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Prepare now for possibility of Employee Free Choice Act

Educate supervisors on signs, consequences of organizing

By Charles F. Walters & Danny Sikka

The federal legislation known as the Employee Free Choice Act, which was passed by the House of Representatives and had majority support in the Senate in 2007, threatens to drastically increase union representation and alter the collective process throughout the private sector. EFCA, commonly referred to as the "card check" law, first creates a mandatory process requiring an employer to recognize a union as its employees' bargaining representative merely by the union obtaining signed authorization cards from a majority of the employees it seeks to represent. In so doing, EFCA would fundamentally change the way in which employees decide on union representation. Employers would lose their right under the National Labor Relations Act to insist upon a secret ballot election as the vehicle through which employees make this important decision and, in turn, effectively lose their ability to provide their side of the story to employees before they decide on union representation.

Second, EFCA replaces the collective bargaining process established by Congress more than 70 years ago with a completely new process. Presently, the parties are required only to bargain in good faith under the act. Neither side is required to agree with the other's proposals, and no one can force such agreement. Rather, the outcome of collective bargaining is left up to the parties. In marked contrast, EFCA puts the ultimate power to decide the outcome of collective bargaining in the hands of government-appointed arbitrators through an undefined arbitration process. Specifically, this bill allows the parties only 120 days to agree on a first collective bargaining agreement, after which either party may insist on final and binding arbitration to decide the terms of the parties' first collective bargaining agreement. This means that the government-appointed arbitrators, not the parties, will decide the governing

wages, health benefits, retirement benefits, work hours, management rights, and all other terms and conditions of employment.

Given the drastic changes threatened by EFCA, its already strong congressional support, and the looming presidential election, the question becomes: What can and should employers do? From a legislative perspective, employers can work with their congressional representatives, industry groups, and organizations such as the Society for Human Resource Management and the U.S. Chamber of Commerce. In doing so, employers should make sure to highlight the following issues regarding EFCA:

1. EFCA would eliminate employees' right to vote in a secret ballot election.
2. EFCA does not allow employees to hear both sides and make an informed decision about whether they want union representation.
3. EFCA potentially denies employees the right to bargain collectively and allows a third party to impose a CBA.

In the workplace, employers should already be considering how best to prepare for increased unionization efforts, because even if EFCA becomes law, it does not mean that an employer will automatically become unionized. To the contrary, it merely means that those employees who are unhappy and not treated properly will find it much easier to choose union representation. Employees who are concerned about the financial stability of the company, those who feel underappreciated, and those who believe that management is not applying policies consistently, are especially likely to look to unions for help. Therefore, understanding the issues that concern employees is crucial.

Employers can better understand their employees through initiatives such as:

1. Daily lineups in which employees have the opportunity to voice their concerns.
2. Open-door policies for human resources, department heads and general managers.

3. Employee satisfaction surveys.

4. Focus groups.

Of course, while the use of these tools is effective in determining what is important to your employees, a quick managerial response and follow-up is equally important. If employees are asked for their opinion and feedback and do not see a response, they will be even more discouraged with management and more likely to support unionization.

In addition to the above steps, employers may want to consider educating their employees about EFCA and the ramifications of unionization even before it appears that EFCA will become law or that there are signs of a union organizing in the workplace. Although some employers are reluctant to even broach the subject of unionization with their employees for fear of spurring organizing activity, the publicity surrounding EFCA, as well as its strong support thus far, make it risky for employers to take a wait-and-see approach on this issue. Employers should at least consider letting their employees know their philosophy on unions sooner rather than later.

Employers should also educate their managers and supervisors on EFCA and its potential consequences, the signs of organizing activity, and the legal dos and

don'ts of organizing. Managers and supervisors not only are in the best position to alert their employer of union organizing activity, but their day-to-day contact with employees often puts them in the best position to prevent employees from feeling the need to unionize. Therefore, arming managers and supervisors now with the tools to do the above can only help employers in the future.

Employers should also review, develop and/or strengthen their general "preventative policies" in accordance with the National Labor Relations Act's requirements for such policies. These policies typically include solicitation and distribution, bulletin boards, e-mail and Internet use, and access to the premises.

If an employer does not have strong and lawful policies that address these issues, then it will be much easier for a union to organize. There is still plenty of time for employers to impact the potential passage of this legislation. And there still is plenty of time to institute workplace initiatives and policies that will benefit employers, whether or not EFCA ever becomes law.

Charles F. Walters is a partner in Seyfarth Shaw LLP's Washington, D.C. office. Danny Sikka is an associate, also at the firm's D.C. office. ■