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The way to save card check

A new version of the bill should work to eliminate union and company pressure.

By Michael J. Goldberg

After last fall's election, unions had high hopes for labor-law reform. But even with the eventual addition of Minnesota's Al Franken to the Democratic ranks in the Senate, there won't be a filibuster-proof majority in support of the Employee Free Choice Act.

Already, a half-dozen or so Democratic senators, including Delaware's Tom Carper and the newly converted Arlen Specter of Pennsylvania, have indicated they won't support the current bill. So if reform is to become a reality, there will have to be compromises on both sides.

The legislation's most controversial provision, known as "card check," would make it easier for unions to obtain official recognition without a secret-ballot vote. Under card check, workers would voice their preferences by signing, or declining to sign, union authorization cards. If a majority of eligible employees sign, the union would be in.

Opponents have successfully attacked the bill as eliminating the secret ballot and opening the door to bullying by union officials soliciting signatures. The scare tactics used in some anti-union ads are undoubtedly over the top and often based on unfair, outdated stereotypes. One such ad cast the actor who played Tony Soprano's mobster nemesis as a union boss.

But if supporters of card check hope to make it acceptable to moderates like Carper and Specter, then "Version 2.0" must assure that card-check results legitimately reflect the views of a majority of relevant employees.

For example, the bill could require the National Labor Relations Board to mandate secret ballots whenever there's evidence of unlawful union pressure. It could also require a "supermajority" of 60 percent or 67 percent for certification by card check, and reiterate that a secret ballot would be available when requested by at least a third of workers.

Although the legislation's opponents exaggerate the threat of union intimidation, the bill's supporters should not pretend unions are without their flaws. Version 2.0 should reassure those worried about union abuses by strengthening internal union democracy.

For example, the bill could guarantee union members the right to ratify contracts, protect against improper takeovers of local unions by their parent organizations, and mandate that officers of intermediate union bodies be chosen by direct elections, which are currently required only at the local level.

Card-check proposals are a response to serious problems with the way the National Labor Relations Board conducts secret-ballot elections. It's not secret-ballot elections that trouble supporters of the Employee Free Choice Act; it's the threats and intimidation that too many employers engage in during the weeks or months that lapse between the scheduling of an election and the actual balloting.

With or without card check, the next version of the legislation should require something more like Canada's "instant" union elections, which are held five to 10 days after they are scheduled. With that approach, which has been endorsed by former NLRB chairman William Gould, legal disputes related to elections get sorted out afterward, rather than dragging on for months before elections are held.

Even when employers refrain from threatening or firing union supporters in violation of the law (which studies indicate they do in 25 percent of organizing drives), the playing field in the months before the voting tilts dramatically in the employers' favor under current law. Employers have unfettered access to the voters - their workforce - for 40 or more hours a week until an election takes place. They can hold countless "captive audience" meetings and one-on-one "counseling" sessions, subjecting their employees to an anti-union barrage instead of a two-sided debate.

Union organizers, in contrast, are not even allowed to circulate literature in a company parking lot, and they have no access to employees' contact information until late in the process.

Version 2.0 should therefore incorporate some of the ideas Rep. Joseph Sestak has proposed. Sestak (D., Pa.) would mandate equal time and equal access for union representatives when employers saturate their workplaces with anti-union propaganda.

If the opponents of card check are sincere in their dedication to equitable union elections, they should recognize that when only one side has any meaningful opportunity to campaign, even a secret ballot is not necessarily a fair one.

GM’s woes include owing CSX

June 3, 2009

Amid fallen giant General Motors Corp.’s larger troubles,the beleaguered U.S. auto manufacturer owes CSX Corp. $8.9 million for automotive shipments. CSX hopes to receive some reimbursement despite GM’s declaration of bankruptcy June 1.

"We've had informal discussions about that they would assume our contract and wouldn't be able to get out of bankruptcy until they made good," CSX spokesman Garrick Francis said. Francis said CSX has carrier liens on all the goods that are in transit so it won't lose money on those carloads.

CSX’s involvement and exposure is relatively small, given that Detroit-based GM owes creditors roughly $172 billion.

Unions Look to Labor Board to Reverse Bush Policy; NLRB Do What Failed Legislation Would Have?

June 3, 2009

By MELANIE TROTTMAN

WASHINGTON -- Unions, uncertain about the outcome of their push for Congress to overhaul national labor law, are counting on President Barack Obama's new appointees to the National Labor Relations Board to reverse Bush-era rulings they say hamper their efforts to organize workers.

The five-member board, which supervises union elections and referees disputes between private-sector employers and employees, has a new chairman and Mr. Obama has nominated two new members with union backgrounds. The Senate must ratify these nominations, as well as a Republican nominee who has yet to be named.

