



Selecting a Crisis Staffing Firm for a Labor Dispute

December 20, 2005

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Personnel Management Group's Winter 2005 Webinar featuring David Jacobsen of Personnel Management Group and Russell McEwan of Grotta, Glassman & Hoffman, P.C.

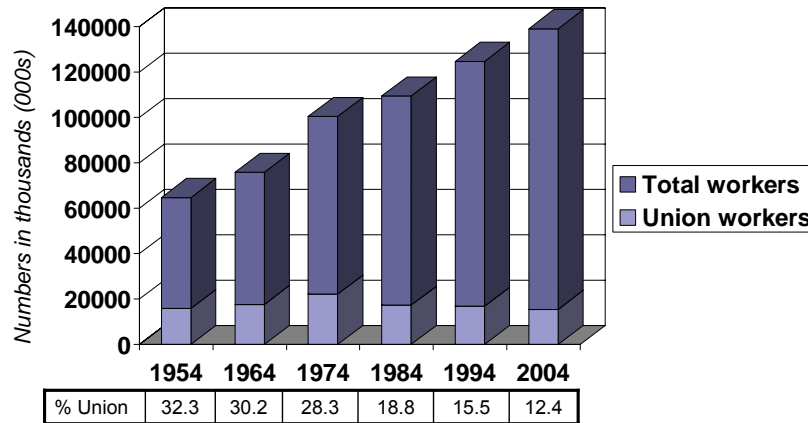
Agenda

- Overview of organized labor
- Overview of work stoppages
- Predictions for 2006
- Selecting the right staffing partner
 - What's the issue?
 - Considerations
- Q&A's



Good morning everybody! My name is David Jacobsen, and I am the President of Personnel Management Group, or PMG. I'd like to welcome you to this morning's webinar and thank you for your interest in participating.

Organized labor has declined

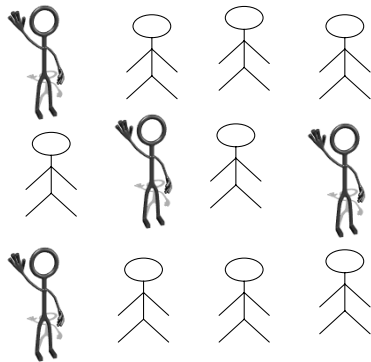


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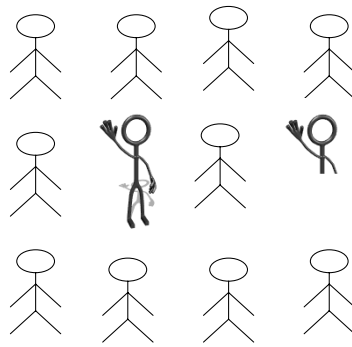
- Union membership has fallen over the past 50 years in terms of both total number of members and percentage of workforce.
 - The decrease in the absolute number of unionized workers is less dramatic than the decline of union membership as a percentage of the total workforce.
 - This is because the decline in union membership has been somewhat offset by growth in the total population.
- The decline can be illustrated in this fashion: the number of workers who are union members has gone from roughly 1 in 3 fifty years ago to 1 in 12 today.

Unions have less influence

In the 50's



Today



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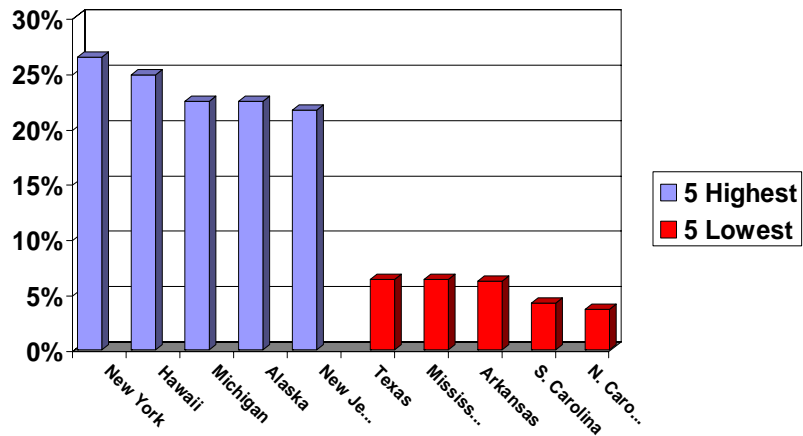
In the 50s, unions had significant clout as one in every 3 workers was a card carrying union member.

