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# Human Resourcer

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# Labor Law and the Nonunion Workplace

By: Renee Atlas and Jodi Eisenstadt of Human Resource Attorneys

Labor legislation has traditionally been the domain of the unionized workplace. However, being nonunion will not insulate you from traditional labor law issues. This summer the National Labor Relations Board (NLRB) — the agency that interprets and applies federal labor law legislation — decided two important cases. These decisions make it necessary for all human resource personnel, whether employed in union or nonunion settings, to have a good understanding of some traditional labor law principles. Let's take a closer look at "Weingarten rights" and "bargaining unit" constitutions.

## The Epilepsy Foundation Decision

In July 2000, the NLRB decided *Epilepsy Foundation of Northeast Ohio*. In *Epilepsy Foundation*, Borgs and Hasan, two employees of a nonunionized workplace, wrote a joint memorandum requesting that their immediate supervisor no longer oversee their research work. Their supervisors were displeased with the memo and asked Borgs to attend a meeting with them. Fearing disciplinary action, Borgs requested that Hasan also be present at the meeting. This request was denied, and Borgs refused to attend the meeting alone. Borgs was sent home and fired the next day for "gross insubordination."

The NLRB considered the question of whether the principles set forth by the U.S. Supreme Court in *NLRB v. Weingarten*, 420 U.S. 251 (1975), should be extended to employees in nonunionized workplaces. *Weingarten* had held that a union employee has the right to have a union representative present at an investigatory interview that the employee reasonably believes might result in disciplinary action.

In *Epilepsy Foundation*, the NLRB held that the National Labor Relations Act grants the right for all employees to engage in "concerted activities for the

purpose of mutual aid or protection." The NLRB found that the right to have a coworker present at an investigatory interview is a concerted activity that all employees may utilize without regard to union affiliation. The NLRB ordered that the employees be reinstated.

## The Sturgis Decision

In August 2000, the NLRB decided *Sturgis, Inc. and Jeffboat Division, Inc.* In that case, the NLRB held that temporary workers could join regular employees as part of a union's bargaining unit, and the employer could be forced to bargain over terms and conditions of employment with both regular and temporary (or "contingent") types of workers, so long as there exists a sufficient community of interest between the two types of employees.

Prior to its August decision, the prevailing law, based on NLRB precedent, was that an employer's consent was needed for the formation of a bargaining unit where the bargaining unit included workers solely employed by that ("user") employer and those jointly employed by that employer and a temporary placement agency ("supplier" employer). In such situations, prior NLRB precedent had found that multiemployer bargaining was involved. The National



Labor Relations Act requires employer consent to the formation of multiemployer bargaining units.

The NLRB's decision in *Sturgis, Inc. and Jeffboat Division, Inc.* involved two different user companies. In both, temporaries worked side-by-side with the regular employees, performed the same work and were subject to the same supervision. In both companies, placement agencies hired the temporaries, determined their wages and benefits, and paid them. The NLRB found that in both workplaces the employees were jointly employed by the user and supplier employers.

The NLRB remanded the cases to the lower level regional directors to determine whether the joint employees shared a "community of interest" with the regular unionized employees to allow them to all be included within the same bargaining unit. The community-of-interest test examines factors such as wages, hours and working conditions, and may not always result in jointly employed workers being included in the same bargaining unit.

This decision, courts' recent findings that Microsoft's temporary employees are entitled to the same fringe benefits as its regular employees, extends the trend to recognize that contingent employees are entitled to the same protections as regular employees. The NLRB reiterated that this nation has but one set of labor laws, and that all workers are entitled to the protections of these laws.

Note that while higher courts may ultimately disagree with the NLRB's rulings in *Epilepsy Foundation* and *Sturgis*, unless and until these cases are overturned, they remain the law.

### **Impact of the Decisions On the Nonunion Workplace**

Those who work in Human Resources can learn several things from these decisions:

- All employees who are subject to an action that might result in discipline have the right to request and have a co-worker present at an investigatory interview.

