

The No-Choice Act—Is there a Union Heading for Your Business?

The first order of business for the labor unions that supported the election of Barack Obama is the passage of the misnamed “Employee Free Choice Act,” potentially the most radical revamping of U.S. labor laws in the past 80 years. If the Free Choice Act (or the “No Election, No Bargaining, No Choice Act” as I like to call it) passes in its current form, employers will be dramatically disadvantaged when it comes to avoiding unionization.

The key provisions of the Act: (1) Unions can establish the right to exclusively represent your employees by cards only, effectively doing away with secret ballot union elections; (2) bargaining over a first contract will be limited in duration to 90 days; and (3) if an agreement is not reached in 120 days, an arbitrator will have the power to force employers to accept a contract the arbitrator feels is appropriate.

These truly are radical changes. Currently, unions have employees sign cards in order to petition for an election monitored by the National Labor Relations Board. Those cards are often signed by employees without much information as to what a union really means and under less than neutral environments (i.e, in a group where a few employees pressure other for a signature, at an employee’s home when the union business agent stops by for a “visit”). There is no time limit on a union on how long it can try to collect signatures from your employees. The union does not have to give an employer notice it is trying to recruit its employees, so often employers only hear about it when it is too late. Currently when a union gets a majority of employees to sign, a petition for an election is filed, and an employer then typically has 5 to 7 weeks to run its campaign to educate its employees on just what it means to have a union.

Under the new regime, the game will be over once the union has cards from a majority of employees. The union would no longer have to file for an election and the employer would have no opportunity to get its message across in a campaign. At no point will there be a secret ballot election where an employee can vote without someone looking over his or her shoulder (how do they get “Free Choice Act” out of that?!) The union will be in and the bargaining will begin.

Employers will also have to bargain quickly. Anyone who has gone through negotiating a first contract knows that it is not unusual to spend 9 months to a year negotiating through all of the things that need to be discussed including wages, benefits, union dues, management rights, seniority, retirement, layoffs and terminations among other things. Under the Act, the parties will only have 90 days to get that work done. If they don’t get it done, an arbitrator will tell you what your contract is going to be.

That of course means the union has all the leverage in negotiating the first contract. It means that they will likely drag their feet to avoid agreeing to anything that resembles management rights (hence the “No Bargaining” part of this law.) Arbitrators will, over time, design a standard first contract that you will simply have to accept unless you agree

to improve it by conceding to the union's demands for enhancements (i.e., the real "No Choice Act"). Labor-Management relations in America will look very different in a very short time.

At this point we can't be sure what the new law will look like exactly. Obama's administration has a distinctly more centrist look to it than the campaign would have suggested and there are some serious constitutional issues that will need to be addressed about contracts being imposed on employers. This is an issue however, that definitely needs to be closely watched by every business owner and manager.

FREE "UNION PREVENTION GUIDELINES". As a recipient of the Corporate Cranium newsletter, I will be happy to provide you with a set of our Union Prevention Guidelines that includes information for managers and supervisors on how to talk to employees about unions, a non-union statement to include in your policies and/or handbook and guidelines on controlling solicitation by union agents in your business. Please contact Nancy Preuss at npreuss@halaganlaw.com to request the Guidelines.

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