

A PERFECT STORM: WILL THERE BE A SURGE OF UNION ACTIVITY IN TEXAS?

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Most Texas employers have historically been “non-union.” However, that may soon change as a “perfect storm” of economic and political forces align. Let’s take a look at what may be on the horizon for Texas employers and why.

Trade unionism in this country saw its zenith in the economic boom that followed World War II. Unions decried corporate wealth at the expense of workers who created it. The pundits foretold that American business was at the cusp of unprecedented growth and profit. A “share the wealth” view of the world hardly seemed unfair. It was the “golden age” of trade unionism.

However, by the late 1960’s, things began changing. Many industries fell on hard times. And employers became more than interested in remaining union-free or restoring pre-union status. Union petitions for representation rights were met with fierce counter-campaigns. These struggles were complex and wrenching—sometimes resulting in violent strikes, plant closures, and bet-the-company legal disputes.

By the 1980’s, many unions in this country found themselves in decline. Old organizing tactics were no longer working. Strikes were becoming less prevalent and often ineffective. The percentage of American workers who were unionized was dropping steadily. Specialized unions were affiliating with others from dissimilar industries—exalting size over purity of craft as a survival mechanism. Although the declines in union membership have stabilized during the past several years, unions now represent less than 10% of this country’s private sector workforce.

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Not long ago, though, a conglomerate of several unions disaffiliated from the AFL-CIO believing that new and effective organizing could reinvigorate trade unionism in this country. The Service Employees International Union (“SEIU”) has been at the forefront of these efforts. To secure new labor contract negotiation rights, SEIU and like-minded unions are using very different techniques than their counterparts. “Corporate campaigns” have become more prevalent than strikes as a way to pressure employers. In corporate campaigns, the union use, among other tactics, broadcast and print media communication with the public and those with whom the employer does business. In effect, public pressure becomes the tool for “persuading” the employer. SEIU and other unions have met with recent success in Texas using such techniques, and these efforts are accelerating.

But where is the perfect storm? The answer may lie with our federal government. In 2007, Congress began working toward a blatantly union-friendly law entitled the “Employee Free Choice Act (“EFCA”)”. EFCA would have made it far easier for unions to obtain representation rights. Under current law, unions must usually win a secret ballot election conducted by the National Labor Relations Board (“NLRB”). NLRB secret ballot elections are designed to foster free choice, and eliminate coercive pressure. However, in recent times, unions have not fared well in NLRB elections. EFCA would have *eliminated* secret ballot elections, and replaced this democratic “choice” mechanism with “authorization cards” the union obtains through unsupervised and unregulated dialog with employees. EFCA was not concerned with the pressure union supporters might apply to get those cards signed by employees. And, if enough employees signed such cards, the Union would be “in”. The employer would then be required to immediately begin negotiating a labor contract. A company’s economic survival might well hinge upon how well it negotiates.

EFCA stalled in Congress, but proponents have made clear they will be back *again* and *again* until this pro-labor statute is enacted. And with the possibility of a Democratic administration on the horizon, passage of a revamped EFCA is highly likely. And so we may have the perfect storm for change in Texas. Highly motivated unions who see Texas as a great, untapped frontier for new members and labor contracts. This, coupled with potential for a law that would virtually assure most unions the ability to get employers to

the bargaining table for labor contract negotiations. And if this perfect storm develops, the largely union-free landscape in Texas will forever change.