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Employers on watch as organized labor eyes federal reform legislation

Business First of Columbus - by Brent Wilder For Business First

With health-care reform in the rear-view mirror, organized labor is back on President Barack Obama's agenda in a big way.

MEDIA

The Employee Free Choice Act, which would usher in a "card check" system of union organizing and other items on organized labor's wish-list may move to the front burner with the recent appointment of two members to the National Labor Relations Board, including the controversial Craig Becker.

While Obama may no longer enjoy a filibuster-proof Senate, Columbus-area labor law observers agree Becker, the former AFL-CIO and Service Employees International Union attorney, will have the power to steer labor relations policy to expand labor union powers.

With Obama and Democratic leadership's surprise victory on health care reform, "I feel like they have the bit in their teeth at this point," said George P. Stoe, president and COO of Columbus steel processor Worthington Industries Inc. "Labor unions are declining in their numbers, and (the Democrats) feel the pressure to do something."

Cause for concern?

Employers oppose the "card check" provision of the Employee Free Choice Act – it speed up the organizing and contract negotiation process.

It's a way for employees to organize a union by having a majority sign cards instead of the secret ballot process. Another element of the Free Choice Act is stronger punishment for companies that try to interfere with employee union organizing.

The house bill was introduced in 2009 and was referred to the Subcommittee on Health, Employment, Labor and Pensions.

The Ohio AFL-CIO did not respond to an interview request for this story. Gary Muffley, regional director in Cincinnati of the National Labor Relations Board, chose not to speak about specific legislation, but rather commented on the Obama appointments. He said there are about 80 precedent-setting cases that need to be decided by the board, but they have been stalled because before Obama's appointments, there were only two board members.

Unions are uniformly behind card check. Literature published by the service employees unioin says "there are a lot of good employers out there, but far too many don't play by the rules and the deck is seriously stacked against workers."

The corporate community and their pro-business attorneys, however, are concerned.

Don Keller, partner in the employment and labor group of Bricker & Eckler LLP and counsel to the Ohio Manufacturers' Association, said employers need to learn more about the potential threats posed by various labor initiatives to make organizing easier – and possibly inevitable – for unions.

The act would force a mandatory maximum 120-day schedule for collective bargaining between employers and recognized unions, followed by binding arbitration determined by a federal arbitrator, Keller said.

"The average time to negotiate a first contract is anywhere from nine to 12 months, and in the majority of cases, a contract is never concluded," he said.

The union side contends the quicker time frame will stop employers from dragging out the contract negotiation process.

Current regulations allow employers to request union decertification by the Labor Relations Board after 12 months if no contract is in place, Keller said.

Mark Grindley, vice president of operations for Plaskolite, an acrylic sheet manufacturer in Columbus, said if the act passes, it will put manufacturers into "survival mode."

Grindley said labor laws aren't broken so no fix is needed. Plaskolite has been part of 15th Congressional District employer advocacy efforts against the act that have included major area employers such as Worthington Industries, Honda of America Manufacturing Inc. and Scotts Miracle-Gro Co.

Plaskolite employees get a profit-sharing plan and performance bonuses to keep them fully aware of the operating margin and what is possible for worker compensation and benefits, Grindley said.

Stoe said Worthington Industries employees in Porter, Ind. came to their own conclusion that the benefits of unionization were minimal.

The plant's employees took action in 2008 to decertify a union that formed following a narrow voting margin in 2006, he said. Stoe doubts a union backed by binding arbitration would have arrived at the same conclusion balancing worker and employer interests.

With profit sharing, employees "know full well the kind of profit margins we have," Stoe said. "We've had tremendous cooperation from them when they understand the position the company is in and what we can and can't do."

'Bare-knuckled approach'

According to American Rights at Work, an advocacy group that's pro-union, "when faced with organizing drives, 25 percent of employers fire at least one pro-union worker; 51 percent threaten to close a work site if the union prevails; and, 91 percent force employees to attend one-on-one anti-union meetings with their supervisors."

The group's Web site says requiring mediation and arbitration to help employers and employees reach a first contract in a reasonable period of time is a good idea.

But Larry Feheley, director at Kegler Brown Hill & Ritter LPA and head of the law firm's labor and employment practice group, said accelerated bargaining would result in posturing by employer and union representatives toward presenting their cases to the federal arbitrator.

"Neither side is incentivized to offer with candor," Feheley said. "We're moving toward one more area where you have arbitrators that are appointed by the federal government who in the best case are bringing in uninformed mandated contracts and in the worst case are being appointed by federal government agencies beholden to union campaign money, and I fear they won't mistake what their marching orders are."

Ryan Augsburger, managing director of public policy services for the Ohio Manufacturers' Association, said the act needs to be viewed in the broader context of labor legislation initiatives:

• Respect Act: Would permit supervisor eligibility for union membership, eliminating the middleman between management and union.

• Paycheck Fairness Act: Would permit unlimited penalties for worker discrimination and add class action litigation to legal liability.

• Healthy Families Act: Would mandate seven days of annual paid leave.

"This is playing Russian roulette not to take this threat seriously," Augsburger said of the pro-labor agenda.

Matthew Austin, of counsel with the labor employment department of Barnes & Thornburg LLP, said the majority of front-line supervisors and managers have not been educated on the act's content and potential impact.

"Becker (of the labor relations board) is on record as saying the employer should stay out of the decision as to whether employees want the union," Austin said.

Tony Seegers, director of labor and human resources policy with the Ohio Chamber of Commerce said, "The administration could have pivoted and said, 'We can tone it down,' or 'We're going to cram it down everyone's throats.' I wouldn't be surprised if the bare-knuckled approach didn't come down with card check."

But there's obviously two distinct sides in this fight.

When the legislation was introduced, David Bonior, chairman of American Rights at Work said: "Workers are struggling to make ends meet in this tough economy.

"The Employee Free Choice Act will dismantle the barriers preventing workers from joining unions, so they can bargain for better wages, benefits and job security. History has shown that when workers have a voice in their workplaces, the middle class is strengthened and our nation prospers."

Brent Wilder is a freelance writer.