- Become familiar with the labor laws and have a labor attorney review your policies. For example, if your company has a "no solicitation" rule, this may impact upon a union's right to organize your labor force. You are subject to an unfair labor practice charge if you run afoul these labor protections.
- If you employ temporary workers you now may be more attractive to unions. However, do not assume that your workplace will necessarily be overrun by union organizers. *Sturgis'* union was opposed to the temporaries being included in the bargaining unit, while *Jeffboat's* union favored union representation for the temporary employees.
- Where you employ contingent employees, consider giving the function of managing them to an outside company, some companies that lease employees may offer this arrangement.
- Satisfied employees are less likely to need a union's representation. 🌍

### **Prevent Problems**

Ensure a high level of job satisfaction by creating a workplace where:

- Employees are listened to and have a forum for expressing dissatisfaction.
- Employees are recognized for their work.
- An internal dispute resolution system allows employees to lodge their complaints and provides a good chance of employees winning their arguments. The system may include an outside mediator or a peer review system.
- Employees can find time with their families and organize life's various demands.
- Employees earn what they are worth and what they could receive elsewhere.
- Employees are treated fairly. Stand in their shoes — if things seem problematic to you, they are probably problematic to your employees. Improve the situation voluntarily.



# Organizational Engineering

## *A New Way To Build Your Business*

*By: Jeff Miller, Sr. Manager, Organization Effectiveness*

Every business' success depends on one thing — its work force. Companies that can expertly identify and use their work forces' abilities and strengths take the high road toward success. It's like building a bridge. Bridges require high-quality materials and precision designs to function properly for decades possibly even centuries. To succeed, your business needs highly skilled workers brought together under the right collaborations.

A new strategy — Organizational Engineering — is available to help you better develop your leadership and management teams. This approach processes certain information to accurately predict the areas that will present challenges, or even problems, and the areas your business will excel.

### **Opt for It**

Organizational Engineering starts with a refined software package known as "I OPT." This technology is extremely cost-effective and makes assessments quickly and accurately. I OPT can be used either to fine-tune the performance of an existing team, or — remarkably — predict how a brand new group is likely to perform before it has even begun its work. The software first processes potential success and vulnerability areas and then generates a laundry list of possible recommendations. I OPT can increase your business's effectiveness and productivity by:

- 🌐 Showing the readiness of a management team to assess and respond to changes in the external environment,



- 🌐 Identifying opportunities for leaders to improve group performance,
- 🌐 Redesigning groups that are not performing up to expectations,
- 🌐 Integrating project teams with client organizations,
- 🌐 Identifying structural vulnerabilities built into teams and recommending ways to offset them,
- 🌐 Designing task forces to meet specific goals or objectives, and
- 🌐 Creating effective cross-functional teams.

And because I OPT only offers ways team members can better interact, instead of asking individuals to make major changes in themselves, results are usually immediate.

### **How I OPT Works**

I OPT's core program is the individual analysis. In only five to 10 minutes, participants fill out a 24-question survey that is then scored by computer. The result is a nine-page report that provides feedback on the test takers' strategic style distribution, their preferred learning methods, how they are likely to interact with other styles, their best organizational environment, how to best talk to people with different strategic styles and much more.

As useful as the individual analysis is, the real richness of the Organizational Engineering system lies in its ability to create computer models of the working relationships of any pair or group of people.

The One-on-One Analysis is designed to facilitate the integration of two people working on common goals — or any other situation where two people would benefit from increased coordination and synergy. Typical applications include integrating a new subordinate with a leader, forming two-person teams and resolving conflict.



The Team Analysis report combines all the individual participants into a single, unified whole. It considers all potential interactions to arrive at the overall direction of the team. Corrective measures are offered to help the group move through any desired changes in the products and outcomes of their work together.

The Leader Analysis is the Team Analysis' close companion. It provides guidance to the leader in helping the group realize its maximum potential. Each team member is assessed relative to the leader's preferred style and probable direction. Groups of team members are then assessed against the leader along

dimensions such as change orientation, performance, etc. This analysis is used to help the leader frame his or her goals, expectations and strategies for a specific group.

