

"Are Unions Dead?"

By Kenneth R. Gilberg, Esq.

Much has been written in the news of late about the declining membership of labor unions in the United States. Unions and other pro labor organizations had hoped that the Employee Free Choice Act ("EFCA") recently passed by the U.S. House of Representatives with a 241 to 185 majority would also be passed by the Senate.

It missed passage by only 9 votes. Senator Edward M. Kennedy (D-Mass) had originally proposed such legislation in 2003 and again in 2005. While the Employee Free Choice Act previously did not have much momentum or attention, it does now. Not only are the supporters of the EFCA expecting to gain majority vote the next time it

is introduced they are also attempting to gain the necessary votes to override an anticipated veto from President Bush.

Employee Free Choice Act

Unions have already stepped up their efforts to increase union membership, but if the EFCA had passed it would have made union organizing much easier. Under the EFCA, instead of a National Labor Relations Board (NLRB) supervised, secret ballot election, employers would have to recognize a union when a majority of the company's employees in a representative

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unit signed union authorization cards. If a union was certified through a card check by the National Labor Relations Board (“NLRB”) then the employer and the union would have to begin bargaining within 10 days, and then if a contract was not reached in 90 days, either party could request assistance from the Federal Mediation and Conciliation Service. If a contract was not reached within 30 days after that, the matter could be referred to binding arbitration and the results of the binding arbitration would be a two-year collective bargaining agreement. In short, the EFCA would virtually end 70 years of NLRB supervised secret ballot elections and the right to bargain to impasse, and subject an employer to terms imposed by an arbitration panel.

To discourage anti-union conduct the EFCA imposes significant remedies for violations of the National Labor Relations Act.

Union Organizing Activities

Unions have earmarked millions of dollars for union organizing and passionate individuals are being recruited as organizers. Union information is being disseminated through advertising and the Internet, and political alliances are being formed. Unions recognize their survival is at stake and they are committed to return to power.

What Can You Do Now?

Write to your Congressperson and support management trade organizations. The Senators from Pennsylvania, New Jersey, and Delaware, all support the EFCA. Write to them and suggest they reconsider their position. Support for or against a union should be a personal choice and the NLRB secret ballot process should be maintained. Talk to the representatives from your various trade and community groups and ask them to voice their dissatisfaction with the ECFA.

Pro-Active Labor Relations Components

Regardless of whether legislation makes it easier for a union to organize, it is evident that unions are aggressively trying new methods and ideas to organize workers. Prudent employees will not wait and hope the ECFA doesn’t pass the next time.

What successful strategies can your company utilize to thwart unions’ new organizing effort? In addition to contacting your Congressional representative, you should consider developing and implementing a pro-active/union avoidance labor relations strategy. The components of a pro-active labor strategy include employee recruitment and selection; company culture orientation; fair and competitive wages and benefits; best practices personnel policies

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and procedures; progressive, corrective discipline; educated and trained supervision; effective two-way communications; employee involvement and identification, and audit system/checks and balances.

Communication is Critical

Communication is a key component of any pro-active strategy and it still ranks as one of the best methods to thwart a union organizing drive. Effective, credible, and timely two-way communications help keep employees happy, develop trust, and a commitment to organizational goals and philosophies. With effective communication systems, employees' issues, problems, concerns and complaints are heard by the person or persons who have the power to address and/or resolve them. Perhaps more importantly, employees feel they are kept abreast of what is going on in their company as a whole. When employees feel "in" on things, especially about things that are important to them and can affect them, they tend to identify more with the company. The "us vs. them" dichotomy is eliminated, and employees try to work with their supervisors and management as a team. The net result is increased productivity and quality in a union-free environment.

Communication Programs

What programs can any company implement to build better communications with their employees? In addition to your company's website, bulletin boards, newsletters, etc., there is, of course, e-mail. While e-mail is a fast and efficient way to reach your audience it is difficult to provide emotion in an e-mail and you may not be able to tell if the reader has interpreted it in the way you intended. Other communication techniques that are more personal and two-way include focused employee surveys and feedback sessions, speak-up meetings, employee action committees, online quarterly management/employee meetings, etc. The ways to communicate are endless and it is important to implement a comprehensive program because communication styles, company culture, and the intended audience vary. Whether a company institutes one activity or 20, sound, trustworthy, and timely communications programs will help employees feel good about themselves and their jobs, making them proud to be part of a successful endeavor.

Education and Training

To maximize the effectiveness of the above programs, those who will implement them — usually the first line supervisors — must have good communication and human resource management skills. Supervisory training can provide the communication, motivation and leadership skills a supervisor needs to create an atmosphere in which employees work to improve productivity and quality and find union representation unnecessary. Educating supervisors to recognize the early warning signs of

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union activity and understand management's legal rights also are critical components of training.

Building Trust and Credibility

There is no guarantee that the company that emphasizes communication will not be targeted for a union organizing campaign. However, the use of surveys and other communications systems will give an employer the edge of knowing what issues exist as well as its vulnerability to a union organizing drive. Moreover, through effective communications and management education, an employer can build the trust and credibility that will make it hard for any union to organize the company and that will, in turn, improve the company's productivity and quality. Complacent employers likely will be the first victims of the unions' new organizing techniques. **nj car**

Kenneth R. Gilberg, Esq. is a shareholder in the Employment and Labor Practice Group of the New Jersey and Pennsylvania law firm of Flaster/Greenberg PC. Honored in 2007 and 2006 by the Labor Relations Institute as one of the "Top 100 Labor Attorneys" in the United States, he helps companies remain union free and helps maintain control for unionized clients. He can be reached by email at Kenneth.Gilberg@flastergreenberg.com or by phone at (215) 279-9915 or (856) 661-1900.

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