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The AFL-CIO Schism: Why Employers Should Care And What They Should Be Thinking About

As most are aware from the headlines about developments surrounding the AFL-CIO national convention this past week in Chicago, two of the largest AFL-CIO unions — the Service Employees International Union (SEIU), and the International Brotherhood of Teamsters — have both withdrawn from the AFL-CIO. Two other large unions — the United Food and Commercial Workers (UFCW) and UNITE HERE (which represents employees in the restaurant, hotel and garment industries) — boycotted the convention, and have stated they may well leave the Federation. On Friday, July 29, the UFCW did just that. The breakaway unions have formed their own coalition, currently known as “Change to Win,” which will have a significantly greater emphasis on union activism in organizing efforts. The Laborers Union, the Carpenters Union and the United Farm Workers are also part of the seven-union coalition. The coalition unions represent approximately six million members, which is more than a third of all union members in the United States, and contribute a large percentage of the dues previously collected by the AFL-CIO. Importantly, the “Change to Win” coalition plans to target these funds to organizing new members.

These are historic developments in the organized labor movement and the repercussions for management should be taken seriously. It is very likely that the AFL-CIO split-up will result in more intense organizing efforts by organized labor throughout the country. Indeed, some labor experts have opined that there are thirty to sixty million employees in the U.S. who would be receptive to joining a union. At a minimum, the split will result in increased competition between the AFL-CIO unions and the Change to Win coalition with more aggressive organizing activity at both the local and national level. Companies in the service, hospitality, retail, healthcare, transportation, technology, financial services, insurance, child care, distribution, agriculture, and government sectors may be particularly vulnerable, and should expect more targeted activism by union organizers. It is also more likely than not that there will be increased use of “anti-corporate campaigns” and other aggressive organizing tactics targeting companies and industries that have large nationwide workforces that cannot easily be shifted or moved outside the United States.

Unionized organizations, in turn, should also expect more aggressive union efforts, both at the bargaining table and in contract administration, to achieve organized labor’s agenda. Union bargaining strategies could include aggressive pushes for national bargaining or industry-wide bargaining and attempts to achieve coordinated contract expiration dates. Employers with both unionized and non-union employees will likely also experience increased pressure to agree to card-check neutrality at their non-union facilities.

In summary, and of particular interest to management, the AFL-CIO split-up could result in at least the following:

- ◆ An increase in organizing activity throughout the country. Simply put, the defecting unions will spend a lot more money on “organizing” activity as opposed to political lobbying. In turn, the AFL-CIO unions may experience pressure from that initiative, and respond by increasing their own organizing efforts in order to stay competitive with the new “model” developed by the alternative federation.
- ◆ The defecting unions likely will increase the use of anti-corporate campaigns (“top down organizing”). The SEIU, Teamsters, UFCW and UNITE HERE, which form the core of the Change to Win coalition, already have a track record of using anti-corporate campaigns in recent years to further their organizing objectives.
- ◆ “Anti-corporate campaigns” refer to union organizing strategies that include: consumer boycotts and other appeals to the public to put external pressure on the targeted company; concerted actions through repeated lawsuits and administrative proceedings to challenge a company’s work practices; and appeals to local politicians, shareholders, and community and church leaders for sympathy and support. Typically the anti-corporate campaign is designed to paint the company in a negative light, and to pressure the targeted company to agree to “neutrality” and recognition of the union based on a “card check” or other showing of interest that does not allow employees the opportunity to vote in a secret ballot election run by the National Labor Relations Board.

- ◆ Bargaining may be more difficult for employers with unions, because the unions will want to have concrete accomplishments to bolster their messages to non-union employees, to fend off potential “raids” by other unions, or to gain card-check neutrality for organizing an employer’s non-union operations.
- ◆ Tensions will arise in state and local labor federations and councils, which depend on coalition unions for a large part of their funding but are subject to AFL-CIO rules prohibiting participation by non-AFL-CIO unions. These issues may arise quickly, in light of AFL-CIO President John Sweeney’s statement on the last day of the convention that disaffiliated unions cannot be “free riders” allowed to “pick and choose” the federations in which they want to participate.
- ◆ There may be more union in-fighting and “raiding” between AFL-CIO and the breakaway unions for members. This could occur with respect to both non-union employees as well as at employers with multiple unions where one union attempts to raid employees represented by another union.
- ◆ Union in-fighting, however, should not lull employers into complacency. Rather, over the longer term, unions may start cooperating more with each other, with an increased focus on particular unions organizing particular industries and “national employers,” rather than allowing individual unions to compete against each other for the same industries or employers.
- ◆ There likely will be a continuing trend for smaller unions to merge with or into larger unions and — perhaps of greater significance — to join together with unions in other countries (“globalization”) to increase organizing and bargaining pressure on U.S.-based employers, both here and abroad, and on foreign-owned corporations with operations in the U.S.
- ◆ Especially within the Coalition to Win group, we will likely see a strong movement toward more centralized control in order to more effectively use union resources to place national pressure on a targeted employer or industry.

In this dynamic climate of dramatic change within the labor movement, it is important for non-union employers to review their human resource policies, practices and procedures to ensure that they are continuing to maintain a positive work environment. This should include a re-examination and recommitment of resources to positive employee relations training and employee communication programs.

Employers should also take this opportunity to assess their potential vulnerabilities in the event of an anti-corporate campaign or other union organizing. Unions often spend months researching a company looking for weaknesses and vulnerabilities before launching a campaign. Now is the time for employers to prepare for the possibility of an anti-corporate campaign or other aggressive organizing tactics. To the extent that an employer has taken actions to make itself less vulnerable to attack, it reduces the risk of becoming a target of union organizing pressure.

These developments in the labor movement are only the beginning. Over the next weeks and months we will see more changes that will shape the future of organized labor. Seyfarth Shaw will continue to monitor and assess developments, and update its clients on these important changes as they occur.

Seyfarth Shaw will be scheduling a number of briefings on these important issues in the coming months throughout the country. We will let you know in the near future when and where these programs will take place.

If you have any questions or require further guidance on how to respond to these important developments, please contact your Seyfarth Shaw attorney.

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