

Unionization and Collective Bargaining

Background:

In early 2007, the United States House of Representatives passed EFCA (H.R. 800), but it was never considered in the United States Senate due to threats of a filibuster. Realizing the measure is stalled until after the 2008 elections, obtaining a filibuster-proof majority in the Senate and a supportive presidential administration has been a key political goal of organized labor.

At the state level, labor has sought in 2006 (HB 3068), 2007 (HB 2383), and 2008 (bill withdrawn), “Worker Privacy Act” legislation that would prohibit employers from requiring attendance at meetings or otherwise requiring communication with employees about labor unions. The bill’s prohibition is backed by the imposition of substantial litigation exposure and expense for employers. In January 2008, the bill was withdrawn to await the outcome of *United States Chamber of Commerce v. Brown*, a U.S. Supreme Court case reviewing a similar California statute.

In June, 2008, the court invalidated the California statute under federal labor law. While the court’s decision also applies to preempt the “Worker Privacy Act,” state labor unions have expressed their intent to bring the proposal back in one form or another.

Finally, in 2008, unions introduced SB 6385 to provide for collective bargaining rights under state law, enforced by the Public Employment Relations Commission, for employees of employers too small to fall under the enforcement standards of the National Labor Relations Act. As amended in committee, the bill was narrowed to employees of small opera, symphony, and theater employers, where complaints originally surfaced – but labor has expressed an intent to return with a bill covering all small employers.

Problem:

In an effort to dramatically shift the balance of federal labor law in favor of unionization, national and state unions are seeking three significant pieces of legislation with major implications for employers of all sizes. At the national level, labor is attempting to enact the “Employee Free Choice Act” (EFCA), a bill which would end secret ballot union elections and require recognition of a union based on the presentation of signed union cards. The EFCA would also enhance penalties against employers and would give only 90 days to negotiate a first union contract before requiring binding arbitration to resolve any impasse in negotiations.

At the state level, labor is attempting to pass a “Worker Privacy Act” which would significantly limit the ability of employers to communicate with employees about union matters. Labor is also seeking legislation that would subject the state’s smallest businesses – currently too small to be covered by federal law – to collective bargaining obligations enforced by the state Public Employment Relations Commission.

Solution:

1. Promote consistency with federal law by opposing proposals that are preempted by the National Labor Relations Act, prohibit conduct allowed by the NLRA, and violate employers’ free speech rights.
2. Resist efforts to eliminate or restrict employee choice and privacy with respect to secret ballot union elections.
3. Do not impose state-level collective bargaining obligations on the state’s smallest employers.