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SOCIETY FOR HUMAN
RESOURCE MANAGEMENT

After the Merger: D-Bart Industries

Scenario E: Differentiating Between an
Unpaid Intern and an Employee

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Case Abstract

This case involves a fictitious company, D-Bart Industries, formed by the merger of Davis Manufacturing and Bartlund Technologies, two former rivals in the fabrication of precision parts used in medical equipment and airline manufacturing. It is appropriate for undergraduate or graduate students majoring in human resource or business management. Six scenarios comprise the entire case study; however, this document contains only Scenario E: Differentiating Between an Unpaid Intern and an Employee. The major themes covered in each scenario are:

- Scenario A: Risk management and employee privacy.
- Scenario B: Union decertification, unfair labor practices and maintaining a union-free organization.
- Scenario C: Family medical leave, employee rights, temporary labor and increasing employee productivity.
- Scenario D: Compensable time under the FLSA and preventing off-the-clock work.
- Scenario E: Differentiating between an unpaid intern and an employee.
- Scenario F: Downsizing and performance appraisal.

Teaching note:

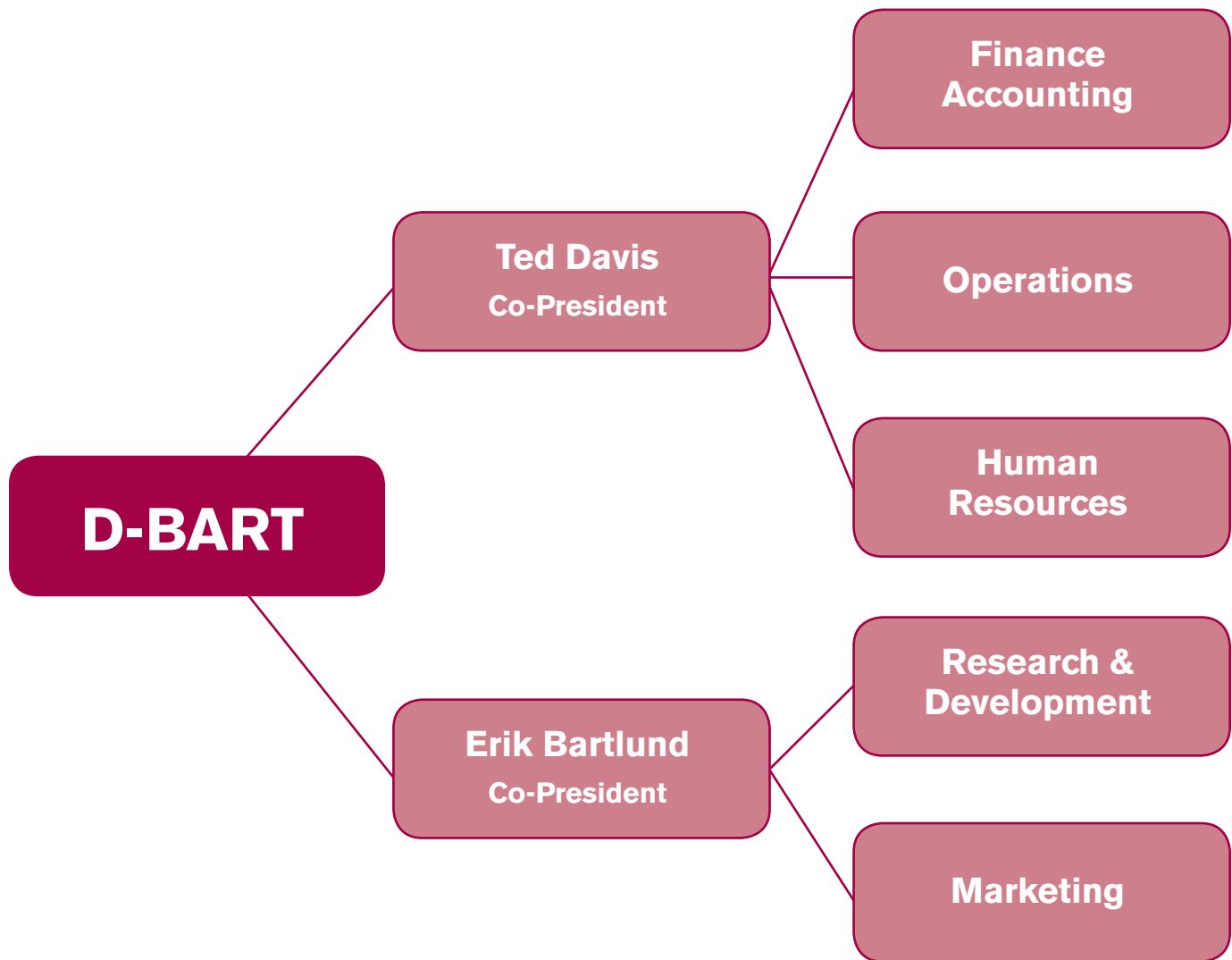
In order to create a student workbook, please make one copy of pages 2 through 7 for each student.

