



Serving the Vending, Coffee Service and Foodservice Management Industries

The Employee Free Choice Act: Are You Prepared?

As NAMA brought to you in the Winter 2008 Edition of In Touch, the Employee Free Choice Act (H.R. 800) -- if passed could greatly change how operators do business. With the inauguration of our new Democratic President, this Bill has a high probability of passing. The Bill -- in its current form -- has 3 significant modifications:

- 1) An employer would now be required to recognize a union as the employees' representative when just a simple majority of the employees sign cards. This replaces the NLRB-supervised secret ballot elections that are traditionally held, where employees determine and vote on whether they want to be represented by a union confidentially without union or peer-pressure.
- 2) After a 10-day written notice from the union, an employer would be required to commence bargaining, while having to potentially submit to binding arbitration in the event the parties could not come to terms of the collective bargaining agreement after four months of negotiations. Here, the arbitrator then has the ultimate authority to bind the parties *for two years* on the terms and conditions of the initial collective bargaining agreement.
- 3) Penalties are increased for unfair labor charges filed against employers during union organizing and bargaining negotiations. Such penalties include triple damages against employers who discriminate against employees who participate in union organizing, campaigning and bargaining of the initial contract, as well as, civil penalties of up to \$20,000.

However, the Bill has been highly criticized because it does not address certain issues, such as, how long are the signed cards valid; there are no check-guards for forgery; and can employees move to de-certify a union by using this same card check process? If enacted, Operators would be required to campaign year-round as they would have no notice of union activity until the cards were already signed and delivered as opposed to the structured campaigning that takes place prior to the secret ballot voting. Management is hopeful that a compromise will be made and some of these concerns will be addressed in a modified version of this Bill.

How can Operators be proactive and prepare themselves should this Bill -- in any form -- get passed?

- One way employers increase their exposure is by failing to use proper union avoidance techniques. The recipe for proper union avoidance is to start by providing adequate training with your management to avoid poor management habits and by communicating with your employees to let them know you want to work with them and not against them.
- Audit your workforce and practices now to ensure your operation remains union-free later should the Bill get passed.
- Review and analyze your policies and practices to ensure they are compliant with federal and state employment laws.
- Write your congressmen – they do listen.

This update was written by Heather A. Bailey, an attorney in the law offices of Drinker Biddle & Reath, LLP. Heather is a NAMA Knowledge Source Partner with expertise in labor and employment law issues. NAMA members who have questions in this area of law can contact Heather at the address below for one free 15 minutes consultation, per member, per quarter.

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