

in the company's parking lot, lunchroom, locker room, or other areas where they could be readily seen by management.

Meaning for Management

As noted, the Board has not yet tackled these questions. Nevertheless, employers who monitor employee use of social media should be aware they could be in violation of labor law as well as employment laws that may prohibit their conduct. Monitoring such employee activities would be at the employer's peril. We will continue to report on developments in this all-important area. ■

EFCA Update

AFL-CIO Continues EFCA Pursuit Despite Lack of Votes in Senate

The AFL-CIO will continue its efforts to push Congress to pass the controversial Employee Free Choice Act to make union organizing easier even though the measure doesn't have the Senate votes to pass.

"We believe EFCA is the best way to solve our broken labor law system," said Fred Azcarate, director of AFL-CIO's Voice@Work Campaign, speaking at a meeting of the Utility Workers Union. "We're continuing to move the campaign on the field."

While making no mention of the proposed EFCA, President Obama, in an April 28 speech in Iowa, described himself as a "pro-labor guy."

While the president made no mention of the EFCA specifically, he stated that his administration is pursuing other avenues. "There are a lot of things that we've been doing administratively to try to make sure that people just get the fair chance to organize," Obama said. "So that when a union tries to organize, it doesn't take five years before you can even get a ruling, and then it turns out that the ruling somehow conveniently always is against the union."

Senate Health, Education, Labor, and Pensions Committee Chairman Tom Harkin (D-Iowa) has re-

peatedly said that discussions about the bill are ongoing and that he hopes to get the bill through Congress this year.

Azcarate said the AFL-CIO is "investigating other ways to get it done" either in this Congress or the next. ■

Preventive Tactics

Union Avoidance in the Age of Obama

With union win rates at a 25-year high, a pronoun majority on the NLRB and reports of economic revival, you may find a union seeking to organize your workforce. The following are basic questions that unions will ask about your company. As part of your union-prevention program, these questions should be researched annually and changes made in your programs, wage scale, benefits, procedures, and other practices as needed and feasible to strengthen the union-avoidance program.

Are Wages Competitive for the Area?

The question of wage competitiveness has two parts, and management often considers only one of them. Management does its homework in conducting local wage surveys but neglects to consider whether the company's wages match what the union that might attempt to organize the company has negotiated with other area employers. Ideally, management should keep an eye not merely on prevailing wages in the locale from which it draws its labor pool, but also on the one or two "likely" unions that might be most inclined to organize the staff. Paying wages comparable to those who are "union" is generally more important than comparability with area standards.

Do Your Employees Believe They Have a "Voice in the Workplace"?

While wages are important, in cases where the company's wages equal or exceed those typically negotiated by the organizing union, unions often organize on the basis of giving employees a "voice" in their terms and conditions of employment. Fre-

quently, employees feel “left out” because management overlooks their views when implementing policies or adopting new ones. Even if comparably paid, these employees may sign a union card or put a check mark in the yes box.

Do Your Benefits Compare Favorably With Either the Locality or the Benefits Negotiated by the Organizing Union?

Employee benefits is an important area upon which management should focus, since even falling behind a holiday or two as compared to the contracts negotiated by the union organizing your employees may be a fatal flaw. Union organizers typically tell employees that simply voting the union in will automatically entitle them to the additional “union holidays.” Employees often find this a credible assertion, as they are led to believe that there are “union holidays” and “nonunion holidays,” and that becoming union “entitles” them to the holidays negotiated by the union with other employers. The same reasoning applies to disparities in sick leave and other paid-time-off situations.

Health insurance is another area where employers need to be competitive. Today, the competition is not so much with the level of benefits (although that certainly is an issue), but what, if any, portion of health insurance costs employees must bear. While each company must determine how to handle cost sharing of insurance premiums, the level of cost sharing can become an effective organizing tool in the hands of unions that traditionally have fully paid employer plans. Employees are led to believe that merely becoming part of a union entitles them to “free” health insurance supplied by the union and paid for by dues; the union does not tell them that cost sharing must be negotiated and also, as a result of negotiations, they could end up with the same (or even greater) cost-sharing payments under a union.

Are There Effective Complaint-Resolution Systems in Place?

One of a union’s biggest selling points is the grievance procedure concluding with referral of unsolved issues to arbitration. This is a highly democratic process and has great appeal for many employees. The concept that a “neutral” person will decide disputes, rather than the employer’s supervisors and upper management, resonates very well

with most employee groups. Except for those companies that have installed “peer grievance review” systems, it is difficult for employers to compete on a level playing field with the highly attractive union grievance/arbitration procedure. Accordingly, it is imperative for the union-free employer to develop credible systems of complaint resolution that are perceived by employees to be fairly structured and evenhandedly administered. These programs should be advertised, as they often fall by the wayside, with many employees not knowing that they even exist.

Thus, even though management has a great many other issues on its plate, use of the complaint-resolution procedure should be encouraged, and all employees should be periodically made aware that the procedure exists and know the protocol for following it. Employees should realize that their co-employees use the system and that the outcomes have been fair and reasonable without management taking undue advantage. This way, if the union begins to organize, management can proudly point to its complaint-resolution policy and specify that it is not merely a “paper” procedure that is tucked away in a handbook and rarely used, but rather, a living, useful policy that employees are able to access and a system in which they have confidence.

Management Tip: Check out your practices now and compare them to the criteria referred to in this article. Once organizing commences, making changes in practices can be illegal. Furthermore, if these programs don’t appear until there is talk of a union, management may not be able to persuade employees that the policies and programs available through their company equal or exceed those offered by the union and that paying dues for services already at their disposal does not make sense. ■

Avoiding Interrogation and Campaign Threats

The lack of supervisory training on what can and cannot be said during a campaign often shows up on the workplace floor and leads to adverse findings of unfair labor practices (ULPs). A recent case involving *ABC Industrial Laundry*, 355 NLRB No. 17 (2010), points out several potential ULPs that could occur wherever supervisors are inadequately trained in union prevention.

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