MANAGEMENT BLIND SPOTS

GETTING ACCURATE INFORMATION ABOUT YOUR WORKFORCE

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A. Introduction

Countless studies, as well as learned experience, demonstrate that employee dissatisfaction and lack of engagement lead to negative organizational outcomes: seeking out a labor union, quitting, or filing lawsuits against a company. All such decisions impose significant costs on an organization, in terms of time, money, distraction, lost expertise, and a domino effect of morale lowering for other workers. Avoidance of these issues depends on a multiplicity of factors; however, one mitigating effort could be a fresh, scientific approach to positive employee relations, supervisor engagement, and supervisor assessment.

Michael Lewis wrote “Moneyball” and “The Big Short,” among other fascinating books. Recently, he wrote a book called “The Undoing Project” about two Israeli psychologists, Daniel Kahneman and Amos Tversky.1 It is, at heart, a love story about how two colleagues, working together, developed fascinating theories about decision-making and the way the mind works. Kahneman eventually won the Nobel Prize in Economics for this work. (Tversky unfortunately died of cancer before the prize was awarded.)

How does this apply to good supervision, employee retention, positive employee relations, and remaining union-free? Kahneman and Tversky’s studies include analysis of the reaction of individuals to both positive and negative choices. Their insights should inform how we communicate with employees. People are more risk-tolerant when faced with negative choices and more risk-averse when faced with positive choices.2

Behavioral psychology can teach us a great deal about why people make decisions. It also sheds light on how we as human beings ignore relevant information when assessing the motivations of others. Whether in a union organizing campaign or in trying to convince employees to stay when a competitor comes knocking, organizations spend a great deal of time assessing individuals, their motivations, their desires, and their needs. To make those assessments, organizations rely upon different types of information—some accurate, some inaccurate. We have learned over many years of interviews, campaigns, and organizing attempts that the people who should be best at providing individualized employee assessments—direct line supervisors—are often the worst. Kahneman and Tversky can tell us a lot about why that happens.

B. Combating the Tendencies of the Mind

1. Insight One: Pollyanna Was Right—Positive Is Better Than Negative

In any type of campaign (union organizing, political, employee engagement) or a trial there are usually two kinds of themes. There are positive themes like taking a stand on big accomplishments, great supervisors, good company culture, excellent benefits, a respectful workplace, a safe work environment, etc. Alternatively, there are negative themes like weaknesses of competitors, corruption, failure to fairly represent charges filed against unions, hidden costs, lack of leadership, etc. All of these facts are useful and most companies want their

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2 Thinking Fast and Slow, Daniel Kahneman, Farr, Straus & Giroux (2011).
employees to have all the information when making a decision about their future or on union choice.

Behavioral psychology tells us that positive themes make employees less risk tolerant. Less risk tolerant employees are more likely to stay in a workplace, more likely to excel in a workplace, and more likely to have limited interest in a labor union. Imagine an employee telling an employer “I’ve been offered a job with more money, better benefits, and greater flexibility.” Or, “The union is telling me – we’ll get you more money, more benefits, more, more, more.” If your company’s counter-argument is – here is how WE help you, here is what WE do, this is how WE care – you are more likely to be successful. The ability to tell this story puts you in a better position to retain talent and remain union free. Telling this story makes your employees more risk-averse.

On the other hand, if your main message is “we know we are not great, but that union/competitor is even worse,” you make your employees more risk-tolerant.

This is not just useful in union organizing, it is also important to talent retention. Bad or mediocre work environments make it easier for people to take a risk on a new job, a new opportunity. If you have ever considered leaving a great company for another potentially great opportunity, you understand how difficult that decision can be.

2. **Insight Two: Blame the Mind – Why We Make Bad Judges of People**

Kahneman, Tversky, and a host of other psychologists think about the brain as encompassing two systems: System 1 and System 2. System 1 is the intuitive side of the brain and it is evolutionary. Humans used System 1 to determine if the cave man who showed up at the watering hole wanted a drink, or wanted to murder you and steal your food. System 1 is described by the theory of “What YOU See is All there Is (WYSATI).” Stated differently, our brains are hard-wired to take incomplete information and create plausible, believable stories. Humans trust System 1, even when we do not have the evidence necessary to trust it.

