

UNION ORGANIZING: WILL THERE BE REFORM?

Labor & Employment Section

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In 2009, only 7.4% of the private workforce was unionized (nationally and in Florida). Indeed, some observers even said labor unions are no longer relevant in the private sector. However, unions won more than 68 percent of National Labor Relations Board (NLRB)-supervised elections held in 2009, up from 67 percent in 2008 and the highest win rate since the research division of BNA began analyzing NLRB data in 1984. At the same time, the number of representation elections in 2009 dropped to the lowest level since 1984.

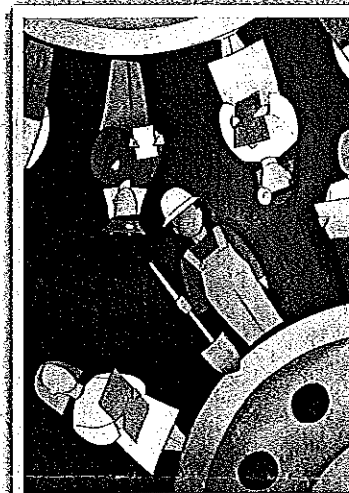
When the Obama Administration took office in January 2009, labor union leaders were enthusiastic (to say the least) about the prospect of dramatic labor law reform. I recently had a conversation with a union leader who I was going up against in a campaign. He was more realistic now that dramatic reform does not seem politically possible—at least for now. However, he was still encouraged by the organizing prospects here in Florida, especially in the health care industry.

The dramatic reform the Obama Administration was expected to pursue aggressively was known as the Employee Free Choice Act (EFCA). The dramatic changes in EFCA included unionization without a secret ballot election

for employees, imposed contract terms through binding arbitration rather than traditional negotiations, and increased penalties for employers but not labor unions for violations of the rules regarding campaigning.

With EFCA on the political back burner, however, employers should remain vigilant in watching for incremental, rather than dramatic, change. For the first time in years, the NLRB had all five members until Peter Schaumber's term expired in August 2010. On June 22, 2010, the Senate confirmed the nominations of Republican Brian Hayes and Democrat Mark Pearce but took no action on the controversial pending nomination of former union attorney Craig Becker. Hayes was confirmed through December 2012 and Pearce through December 2013. Becker will continue serving a recess appointment that expires at the end of 2011 and Chairman Wilma Liebman's term will expire in August 2011.

Decisions issued by the NLRB govern how employers and labor unions conduct themselves and change in election procedures and substantive law could come on a case-by-case basis. NLRB Chairman Wilma Liebman has also said that she believes the



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purpose of the National Labor Relations Act (NLRA) is to encourage union organizing and the NLRB Board is presently considering using rulemaking to change election procedures. Some of the incremental, but substantial changes could include requiring employers to give union organizers “equal time” or “equal access” to employees during labor

campaigns (at the employer's expense?) and shrinking campaign periods from 42 to 21 days or less.

If a labor union targets a business, there are many rules governing what an employer and its supervisors and managers can and cannot do to remain union-free. But, that is another story for another time. Until then, businesses—especially health care businesses in Florida—that want to stay union-free should pay close attention to the new NLRB. Conversely, those who are more closely aligned with organized labor would also

be wise to monitor these developments closely.

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