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Posted Nov 17, 2008



ADVICE

‘Free Choice’ seems more likely to pass now

Guest column:

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Rare indeed is the management that believes unionization will benefit the company or its employees. For the rest of us, now is a time for heightened vigilance, for under this new administration a radical change in federal labor law is poised for enactment, and it is a “game changer” that stacks the deck in favor of union organizers.

This new legislation is called the “Employee Free Choice Act.” Some have opined that the name is “Orwellian,” for EFCA quashes “free choice” by effectively eliminating secret ballot elections in union-organizing drives. It accomplishes this by mandating “card check” certification of unions. Under a “card check” regime, union organizers need only collect signatures from a simple majority of the targeted work force, upon which the union is “certified” and the entire work force is unionized.

This “card check” process leaves employees at the mercy of union organizers who, working singly and in groups, track down employees at work and in their homes. Experience shows they often subject employees to misrepresentations, which escalate to peer pressure and then to intimidation, until the employee finally relents and signs a union “authorization card.” So under EFCA the union (“candidate”) can solicit and collect the signatures (“votes”) by pretty much whatever means it deems necessary, and then declare itself the victor – exactly the type of “election” regime one would associate with a totalitarian state.

In addition, under EFCA, if the employer and the new union do not reach a first contract within 120 days, the matter can be referred to a federal “arbitration board” empowered to impose the terms of an initial two-year contract. The prospect of federal bureaucrats determining “wages, hours and working conditions” should send chills down every management spine.

Armed with this statutory club, the union will have every incentive to make inflated demands, knowing that the employer will be tempted to concede rather than risk whatever might be imposed by the arbitration board. In turn, this initial contract will become the template for the next round of negotiations. This gravitational pull toward above-market compensation, staffing levels and work rules will make it extremely difficult for the company to compete, domestically or internationally.

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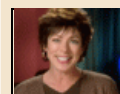
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Organized labor tacitly acknowledges this. Having watched as unionized manufacturers have slipped their grasp by moving operations overseas, or gone out of business entirely, unions are now targeting service sectors that can't readily escape: health care, nursing homes, building services, leisure and hospitality are now among the targets of choice. Should those industries become more unionized under EFCA, companies within them will come to resemble the domestic airline industry, which is notorious both for periodic forays into Chapter 11 and for high mortality rates (when did you last fly Eastern, PanAm or TWA)? Ironically for organized labor, under EFCA the benefits of remaining union-free will greatly increase, and so provide additional motivation for the informed employers and employees alike to resist unionization.

Without secret ballot elections, the run-up "campaign" is also eliminated. This greatly reduces the unions' costs for organizing drives. In addition, the targeted work forces would be subjected to the "persuasion" of professional union organizers without the benefit of hearing the counterbalancing factual information from their employer that comes during a traditional campaign.

And because the union organizers know who has or has not signed, they can focus pressure on hesitant employees until they get to that magic "50 percent plus one." A swarm of union organizers could, within a matter of days (if not hours) obtain the requisite number of signatures. The remainder of the work force needn't even be approached for a signature, and may not become aware that they are unionized and obligated to pay union dues until after the fact.

The coming administration elevates the enactment of EFCA from "possibility" to "likelihood," though uncertainty as to enactment remains. What is certain is that employers wishing to preserve their union-free advantage should not wait for enactment before responding to this threat. Employee signatures are valid for one year – so even now organizers could be quietly collecting inventories of signatures, readying themselves to pounce on unsuspecting companies immediately after enactment, announcing that their workplace is "now union."

So what's an employer to do? Adapt. The tried and true elements of a union avoidance are still effective, but now should be integrated within an ongoing, preventative process. Since many of these same elements are good management practice in their own right, there's no reason not to implement now. Such elements include vulnerability assessments, progressive discipline and open door policies, workplace communication, and supervisor training regarding unions and organizing.

Finally, educating rank-and-file employees regarding the legal and monetary ramifications of signing a "card" will become part of the standard repertoire (such as during orientation), so that they will be less likely to inadvertently provide a signature to a union organizer, and more likely to resist pressure and to alert management should union organizers begin stalking them. •

Thomas C. Wigand is author, along with Jeffrey L. Hirsch of Boston, of the new edition of "Labor and Employment in Rhode Island," from LexisNexis Publishing. Wigand can be reached at 842-0300.

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