

WINNING THE HEARTS, MINDS AND LOYALTY OF YOUR WORKFORCE BEFORE THE UNION COMES CALLING

The Pending Employee Free Choice Act - What You Can Do NOW

by Marta Fernandez

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This week, the U.S. Chamber of Commerce announced it will spend about \$10 million in the coming months to fight the pending Employee Free Choice Act (EFCA). The EFCA is federal legislation that would allow workers to organize without a secret ballot vote.

"Such 'card check' organization drives are a top priority of union leaders, who want President-elect Barack Obama and a Democratic Congress to enact legislation easing union-organizing rules," said U.S. Chamber of Commerce representatives when the announcement was made. This proactive approach to protecting U.S. businesses sends a strong message to the business community: act now to protect your workplace!

While some groups are fighting the passage of the EFCA (which President -elect Obama has vowed to pass), others are preparing their businesses for what they view as "the inevitable". This is particularly true in the service industries which cannot simply ship their production offshore.

There is no question that such legislation, which would permit unions easy access to the workforce and require employers to recognize the union as the authorized

representative with only a simple majority of signed employee cards, will significantly alter how the industry operates and what it can expect from the bottom line.

SO WHAT CAN YOU DO?

Below are action items that you can take now, **before** a union organizing drive is on its way. *Remember, once an organizing drive starts, the rules are different: what you, as the employer, can and cannot do lawfully will change.*

1. ACTION AT THE EXECUTIVE LEVEL

- **Understand the law.** Executives need to have a clear understanding of what the labor laws currently allow and do not allow employers to do, and what lawful steps they may take even under the new legislation to reduce unionization risk.
- **Evaluate the overall corporate picture.** Once executives understand the legal parameters, they can more effectively evaluate the risks to the organization. They need to consider where their vulnerabilities are and how a union will use these vulnerabilities to target the organization as a whole (or certain properties within the organization). For example, does the organization have contractual arrangements with third parties that the

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union may try to pressure to access the organization? Or does the operator have neutrality agreements that may directly or indirectly impact the property? Are there related corporate entities that may already have union contracts in place or union- friendly investments, such as in certain pension plans, that are likely to spill over to another entity? Are some properties more valuable to the union over others because of size, reputation or geographic location?

- **Identify the specific risks at the property level.** Each property and operation will have specific issues that make the location ripe for unionization or uniquely appetizing to a union. An assessment of the risks requires knowing what questions to ask of management. Such questions will involve managers' and supervisors' performance and their relationships with the workforce - are they credible? Does the staff respect them? Are they consistent in their day to day employee management decisions? Does management understand the wages, benefits, staffing and productivity structures applicable to their property and geographic location? What internal employee communications structures exist and are they being effectively used? Does management understand and have a union avoidance philosophy?

- **Adopt and communicate a corporate policy.** The corporate philosophy needs to be communicated to management so that there is no question where the company stands on this issue. Employers are entitled to opine on union issues but very often executives within the organization are hesitant to communicate a corporate philosophy on unions because they erroneously believe they cannot lawfully do so. If the message is not articulated at the corporate level you can be sure it is not being articulated at other levels within the organization which means that management will not know how to respond to employee questions on the subject and ultimately to a union organizing campaign.
- **Public Relations.** Have a public relations plan in place to communicate with guests, corporate clients and partners, as well as local politicians who will be contacted by a very public relations-savvy union.

2. ACTION AT THE MANAGEMENT/PROPERTY LEVEL

- **Educate managers and supervisors.** No matter how experienced, managers and supervisors that have not worked in a unionized environment will not know what the warning signs are and will not know how to lawfully respond. Educating managers and supervisors on what their role is under the law -- and what they can do to identify the warning

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signs and take preemptive action -- is key to getting a jumpstart on organizing efforts. Proper management training will also reduce the risk of inadvertent violations of law, which carry significant monetary penalties. For the first time in history, under EFCA, monetary penalties including treble back pay would be imposed for violations of organizational rights during union organizing campaigns.