- In the community
- In politics
- In business

(elaborate on unions' influence in these 3 areas)

Today their overall clout is much less apparent as only one in 8-9 of today's workforce is a member of a union.

Union levels vary across the U.S.



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States with highest representation:

Alaska – 22.4

Hawaii – 24.8

Michigan – 22.4

New Jersey – 21.6

New York – 26.4

Washington – 20.3

(Notable that influential state California is 18.0)

Still substantial representation in populous states like NY and NJ

States with lowest representation:

North Carolina – 3.6

South Carolina – 4.2

Arkansas – 6.2

Mississippi – 6.3

Texas – 6.3

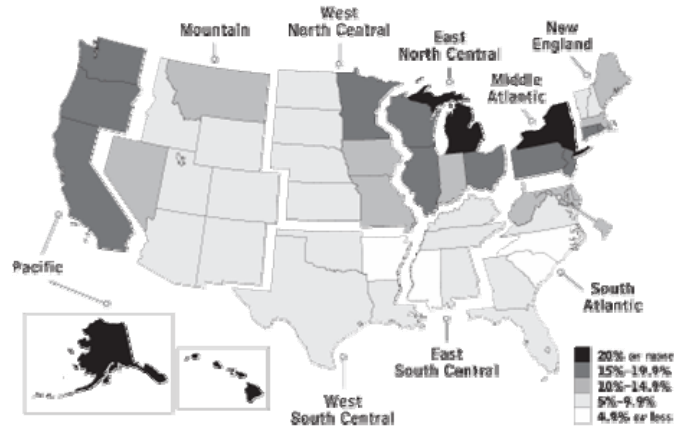
Virginia – 6.6

Very little representation in the South including influential states such as Texas

And are more common in North

Union Membership Rates by State, 2004 Annual Averages

(U.S. Rate = 12.5%)



Source: Current Population Survey, Bureau of Labor Statistics. Web: www.bls.gov/news.release/pdf/unlon2.pdf

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This pattern holds true when you look at the entire nation. Union membership is substantial in the Northeast and far west.

By contrast, membership and probably influence are almost non-existent in many of the lower states including populous states such as Texas and Florida.

Unions are responding...

- Change to Win Federation
 - Made up of 7 unions including the influential SEIU, Unite Here and IBT
 - Mission is to aggressively drive membership

- As manufacturing jobs continue to dwindle, unions are increasingly targeting other industries and geographies
 - Targeting of Wal-Mart
 - CWA – Cingular
 - SEIU – janitors in Houston

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As you know, the Change to Win Federation recently split off from the AFL-CIO largely due to a dispute as to where to focus time and resources; on political lobbying or on organizing.

Change to Win includes: SEIU, Unite Here, Teamsters, UFCW, CJA, Laborers International Union, United Farm Workers.

“We must have more union members in this country to fight the political and business forces that are undermining workers in this country. The AFL-CIO has chosen the opposite approach by planning to throw even more money at politicians.” -Jimmy Hoffa

CTW officials claim that CTW unions will initially target for organizing about 50 million workers in the U.S. who work in industries that cannot be easily outsourced – retail, healthcare, construction, transportation and warehousing, food production, and real estate property services.

More immediately, CTW plans to have campaigns targeting over 500 workers by the early part of 2006 – very aggressive goals.

Unions are also targeting new areas such as service and retail. We all read about the ongoing battle between Wal-Mart and the UFCW. Organizing Wal-Mart would prove to be a major victory for organized labor and would represent a huge increase in membership.

CWA has organized over 13,000 Cingular service employees over 2004-2005.

Perhaps most impressive is the SEIU's success at organizing janitors – service workers – in Houston – a union unfriendly city in a state that falls into the lowest 5 states in terms of union membership as a percentage of total workers.

...becoming more “crafty” ...

