

TMG Update

EFCA – Labor Union's Trojan Horse! (by Tom Powell)

American Labor Unions have pinned their survival on the passage of the Employee Free Choice Act (EFCA) by the next Congress. That's why the November, 2008, elections are so important. Regardless of who wins the presidential election, the fate of the EFCA will rest on a Congress many of whose members, regardless of party affiliation are beholden to the union's continued generous cash flow.

The irony of this fall's election is politicians are running for office on a platform of "let every vote count". Again many of those same politicians however, who want every vote to be counted when it is in support of *their* personal gain, have publicly pledged that if they are elected they will support and sign the EFCA. What hypocrisy! They want every vote counted for their benefit, but want to change the provisions of the National Labor Relations Act (NLRA) to take away the right of employees to a secret, government run vote, by which workers decide if they wish to be represented by a labor union for the purposes of collective bargaining. Today's educated workers understand union representation is more about maintaining entrenched union leadership and their agendas rather than unions helping members.

With the exception of the addition of healthcare workers to NLRA coverage in 1974, EFCA's passage in 2009 will mark the most significant change to the NLRA since the Taft Hartley Amendment of 1947. When passed the fundamental way employers manage their business will change. Astonishingly, most CEOs are unaware of this planned hostile take over of the way they manage their business. They naively believe there is nothing to worry about until the union issue surfaces. Then, they believe, they will have the time and freedom to act. *Nothing could be further from the truth.*

KEY PROVISIONS OF THE EFCA

Not withstanding all the potential ancillary provisions of any future EFCA, *two provisions of the proposed EFCA need to be clearly understood:*

1. Unions will gain *automatic certification* to represent *all* of the employees in a proposed bargaining unit by offering a simple majority of authorization cards signed by employees designating the union to represent them. This simple majority threshold can be so easily reached it's almost ludicrous. "Unions" and "more money" are almost synonymous beliefs among workers. Who would not sign a union card if they were told "sign this and we'll get you more money"!

2. The proposed EFCA legislation would require some form of "*compulsory arbitration*" of negotiated settlements. The days of negotiating to impasse will be gone! Which union would be dumb enough when bargaining with an employer to compromise and reach a settlement when they could let an outside third party who has no vested interest in or even an understanding of the business itself make that decision for them! Union negotiators will take credit for all the positive achievements and blame the arbitrator for any failures at the bargaining table.

These two provisions will fundamentally change the way management and their employees co-exist.

CARD CHECK

By the time union activity surfaces – it will generally be too late for employers to act. Unions have already refined contacting employees away from their workplace so it can be anticipated when the Company hears about union activities it will be "game over" for the Company. Once the union *represents* the employees, *any change in wages, benefits and conditions of employment must first* be discussed with the union. Management will continue to be able to decide what changes can and should be made and the manner on

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how and when they will be made. After that they will have to bargain with the union to get their input and approval.

By bargaining with the union management will learn that any positive change they want to make like a wage increase or improvements in benefits, the union will be the first to tell employees what great work the union did in representing them by forcing the Company to give in to the union demands. In addition, the union will also be first to tell the employees about any "bad" news bargained making sure that management gets all the blame a lose-lose situation for employers.

ARBITRATED SETTLEMENT

Under the current NLRA there is no time limit in bargaining a settlement between the two parties. An often quoted federal government study found that in about 1/3 of employee groups who elected a union to represent and bargain for them, the union *never* reached a negotiated settlement. The EFCA legislation is proposing that when the two parties negotiate for a period of time and no settlement is evident, either party can request an outside third party to come into the negotiation to first mediate and if unsuccessful arbitrate a settlement and impose it on both parties. So much for bargaining in good faith.

NOW IS THE TIME TO ACT

It's imperative you do whatever you have to in order to insure that your CEO knows and understands the changes that the future EFCA will have on the control and management of their respective business. They must understand that if they wait until the union shows up before they act – *it will be too late.* Calling a consultant and a lawyer will most likely be too late to stop the unionization effort. Rather, the Company can open up its checkbook for new, costly and on-going legal fees – because they will become an added cost of doing business.