System 2 is the more logical, deliberate, reasoning part of your brain. System 2 does not help you make quick, split-second decisions. System 2 is harder for people to access. It takes more time and more energy to use System 2, so we as human beings, have a natural tendency to let System 1 take over.

This psychological phenomenon causes leaders to make inaccurate forecasts all the time, but especially about people and their intentions. In our experience, we have seen this manifest itself in hundreds, if not thousands of supervisor interviews.

3. **Insight Three: How You Say Something Affects How People Respond**

When you hear “the Eagles won the Super Bowl in 2018,” it triggers a response and memory. Perhaps you remember the famous fourth down where Philadelphia scored on a trick play right before halftime. However, if you hear “the Patriots lost the Super Bowl in 2018,” it triggers a different response and memory. Perhaps you think of Tom Brady fumbling the ball with two minutes to play, sitting on the field with his hands on his knees, dejected. Both of these statements, Eagles Won and Patriots Lost, describe the exact same event. They generally trigger
very different responses. This is “framing” and it is important to any discussion about communication and judgment. When we teach our leaders how to discuss important changes or work modifications, we must always be cognizant of framing. Good leaders are cognizant that actions certainly say things, but more important sometimes than the message, is how we deliver the message.

Perfectly legitimate and valid changes in the workplace, delivered by engaged supervisors who care about their employees – can still cause significant emotional stress in the workplace. Our brains respond to framing issues differently and we must always be cognizant of what we want to say. It is not just about putting a positive “spin” on things. It is a deeper problem. Being honest in our communications is key, but honest differences in how we deliver the same conclusion will have significantly different results.3

C. The Practical Applications of These Ideas

For years, practitioners have stressed the common-sense approach of improving communication within a workforce as a means of building positive relationships of trust and mutual success. These ideas are not new, but understanding why they work and why they are important can tell us a great deal about the strength of an organization, and its vulnerability to raids from competitors/unions.

In the union organizing sphere, the threat of unions targeting your workforce is growing. With years of declining membership and the Supreme Court’s recent decision in Janus v. AFSCME, Council 31,4 unions are set to lose major, formerly safe, sources of revenue. While Janus’s direct impact is on public sector unions, its indirect impact on private employers cannot be understated. Unions face an “adapt or die” scenario. Desperate times call for desperate measures.

As unions lose public employee funds, they will seek to replace that revenue. Making sure the most important link in your chain, direct line supervisors, are effectively leading and accurately gauging employee morale is imperative. Unions are targeting new industries and new employee populations in an effort to swell their ranks, and, therefore, their bank accounts.

The first step is to understand weaknesses on a granular level. Certainly, your organization reviews compensation studies, benefit analyses, market trends, etc. to understand your weaknesses and strengths in the market and remain competitive in your industry. What do you do for the soft side? How do you ensure that you (and your line supervisors) are connecting with employees? How do you assess your leaders to ensure they are not the weak link in the leadership chain?

In almost every toxic work environment we encounter, we find supervisors who are more problem than solution. What if you could recognize and react to that before the union organizing drive or before your best talent walked out the door? Engagement surveys, roundtables, employee meetings, 360 reviews, these are all useful and many employers do some version of

these things, but understanding how both your supervisors and employees approach each other is vitally important.

New tools, harnessing technological developments, make gathering information about employees significantly easier.

**Data analytics.** Organizations have been for some time storing significant volumes of data about the workplace, often siloed into different data streams: employment background and skills, safety records, training records, email records, personal information like date of birth, performance reviews, time records, productivity, and on and on. Over time, companies have developed more technology-driven ways to collect, analyze, and operationalize the data. When an organization is harnessing the data available to their organization about people, they are engaged in people analytics. There are three types of analytics you hear a lot about:

(1) **Descriptive analytics** – this is what happened in the past, like how many people applied to work at your organization.

(2) **Predictive analytics** – this is what could happen. Stated simply, predictive analytics is using historical data to make predictions about the future. An employer reviews information from the past to determine the likelihood of a future outcome. Predictive analytics allows HR leaders to make data-based decisions about the future relying on mathematical models.

(3) **Prescriptive analytics** – this is what we should do. Prescriptive analytics is focused on finding the optimal or best course of action in a defined situation. Multiple outcomes for different decisions are predicted based on various variables.

