

TMG Update

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SPECIAL EDITION EMPLOYEE FREE CHOICE ACT

(by Frank S. Merrick)

As many of you are probably aware, President-elect Obama was the beneficiary of significant monetary donations and volunteer time contributed by organized labor. His election, combined with a meaningful increase in the number of Democratic seats in the U.S. Senate (a number still pending based on 2-3 tight races), has labor salivating.

There is likely to be much labor relations impact as a result of the change in both the executive and legislative branches of the government (see other side). Among those impacts are likely to be:

- The passage of some significant labor law reform making it easier both for unions to organize and more certain that they will obtain a contract after winning representation rights. The Employee Free Choice Act (EFCA) has already passed the U.S. House.
- Appointments to the NLRB of individuals who are more pro-union. There currently are 3 vacancies (out of 5 seats) on the Board. The 2 currently sitting members exhibit a balance of inclination (1 more pro-business and 1 more pro-union), so the new President's appointees will clearly tip the balance.
- A friend of unions in the Secretary of Labor role. Among those being talked about for this Cabinet seat is Andy Stern, President of the Service Employees International Union (SEIU).
- Executive Orders or the undoing of orders of the Bush administration, such as publicizing Beck rights (the ability of a union represented employee to opt out of a union shop membership obligation if he/she tenders a "fair share" payment to the union).

This is indeed a significant list...but one that only covers union-related issues. Beyond that, the new President can have an impact by:

- His appointments for Heads of the agencies that enforce the myriad of other employment laws.
- His support for amendments and enhancements to those other laws, such as Minimum Wage EEO, etc.
- His judicial appointments throughout the federal court system.

The actions he takes can all further his and the labor movement's agendas. However, President-elect Obama certainly has many other more pressing issues to contend with such as the stock market crash, unemployment and other current economic challenges along with 2 wars, and more. Whether these more urgent issues push labor's agenda back will be up to the new Administration to decide. As an alternative, the administration might choose to implement them quickly as comparatively easy fixes or attach them as "minor amendments" to major bills sent forth covering other matters.

What To Do Now?

In the short run, we are recommending our clients prepare for the passage of EFCA or something like it. Insider talk from the Beltway indicates there may be some backing off on the proposed elimination of secret ballot elections in exchange for the retention of the mandatory first contract arbitration provision and VERY expedited elections. Timeframes like those in many of the Canadian Provinces of 5-10 days from petition to vote are being offered in discussion.

Regardless of whether we see expedited elections or no elections, the paradigm for labor relations will change. Preventive labor relations must become an "up-front" objective. Clients can no longer sit back and see if a NLRB election petition will be filed and then plan to run their 6 week information campaign. The luxury of time will, in all likelihood, be lost.

To help our clients prepare for such a change in union organizing we have developed an EFCA CHECKLIST. We believe this is the most comprehensive planning document available today. While many law firms are publishing "Alerts" to get ready, few offer much advice on how to do so. While other consulting organizations are offering "EFCA Kits", in reality they are just their old tools re-packaged.

Our EFCA CHECKLIST offers detailed clear and concise steps to get ready and stay ready, or in the alternative, to deal with union activity at various steps along the way (including if you have been blindsided and organized without warning). While many of the details of the new legislation are unclear, our CHECKLIST is applicable to any organization that wants to do what they can now!

We are making this CHECKLIST available at no charge to our clients. If you would like to receive one, please call or e-mail one of us and we will be happy to send it to you. And, as always, feel free to call if we can answer any questions or be of service.

WashingtonPost.com

**Labor Seeks Election Rewards
Union Organizing Rights Could Be Early Obama Test****By Michael A. Fletcher****Washington Post Staff Writer****Thursday, November 6, 2008; Page D01**

Bolstered by exit polling data showing that union members played a pivotal role in President-elect Barack Obama's victory, the AFL-CIO served notice yesterday that it views the election results as ratification of organized labor's ambitious agenda.

Labor's top priority is passage of legislation that would make it easier to organize unions, which advocates say would help labor groups expand their shrinking numbers and win better wages and benefits for average workers, whose pay has stagnated in the last eight years.

"In an economy that gives corporations far too much power, a union card remains the single best ticket into the middle class," said AFL-CIO President John Sweeney. Union membership has dropped from 20 percent to 12 percent of all U.S. workers over for the past quarter century.

The Employee Free Choice Act, which would require employers to recognize unions once a majority of workers sign cards of support, is fiercely opposed by business groups that argue the measure would cost jobs and further weaken the nation's economy.

Currently, employers can demand that workers hold secret-ballot elections to determine whether to form unions, something labor organizers say allows companies to run campaigns that pressure workers into voting against organizing. At the same time, business leaders say the so-called "check card" legislation would deny workers a secret ballot, leaving them vulnerable to being coerced into supporting the formation of a union.

The battle over the measure promises to be one of the early tests of the Obama presidency. Obama has strongly endorsed the legislation, which he has called part of an overdue effort to raise the standard of living for the nation's working class. But with the economy in tatters, some business leaders are stepping up their argument against the measure, saying that now is not the time to put new burdens on business.

"The day President Obama takes office, the bets are that he would inherit between a \$750 billion and a \$1 trillion annual deficit," said Bruce Josten, executive vice president of the U.S. Chamber of Commerce. "You have to get the economy off its back and growing, not contracting; growing jobs, not shedding jobs."

Business leaders also object to a provision in the legislation that would allow a federal mediator to impose a contract settlement in cases where a union and management cannot agree on a deal within 120 days -- a provision business leaders say will benefit unions.

Labor leaders also plan to push the Obama administration to move quickly on efforts to stimulate the economy by extending unemployment benefits, broadening the food stamp program, investing in infrastructure, and making grants to state and local governments, which have been hard hit by revenue losses from the economic downturn. Labor is also looking to the incoming administration to broaden the availability of health-care coverage and eventually increase taxes for top income earners as a way of countering the income inequality that has accelerated in the past eight years.

"It is a question of how are we going to restore middle-class families' ability to own homes, have health care, and imagine retiring with dignity," said Andrew L. Stern, president of the Service Employees International Union, an AFL-CIO rival.

The AFL-CIO made clear that its massive outreach efforts, which the union said touched 13 million households in 24 battleground states, paid off in strong support for Obama and other Democrats. That support was particularly striking among white working-class voters, who were thought to be skeptical of the nation's first black major party presidential nominee.

Exit poll data gathered for the AFL-CIO by Peter D. Hart Research Associates found that among union members, Obama won the white male vote by 18 points, while he lost that same group in the general population by 16 points. There were also wide disparities in support for Obama between union and non-union voters who are white weekly churchgoers, veterans, gun owners and whites who have not graduated from college. Union members supported him in each case, while he lost each group in the general population, the poll found.

Beyond their direct support for Obama, more than 250,000 AFL-CIO volunteers campaigned for Obama, helping him win in such swing states as Ohio, Florida, North Carolina, Michigan and Pennsylvania.

"People volunteered because they want a president who will fight for America's working families," said Gerald W. McEntee, president of the American Federation of State, County and Municipal Employees. "In the critical battleground states, workers gave Sen. Obama the winning edge."