

You May Need More Than an Ounce of Prevention Against the EFCA

By: Drew Brock, Ph.D.

Changes in US labor law are likely to occur this year that have significant implications for organizations across the country. Most notably, the **Employee Free Choice Act (EFCA)** seeks to revolutionize the union organizing process marking the greatest change to labor law since the passing of the National Labor Relations Act in 1935. In short, the changes the EFCA brings make the process of union formation much easier than ever before, and the avoidance of such a predicament critically important. Accordingly, preventing union formation by taking **proactive steps** using proven management tools will become essential for the ongoing profitability if not survival of many organizations.

The dreaded card check

Although much discussion has been bandied about of late regarding what the EFCA will end up looking like, most of the “scare” comes from the controversial “card check” proviso in the Act. In addition to requiring a secret-ballot vote to see if a majority of an entire bargaining unit wants to be unionized (a vote forced by 30% of that unit signing union cards), the EFCA currently stipulates that if the union gets cards signed by a majority of a bargaining unit, the union can force the organization to recognize and bargain with them – everyone in the unit would automatically be unionized with no vote taking place. Encouragingly, just a few weeks ago President Obama announced that the “card check” provision lacks the congressional votes necessary to push the measure over the top. That doesn’t mean the EFCA is dead, however, and the President has already announced that a compromise version of the bill is already in the works. Current speculation is that the compromise bill would likely call for a very quick election somewhere on the order of 10 to 21 days.

Closing the window

Most importantly in this debate is the notion of tightening the window of opportunity organizations have to “plead their case” with their constituents. Typical labor campaigns on behalf of organizations base much of their success on the ability to draw the campaign out, make logical and rational arguments to employees regarding the feasibility (or lack thereof) of joining/forming a union, and carefully craft communications delivering strong pragmatic messages to the staff. Such an approach removes much of the emotion from the decision process. Instead of having months to calm the waters and draw employees to an understanding of the critical issues surrounding the union’s push for representation, many speculate that the fervor and emotion of the election will have little if any time to die down before the election is held.

In support of false teeth

In talking with groups of management, we often ask them if they support the idea of false teeth. Nearly everyone does, but when we suggest pulling all their teeth and supplying them with a new set of dentures, these same managers protest, “but my teeth are not rotten!” So it is with unions and employee relations. For organizations to cope with the impact of EFCA, it will be critical that they realistically assess their position in relation to the employees that work for them. A check-up is in order to identify if there are any cavities. As the old adage goes, the only way to find out what your people think about you is to ask them. And the best known tool for accomplishing that objective is a comprehensive employee opinion survey. Identifying what issues are out there, where the “hot spots”

in your organization are, and how to develop steps for resolution is the best first step toward girding yourself against the challenges that union organization can bring.

Organizations that engage outside firms to manage data, ensure confidentiality, and offer change solutions through the survey feedback process essentially inoculate themselves against the need for unions. By gathering information through routine surveys and other assessment methods (the topic of the second article in this series), and utilizing other upward communication tactics to “open the doors” between the staff and leadership, organizations can develop an air of trust and encouragement that inclines many employees to embrace rather than oppose management (why mess with a good thing?). Knowing what the “hot button issues” are and dealing with them before organizers have a chance to press those buttons provides that ounce of prevention that will be critical when the unions come calling.

My teeth look good, now what?

Once you have a clear idea of where your staff is coming from and can identify those areas that need work, it will be important to ensure that the captains of your communication efforts (middle management) are equipped with the tools they need to deliver organizational messages effectively. As first steps, providing baseline union training to middle management is a very important and not too costly approach. Keep in mind though that sending your management team to a one-day seminar is not the band-aid it’s cracked up to be! You need to ensure that the instructors are providing tools that managers can use and examples that apply to your industry. Most importantly, you need an assessment of whether or not your managers are learning the content being delivered. Demand proof for your money that your management team has acquired the competencies they need regarding labor legislation and dealing with unions.

But what if that ship has sailed?

Not everyone is in the position of being union-free at present. So, for many there is a need to shore up resources and take immediate action to lessen the potential impact of the EFCA legislation when it does come to pass. In the presence of a union environment, sending the management team through “union boot camp” will not be enough. As a part of the culture, and in the hopes of equipping the team with all the tools they need, it will be important to conduct routine assessments and dialogues with managers to get a handle on any existing employee morale issues. This approach, often conducted with the assistance of an external facilitator so that senior and mid-level management can interact openly, often serves to build confidence among the management team regarding their oversight of the employee relations climate. The goal is to endow your organization with a team of mini-labor relations experts that function continuously in the organization to identify labor relations and morale issues.

Never before was the adage “an ounce of prevention is worth a pound of cure” more apropos – organizations need to strike out ahead of the coming EFCA storm and prepare their management teams and staff for this new age.

About Drew Brock, PhD

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