**Artificial intelligence.** Organizations are also increasingly using artificial intelligence (AI) to make employment and strategic decisions like training and advancement planning through the use of big data. One example that may startle you, is that right now, through the use of data analytics and AI tools, organizations are able to, for example, look through calendar entries and emails to predict which employees are likely to leave within a year and then relying on these insights make decisions like coaching and counseling and even retention decisions. Tools on the marketplace already, utilize a variety of AI techniques to synthesize employee feedback to identify core themes for management to consider and are designed to surface perceived strengths and weaknesses of organizations and promises to guide leader to the right course of action based on the feedback.

**Wearables.** Another “wave of the future” is wearables. Wearables usually involve a combination of robotics and artificial intelligence. A wearable can be eyewear, wrist wear, headgear or other computer-powered accessories that give multi-tasking employees more flexibility to do their jobs. While the most common goal for wearables is an effort to make warehouses and manufacturing more efficient through the use of technology, wearable technology has the ability to collect data about the wearer, including information that can lead to psychometric analysis about the wearer’s mood, disposition, and engagement. Indeed, wearables have employee relations components even when they do not seem like it – many have management, training, and tracking components.
But What Can an Organization Do with the Information? As the examples above show, gathering information is essential and increasingly easy, but if an organization misinterprets the data, it is useless. For example, if your supervisors are misinterpreting their employees, their feedback is not meaningful, or contains too much “noise” to assess the situation. The same holds true for human resources professionals. This propensity to misinterpret questions to avoid difficult answers raises another important point. Supervisors and human resources personnel often engage with, and then describe their employees using the concept of What You See Is All There Is. There are two key ways to recognize and combat this phenomenon.

First, challenge your supervisors and human resources personnel to create lasting, respectful relationships with their employees. Teach them to understand the problems with System 1 thinking and force them to dig deeper. Management and human resources need not be intrusive to get to know your employees. It just takes time and availability. Make the effort to know them.

In a union organizing campaign or a raid on your talent, you must assess the information given to you by the people who should know your employees the best – direct line supervisors and local Human Resources teams. If those individuals do not have the proper relationships with employees, you will not receive accurate information necessary to combat the encroachment. We have found repeatedly that the biggest indicator a management team is part of the problem is when they have very little knowledge about employees.

Second, there are legions of studies about what makes most employees unhappy at work. Employees want to be treated fairly, respected, valued, considered “part of the team,” and they want reasonable compensation for the work they do. Almost all of these issues are directly within the control of direct line supervisors and human resources. A laser-like focus on supervisory training and on selecting the best people to fill those roles should be a top organizational priority.

D. Resources

Ogletree Deakins provides a host of nuanced, tailored training programs and assessment tools to improve supervisor communication and engagement. Based on these ideas we have also developed supervisor assessment tools that help organizations gauge the engagement not only of the employees, but the supervisors themselves. We can take some of the guesswork and some of the “gut” out of these assessments. By understanding the right questions to ask and properly gauging the responses against “What You See is All There Is”, the data we collect provides a more accurate assessment of vulnerability to competitors and union organizing. The below is just a sample of the approach we take to assist in these areas.

1. Selection of Supervisors and Managers

The best and most effective communication with employees is through their direct supervisor. They are the ones who deal with the employee on a day-to-day basis. The direct supervisors are also the ones who know or should know what issues may be unresolved and cause an employee to think that a union might be the solution of the problem.
Most union organizing and employee exodus are caused by supervisor misdeeds. Therefore, it is important for supervisors to know what behaviors send employees to unions and conversely know what traits make one an effective supervisor. When selecting a supervisor you should look for the following skill sets:

- Good communicator
- Honest
- Approachable
- Team builder
- Gives praise
- Gets results
- Diversity-conscious

Rarely will every supervisor exhibit all of these traits. Therefore, it is important for companies to constantly train supervisors and reinforce these behaviors. It is proven that such an investment in time and training not only pays off in more productivity but also is effective in keeping unions out.

2. **Practicing Positive Employee Relations: A Summary Checklist**

Studies show that employees tend to be dissatisfied in the workplace based on such issues as a lack of appreciation of work, a feeling that they are not “in” on things in the business, and an insensitivity to personal issues and problems. These are issues that arise primarily at the level of first line supervisors and second level managers who deal on a daily basis with employees who may seek out a union.

