



REGIONAL HR UPDATE: NORTH AMERICA

The New Administration - Employee Free Choice Act

| MIKE KENT

The proposed Employee Free Choice Act (EFCA) is potentially the most disruptive new employment legislation proposed by the new administration. It mandates the most sweeping reforms in labor management relations since World War II and shifts the balance of power in organizing efforts more radically than any U.S. labor legislation ever.

In summary, as proposed, EFCA says that if the union can collect cards from 51 percent of the eligible members of a proposed bargaining unit, the company must immediately agree to negotiate a contract. Failure to reach a contract within 90 days requires the acceptance of binding arbitration to achieve a two year contract. If passed in its present form, it is possible that cards can be presented to management with 1) no prior notice that an organizing attempt was underway, 2) no opportunity for the company to present any opposing arguments to employees and 3) most importantly, no secret ballot to avoid the appearance or reality of coercion of workers to sign cards.

I know I'm showing my bias here, but if this is such a great way to determine the will of the people, why isn't the administration also proposing it as the means to elect Congress? To be fair, there is ample evidence of companies (and unions) coercing or trying to coerce workers into voting one way or the other, but at least the current secret ballot, supervised by the National Labor Relations Board, prevents the most obvious and egregious violations by both sides.

The EFCA was passed by the House but not the Senate in 2007 and was reintroduced last March in essentially the same form. It is widely acknowledged to be organized labor's top priority. Obama voted for it while a senator and essentially promised organized labor that he would get it passed in return for their support of his election. Obama has committed to this effort over the objections of nearly every business group in the country.

While the EFCA would not completely eliminate the possibility of secret-ballot elections, in its current form an employer could not insist on a secret-ballot election. It also provides for new, steeper penalties for employer (but not union) unfair labor practices, including punitive damages in addition to back pay and civil penalties in certain cases.

One piece of recent good news: according to a poll conducted for the Coalition for a Democratic Workplace, 73 percent of union workers oppose the proposal to replace the current secret ballot system. While still backing EFCA overall, President Obama and some other former key supporters have recently been reported to be backing away from the bill's card-check provisions. Unfortunately, one of the proposed compromises is to mandate "quickie" elections within 14 to 21 days after the union files its petition with the NLRB. Even this process is expected to vault the percentage of union wins into the 80 to 90 percent range from the current 60 to 65 percent level.

So what can employers do to improve their chances? First, you can support virtually every major HR and business association in their intense efforts to defeat or amend the bill. On a more local level, companies can do the things they should be doing anyway, but now become business-critical, namely:

- Adopt or reinforce a positive employee relations philosophy;
- Orient employees to their rights, such as the right to request the union's latest financial statement;
- Train managers in legal means of communicating your message to employees;
- Promote the true value of the company's compensation and benefits package;
- Survey employees to anticipate problems and craft effective implementation and communication programs to deal with employee concerns; and
- Insure that policies regarding use of company systems and media are updated, communicated and enforced.

The old saying in labor relations circles is that the companies that get unions are the ones that deserve them. EFCA may make it easier for unions to gain recognition, but good companies can still make them unnecessary as a way for employees to be heard and to achieve their career goals. 🌐

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