EMPLOYEE FREE CHOICE ACT

Dire Consequences of 'Card Check'

Ever since the presidential primaries ended, a storm has been gathering in the business community. Then-candidate Barack Obama's talk of the "card check" bill (misleadingly titled the Employee Free Choice Act, or EFCA), energized labor unions and terrified businesses across the country.

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This proposed legislation would completely revolutionize labor law as we know it and seriously damage the business community's ability to maintain control over its work force and to satisfy the ever-changing needs of its customers in a demanding global economy. In short, this is bombshell legislation and it is not only on the horizon, but is teed up to be introduced any day now in the House, where it was passed in 2007. With an intense debate in the Senate looming, I began to ask myself, "What has changed so radically in our makeup to make this and other pro-union, anti-business legislation so prominent on the agenda of Congress?"

After practicing traditional labor law for 30 years, I know that this legislation would never have seen the light of day 15, 10, or even five years ago. What has changed? There has been a profound change in the business climate with regard to employee rights in the workplace. This, coupled with a dearth of union organizing over the past 20 years, has produced a whole generation of owners, senior executives, managers, supervisors, legislators, judges, lawyers, and employees who have not experienced any type of labor organizing situation, much less experienced any type of labor strife. Because of this, they are more open to discussing the union question.

COUPLE THIS WITH the fact that our educational system, to some extent, and our work environments have evolved into entities that train for and reward teamwork, tolerance, and collaborative thinking, all of which are noble objectives. In that context, many of our current stakeholders in business are more open and malleable when it comes to the old-school, black-or-white questions about unionization.

Of late, I have been asked to speak extensively on this topic and invariably two things happen at these sessions: (1) there are rarely more than three or four people who say that they have any significant experience with unions; and (2) in the course of the question-and-answer period, someone will ask, "Jim, how bad can this actually be?" Indeed, I am astounded by the number of senior executives and owners who opt not to advise their work force of their own personal position that a union could hurt the business and the employees. Seen in this light, it is understandable that legislation that is vaguely portrayed as being intended to "increase employee free choice" and "improve the lot of the middle class" does not set off the alarms that it once would have.

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This, in turn, is closely related to the basic misunderstanding of what EFCA really does. PACs and labor unions have executed a brilliant publicity campaign that has misled the general population about the legislation.

THE BILL IS actually very simple. The three main tenets of the bill include: (1) abolition of a secret ballot election, (2) compulsory binding arbitration for first contracts after 120 days of bargaining, and (3) punitive fines for violations of the National Labor Relations Act by employers. These elements strip not only the business of its rights, but the workers of theirs as well.

These principles that EFCA would change have been in place for more than 60 years — so "if it ain't broke, don't fix it." Labor has complained for years that the system is broken, but is it truly broken?

The facts are that unions win anywhere from 45 percent to 50 percent of secret-ballot elections. That seems relatively balanced. Unions gain first contracts in one in three of the elections they win. The opposition argues that this number is far too low.

I happen to have considerable experience in the negotiation of labor contracts, specifically first contracts. The reason most first contracts fail is because unions come to the bargaining table and make demands that are excessive, demands that refuse to allow the business the flexibility it needs to meet the needs of its customers.

RESPONSIBLE businesses — knowing that these demands are anti-competitive and will diminish, if not eliminate, their ability to make a profit — refuse to concede to them and lawfully say, "No." Those that do not, capitulate — and when the business cycle turns against them, or some profound business event (such as an increase in competition) occurs, they cannot be flexible and their business suffers, or — in the worst case — vanishes. If this sounds familiar, it should. The woes of the auto industry are one of the best examples of the above.

In sum, the unions' core objective has always been to organize members. That is their sole mission. In the 1960s, they represented 23 percent to 25 percent of the work force. Today they represent less than 6 percent of the private-sector work force. Essentially, they have failed in their core business. They have replaced that core business with raising money for PACs, 529s, and political candidates. They are using that influence in an attempt to come full circle, back to their membership roots.

In short, unions don't need EFCA, they just need minimal change in a system that actually has worked for the past 60 years, which will turn the tables in their favor. Increases in the number of union-organized employees in this country will occur. That will be due in part to modifications in existing labor laws, but also a great desire that we all have to just get along.

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