

*What can employers do
(after President Obama is inaugurated)
to keep the union out?*

There are a number of changes looming for employers as a result of the recent Democratic victories in the national election. No one knows exactly what changes will occur. However, it is a safe bet that it is going to be harder for employers to comply with the law and the risk for employers resulting from claims brought by their employees is going to go up. The potential change striking the greatest fear in most employers is the pending Employee Free Choice Act ("EFCA"). Under current law, in most cases, employees become unionized through a secret ballot election following a "campaign" in which the employer and union have an opportunity to make their case for and against a union to the employees (i.e., the voters). The EFCA would bring about a major change in that process. If enacted, unions could be certified as the representative of all employees based simply on the signing of cards indicating support of the union. Importantly, a representative of the employer is never present when such cards are signed and there is no way to know under what conditions the employee was convinced to sign. It is even possible for a union to be recognized based on forged signatures. In any event, under the EFCA, if a majority of the employees sign cards, then the union becomes the employees' representative. As offensive as this process seems, the EFCA stands a reasonably good chance of becoming law.

What can you do? First, call and write your congressmen to oppose the legislation. In the meantime, there are some steps you can take with your own workforce.

The best thing you can do is not give your employees a reason to want a union. Most employers think that employees want a union so that they can work less and make more. Often, that is a reason. However, the number one reason employees get interested in a union is working conditions. Go look at any union website. You will quickly see that unions attempt to appeal to employees' desire to be respected for the work they do, to have their concerns heard, to have job security, to have the employer make good on its promises, and to generally have good working conditions. Economic issues such as increased pay and greater benefits are important but secondary. Employers can address issues of working conditions even in hard economic times. While raises and good benefits go a long way toward keeping the union out, that cannot always be done, particularly in our current economy.

Here are some basic principles that, if carried out, can make your company a better place to work and make it less likely that you will ever have to deal with a union:

- Make your employees feel appreciated for the work they do.
- Have good communication with your employees.
- Be firm, but fair. That is, enforce your rules consistently.

Success against a union's efforts to organize your workforce has always depended to a great extent on early detection of union activity among your employees. If the EFCA is passed, early detection will be absolutely critical. Because there will no longer be a secret ballot election or even a campaign leading up to it, the battle may be lost before the employer ever knows there is a problem.

What activities should be a clue to you that your employees are considering a union?

1. You see a union card. You will not always see one. However, a loyal employee may bring one to you. If that happens, you can be sure that your employees are being solicited.
2. The "grapevine" suddenly goes dead. If employees are not talking as openly with you as they have in the past, that is a bad sign and could be an indication that employees are no longer as comfortable dealing directly with management.
3. A former employee shows up after work to talk to employees. Unions like to use someone who knows your employees to break the ice. That former employee could be working on behalf of the union in an effort to convince your employees to support the union.
4. You notice "busyness" during breaks. If employees all of a sudden appear to have a purpose when off the clock, they could be talking about the union.
5. Employees suddenly clam up when you approach. They may be discussing something they do not want you to hear.
6. A sudden increase in questions about company policies and benefits. This is a sign that employees are comparing union promises to what your company offers.
7. A previously popular employee suddenly becomes unpopular. This employee may have expressed opposition to the union and is being ostracized by union supporters.

Front-line supervisors are very important in the effort to avoid a union. They are in the best position to see the early warning signs. They are closest to your employees and have the best opportunity to convey the message that a union is not in your employees' best interest. Therefore, your front-line supervisors need to be educated on the warning signs and need to know the importance of alerting upper management if it appears that union activity is afoot.

If the EFCA is passed, that will certainly give unions a leg up on employers. However, victory against the union will still be possible. Employers will put themselves in a better position by doing all they can do to keep employees from having a reason to want a union and by keeping their eyes open for signs of union activity. If you think a union has its sights on your workforce, you should consult your lawyer for advice on developing a plan specific to your situation to keep the union out.

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