Supervisors and managers should be trained on and held accountable to maintaining positive employee relations. While there are a number of different approaches, the basics emphasize the following characteristics:

- Communication: Keep employees informed and avoid sudden changes without adequate explanation.

- Complaint Resolution: Encourage use of the Open Door Policy, but better yet use the “No Door”/Management by Walking Around to hunt down issues and concerns.

- Credibility: Be truthful, informed, and competent. Back up what you say with what you do.

- Commendation: Show appreciation for good work and extra effort by both individuals and the team. Find ways to recognize average performers, too. Avoid overworking the best performers.

- Compassion: Show interest in personal and job-related problems and concerns.
• Concern: Preserve team member dignity and self-esteem.

• Cognition: Be sensitive to the attitudes and moods of team members – if they change, find out why.

• Consistency: Ensure your daily practices conform to company policies. Be fair in the application, and prevent inconsistency and favoritism.

• Coach: Try to develop and improve poor performers.

• Counsel and Correct: Work to eliminate mistakes and give opportunities to improve. Aim to be corrective, not punitive.
Management Blind Spots: Getting Accurate Information About Your Workforce

Presented by
Matthew J. Kelley (Indianapolis)
Jennifer G. Betts (Pittsburgh)
What Are We Hoping to Gain?

- A Better Working Environment
- Trust
- How Your Supervisors Can Reinforce
  - Your Business Model
  - Your Policies
  - Employee Morale Issues Every Day and in an Organizing Environment

What Are We Hoping to Learn?

- Stage 1 – Why Do We Care – The Importance of Supervisors
- Stage 2 – The Mind is a Terrible Thing to Trust
- Stage 3 – Understanding Why This Matters to Your Workforce
- Stage 4 – Applying the Knowledge to Supervisors to Better Evaluate and Train Leaders
- Stage 5 – Chance Favors the Prepared Mind
Stage 1 – Why Do We Care

Describe for me, in one word, your ideal supervisor.
Trust Is Essential

- In any context, but especially a workplace in flux, trust is the currency of the realm
- Supervisors are always the merchants
- Good supervisors assist us in analyzing problems in a workforce, mitigating legal risk, enhancing employee engagement, and minimizing the likelihood of union organizing

Survey Says!

- 77% of the reasons people think about quitting their jobs can be attributable to supervisors (Gallup)
- 60% of employees say they have left jobs, or would consider leaving because they don’t like their supervisors (Randstad)
- 64% of workers say their supervisors don’t give them enough support (Mental Health America)
Survey Says!

- 48% of workers without supervisor support have the incentive to perform their best work vs. 88% of workers who have their boss’s support (APA)
- 39% of workers without their supervisor’s support experience job satisfaction vs. 86% who have their boss’s support (APA)
- 22% of workers without their supervisor’s support described their organization as a good place to work vs. 79% who do have their boss’s support (APA)

Stage 2 – The Mind is a Terrible Thing to Trust
Finding Home “Base”

- Assume – your business had a union election last year
- You have 100 employees
- The vote was 75 for “No” to 25 for “Yes”
- You have had relatively low turnover in the year.
- The Union has returned again and is trying to get more support for another election.
- What is the probability that one of your employees is a union supporter?

WYSIATI

- Pat is an average worker.
  – Technically proficient, he does only what you ask him nothing more, but you do not need to check his work and you are comfortable he will do the work correctly.
  – Never signs up for voluntary OT. Never volunteers to be on a committee or take part in safety meetings. Keeps to himself but will challenge supervisors when he thinks they are wrong.
  – Talks with two or three other guys on a job site (one of whom is a known union supporter). Whenever you approach, they stop their conversation.
  – Pat is sometimes late to work and has left early without telling anyone on several occasions.
If you had to guess the probability that Pat supported the union organizing drive last year and might support it again now, what would you say the probability is now that you have this additional information?

10%
25%
50%
100%
Something Else?

WYSIATI

What assumptions did you make about Pat?
WYSIATI

What...You...See...Is...All...There...Is

Stage 3 – Why This Matters
I offer you a choice, you must play my game. Either a coin flip - Heads you win $1000, Tails you win $0 OR I will pay you $400 not to flip the coin. Which do you choose?