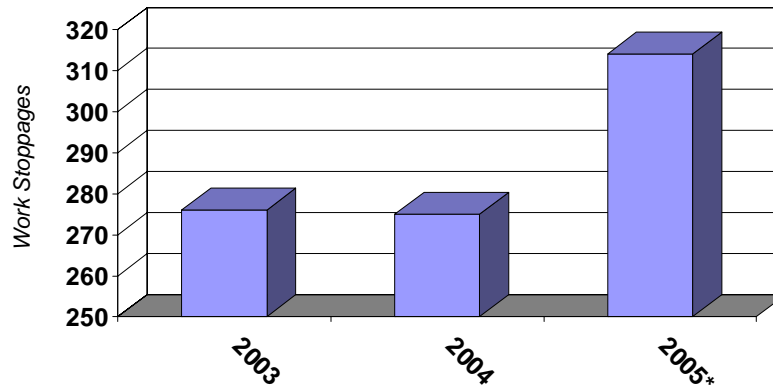
- Adopting strategies that adapt to modern economic realities
 - Organizing whole industries so that individual employers don't face unfair competition
 - Demonstrating desire to unionize with “card checks” rather than NLRB elections
 - Using legal process and class action lawsuits against companies
 - Targeting jobs that cannot be easily outsourced overseas
 - Sophisticated PR – Building broad coalition of support including local churches, politicians, and immigrant groups
 - Running aggressive public information campaigns against Wal-Mart

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Points to discuss:

- SEIU – janitors, “Justice for Janitors”
- Unite Here – laundry workers
- Unions recognize the flaws in the NLRB election process and are working around it via techniques such as card checks. (NLRB process takes too long – and limits unions' ability to campaign during work hours.)
- Again, the Wal-Mart case where a subcontractor was using illegal aliens
- Unions are becoming effective public communicators.

...and more aggressive



**Based upon Q1 through Q3 of '05*

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Work stoppages, including both strikes and lockouts resulting from deadlocked negotiations, are up 14% this year, according to Bureau of National Affairs Inc. There were 231 work stoppages initiated through the end of August, compared with 202 in the same period last year, with the vast majority being strikes.

Activity has increased significantly

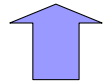
	2004	2005
Teamsters	38	47
SEIU	18	19
Steelworkers	11	17
Machinists	11	14
Op Engineers	11	13
Auto Workers	8	11

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- The UAW, Teamsters, Service Employees International Union, and Steelworkers of America have all engaged in more work stoppages through August of this year than they had last year, according to BNA data. The Teamsters were involved in 47 work stoppages through August of this year, far more than any other union.
- 25% more work stoppages when we just consider the 6 most active unions

What does this mean for 2006 and beyond


- Tightening labor market and improving economy
- Continued pressure on health care and pension costs
- Increased union membership
- Continued growth in international competition
- Increased willingness for both management and unions to take “a hard line”



Work Stoppages

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- The increase in strikes could partly be driven by the improved economy, since unions often view strikes as a more effective threat when companies are faring well and labor markets are tight. But others, including union leaders, argue that the increase indicates the harsher negotiating climate.
- Historically, it's during economic recoveries, when labor markets tighten, that unions do best, both on the picket line and at the bargaining table
- Workers could be drawn to unions willing to strike to resist cuts to health care benefits
- Studies routinely touted by labor leaders claim that some 50% of American workers would join a union if given a chance
- Employers are taking a much harder bargaining position, and that's naturally going to be met by an elevated level of worker militancy.
- During the past couple of years, we have started hearing companies talk openly about permanent replacement
- Despite inherent costs and risks associated with lock-outs, we saw the New York Elevator Association lock-out it's union for months.
- The power companies continue to face acrimonious relationships with their unionized workers while seeing supply dry up.
- The major airlines and automotive companies have no choice – and the prospects for their workers is often so poor that they adopt a “do or die” attitude



“There have been efforts in a number of industries by employers to take a hard line unnecessarily. Unions are fed up with it...unions are in a fighting mode”
– *Bruce Raynor, President of Unite Here*

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- Perhaps the climate is best summed up by Bruce Raynor (refer to quote on slide).
- If Raynor is right, then we can expect to see a continuation or increase in labor disputes, and the topic of our webinar today becomes that much more important – selecting the right crisis staffing company to prepare for and endure and perhaps even prosper during a work stoppage.
- There are multiple ways to operate during a strike. One option is to discontinue operations, however, much more often companies choose to continue operating – in these situations, temporary replacement labor can be a critical element of any company’s business continuity plan.
- With that, I would like to introduce Russ McEwan – most of our participants today are labor and employment lawyers. As you know, you are often asked to assist your clients in selecting the right staffing firm for them to use during a strike/lock-out. I have invited Russ McEwan of the law firm of Grotta, Glassman & Hoffman, P.C. to join us today. Russ is someone I have dealt extensively with working for mutual clients on strikes throughout the country. Russ has been kind enough to offer his insight as a labor lawyer on this topic. In the time I’ve been working with Russ and his Firm, they’ve helped prepare a variety of clients with complex operations for major labor disputes. As such, Russ is someone who’s done a lot of strike contingency planning. I hope that you find his comments to be valuable to you in your own client relationships.