NO DECERTIFICATION CHANGE

Following the EFCA passage many groups of employees will quickly realize that they were duped by the union's sales pitch and will say, "I did not understand what I was signing or getting into. What can I do?" The answer is that the provisions of the EFCA do not provide any new relief in the difficult procedure employees must follow if they wish to seek to decertify their union. While the EFCA will allow the capture of many new union represented employees, there are no similar provisions in the EFCA to make it easier for employees to get out from under mandatory union representation.

WHAT THE PASSAGE OF THE EFCA MEANS

Here is a listing of some of the potential changes that will accompany passage of the EFCA:

1. Union membership will increase from its current 12.1% of the U.S. workforce. How high will it go is anyone's guess, but a 50% plus member-

ship has been mentioned especially if the "union shop" provision is arbitrated into final contract settlements.

2. Management will have to "co-manage" their business with a union representative having a voice in any proposed change. Any positive change the union will take the credit and any "bad" news will be blamed on the "bad management" of the Company.
3. The cost of doing business will increase principally by increased indirect costs of doing business in "pay for time not worked" provisions like grievance processing, union management meetings, etc. Add to this the additional legal and consulting costs that will be incurred in the union management relationship. The additional costs will be high and on-going.
4. The threat of a "strike" will become a real issue for the employer. Strike costs are very high!
5. Your best employees will likely leave because they will either stop being your "best" employees for many reasons or they will quit and work elsewhere where they don't have to put up with the union issue.
6. Your employees will become polarized in the 'us against them' adversarial relationship the union will bring and support. Any union that fails to educate their members that management is the "bad guy" will have no reason to remain the bargaining representative of the employees.
7. If management is not careful in negotiating with the unions, the real potential exists that their business could end up like the auto, steel, and rubber industries, shadows of their former selves.

STEPS YOU NEED TO TAKE NOW

What steps can employers take *now* to minimize any union organizing activities/successes at your company/business following passage of the EFCA? Unfortunately, there are no magic steps that can be taken to insure success. There are however steps management can and should take *NOW* before the passage of the EFCA.

1. Assign responsibility for employee issues that could lead to unionization activities to a Manager who reports directly to the CEO. Anticipation of potential discontent and management actions in response are critically important. Be *proactive* – not *reactive* to the threat of unionization.
2. Educate and reinforce management on how to legally, practically and proactively discuss all aspects of the union issue with their employees.
3. Educate all employees on your philosophy of working together directly and cooperatively with each other without *any* third party in between.
4. Include your direct working relationship philosophy in your new employee orientation for all employees exempt and non-exempt.
5. Educate employees on what they can expect from the union if and when they are contacted. They should understand there are two sides to the union issue and they should listen to both sides before they make *any* decision on the union issue. Your employees need to know who they can talk to when they have any questions about a union.
6. Educate employees to not sign anything from the union, no matter how innocent it might look or

sound. *Get all the facts before deciding to sign anything.*

7. Be prepared *in advance* to respond immediately if and when the first sign of union activity surfaces.
8. Provide competitive pay and benefits and educate employees on that competitiveness. Don't be afraid to say "no" – but explain "why not"! Have an ADR or a simple employee compliant procedure with a peer review option.
9. Take advantage of technology in managing the union issue. Use a variety of internal and external technologies to provide knowledge and factual information on the union to *all* your employees
10. Communicate, communicate, communicate with all your employees about your business, including the threat of union activity. With the EFCA, the union threat will not be a "sometime" issue, it will be an "all the time" issue. Communicating "bad" news is as important as communicating "good" news.

A REAL TROJAN HORSE

Passage of any proposed EFCA will open a Pandora's box for union activity in the United States. More changes to the law should be anticipated. The best defense any employer can have to the EFCA is educated and knowledgeable employees. That's because when your employees are visited at home and are the recipients of the union's sales pitch they need to say to the union, "*No thanks, I'm not interested and I don't want to sign your card*". That's when your management of the union issue will "pay off". Don't be surprised if you never know it happens, but be happy it occurs.