

THE BOTTOM LINE

Employee Free Choice Act

Pete Van Dyke and Tony Puckett

How Unions Organize Under Current Law

- “Showing of interest” on “authorization cards”
- Legal significance of authorization cards
 - Legal binding document which designates the union as the signer’s bargaining agent
 - If a union gets a majority of the employees in the appropriate bargaining unit to sign cards, those cards can provide a basis for the union becoming the exclusive bargaining agent for those employees, without an election

How Unions Organize Under Current Law (continued)

- Normally, however, authorization cards are used only for the support for a union's filing of a petition for election with the NLRB
- 30% showing of interest in the "appropriate bargaining unit" needed for NLRB conducted secret ballot election
- If petition filed, employer is notified. Union has maximum support at this juncture; employees have heard only the union's side
- Post-petition process
 - Possible challenges to petition
 - Scheduling election
 - Campaign

How Unions Organize Under Current Law (continued)

- Election
 - Board holds election, normally within 42 days of petition. On average, the election occurs within 39 days
 - Union must get majority of votes cast in the appropriate bargaining unit – i.e., a majority of voters cast a “yes” vote
 - Ties go to the employer

How Unions Organize Under Current Law (continued)

- Post-election process
 - Absent a challenge, if the union wins it is certified as the “exclusive bargaining representative” for the employees in the bargaining unit
 - Negotiations
 - Parties must negotiate in “good faith” – what does that mean?
 - No agency or court can force an agreement, or require one side or the other to agree to something the other side wants

Employee Free Choice Act:

How likely is it to become law?

- #1 priority for organized labor
- In 2007, the EFCA passed the House and had majority support in the Senate, but fell short of 60 Senators needed for cloture. Bill introduced in the 111th Congress (S 569; HR 1409)
- Current composition of the Senate is 56 Democrats, 2 Independents, 41 Republicans, and 1 unresolved race in Minnesota
- President Obama said he will sign it
- ***BUT, the game isn't over!***

Employee Free Choice Act:

How likely is it to become law? (continued)

- EFCA supporters might have a hard time getting 60 votes needed for cloture. The campaign against EFCA is having an impact
- Compromises are being discussed, which would preserve secret ballot, but require a quick election. Other odious parts of the law could remain

Who will be affected?

- Any non-retail business with gross revenues of more than \$50,000/year

Or

- Any retail business with gross revenues of more than \$500,000/year

And

- Employs two or more employees (excluding supervisors)

EFCA: An End to Secret Ballot Elections

- In its present form, EFCA would permit an employer to become unionized by a union presenting a majority of signed authorization cards – No Campaign or Election
 - Under-the-radar union organizing efforts, unknown by the employer
 - Permits union to exert pressure and coercion upon employees
 - No ability of employer to campaign and explain to employees why unions are not good for the workforce
 - No secret ballot vote run by the NLRB

Does EFCA Really End NLRB Elections?

- HR 1409 and S 569 provide:

If the Board finds that a majority of the employees in a unit appropriate for bargaining has signed valid authorizations ... the Board shall not direct an election but shall certify the individual or labor organization as the representative described in subsection (a)

Does EFCA Really End NLRB Elections? (continued)

- Election still theoretically possible, but will never occur
 - Unless union has 75% support at “petition time” it loses a majority of the time
 - Unions will not proceed with election requests if they cannot get a majority of the employees to sign up, unopposed

EFCA: The Probability of Mandatory Arbitration

- Collective bargaining begins within 10 days after the union is certified
- If no contract within 90 days, then a federal mediator becomes involved
- If no contract after 30 days of mediation, then a panel of interest arbitrators sets the contract terms for 2 years
 - Unions have no incentive to bargain reasonably (extreme proposals)
 - No guidelines on how the arbitrator will decide contract terms
 - The arbitrators need have no industry or business experience

EFCA: The Probability of Mandatory Arbitration (continued)

- So, what's the big deal about arbitration?
 - Wages and bonuses
 - Staffing and employment levels
 - Retirement and health care plans
 - Layoffs, promotions, transfers, filling job vacancies
 - Work assignments
 - Subcontracting
 - Closure, sale of business, merger issues
 - Etc.

EFCA: The Probability of Mandatory Arbitration (continued)

- In effect, the nuts and bolts of your business will be decided, potentially, by some panel of arbitrators who might not have a clue about what you are about

EFCA: Stronger Unfair Labor Practice Penalties

- Injunction for interference with employee rights
- Treble (3x) for wrongful or retaliatory discharge
- Civil penalties of up to \$20,000 per Unfair Labor Practices violation (in addition to reinstatement, back pay and notice posting)

What About Possible “Compromise”?

- Unions aren't budging
- Even suggested compromises are terrible
 - “Quickie” elections
 - Union access to employees on company time

LRI Believes Organizing Will Change Under EFCA

- Go after a small, discrete group – “peel and stick”
- Billboard strategy
- “Salting” and “blitzing” high priority targets
- Key point of leverage now and then – *The Card*

LRI Suggests Five Things an Employer Should Do TODAY to Prepare for EFCA

1. Educate key stakeholders BEFORE Congress votes
2. New-hire orientation
3. Early warning system
4. Campaign "In A Box"
5. Positive employee relations "best practices" – Golden Rule; create an atmosphere where unionization is not attractive

Let Congress Know What You Think:

To Find Your Representative

- (202) 225-3121
- www.house.gov

To Find Your Senator

- (202) 224-3121
- www.senate.gov

Tell them to vote NO on Card Check! No on proposed compromises! NO on Cloture! Leave a system that has worked well since the '30s alone!

Special Guest

Jim Teague
Executive Vice President
Labor Relations Institute

THE BOTTOM LINE

McAFEE & TAFT
ATTORNEYS & COUNSELORS

Questions?