
Instant Unionization Through the Back Door

Legal Alert

September 5, 2011

Although the union-friendly Employee Free Choice Act (EFCA), “card check” bill seemed dead in Congress, it now appears that the National Labor Relations Board (NLRB) is moving forward with changes that are designed to achieve many of the same objectives, including quick election deadlines that would severely restrict an employer’s ability to oppose unionization efforts. Additionally, the Department of Labor (DOL) has proposed changes to its regulations regarding reporting requirements for employers and third party consultants providing information to employees about unions and collective bargaining and their rights and this too may make it easier for unions to organize workers.

Quickie Elections

The NLRB has proposed new regulations that would require union recognition elections be held in as little as ten days of the date that a union files a request for an election with the NLRB as opposed to the forty-two days generally allowed now. Since most unions organize in secret and do not surface until they have union authorization cards from 65-70% of the employees they are seeking to organize, the shortened election timeframe would give employers a much more limited opportunity to refute union claims, clarify facts and educate their employees about the pros and cons of belonging to a union. Even without the proposed expedited deadlines, unions already win two out of every three union elections!

Notice Posting

All employers subject to the National Labor Relations Act (most private employers) will have to post in a conspicuous place (where employment posters are generally placed) a notice informing employees of their rights under the National Labor Relations Act, including the right to join a union. Also, employers who post information and notices about personnel policies on the internet or their intranet will be required to post the NLRB notice on those sites. The requirement takes effect on November 14, 2011; the specific language to be included in the notice is still being drafted by the NLRB.

Ballots

The NLRB’s initiatives also include the expanded use of mail ballots and internet balloting. Thus, the “secret ballot” may be in jeopardy since employees may vote while union organizers and peers are present. The NLRB’s proposed rule also shortens the time frame to challenge voter eligibility issues and accelerates the time in which an employer must provide voter names and contact information to a union.

Reporting

The DOL’s proposed regulations would increase the reporting requirements for management attorneys and consultants and, in some cases, this may limit or stop attorneys and consultants from providing, reviewing and drafting information for employers to disseminate to their employees about unions and collective bargaining. Even educating supervisors and managers about the legal “do’s and don’ts” regarding unions and union organizational activity may soon require disclosure to the DOL.

What Employers Should Do Now

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Assuming that these proposed rules will likely take effect in some form soon, employers should expect a substantial increase in union organizational attempts. Since employers will have little time to respond to a union campaign, it is imperative that employers take steps to prepare now. Our “Union Avoidance Strategic Planning Guide” highlights key components for a preventive action plan.

If you would like to prepare a union avoidance plan for your company, or otherwise discuss this alert in greater detail, please contact a member of the Labor and Employment Practice Group at Flaster Greenberg PC.