The Organization Before the Merger



After the Merger: D-Bart Industries

The New Organizational Structure and Management Staff



Director of Human Resources Wendy Wright
Lewiston, ID Kendal James, Division Manager
Boise, ID Lois Franklin, Division Manager
Pocatello, ID Rick Stephens, Division Manager

Centralia, WA Mary Haggerty, Division Manager
Medford, OR Ray Houser, Division Manager
San Jose, CA Karen Howell, Division Manager
San Francisco, CA Brad Smith, Division Manager

After the Merger: D-Bart Industries

THE ORGANIZATION

This case involves the recent merger of Davis Manufacturing and Bartlund Technology. Before the merger, the organizations were fierce competitors in the manufacturing of precision parts used in building medical equipment and airplanes. When the economy slowed in 2008 and 2009, it became apparent that the two organizations would have a stronger market presence if they joined forces. The merger was approved in late 2009, and on March 1, 2010, the two former rivals became D-Bart Industries.

This was a true merger of equals, not an acquisition of a smaller company by a larger company, and although Davis and Bartlund had very different corporate cultures, the new leadership team embraced a philosophy of collaboration. There was no power structure being imposed by one company over the other and no assumption that one set of employees had priority over the others. New structures were forming to play on the strengths of each organization. As things changed, nothing was guaranteed and employees were nervous about what was to come.

Because the original organizations were led by very different personalities, it would take some time before a comfort level was established. Bartlund's founder, Erik Bartlund, was an idea man with seemingly boundless energy. He claimed to sleep little, and in the early years of the company, he kept a notepad on his nightstand so he could jot down ideas as they bubbled forth in insomniac sprees of creativity. His notebook was now an electronic tablet, but his ideas were no less frequent, if sometimes a little bizarre. He was always more interested in product design and innovation than in the nuts and bolts of running his company.

As one would expect, Bartlund Technology developed into a creative workplace where risk taking and working outside the box was the norm. Employees had authority to make decisions and the autonomy to structure their work. The dress was casual, and there were lunch-hour games of competitive volleyball in the grass next to the parking lot. Employees brought their dogs to work, and a water bowl and dog biscuit jar were standard in the break room along with coffee and pastry. That was fine with Erik. As long as employees got the job done, produced a quality product, and Bartlund was considered the most innovative in the industry, he was satisfied.

Although Davis had a very different corporate culture from Bartlund, it, too, was highly respected in the industry for its quality products. The CEO, Ted Davis, was a retired Marine who took over the company when his father, the founder, retired. Davis ran a tight ship. True to his military background, he believed in having a procedure and policy in place for every eventuality. He had a top-down management style and liked to maintain personal control over decision-making, a characteristic some employees found oppressive.

It was understood by all that nothing happened at the organization that Davis didn't know about and personally approve.

When Davis production and shipping employees voted to unionize in 2003, Ted was not particularly happy, but he did little to oppose the process, saying that it was their right to do so. This accepting attitude has served Davis well; union/management relations have always been excellent, with a level of respect and cooperation not always found in union environments. The union contracts from Davis were honored by D-Bart with the intent that employees previously represented by unions would continue to be represented by their bargaining units. Bartlund employees have never been unionized.