### Contact Us

If you would like to use Organizational Engineering in your own firm, call Jeff Miller in RSM McGladrey's Family Business Group/Management Development Institute. He will be happy to answer any questions you may have, provide pricing details and set up a plan for you to begin reaping the benefits of this remarkable technology in short order. 🌐

# Understanding Foreign Culture Differences

*By: Elizabeth Scholz, Consultant, Organization Effectiveness*

**B**onjour! Hola! Guten Morgen! One of the biggest reasons international business mergers and alliances fail is due to a lack of understanding of the foreign culture. Culture can be defined as a deeply engrained set of values shared by members of a society, which serves as a behavior guide within that particular society. It has been proven that business and human resource professionals must expand globally if they want to succeed in today's competitive marketplace. Here are some suggestions to consider before launching into any international venture.

In 1968, Geert Hofstede began work to identify four dimensions that differentiate national culture groups. While his work started 32 years ago with a limited range of scope (all participants were from the same international company, namely IBM), his theories have been adopted as cultural truths over the decades. Hofstede's findings have also been replicated and validated by numerous, more recent studies. Hofstede's four categories are:



- 1. Power distance (PD).** The degree to which members of the group, company or country accept that power throughout their respective organization is distributed unequally. Countries high in PD are the Philippines, Mexico, India and France. Lower PD countries are the United States, Netherlands, Australia and Israel.

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# What is the best alternative to sourcing and hiring the “right” candidate? Is there a staffing solution that will meet my current needs?

*RSM McGladrey, Inc. will help you find the “right” solution to hire the “right” talent customized to your current needs. We specialize in the following:*

- ⊗ Developing customized recruitment strategies
- ⊗ Providing interim human resource and accounting professionals
- ⊗ Engaging a retained search for key positions
- ⊗ Designing and implementing a college recruitment program
- ⊗ Outsourcing specific staffing functions
- ⊗ Providing assistance and support with job fairs, job sites and interviewing
- ⊗ Applying market research, salary surveys, competitive analysis and job descriptions to your employment function

## Why are we exceptional and unique?

- ⊗ We are human resource consultants with extensive backgrounds in corporate and search entities and have personally experienced your situation.
- ⊗ We have the tools and resources to successfully complete your employment needs:
  - State-of-the-art technology
  - Extensive database
  - National offices with more than 150 human resource consultants
  - Resources within our office in strategic and business planning, compensation, training, performance management, benefits and compliance issues
  - Colleagues in tax, accounting, manufacturing, information technology, finance and industry specialization
- ⊗ We have appointed leadership roles in all human resource organizations.
- ⊗ We are committed and provide guarantees to successfully complete your project.

Before people problems affect your bottom line, call us today to discuss your employment needs and find out how we can help meet them. Copy and mail or fax this form to request a meeting. We would welcome the opportunity to make recruiting good employees a lot easier for you.

**Human Resourcer Express Fax: (847) 413-6464**

**Yes!** I would like to learn more about how your firm can help meet my human resource challenges. Please call me immediately at (    ) \_\_\_\_\_ to discuss my needs.

_____	_____	
Name	Title	
_____	_____	
Organization	Address	
_____	_____	
City	State	ZIP
_____	_____	
Telephone	E-mail	

Or copy and mail to Lyndy Nierman, Managing Director, RSM McGladrey, Inc., 1699 East Woodfield Road, Suite 300, Schaumburg, IL 60173

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- 2. Uncertainty avoidance (UA).** The extent to which the members of the group, organization or country feel threatened by change or an ambiguous situation. In a high UA situation, ambiguity is not tolerated. Countries with low UA include the United States, Hong Kong, Canada and Singapore. Countries with high UA include France, Belgium, Greece and Portugal.
- 3. Individualism.** In countries rating high on individualism, people look out for their own interests and those of their immediate families. Cultures with low individualism will seek to maintain harmony among members and reach decisions by consensus. Countries high in individualism are the United States, Great Britain, Canada and Italy. Countries low in individualism are Japan, Iran, Taiwan and Columbia.
- 4. Masculinity.** Countries place more emphasis on traditionally masculine traits, such as assertiveness, achievement, tasks, money performance and purposefulness. Others prefer more traditionally feminine traits, such as quality of life, helping others, preserving the environment and not drawing attention to one's self. Countries high in masculinity are Venezuela, Italy and Germany. Countries low in masculinity are Sweden, Thailand and Spain.

