Labor Management ASAP

A Littler Mendelson **Time Sensitive** Newsletter

in this issue:

AUGUST 2005

The splitting of the AFL-CIO and the emergence of a separate union coalition, Change to Win, means employers must prepare themselves to operate in this new, aggressive union environment.

The Splitting of the AFL-CIO: *What It Means to the Nation's Employers*

By Gavin Appleby, Andrew Marks and Gerald Hathaway

In a widely anticipated move, three major labor unions — the Service Employees International Union (SEIU), the International Brotherhood of Teamsters and the United Food and Commercial Workers Union (UFCW) — have split from the AFL-CIO. We expect that UNITE HERE, which boycotted the recent AFL-CIO convention, will soon follow and possibly the United Farm Workers may as well. These five unions, together with the Carpenters Union (which left the AFL-CIO in 2001) and the Laborers Union (which announced they are staying within the AFL-CIO), have combined to form a coalition called Change to Win. This development is traumatic for the AFL-CIO, which may lose well over 5 million members (the SEIU, UFCW and the Teamsters alone have 4.6 million members). The change is also dramatic for the nation's employers which, as discussed below, may quickly be confronted with more frequent and more aggressive organizing efforts.

The Reasons for the Split

The departure of three major Change to Win unions has been brewing for some time. In 2004, Change to Win began seeking change within the AFL-CIO, including its leadership. When it became clear that the Change to Win agenda was not being accepted at the top levels of the AFL-CIO, and that the existing AFL-CIO leadership would not change at the July convention, the breakaway began to look inevitable.

The reasons for this break up are many. Most significantly, the leadership of Change to Win professed frustration over the AFL-CIO's focus on national politics, and demanded instead that more be done to stop the continuing decline in the percentage of union membership within the American workforce. Led by the SEIU, the Change to Win unions demanded that financial resources be devoted to organizing efforts instead of to U.S. political candidates.

The SEIU is a good example of what some observers refer to as a "new world union," using tactics that are more aggressive than those used by many of the old-line union guard. The SEIU's "top down corporate campaign" tactics change the fundamental way that unions operate — organizing is no longer addressed to the workers alone. Rather, the SEIU's tactics include softening the employer's resolve through investigation and disclosure of the employer's policies to customers and the community, using government agencies (such as OSHA, State Attorneys General and the Department of Labor) to investigate and prosecute violations of law, enlisting politicians and local civic leaders to pressure employers not to resist organizing, and obtaining union neutrality agreements (or related state legislation) and card checks in place of union elections. Some of these tactics as well as general grass roots organizing have been successful in obtaining new membership for the SEIU and several other new world unions.

The Current Status of Affairs

As might be expected from the splitting of any large organization, there are issues left to be resolved between the AFL-CIO and Change to Win. The most immediate concern is over state and local labor federations, which receive funding from national union organizations. On the last day of the AFL-CIO convention, AFL-CIO President John Sweeney effectively warned the Change to Win organizations that any effort on their part to be involved in the state and local federations would be looked upon unkindly since the Change to Win unions no longer support the AFL-CIO. However, there clearly are state and local federations that are convinced that change is needed in the union movement and some of these organizations prefer the Change to Win philosophies. As a result, there will undoubtedly be continued fallout at the state and local level.

What It Means to You

The fact that there are now two large union organizations is not welcome news to American employers. There is no question that the AFL-CIO and Change to Win are now competing entities trying to add new members to their organizations, with each vying against the other to prove that their way is better than the other way. There also is no doubt that the somewhat sleepy labor movement of the last decade is waking up to what is suddenly a competitive world of organizing.

Certainly the AFL-CIO needs to stem the tide of membership decline. To help deflect criticism, the AFL-CIO announced several new initiatives at its late July 2005 convention, including increased funding for local union organizing — thus providing member unions with a potential $22.5 million (some of which will be paid as "rebates" for successful organizing). At the same time, the Change to Win group is seeking to show that its coordinated aggressive campaign strategy is a "better way" to organize. While some raiding of each union organization by the other is probably inevitable, both organizations would prefer to add new members from the 30-60 million non-union American workers that studies show are willing to consider unionizing.

In the post-split world, smaller unions are likely to merge with larger unions (which was a plank in the Change to Win platform). In addition, if the Change to Win group can demonstrate immediate success in growth, it may convince other unions to leave the AFL-CIO, which incidentally, learned immediately after its convention that it had lost 189,000 members in the last year for reasons entirely unrelated to the Change to Win split. For unions that expect to survive and grow, aggressiveness will have to be the name of the game, and the SEIU's anti-corporate method of campaigning currently seems to be leading to more success than traditional union organizing efforts. The end result is significant pressure on employers to be ready for a new, aggressive union world.

Littler Recommends

Preparation, preparation and more preparation. Both union organizations are seeking targets in a more aggressive manner than was true as little as three months ago. Companies need to be prepared to deal not only with traditional union campaigns but also with anti-corporate campaigning. In light of these circumstances, we urge employers to consider the following suggestions:

1. Be self-critical. Assess your vulnerability to both campaigns and anti-corporate activity. Make sure that you are in compliance with laws (particularly OSHA, FLSA and related state laws) and that your benefits are where you want them to be. Know your property rights.

2. Be informed. Make sure you know how your employees feel about things. Audits help, but such audits should not be restricted to employee attitude surveys. Employers should analyze their policies (including no solicitation and other similar policies), employment practices (including which employees truly are supervisors), and employee empowerment programs to determine what changes, if any, are needed to ensure that they are ready to deal with union pressure.

3. Be astute. Train human resource professionals and facility managers to read the signs of union interest and union activity, as well as to respond effectively and legally to any issues that arise.

4. Be prepared. Non-union facilities of an organized employer or a nonunion contractor at an organized facility are low hanging fruit to aggressive organizers. Expect unions to seek representation on a national as well as local basis. Anticipate more aggressive bargaining demands directed to issues such as neutrality agreements and card check alternatives to union elections in non-represented facilities.

5. Be proactive. Prepare your public relations response to potential anti-corporate campaigning. Don't wait until criticism occurs from workers or outsiders. Evaluate your organization's involvement and reputation in the community, and be aware of what is going on in the community. One way that the new world unions have achieved success is through pressuring local politicians, and enlisting religious and civic leaders, to push for "employer reforms," all of which lead to an employer having to defend itself against very public criticisms of its practices, diversity, wages and benefits. There are reports of well-intended, if misinformed, preachers leading union-sponsored sit-ins in employee cafeterias. Having a good name in the community can deflect this kind of pressure before it occurs. Also helpful is educating employees and communities about the support given to those communities by the company, including the value of the jobs that the employer is providing.

6. Be preventative. Consider your company's hiring process to ensure that quality employees become part of the organization. Adopt and enforce job application and background check protocols. At the same time, address problem employees head-on so that disgruntled, borderline performers are not sitting around waiting to welcome a union campaign pitch. First line supervisors can still make or break an organizing drive. Make sure supervisors treat employees fairly and respectfully.

7. Be savvy. Realize that organizing in the new world may have non-traditional elements. Some of the money being set aside for union organizing is directed at specific corporations, including Wal-Mart, Federal Express, Comcast and Toyota. Other money is being earmarked for employees in information technology and in the financial and medical sectors.

We're prepared to assist you in whatever way is necessary.

Gavin Appleby is a Shareholder in Littler Mendelson's Atlanta office, he may be reached at gappleby@littler.com. Gerald Hathaway and Andrew Marks are Shareholders in Littler Mendelson's New York office and can be reached at ghathaway@littler.com and amarks@littler.com respectively.