Law firms are advising corporate clients to be on alert. If confirmed by the Senate, the two new board nominees -- labor-side lawyers Craig Becker and Mark Pearce -- would join longtime member and chairman Wilma Liebman to create "a majority bloc distinctly in favor of expanding the rights of unions and workers," law firm McKenna Long & Aldridge LLP said in a report addressing issues likely to be revisited by the NLRB. "Employers must…prepare for the resulting shifts in the regulatory landscape."

Once new nominees are in place, the board will face a lengthy agenda of issues including: whether more workers whose jobs fall in the gray area between salaried management and hourly laborers should be allowed to unionize; how much freedom workers should have to use company email systems to promote union membership; how much access union organizers should have to workplaces; and what constitutes unacceptable intimidation by employers seeking to oppose union organizing drives.

"I think we can predict that the landscape will change as quickly as cases get to the board where they can overrule" precedent, said Ken Yerkes, chairman of the labor and employment practice at Indianapolis corporate law firm Barnes & Thornburg LLP.

Ms. Liebman, a former legal counsel to the Teamsters and Bricklayers unions, was named as chairman by Mr. Obama to replace the Bush-appointed chairman, who remains on the board. First appointed to the board by President Bill Clinton, Ms. Liebman later became known as the board dissenter when Bush appointees dominated. In an interview, she said the board "can enforce the law more vigorously" but is bound by constraints of the law it was created to administer and enforce.

That law, the 74-year-old National Labor Relations Act, was designed to protect the rights of workers

and employers and guarantee employees the right to unionize and bargain collectively with management.

Ms. Liebman said she is "agnostic" on the proposed Employee Free Choice Act, the labor-backed proposal in Congress that would make it easier for unions to organize workers without secret ballot elections as well as give federal arbitrators authority to impose contract settlements in cases where labor and management can't conclude deals. The act, opposed by business groups, is stalled for a lack of votes in the Senate, although former holdout Sen. Arlen Specter (D., Pa.) is talking with several lawmakers about a compromise proposal that might be passable.

Mr. Becker, counsel to the powerful Service Employees International Union, has argued that unionizing rights should cover more workers and wrote an article titled "Better Than a Strike: Protecting New Forms of Collective Work Stoppages under the National Labor Relations Act." Mr. Pearce is a founding partner of a union-side law firm, whose Web site says unions are "frequently" faced with employers who try to dissuade employees from exercising their right to unionize.

John Sweeney, president of the AFL-CIO, has endorsed the two nominees, saying they understand "the need to restore balance" to the NLRB. The U.S. Chamber of Commerce's chief legal officer, Steven Law, said the group will urge the Senate to carefully review Mr. Becker's nomination because of essays in which "he infers that employers really have no legitimate role to play in the organizing process." That position "seems inconsistent with the spirit of the law if not the letter," he said.

The NLRB, established in 1935, is a legacy of a time when the U.S. economy was more dependent on manufacturing and heavy industry, and industrial unions such as the United Auto Workers were pushing to gain power representing millions of blue-collar factory workers.

Globalization and a shift away from manufacturing have coincided with sharp declines in union membership. Unions represent about 12% of U.S. workers, down from 20% in 1983, the earliest comparable data available. Unions complain that the National Labor Relations Act doesn't give the NLRB enough power to sanction companies that violate the rules governing union organizing, and say the board takes too long to resolve cases.

They also say that once a petition is filed for representation the NLRB takes too long to hold an election, allowing time for employers to intimidate workers from joining the union.

Employer groups say the relevance of unions has declined in the modern-day economy and insist most employees don't want to join one.

Last year, about 400,000 private-sector workers joined unions, boosting membership to 8.24 million while leaving 98.8 million unorganized, said Cornell University labor expert Kate Bronfenbrenner.

6/4/2009 New Service

Amtrak to operate new state-supported route in Virginia

Amtrak recently signed an agreement with the commonwealth of Virginia to provide new passenger-rail service between Richmond and Washington, D.C.

Virginia will pay Amtrak $17.2 million during a three-year demonstration period to provide daily rush-hour service from Washington, D.C. to Lynchburg, beginning in October, and from D.C. to Richmond starting in December.

The first state-supported intercity passenger-rail corridors in Virginia, the routes are the first phase of planned passenger-rail improvements in Virginia's I-81/Route 29 and I-95/I-64 corridors. The service will operate over freight-rail tracks owned by CSX Transportation and Norfolk Southern Railway.

Amtrak and the Virginia Department of Rail and Public Transportation will finalize schedules and fares in the coming months.

It's war against organizing

By KATE BRONFENBRENNER

June 4, 2009

Angel Warner, an employee at a Rite Aid distribution center, sat next to me recently in a congressional briefing room and described what happened when she and her fellow workers tried to form a union in their California workplace.

She talked about the surveillance, constant threats and harassment they endured; how she and other workers were repeatedly taken aside and interrogated, one on one, about how they planned to vote; how two co-workers were fired; and how the rest lived in fear that any day they, too, might get a pink slip. The union filed numerous charges of unfair labor practices and eventually won the organizing election. But three years after the campaign began, Warner and her fellow Rite Aid workers still don't have a contract.