- The Coin Flip
- The $400

The $400
The Coin Flip
Kahneman and Tversky

- People who are faced with two negative outcomes tend to gamble, but people faced with two positive outcomes tend to be risk-averse.

- What does that tell us about union choice and employee retention?
Stage 4 – Applying the Knowledge

Effective Communication

- Combat WYSIATI
- Both for yourself and for your employees
- Starts with **being available**
Can Technology Help Engagement?

- Consider gamification
- Peer-to-peer recognition
- Social interaction through tech
- Micro-targeting

Is tech important? Probably...
A survey of 1,000 millennials conducted by Microsoft showed that 93 percent cited modern and up-to-date technology as one of the most important aspects of a workplace.

But... A study from Adobe found that millennials value interpersonal interaction over digital interaction at work.

Effective Communication

- Think Back to Your Childhood
  - “Dad – Can I go down the park after dinner?”
  - “No.”
  - “Why?”
  - ...
Other Negative Leadership Styles

- Do your supervisors engage in:
  - Moving away behaviors?
  - Moving against behaviors?
  - Moving towards behaviors?

Moving Away Behaviors
Moving Against Behaviors

Moving Towards Behaviors
Poll Question
- Will you take a gamble that offers a 10% chance to win $95 and a 90% chance to lose $5?
  - Yes
  - No

Poll Question
- Would you pay $5 to play the lottery that has a 10% chance to win $100 and a 90% chance to win nothing?
  - Yes
  - No
The previous experiment illustrates a phenomenon called framing. We all do it.

If we are talking about the 2018 Super Bowl and I say to you the Eagles won, your reaction is different than if I say the Patriots lost.

That is framing. Two methods of describing the same outcome produce wildly different result.

Stage 5

FORTUNE FAVORS THE PREPARED MIND.

LOUIS PASTEUR
Do You Recognize This Woman?

Is Technology a Way to Identify Your Blind Spots?

- Predictive attrition tools
- “Data exhaust” analysis
- Psychometrics

Big Brother is Watching
What Can You Do?

- Be comfortable with your ability to assess and CREATE the proper working environment to avoid an organizing campaign
  - Challenges identified
  - Respectful environment
  - Empathetic leadership
  - Awareness of site health indicators
  - Tactical awareness
  - Engaging environment

Finally...one last thing you can and should do?

Be Mindful of Your Perceptions
Questions?

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Presented by
Matthew J. Kelley (Indianapolis)
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Jennifer G. Betts
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Jenn Betts represents employers in all areas of labor and employment law, including discrimination, harassment, whistleblower, retaliation, class and collective actions, non-competition and non-disclosure covenants, union campaigns, collective bargaining agreements, and unfair labor practices. Jenn works with clients in an array of industries including retailers, manufacturers, technology companies, banks, and in the energy sector.

Jenn regularly litigates cases in federal and state court, arbitration, and in front of relevant administrative bodies, and represents employers in obtaining and defending against injunctions. Jenn has successfully represented employers in discrimination, traditional labor, wrongful termination, and wage and hour claims, including class and collective actions.

In addition to actively managing litigation, a significant portion of Jenn's practice involves training, proactive counseling, and conducting audits on subjects like the impact of technology on the workplace, compliance with wage/hour laws, avoiding issues of workplace discrimination and harassment, and managing disability accommodation and leaves of absence requests.
Matthew J. Kelley
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Matthew ("Matt") Kelley received his J.D. from the Indiana University-Bloomington School of Law in 2008. While attending Indiana University-Bloomington Mr. Kelley served as the Executive Notes Editor of the Indiana Journal of Global Legal Studies and competed in the Phillip C. Jessup International Law Moot Court Competition.

Originally from Kingston, Pennsylvania, Matt earned an undergraduate degree from Towson University, while garnering academic all-conference honors as a collegiate golfer. Matt also holds a master's degree in Russian Studies from Indiana University-Bloomington. Matt spends his spare time spoiling his two children, reading, riding motorcycles and playing in competitive golf tournaments across Indiana.

Matt currently handles a wide-array of employment and labor law issues, while specializing in the area of traditional labor law, working with employers on a variety of traditional labor issues.