Selecting the Right Vendor

- Moderated by Russell J. McEwan, Esq., Principal, Grotta, Glassman & Hoffman, P.C.



Good morning, everyone. When Dave Jacobsen asked me to speak to you this morning about selecting a staffing firm to use during a strike, I gave my notes the working title of “How To Pick Your Scabs.” But putting aside any amusing play on words, I do agree with Dave that it is essential in helping prepare your clients for a strike that you pick the right staffing firm. It is probably the most important operational decision you’ll make with your client for a few reasons.

First, as Dave said, this is the crew that is going to do the work during a strike. They are going to assemble products, they are going to use your client’s tools and equipment, they’re going to attempt to satisfy customer orders. For all of these reasons, you want to make sure that you know who you are letting in to the plant before signing off on any contract. Selection of the right staffing firm is also critically important to your client because, as Dave correctly pointed out, this is the most expensive aspect of a strike. If you have ever dealt with a client with hundreds or even thousands of employees on strike, and you’ve seen the bills from Company’s like Dave’s, they’re absolutely mind-blowing. Because recruiting a competent workforce to replace your own local workforce often requires a regional if not national recruiting effort, transportation and housing costs are a given. Those costs easily outweigh any savings that you might enjoy over the fully loaded bargaining unit rate. Plus, at least in the beginning stages of a strike, your client’s productivity is going to suffer in a tremendous way, despite any promises to the contrary by any staffing firm in any industry. While replacement employees may, at some point, equal or exceed your bargaining unit personnel – and in many cases they do – they will not in the very short term.

So, given the costs involved, picking the right staffing firm is key. Some of the things that I’ll go through in just a few minutes are how to avoid hidden costs that tend to creep into service agreements that you reach with staffing firms, and how to take preventative steps to eliminate “ghosting,” which is the industry term for charging customers for employees who never actually performed any work. To make sure that you are able to minimize costs for your clients, we’ll talk about how to guarantee what I call “Administrative Integrity” from staffing firms.

Finally, I think that to us lawyers, the selection of the right staffing firm can dovetail nicely with our overall efforts to help our clients with their contingency planning. Like many of you, I have used thorough contingency planning as a means to convince the union that its not in their best interest to take the company on. Having confidence that the client has selected the right staffing firm definitely plays into that overall effort.

So, as you can see, there are many reasons to really button this piece of your client’s contingency planning down. And now, let’s go over some specifics.



What's the Issue?

- Crisis staffing is the single most important component of successful strike contingency planning

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So, let's get started by looking at the big picture. Why does it really matter what staffing firm your client selects as they plan for a strike? For me, and I trust for many of you, the answer is simple.

What's the Issue?

- Crisis staffing is the single most important component of successful strike contingency planning
 - Productivity

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The reason you, as labor lawyers, should care about your client's selection of a staffing firm is because, more than anything else, this is an issue that can make or break a strike. And there are a few reasons why.

First and foremost, when your client replaces its bargaining unit with temporary replacement workers during a strike, it still has to fill customer orders, maintain service levels, and get its goods to market. Selecting the wrong staffing firm could force your client into a position where it simply cannot operate, despite its most sincere desire to continue. Not only does this have a devastating impact on the bottom line, but there is no faster way to a management-side collapse at the bargaining table than an inability to operate. So, picking a vendor who can provide your client with a productive workforce – and not just warm bodies -- is critical to making sure that your overall contingency plan will work.

What's the Issue?

- Crisis staffing is the single most important component of successful strike contingency planning
 - Productivity
 - Cost

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While the hourly wage rate of temporary labor is almost always less than the fully-loaded rate being paid to members of a bargaining unit, there is no denying that the overall costs associated with temporary labor can be staggering. In addition to wages, your clients could be required to pay to transport and house a replacement workforce if they can't or choose not to recruit locally. In addition, there are some potential costs of which your client should be aware that will be addressed shortly. Suffice to say, replacement labor costs are often the single biggest cost factor in a strike contingency plan, followed by security costs and legal fees.