Like most U.S. companies, Rite Aid takes full advantage of current labor law to try to keep

workers from exercising their full rights to organize and collectively bargain under the National Labor Relations Act. Far from an aberration, such behavior by U.S. companies during union organizing campaigns has become routine, and our nation's labor laws neither protect workers' rights nor provide disincentives for employers to stop disregarding those rights.

Late last month I published a study, "No Holds Barred," that was presented at the hearing at which Angel spoke. I looked at a random sample of more than 1,000 union elections over a five-year period to determine the parameters of employer behavior during union representation elections in the private sector and the limitations of the labor law system established to regulate that behavior.

In 34 percent of the elections I studied, companies fired employees for union activity. In 57 percent of elections, employers threatened to shut down all or part of their facilities, and in 47 percent, employers threatened to cut wages and benefits.

In 63 percent of campaigns, supervisors met with workers one on one and interrogated them about their union activity or whether they or others were supporting the union. In 54 percent of the elections, supervisors used these one-on-ones to threaten individual workers.

The bottom line is that there has been a steady decline of workers' rights in the past several decades. Colleagues and I have examined this issue in a series of studies over the past two decades. My new data show that employers are more than twice as likely as they were in the 1990s to use 10 or more tactics -- including threats and firings -- to thwart workers' organizing efforts, and they are more likely to use more punitive and aggressive tactics such as interrogations, discharges and threats of plant closings, while shifting away from softer tactics such as social events, promises of improvement and employee involvement programs.

For the vast majority of workers who want to join unions today, the right to organize and bargain collectively -- free from coercion, intimidation and retaliation -- is at best a promise indefinitely deferred. In election campaigns overseen by the National Labor Relations Board, it is now standard practice for companies to subject workers to threats, interrogation, harassment, surveillance and retaliation for union activity.

The failure of the system to defend workers' rights in a timely manner multiplies the obstacles workers face when seeking union representation, creating delays that favor employers. Employers appeal a high percentage of the cases to the NLRB, and in the most egregious instances, the employer can count on a final decision being held up by three to five years.

A key aspect of proposed labor law reform, the Employee Free Choice Act, concerns revisions to the rules surrounding arbitration of the first contract. My findings show that this provision may be among the most crucial of the legislation. Fifty-two percent of workers who form a union are still without a contract a year after they win an election, I found, and 37 percent remain without a contract two years after the election. For employers, labor law provides yet another means to indefinitely delay unionization.

It doesn't have to be this way. My survey data from the public sector portray an atmosphere in which workers may organize free from the kind of coercion, intimidation and retaliation that so taints the election process in the private sector. Most of the states in the public-sector sample have laws allowing workers to choose a union through card check or voluntary recognition. And more than a third of public-sector workers in the United States are members of unions.

Unless Congress passes serious labor law reform with real penalties, only a small fraction of the workers who seek union representation will succeed. If recent trends continue, there will no longer be a functioning legal mechanism to effectively protect the right of private-sector workers to organize and collectively bargain. Our country cannot afford to make workers defer their rights and aspirations for union representation any longer.

Analysts reaffirm rail industry's long-term value

June 5, 2009

Analysts from two firms, Dahlman Rose & Co. and Morgan Stanley, signaled satisfaction with the long-term outlook for the rail freight industry's economic prospects following Norfolk Southern's Investor Day conference June 3. The two firms differed slightly on NS's own short-term outlook, but both said the Norfolk, Va.-based Class I railroad would share the excellent long-term prospects of the overall industry.

6/5/2009 Traffic

AAR: North American freight-rail traffic malaise continued in May

Five months into 2009, North American railroads continued to post high double-digit traffic decreases. In May, U.S. railroads originated 989,306 carloads, down 24.7 percent, and 723,898 intermodal loads, down 19.7 percent compared with May 2008 levels, according to the Association of American Railroads (AAR).

“May marked the second straight month in which U.S. rail coal carloadings had double-digit declines, a consequence of lower electricity demand and higher coal stockpiles,” said AAR Senior Vice President John Gray in a prepared statement. “Industrial production is still down sharply across the board, [which] means lower demand for rail service for everything from chemicals and scrap metal to cement and ores.”

In May, Canadian railroads’ carloads plummeted 32.8 percent to 213,517 units, while their intermodal volume plunged 18.1 percent to 157,446 units. Mexican railroads registered an 18.5 percent drop in carloads and 21.7 percent decline in intermodal originations.

Through 2009’s first five months, U.S., Canadian and Mexican railroads’ carloads decreased 19.6 percent, 23.8 percent and 14.2 percent, respectively, compared with totals from the same 2008 period. Their intermodal volume dropped 16.9 percent, 14.8 percent and 20.5 percent, respectively.