Federal Legislation Fundamentally Changing Labor Law Passes First Hurdle

In the private sector, currently only 7.4% of employees belong to a labor union. For organized labor, proposed changes to federal labor law may represent its best hope of stopping and turning around the long decline in membership. On March 1, 2007 the House of Representatives voted 241-185 largely along party lines to re-write federal law that dates back more than 60 years. The so-called "Employee Free Choice Act" would, if enacted, allow unions to be certified as the collective bargaining representative if a majority of workers sign authorization cards.

This would be a major change to existing law. For the vast majority of private sector employers and employees, the process of unionization involves two steps and culminates in an election. The union first secures signed authorization cards from at least 30% of the employees it wishes to represent. (A union generally will not seek an election unless more than a majority of the employees have signed cards). The union next presents the signed cards to the National Labor Relations Board ("NLRB") and a secret ballot election is conducted by the NLRB. The union must win the election in order to represent the employees.

Prior to the election, the employer can legally campaign against the union and present employees with information critical of unionization. The net result is that employees that signed authorization cards may vote against the union when the election is conducted. In part because employers actively oppose unionization, labor unions currently win just over 50% of the secret ballot elections. In contrast, unions successfully organize over 80% of the time when the process consists only of signed authorization cards.

In addition to eliminating secret ballot elections, the bill contains a number of significant changes including treble back pay for employees unlawfully fired and civil penalties of up to $20,000 per violation against employers found to have willfully violated the law. The bill also provides for binding arbitration if the parties are unable to negotiate a first contract. This also represents a significant departure from existing law because binding arbitration has generally been limited to the public sector. Binding arbitration allows an arbitrator to impose a contract on the employer that it may have been unwilling to agree to in negotiations.

Opposing the bill is a broad array of employer groups. The opposition contends that the secret ballot election process correctly utilized allows employees to exercise free choice. The argument is that the secret ballot election process supervised by the NLRB provides a mechanism for workers to

make a decision free from possible coercion by co-workers or union organizers. The opposition also notes that labor wants to keep the secret ballot process when the issue is decertification of a union.

The White House has promised to veto the legislation if it passes the Senate. While the bill is not likely to be enacted in 2007, it will remain a top issue for labor and may be its best hope for organizing new members. The top Democratic candidates for 2008 are already on record as supporting the legislation. The legislation is shaping up as a critical employment law issue and its ultimate fate may turn on who wins in November of 2008.

This update is a summary for general information and discussion only. It is not a complete analysis and may not be relied upon as legal advice. Please contact William E. O'Gara, Esquire for further consultation at 401-824-5117 or send an email to him at wogara@pldw.com