/index.cfm?fuseaction=misc.terms>

Google.com terms of use and privacy policies - <http://www.google.com/accounts/TOS>

Facebook.com terms of use and privacy policies - <http://www.facebook.com/terms.php>

EEOC Guidance on Preemployment Screening under the ADA

<http://www.infolinkscreening.com/InfoLink/Resources/LegalIssues/eeoc.pdf>

Fair Credit Reporting Act - 15 U.S.C. 1681

Federal Background Screening and Drug Testing Laws

<http://www.infolinkscreening.com/InfoLink/Resources/FederalLaw.aspx> (links to several relevant laws)

State Privacy Laws Relating to Internet Privacy

<http://www.ncsl.org/programs/lis/privacy/eprivacylaws.htm>

<http://www.privacy.ca.gov/index.html> (California)

<http://www.privacy.ca.gov/lawenforcement/laws.htm> (California)

<http://www.leg.wa.gov/pub/billinfo/2007-08/Pdf/Bills/Senate%20Passed%20Legislature/5827-S.PL.pdf> (link to new Washington law)

[\[itcompliance.com/laws_regulations/2007/05/employee_privacy_new_credit_ch.htm\]\(http://www.realtime-itcompliance.com/laws_regulations/2007/05/employee_privacy_new_credit_ch.htm\) \(article on Washington law and similar laws in Hawaii, Pennsylvania, New York and Wisconsin\).](http://www.realtime-</p></div><div data-bbox=)

BNA's Privacy & Security Law Report

<http://www.bna.com/products/corplaw/pvln.htm>

National Workplace Rights Institute (multiple resources from the employee perspective)

<http://www.workrights.org/>