

Labor law protects nonunion workers' right to compare wages

By **DON McINTOSH**
Associate Editor

At nonunion Jerry's Home Improvement in Eugene, employees knew the rule: Don't discuss your wages with co-workers. Such rules are common in workplaces throughout America. They're also illegal.

Under the National Labor Relations Act, sharing information about wages, benefits, and working conditions is a protected right, even in nonunion workplaces. But few employers or employees know that.

Richard Ahearn, Seattle regional director for the National Labor Relations Board (NLRB), thinks many nonunion employers have policies discouraging or prohibiting co-worker wage discussions. Ahearn's agency administers the National Labor Relations Act. Most people who are familiar with the Act know that it spells out workers' right to unionize. But it also protects workers' right to "engage in . . . concerted activity for mutual aid or protection." And that includes discussing wages.

Trouble is, in most nonunion workplaces, there's nobody there to inform employees of their rights, Ahearn said. It's a rare worker who knows that it's illegal for an employer to ban wage discussions. It's even rarer for a worker to report it. Employees are normally named when they file charges with the NLRB, so their employer knows who filed the charge.

At Jerry's Home Improvement, the no-discussion-of-wages rule was challenged by a former employee, Marshall Lampkins, who had been fired for other reasons.

The "Pay and Compensation Confidentiality policy" in the Jerry's Team Member Orientation Handbook was plainly illegal. "Team Member pay rates and compensations are confidential and are not to be discussed or compared among Team Members," the handbook stated. "How much you earn is your business and yours alone."

Andrew Lewinter, Lampkins' attorney, said the discussion-of-wages case goes right to a core purpose of the National Labor Relations Act.

"The union is the institutional embodiment of the right that is pro-

ted by the National Labor Relations Act," Lewinter said, "but the right itself is that employees can get together and act in their mutual interest."

In April, Jerry's settled the charge by agreeing to remove that clause from the employee handbook, and post a notice announcing the change. Case closed. But lots of other nonunion employers still maintain those rules.

"We recommend that [employers] caution employees against discussing compensation," says Judy Clark, president of HR Answers, a Tualatin-based human resources consulting firm.

Clark, who has 35 years in the HR profession, thinks there's a shift under way. In the past, companies were more likely to outright prohibit employees from discussing their wages with co-workers, and even consider it grounds for discipline. Today, Clark said, employers are more likely to say something like, "We believe the pay information of individuals is very sensitive . . . so we ask that you use significant discretion in any conversation regarding pay." That avoids violating federal labor law, while still discouraging pay comparisons.

Clark said employees may not know all the reasons one co-worker is paid more than another, and that sharing such information can cause dissension and confusion in the workplace.

But there may be another reason to discourage employee wage comparisons: To do so gives employers an advantage in wage negotiations.

There really is a "market" for labor. Employers buy it. Employees sell it. The price, whether wage or salary, is subject to negotiation. The unionized 7 percent of America's private sector workforce bargains collectively. The other 93 percent bargain on their own. Often the bargaining has a "take it or leave it" quality, like when an employer tells a worker what the pay will be. Sometimes the price of labor is the minimum wage allowed by law.

As theorized by classical economist Adam Smith, markets are fair and efficient when they have many buyers and many sellers, and when buyers and sellers are relatively equal. But real-world modern markets are often characterized by inequalities and distortions. One

such, identified by modern economists like Joseph Stiglitz, is "information asymmetry" — when participants in an exchange don't have equal information. Negotiating the price of a used car, superior knowledge of the market or of a particular car may give a dealer the advantage.

Similarly, when negotiating the price of labor, employers often have the advantage of superior information. An employee may agree to work for \$10 an hour, not knowing that a co-worker is getting \$12 an hour for the same work. If the two employees compare pay stubs, the lower-paid worker might use the information to argue for a raise. Knowing co-workers' pay can make a difference.

But American cultural norms sometimes get in the way. In a February 2010 survey of 1,356 employed adults by Harris Interactive, only 33 percent said they were comfortable sharing details of their compensation . . . with their best friend. Even fewer — 15 percent — felt comfortable discussing wages with other employees at their level.

"How much you earn reflects how successful you are," said Tim Besse, co-founder of Glassdoor.com, the company that sponsored the survey. "It's looked on as inappropriate bragging to tell someone [how much you make], and inappropriate to ask."

Increasingly, web sites like Salary.com and Glassdoor.com are getting around this taboo, making it easier for employees to share wage information anonymously.

Salary.com can tell you what Seattle software engineers with five years experience earn. Glassdoor.com goes even farther, telling you what they earn at Microsoft, Amazon, and Ebay. Current and former employees get access to pay information by sharing their own information, without revealing their identities.

Clark, the HR consultant, said the advent of such web sites is making it harder for employers to prevent workers from divulging wage information.

The typical union worker can look at the union contract to know what co-workers make. Non-union workers, on the other hand, need all the help they can get. For workers to share wage information is like a union in embryonic form. And it's illegal for employers to prevent that.

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