Both organizations were located in the West. Bartlund had five facilities: Portland and Medford, Ore.; San Jose and San Francisco, Calif.; and Centralia, Wash., Bartlund's headquarters in Portland was the company's newest facility. Davis had its headquarters in Spokane, Wash., and three facilities in Idaho: Lewiston, Boise and Pocatello.

Although there had been no official announcement from D-Bart, it was expected that the merger would necessitate scaling back some facilities, with employees transferred to other locations or laid off. At the same time, other facilities could add new employees. It was rumored that the Centralia and Pocatello facilities would be shuttered and put up for sale. Employees at the Centralia and Pocatello plants were understandably nervous.

Davis and Bartlund worked cooperatively to select a new management team for D-Bart. Davis and Bartlund were appointed co-presidents, with Davis assigned to the day-to-day operations and Bartlund managing the products. Davis had recently relocated to the Portland headquarters, where he was responsible for operations and production, finance and HR. Bartlund managed research and development, product innovation and marketing. He remained in the San Francisco office. Wendy Wright, director of human resources for Davis, was appointed the new HR director for D-Bart, and she also relocated to the Portland headquarters. Although many positions were still vacant, it was expected that the rest of the employees would be a mix of workers from both companies, with no clear power structure that favored one group over the other.

Scenario E: A Learning Experience: Intern or Employee?

Location: D-Bart Industries, formerly Bartlund Technology, San Francisco, Calif.

Players: Erik Bartlund, co-president
Judy Nolan, marketing employee
Samantha Reynolds, marketing employee
McKenzie Hughes and Ryan Greene, unpaid interns

San Francisco had been the headquarters of Bartlund Technology prior to the opening of the Portland facility. It was where the company was founded, and the culture in the San Francisco facility had always been a reflection of Erik Bartlund's personality. Bartlund believed the long-term success of the organization was based on creativity and innovation. Therefore, he wanted the best and the brightest employees for his company. He wanted employees with new ideas and those who were not afraid to take risks.

Bartlund had always encouraged internships. He believed the company's next new product could come from smart young employees who had enthusiasm and creativity in abundance, even if they had little or no experience in the industry. Every summer there was a flock of new interns on the San Francisco campus. Even though change was inevitable when Bartlund merged with Davis to become D-Bart, the San Francisco facility had changed the least. It still carried Bartlund's personal stamp, so it didn't surprise anyone when the unpaid summer interns arrived at D-Bart just as they always had.

In the early days of the company, there would be only two or three summer interns, and Erik Bartlund would personally take them under his wing. There was never any real plan for what they were to learn; they simply followed Bartlund around as he introduced them to various areas of the company, and after a few weeks, they were mostly on their own, moving around wherever there was extra work they could do.

The intern program was now far more structured than it was in the past. D-Bart had an agreement with the university for a specific number of interns, and each came with a learning plan approved by his or her academic advisor. The interns were assigned to a D-Bart mentor who supervised their work and was responsible for signing off on their learning plan at the end of the summer. The interns rotated through various departments for the first six weeks, and for the rest of the summer they were assigned where they were most needed.

It seemed to work well for those participating, but some supervisors complained that nothing got done during the first six weeks of summer because they were busy babysitting a flock of "know-nothings." But the same supervisors who complained also said that after the first couple of months, it was a sweet deal. By then, the interns knew most of the jobs, and there was a lot they could do to help out.

Judy Nolan from marketing was overheard talking to Samantha Reynolds in the break room recently. “It’s such a relief when we get the interns past the learning curve. By the end of July, we can finally get some real work out of them.”

“Yeah, I love August,” agreed Samantha. “It’s payback time for all the coddling we have to do early on. I’ve got two of them this year, and I’ve got them working on next winter’s marketing plan. They’re getting things far enough ahead that I think I can take the week off right after Labor Day. They can cover for me while I’m gone. I decided I could get some vacation time in before they all go back to school.”

