

October 22, 2008

RE: Unions Campaign To End Free Elections

We want to report to you on organized labor's ongoing multimillion dollar campaign for passage of the disingenuously titled "Employee Free Choice Act" ("EFCA"). If enacted, the EFCA will eliminate free choice concerning unionization by denying private sector employees the right to vote by secret ballot in union representation campaigns. In fact, employees will lose the right to vote on whether they want their workplaces unionized. The House of Representatives voted in favor of this Bill in 2007. If this upcoming election results in a Democratic White House and a filibuster proof majority in the Senate (60 votes), this Bill will likely become law.

Under the current law, when a union claims to represent a group of employees, unless an employer voluntarily recognizes the union, the National Labor Relations Board (NLRB) administers a secret ballot vote. Typically, there is a five or six week campaign period in which both the union and the employer campaign for votes and during which our office engages in persuading employees why remaining union free makes sense. Employees have the opportunity to hear both sides of the issue and then vote in the privacy of a voting booth much like we will do this Nov. 4.

Under the EFCA, if more than 50% of employees sign authorization cards, the NLRB and the employer will have to recognize the new union without a campaign and without a secret ballot vote. Unions and pro-union employees will have a virtual free hand to solicit employees both at work and at their homes and use peer pressure or worse to persuade reluctant workers to sign authorization cards. Under this scenario, those employees who are not contacted by union organizers will have no say as to whether their workplace will be organized. Ironically, though unions think that they should be allowed to organize workplaces by merely coercing signatures, the unions do not want the law to allow employees to decertify or kick out a union by using the same method.

Enactment of the EFCA will require employers to change their approach regarding unionization issues. Employers will need to communicate with employees preemptively and on an ongoing basis regarding unionization issues since employers will not know when union organizers start soliciting employees for signatures. Under the EFCA, there will no longer be a campaign period during which an employer has an opportunity to get its message across to employees. Employers will need to get their message across to employees even before union organizers start soliciting employees for signatures.

Perhaps of equal concern, if a union is successful in obtaining the necessary signatures and is therefore automatically recognized as the bargaining representative for a group of employees, the EFCA would provide for mediation and arbitration between an employer and union during first contract negotiations. This means that unlike current law where an employer is free to reject any proposal that it does not feel is in its interest, under the EFCA, if an employer and union reach an impasse during negotiations, a federal arbitration board will now be able to impose a contract (including a compensation package) on the employer.

Soon after the election on November 4, we will know whether employers are likely to need to adjust their approach regarding union avoidance. For more than forty-five years, our Firm has been at the forefront of union avoidance work. We are prepared to respond to any change in the union organizing environment with new, effective, ongoing employee relations communication programs for our clients to implement.

If you have any questions regarding this legislation or have an interest in participating in efforts by organizations opposed to this legislation, please contact Peter Bennett or me.

Sincerely,

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