- **Conduct employee vulnerability studies.** Understanding the warning signs allows you to identify positions, departments or shifts that may be particularly vulnerable to union organizing. It will also help you identify the issues that will "drive" a union organizing drive.
- **Evaluate supervisory positions.** There are two areas to consider when evaluating supervision. The first requires ensuring that employees that are called "supervisors" are really statutory supervisors within the meaning of the NLRA and therefore owe a duty of loyalty to the employer and cannot lawfully engage in pro-union activities. The second requires identifying the effectiveness of your supervisors in dealing with employees. Remember: more than promises of higher wages or benefits, nothing drives employees into the arms of a union faster than a supervisor who treats them poorly.
- **Take steps to address employee concerns.** Once you have identified the issues that are likely to drive the campaign, you can take steps before an organizing drive is underway to correct problem areas. Wage and benefit issues are always key, but merely increasing these are not always an effective -- or even necessary -- solution. There are a myriad of issues that require review and may have solutions that do not necessarily mean across the board wage and benefit increases: unfair treatment, lack of supervision, lack of an effective Human Resources department, internal wage or benefit disparities, staffing schedules, and even lack of (or outdated) equipment may all be contributing to disgruntled personnel.
- **Review employee policies and procedures.** Are employee policies in place that will best protect the property against unauthorized union access? After hours employee access, solicitation and distribution, e-mail and computer usage, and security policies are just some of the policies that need to be reviewed to ensure the property will be less accessible to a union while at the same time in compliance with the law.
- **Engage in Internal Public Relations.** Positive employee relations is the key to staying union-free. But, unless you communicate how great it is to work for you, employees do not always know

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what their employer really has to offer. Internal public relations through such simple steps such as weekly employee town hall meetings, employee appreciation events, advertising benefits offered and assisting employees with health care benefit concerns, and internal promotion policies go a long way toward winning the hearts and minds of your employees.

3. ACTION AT THE EMPLOYEE LEVEL

- **Education, Education, Education.**

The biggest advantage the union has is that employees do not know what a signature means. Unions often pressure, coerce or mislead employees into signing a card, petition or other document without the employees full understanding of what it means. The proposed legislation contains no rules or restrictions on the process of card signing and no penalties for Union coercion, intimidation or dishonesty in the process. Employers are permitted by law to educate their employees on the meaning of union representation, on their rights to freely choose or reject such representation, on what their signature will mean in that process and even on their right to revoke their signature after they have signed if they change their mind. Employers are also free to express its point of view about unionization within legal parameters. Studies show that the more employees understand what unions are about and what they actually can and cannot do for

them, the less likely they are to "sign up" for the union.

- **Speak up now!** Why educate your employees, now, before a union organizing drive? Many employers might think that educating the workforce on the issue will only cause employees to "think about a union" or "rock the boat" when the union is not on anyone's mind. However, once a union organizing drive is underway, the rules change and employers become much more limited in what they can say or do to educate their workforce or make changes to improve workforce loyalty. *The best time to speak on the subject is before a union organizing drive commences!*

Every business should understand the implications of the pending EFCA. In considering a plan of action for your organization, it is essential to remember that no one plan fits all. The action steps described above need to be considered with the framework of your particular organization and its unique workplace policies, culture, history and geographic location. To avoid serious missteps such as engaging in tactics that are at odd with labor laws -- or that may backfire with your workforce -- be sure to consult with experienced labor lawyers and other professionals in the field.

The passage of the Employee Free Choice Act, which would eliminate the secret ballot vote among employees, will spur unions into implementing organizing campaigns across the country, targeting new businesses and

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properties for representation. The current financial crisis has already made the "union pitch" more palatable to a workforce that is fearful of job losses, wage and benefit reductions, and declining retirement plans. To win the hearts, minds and loyalty of your workforce, you need to act now, before the union knocks at the door.



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