What's the Issue?

- Crisis staffing is the single most important component of successful strike contingency planning
 - Productivity
 - Cost
 - Nothing succeeds (at the bargaining table) like success (in the plant).

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I have been doing this long enough to recognize that effective contingency planning can sometimes help avert a strike altogether, or shorten the life of a strike. I understand that there are times when parading in a crowd of replacement workers to show union members that you're planning can help to dissuade them from going on strike, but it is far more common for companies like PMG to help shorten a strike by proving to striking employees that the company can carry on. In my experience, there are few things as discouraging to picketers as seeing trailer after trailer full of your client's product pulling out of the facility during a strike. So, in this manner, your client's choice of the right staffing partner can be critical to its success at the bargaining table. I know Dave has mentioned that his most successful clients are the ones who did or had their counsel do the due diligence on their labor vendor. So, hopefully you will get some good ideas from today's webinar to enable you to help your client's through this process.

Company Background

- How long has the company been doing this work?
 - Principals and project managers, too!
- Does the company specialize in a particular industry and, if so, does that serve your client well?
- Recent engagements?
 - How long?
 - How many placements?
- Most recent engagement?
- References?
- Other engagements in your industry, geographical region, etc.
- Biggest challenge you faced with client?
- Legal actions
 - Unfair labor practice charges by or against unions
 - Lawsuits by or against clients
 - State or federal agency actions

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Stated very simply, your client needs to know who they are dealing with before entrusting a significant part of their contingency plan to any given staffing firm.

Engagement Specific Recruitment and Staffing

- Multiple location capability (if applicable)
 - Enough experienced Project Managers?
- Other competing engagements
- Recruitment process
 - What will the staffing firm need to know from the client?
 - Job descriptions with essential functions
 - Safety and training materials
 - Special equipment/operator needs
 - Where and how does the company recruit?
 - How available are replacements in your client's industry?
 - Does the staffing firm envision any particular problems or increased costs as a result of a tight labor market?
 - How will the staffing firm communicate recruitment status/results to your client?
 - What, if anything, does the staffing firm do to prevent "salts" from being hired?



Just as important as knowing something about the company that you're going to do business with is knowing how they propose to handle your client's engagement. Now, that may sound obvious, but the specific inquiries that you should make may not be as obvious.

Your client should also make sure to ask questions about how its specific engagement will be handled, and must learn not to accept generalizations which could conceal either a lack of experience or a lack of corporate structure.

With regard to recruitment, the staffing company should (through its counsel) develop an application that weeds out, to the extent permissible by law, union salts to ensure that our clients are not sabotaged. I know that PMG has done so and claim they haven't had a single incident reported where one of their replacement workers was found to have been planted by the union.

The staffing company should also provide your client with a weekly status report to assure them that they are either on target or to alert them to labor shortages in enough time to react.

Engagement Specific Recruitment and Staffing

- Training Process
 - Will the workforce come trained?
 - Does the staffing firm have any recommendation as to how to train the replacement workforce?
 - What form of safety training is provided by the staffing firm?

- Staffing Process
 - How does the staffing firm handle the assembly and assignment of its workforce on a daily basis?
 - How is timekeeping handled?
 - What is the ratio of project managers to workers?
 - How does the firm handle performance and disciplinary issues? At what cost to my client?



With regard to training, staffing companies are generally looking for a basic skills match. Your clients should be asked for job descriptions and basic training parameters so that the staffing company can provide a workforce that is ready to work on day one. Watch out if they're not asking for that information – they're not being diligent

Oftentimes, training is done right after deployment instead of before a strike begins, generally known as pre-deployment. Where the high skill level of a workforce necessitates pre-deployment training, this approach enables your client to avoid committing major dollars too early, when a strike is merely a prospect, and sends a signal to the bargaining unit that the employer is preparing, so it needs to think twice about that last offer in negotiations. Once the temp replacement workforce is assembled, the staffing company should be able to provide pretty much whatever type of training the client requests.

