Union Avoidance + Improved Employee Relations = As Good As It Gets

Insights
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While our crystal ball is no better than anyone else's, change in our country's labor laws appears to be drawing ever closer. While EFCA as it was originally proposed with its elimination of secret-ballot elections is undergoing change, a lot of other tweaking has been going on lately in the Senate reflecting unions' desire to find some form of legislation which will pass and which will give them the stimulus they need to revitalize their efforts to halt the continuing loss of union jobs and members.

While no one knows exactly what new legislation will ultimately emerge from the Washington, D.C. sausage grinder, the lack of certainty should not induce ostrich-like behavior. Nor should the absence of details stop the prudent employer from preparing for change which, if it happens, is guaranteed to make it more difficult for employers to effectively oppose unions' efforts to organize employees.

Quickie Votes?
One of the current proposals which seems to have a significant amount of backing is the shortening of time between a union's filing of a petition for election and the holding of the currently-secret-ballot election. Under current NLRB procedures the goal is to conduct an election within approximately 42 days of the time the union files a petition for election with the NLRB. Union supporters believe that delay gives the employer far too much time to communicate its views to employees. They believe they could win more elections if the employer did not have so much time to communicate its views about the realities of union representation.

What will be the new interval between petition and election? We don't know how long it might be – in fact, we don't know for certain that it will be changed. We do know that it is very possible that the period will be radically shortened. Such a constriction of time could come about as the result of legislation coming out of Congress or conceivably, it could come by administrative regulation passed by the Democratic-leaning NLRB. Whatever the outcome, you are not defenseless during this between-time with the significant possibility of legislative change.

American corporations plan everyday for uncertainties and factor in unknown outcomes into their operating plans, by establishing and setting aside reserves and by creating alternative operating

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operating plans, by establishing and setting aside reserves and by creating alternative operating plans to address unknown contingencies. That's essentially what we urge management to do in the realm of union organizing by focusing intently on positive employee relations. A union's decision to target your work force is certainly an unknown, somewhat out of your control, and is a decision which could have a significant operational impact on your business.

But there are a number of actions which can be taken, including letting your elected representatives know your position on the subject and just as importantly letting your employees know your position as well as your reasons for your desire to remain union free.

Start Campaigning Now

If you're going to be in a race in which the other side is likely to have a head start (as would be the case where the union has total control of the timing of its campaign as well as of the timing of the election), it would be prudent to consider starting to run now. You won't have enough time to catch up if you start running from a complete stop when a union has reached full speed in its own campaign and decides to file a petition for election at your workplace.

Okay, so how do you begin to strategize to counter a possible campaign that hasn't started yet? In our view a very good place to start is to ensure that you are communicating effectively with your employees. In that communications process, a very important point to get across to your employees is the company philosophy concerning unions. Some employers are concerned that their use of the "U" word will put the idea in employees' heads to seek union representation. We believe that such an outcome is very remote in today's global information society, as long as there aren't other reasons for employees to be unhappy with their current job conditions.

And even if that were a vague possibility, we believe that the value of clearly communicating your company's position regarding unions far outweighs any theoretical risks such a communication might entail. In essence, if labor laws are changed and election periods are drastically shortened, very few employers will win a union organizing campaign if they are starting the race from a dead standstill while the union is going at full speed. If you've never addressed the subject before, it will be doubly hard to get traction off the line with a long way to go and a short time to get there.

It's perfectly legal for an employer to communicate its views on unions to its employees. The National Labor Relations Act provides that employers or anyone else can express views, argument or opinion on the subject of unions or unionization without violating the Act so long as the expression of those views "contains no threat of reprisal or force or promise of benefit."

Keep It Real

In order to have a philosophy or opinion on the subject, it will be necessary to give some thought to the subject, which we assume you've already done: but maybe not. The statement "We hate unions because they are un-American. . . ." is not a particularly effective expression of company philosophy. But where an employer has given thought to the subject and made a decision that it genuinely wishes to treat employees fairly and as well as it is able under its operating circumstances; where it has taken the time to institute fair policies and systems to ensure that employees' reasonable needs

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has taken the time to institute fair policies and systems to ensure that employees' reasonable needs are addressed; then that employer can do a better job addressing its employees' needs than can a third party who has no stake in the success or failure of the enterprise. Tell them that.

The employer who genuinely cares for its employees and for their working conditions, and who recognizes employees for the crucial business partners they really are, should be able to effectively express the view that employees do not need to pay a third party to ensure that they will receive fair treatment on the job. An employer who believes that unions more often divide than facilitate teamwork should be able to speak convincingly about the division a union could cause in the company's ability to compete in an ever-more-challenging market.

For employers who have these or similar views, there is nothing preventing you from communicating them to employees. And it's essential that you do express your views on the subject. The expression of such views is not illegal, nor does it prohibit employees from taking the opposite view. But a clear expression of the employer's views can have an impact, it can lead to a productive dialogue, and it clearly lets employees know where you stand on this subject.

Keep It Current

Some employers may say "We have a statement in the employee handbook about our opposition to unions." To that we reply: "You have a lot of statements about a lot of topics in the employee handbook. How long has it been since any of your employees have read the handbook since their hire date?" This is an important subject and it deserves to be treated as such.

If you have not already done so, we urge you to carefully examine the history of your company, where it came from and where it's going, to examine in detail your attitude toward your employees and the systems that are in place to support them in their jobs. After that examination we urge you to consider adopting and communicating the rationale for your position on unions.

The articulation of the company's view about a union is an important step. But it's only a first step in a more comprehensive review of employee relations for the employer who wishes to remain union-free in the new world which is very rapidly approaching.

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