“Me too,” said Judy. “I’m taking Fridays off for the rest of the summer. I think we’ve earned it after all we’ve had to do for them.”

The conversation overheard between two interns was quite different.

“How ya’ doing Ryan?” McKenzie asked when they bumped into each other at the copy machine on the third floor.

“I don’t know, Mac,” he said. “Seems like I’m working all the time, just longer and longer hours.”

“Yeah, me too,” she agreed. “And I’m starting to keep track. Last week I worked 46 hours.”

“Really? Can they do that to us?” asked Ryan.

“I don’t think so,” said McKenzie. “This doesn’t feel like an internship anymore. I think we’re just unpaid flunkies!”

“It sure feels that way. Do you suppose we could send them a bill for all the unpaid labor we’ve been doing?” asked Ryan with a chuckle.

“It would be worth a try.”

Questions

1. How does an employer differentiate between an intern and an employee?
2. When must wages be paid?

Debriefing for Scenario E

A LEARNING EXPERIENCE: INTERN OR EMPLOYEE?

1. How does an employer differentiate between an intern and an employee?

Although there have always been volunteer opportunities in not-for-profit organizations, the use of unpaid labor in for-profit industries is generally prohibited under the Fair Labor Standards Act. Whether the individual is an unpaid intern or an employee depends on the activities done at the worksite. Merely calling someone an intern does not necessarily disqualify their work from compensation.

Criteria for the Trainee or Intern

When *all* of the following criteria apply, trainees or students are not employees under the meaning of wage and hour laws:

1. The training, even though it includes actual operation of the facilities of the employer, is similar to that which would be given in a vocational school.
2. The training is for the benefit of the trainees or students.
3. The trainees or students do not displace regular employees but do work under their close supervision.
4. The employer that provides the training derives no immediate advantage from the activities of the trainees or students, and on occasion, operations may actually be impeded.
5. The trainees or students are not necessarily entitled to a job at the conclusion of the training period.
6. The employer and the trainees or students understand that the trainees or students are not entitled to wages for the time spent in training (Oregon Bureau of Labor and Industries, n.d.).

Criteria for the Training Program or Internship

To be considered an intern or student trainee and not an employee, there must be a learning program in place that includes the following elements:

1. A planned program of job training and work experience related to the student's abilities. The program must include employment skills and be coordinated with learning in the school-based learning component and lead to skill mastery or the awarding of a skill certificate.

2. The learning experience encompasses a sequence of activities that build on one another, increasing in complexity and promoting mastery of basic skills.
3. The learning experience has been structured to expose the student to all aspects of an industry and promotes the development of broad, transferrable skills.
4. The learning experience provides for real or simulated tasks or assignments that push students to develop higher-order critical thinking and problem-solving skills (Oregon Bureau of Labor and Industries, n.d.).

2. When must wages be paid?

An individual providing work for the benefit of a for-profit organization is an employee if he or she is not an independent contractor, a co-partner or engaged in a work-training program that meets the criteria identified above. Work done for the employer's benefit is compensable under FLSA. Most states prohibit volunteer work in any for-profit organization, although legislation defining employees and non-employees can vary by state law (Mortenson, 2010). State and federal regulations are periodically re-interpreted, so it is important that employer policies are up to date.

References and Additional Reading

Kozlowski, J. (2010, May). Unpaid student interns under the Fair Labor Standards Act. *Parks & Recreation*.

Lipka, S. (2010, May 14). Would you like credit with that internship? *Chronicle of Higher Education*.

Mortenson, E. (2010, April 22). Unpaid internships may skirt rules. *The Oregonian*, B1-B2.

Oregon Bureau of Labor and Industries. (n.d.). Interns and trainees. Retrieved October 19, 2010, from www.oregon.gov/BOLI/TA/T_FAQ_Interns.shtml.

Stephenson, C. (2010, June 16). Firms must exercise care in hiring unpaid interns. Minneapolis, MN: Finance & Commerce.

Taylor, S. (2010, November). The lowdown on unpaid internship programs. *HR Magazine*, 46-48.

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