In recent years, several surveys have been conducted in China, where little information had previously been available regarding traditional barriers to working relationships. The recent surveys have shown other areas to which we should be sensitive. Here are a few of the findings:

- 🌐 Before heading off to a foreign country to begin business negotiations, know the size of the foreign team you will be dealing with. For instance, in China the negotiating team is usually larger than the American team. The Chinese team may be insulted by a small American negotiating team and may question the seriousness of the proposed alliance.
- 🌐 In Asian societies, what is said or even implied may hold more weight than what is written. It is

important to understand what body language means in different cultures, and be prepared to hold up your end of a verbal agreement.

- 🌐 Believe it or not, some countries, such as Japan and Korea, still have an aversion to doing business with women executives. This seems to be the case in most Asian countries, with the exception of China. From the early stages of the business venture, fully explain the position and level of involvement of women to avoid assumptions that women are present to act in an administrative role.
- 🌐 There may also be differences in methods of logic and perceptions of time. Asians tend to analyze situations in a spiral, interactive, holistic fashion. Americans are typically more linear thinkers who move from one analysis to the next in a structured sequence. Americans view time as sequential and absolute. Asians generally perceive time as nonlinear, infinite and repetitive. Given these differences, it may be very difficult to follow each other's logic and thought patterns.
- 🌐 Finally, before venturing into a business alliance with a foreign business partner, understand what your obligations will be to your new foreign employees. In some Communist countries, government mandates heavy social obligations. In China, for instance, large corporations are expected to house, clothe, feed and provide medical care for their employees.

### Be Prepared

It is vital to the success of any organizational intervention — or business alliance — that you have a clear understanding of a foreign company's basic values, as well as the foreign country's culture. When negotiating a business deal or business alliance, we suggest partnering with a consultant familiar with the business's homeland. The consultant will be able to coach your organization through the foreign culture and help research detailed information regarding the foreign company with which you are conducting business. 🌐

# RSM McGladrey, Inc.

## Human Resources Solutions

RSM McGladrey's Human Resource Consulting Services include:

- 🌐 Strategic Planning
- 🌐 Employee Climate and Attitude Surveys
- 🌐 Employee & Management Compensation Planning
- 🌐 Employee Welfare Benefits Consulting
- 🌐 Executive Coaching and Teambuilding
- 🌐 Management Retreats
- 🌐 Human Resource and Financial Contract and Outsourcing Services
- 🌐 Human Resource Diagnostic Reviews
- 🌐 Management Assessment and Development
- 🌐 Change Management
- 🌐 Management/Supervisory Training and Development Programs
- 🌐 Organization Planning and Evaluation
- 🌐 Performance Management
- 🌐 Employee Handbooks and Policy & Procedure Manuals
- 🌐 Executive Search and Recruitment Strategies
- 🌐 Wage and Salary Administration Programs

RSM McGladrey's Human Resource Consulting Services can help you evaluate and design appropriate organizational and management structures, and install HR programs and systems that motivate employees to do their best.

Because each and every organization we serve is unique, we take a close, practical look at your organization's needs to gain a complete understanding of your business.

Our consultants have served as human resource professionals in a wide variety of businesses and industries. With first-hand experience, they know the kinds of HR problems most likely to concern you.

Regardless of your organization's situation or size, we can help you find solutions that are responsive to both your organization and your employee needs by:

- 🌐 *Looking beyond short-range problems to pinpoint strategic HR issues*
- 🌐 *Helping you align your HR function with organization goals and objectives*
- 🌐 *Applying the management resources and experience you need to help turn recommendations into action*
- 🌐 *Providing hands-on, day-to-day assistance*
- 🌐 *Helping you formulate major HR strategies and systems*
- 🌐 *Developing and implementing practical solutions*

### **WE CAN HELP ACHIEVE YOUR OBJECTIVES!**

We're ready to make sure that you get the most from your people by helping you develop a human resources function – and systems – custom tailored to your organization's particular needs. 🌐



For more information on RSM McGladrey's Human Resource Consulting Services, contact Lyndy Nierman, Managing Director, 1699 East Woodfield Rd., Suite 300, Schaumburg, IL 60173, phone 847-413-6900, or email: [lyndy\\_nierman@rsmi.com](mailto:lyndy_nierman@rsmi.com).

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