**In your face(book): Social Media and UNfair Labor Practices**

An unprecedented union campaign was being waged at Jimmy John’s Gourmet Sandwiches franchise stores in the Minneapolis area. The franchisee, MikLin Enterprises, Inc., was a small family company owned by Mike Mulligan, his wife, Linda, and son, Rob. The unionization effort was malicious. To counter the union’s voice, an Anti-Union Facebook page was created by a rank and file employee; its members included store managers, assistant managers, area managers and a co-owner, Rob Mulligan. The Facebook page, however, was public allowing anyone with a Facebook account to access it and read the posts.

As the union fight escalated and focused on sick leave, union activists threatened to plaster the city with flyers insinuating that sick Jimmy John’s workers were making sandwiches. The contentious poster showed two identical sandwiches, one purportedly made by a healthy worker, the other a sick worker. The poster then states, “Can’t tell the difference? That’s too bad because Jimmy John’s workers don’t get paid sick days. Shoot, we can’t even call in sick.” When Rob Mulligan, learned of disgruntled workers intent to go public with their concerns over health care, he posted a comment on the Jimmy John’s Anti-Union Facebook page encouraging members of the group to take the posters down. Renee Nichols, a Jimmy John’s Assistant Manager, followed this comment with the following:

* A post giving the phone number of a union activist and Jimmy John’s employee, David Boehnke, suggesting that the Facebook members send him text messages to “let him know how they feel.”
* A comment referring to David Boehnke that read, “F\*\*k you David Forever”
* A message adding to a negative description of Boehnke by another member of the Facebook group, saying “[y]ou forgot to say unibrow. He just likes things that begin with uni lolz.” This was apparently a reference to Boehnke’s eyebrows and the “Unibomber,” Ted Kaczynski, who mailed explosive packages to various people over a period of years.
* A reaction to a picture of David Boehnke with feces on the bill of his cap posted by a former employee Benn McCarthy that said, “Haaaa Benn—2 David—0 Fartbag.”

Rob Mulligan joined the diatribe posting the following rejoinder on the Anti-Union Facebook page, “I call him, the Unibrowner.” Similarly, another Jimmy John’s manager chimed in on the exchange posting her approval of the defiled photo of David Boehnke and suggesting it be put up everywhere. This sentiment was echoed by another Assistant Store Manager, Eddie Guerrero.

MikLin Enterprises, Inc., the owner of these Jimmy John’s franchise stores, needed to react to this use of social media, but what was the correct response?

**Jimmy John’s Background**

Jimmy John’s Gourmet Sandwiches was founded by 19 year old Jimmy John Liautaud. With the help of a few cookbooks and working in his mother’s kitchen, Jimmy came up with his “award winning bread” and six sandwiches. He soon opened up his first store in a garage, having barely enough money to pay rent for the space and buying all used equipment. Today Jimmy John’s has approximately 1,400 stores, mostly franchises, in over 39 states. MikLin Enterprises Inc. owned ten Jimmy John’s franchises in the Minneapolis, Minnesota area. A small family company, MikLin was owned by Mike Mulligan, his wife, Linda, and son, Rob.

**The Industry**

Working conditions in food service were widely regarded as substandard. Median annual income in fast food was $10,462, less than half the poverty line for a family of four. The average workweek was 24.3 hours and the median wage $8.28 per hour. Benefits were virtually non-existent. (Williams & Gault, 2014)

**Unionization Effort**

Jimmy John’s was the subject of a union campaign. On September 2, 2010, MikLin workers launched a union organizing drive. Days later, Jimmy Johns Workers Union was announced—the first fast food union in the country. Affiliated with Industrial Workers of the World a global union for all “working people,” union membership was open to all Jimmy John’s employees nationwide. Through the unionizing effort, the workers sought “a pay increase to above minimum wage, consistent scheduling and minimum shift lengths, regularly scheduled breaks, sick days, no-nonsense workers’ compensation for job-related injuries, an end to sexual harassment at work, and basic fairness on the job” (About IWW, 2011).

Initially the union organizers of the MikLin franchise stores tried to negotiate informally over their demands, but the approach quickly moved to an official union election. By late September, at least 30 percent of the MikLin workers signed cards calling for union representation, and an election was conducted on October 22, 2010. By only two votes—87 to 85—the unionization effort failed. Refusing to accept defeat, the union filed a petition with the National Labor Relations Board for unfair labor practices. The petition included allegations of intimidation, bribes, threats, a wage freeze and dismissal of workers sympathetic to the union. Indeed, following an investigation the NLRB regional director informed Jimmy John’s that it found sufficient evidence to issue a complaint prompting a settlement. The settlement agreement set aside the union election loss and allowed the union to pursue a new election. In addition, MikLin agreed not to discipline or threaten employees because of their union activities, and not to withhold raises because of an ongoing union campaign.

With the election set aside, the union focused on changing company policies with sick leave as the top priority. The workers sought the right to call in sick and be paid for sick days. To exert pressure on MikLin, workers wore buttons with the slogan, “Sick of Working Sick” during their shifts. The Facebook exchange was ignited by the workers’ threat to plaster the city with the flyers suggesting that Jimmy John’s sandwiches were made by sick workers putting the health of it patrons at risk.

**MikLin Enterprises, Inc. Stance**

Mike Mulligan objected to the union’s characterization of MikLin Enterprises, stating “[w]e are very proud of our employment record and take issue with the claims of the I.W.W. We value our relationship with our employees and offer competitive wages and good local jobs. We are dedicated to providing a fair, equal and diverse workplace environment.” (WZZM 13, 2010). Mike Mulligan believed the pro-union group was using his franchise as an example for a wider unionization movement of the restaurant industry. According to Mike Mulligan, until the arrival of the union “salts,” MikLin had only one unfair-labor practices complaint during its ten years in business. Since then, more than fifty complaints had been lodged in the past five months.

Mike Mulligan maintained that MikLin was consistent with the industry and that meeting the union demands for sick leave, higher pay and health care could actually bankrupt the company. In Mike Mulligan’s words, “ [i]f we agreed to these demands, it would cost four times what the company made last year….When I say, ‘The things for which you’re asking are not done in the industry in which we’re competing,’ they say, ‘Yeah, that’s the problem’”(Brandau, 2011). Addressing sick leave specifically, Mike Mulligan stressed, “we do not allow people with flu-like symptoms to work, and we’ve tried to demonstrate flexibility if they can’t show up” (Brandau, 2011).

**Dilemmas**

The Facebook posts posed legal and management dilemmas for Mike Mulligan, president of MikLin Enterprises Inc. What freedom do employees have in expressing their opinions through social media? What are MikLin’s rights and obligations? What, if anything, should Mike Mulligan do about Rob, his son, and the managers’ use of social media? Propose a social media policy for MikLin identifying the key issues that need to be addressed.

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