Time management raises the topic of a dirty little secret of the staffing industry. Certainly not every company is guilty of ghosting, but there are enough who do it to have coined the phrase, and it certainly does exist. Where possible, make sure your client uses a time card system with the temp employees, and that an employer representative signs off on the number of workers assigned at the start of a shift. In this manner, the employer knows that he is paying no more than what he's getting.



Productivity

- Worksite productivity
 - Can the staffing firm give you an idea of average productivity numbers?
 - Does the firm ask your client about their performance standards?
 - Does the firm use any metrics/performance standards?
 - Are the standards appropriate for your industry?
 - Does the firm provide a productivity timeline?

- Turnover and attendance
 - How does the firm address the high turnover rates typical of temporary workforces?
 - How does the firm address attendance issues?
 - What guarantees are provided that the workers will be the right fit for the job?

Costs

- A myriad of costs
- Some wholly unavoidable. For these, it's a matter of managing your client's expectations
- Some costs could be "sleepers"
- Most costs are negotiable to some degree

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Finally, we'll talk about some cost factors of which your clients should be aware.

Costs

- Particular costs to be aware of:

- Recruiting/sourcing fees
- Hourly rates
- Overtime
- Support/administrative charges
- Lodging
- Meals/per diem
- Travel
- Billing Terms



Most staffing companies charge some kind of recruiting or “make ready” fees up front. While this cost is justified particularly where the type of job is highly skilled, make sure your client pushes and negotiates here. Staffing companies use these fees to cover some of their own upfront costs, but often there is room for negotiation, both in the amount of the recruiting costs and for reimbursement if deployment takes place.

Hourly rates are almost always negotiable. OT should be paid in accordance with state laws, but I’ve seen clients successfully negotiate reduced OT billing rates. Also, staffing companies often try to secure as much OT as possible – their workers want to work lots of hours, and the staffing company wants to bill for lots of hours. The industry standard is usually 60 hours, 40 regular and 20 OT.

Hourly charges for administrative supervisors and support staff is another ripe area for negotiation. These on-site supervisors play important roles, but I make it a practice to counsel my clients to push hard on these hourly fees – particularly on larger projects. Also, make sure the staffing company doesn’t try and push too many supervisory or support staff onto a project. The replacement workforce should be lean, not overburdened with overhead. Also, much of the administrative duties should be covered back in the staffing company’s headquarters. On one large project, the client actually negotiated all the supervisors/coordinators for free – make sure you determine the needed number before taking this approach as the staffing company might be inclined to understaff free resources.

Lodging, per diem and travel should all be passed along at the staffing company’s cost. Don’t let them charge upcharges, they shouldn’t be making profits on the lodging and travel. Make sure your client collects receipts. If your client chooses to pay for lodging directly, be sure to counsel them to have the hotel shut down all incidental services such as telephone and pay tv. I’ve seen some disastrous invoices as a result of “extra charges”.

The staffing company will likely seek billing payment terms that are more concentrated than what your client is used to. This is mostly because it is liable to pay wages under state wage and hour laws. Its compliance with these laws that generally drive billing terms.

Q&A



- As a general statement, the staffing company should be upfront with its client about all costs that they could be exposed to. They should act like their goal is to have repeat customers and referrals, not one time clients.

- To summarize what we've covered, I believe you'll do your clients an invaluable service and advance their contingency planning goals by helping them select the right labor vendor. There are many aspects of the relationship that will need your attention, and on which your clients could use help. The key considerations, from my perspective, are knowing who you're doing business with, knowing how they intend to keep you operating, and knowing what it is going to cost your client.

I think I've covered the areas that are most important to labor counsel. And on that note, we would like to turn it over to participants for questions and/or comments.

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or the nature of your labor crisis,***



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Okay, if there are no other questions, I'd like to encourage you to contact me when and if your clients are in need of a labor staffing firm. My contact information is displayed.

I'd also like to invite you to schedule a complimentary web-based presentation regarding PMG's services. The presentation takes only about 30 minutes, and can be done from the convenience of our respective offices. If, as a result, there is a specific need or an interest in pursuing business further, I would be happy to meet with you or your clients in person.

PMG values long term relationships, not one time encounters with its clients. We want to be known as the most competent and trustworthy labor vendor to partner with during a strike, and we hope that today's presentation furthers that.

Well, thanks for participating and everybody have a great day. Happy Holidays!