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Will 2009 And The Obama Administration Bring Winds Of Change Or A Hurricane?

By: Louis P. DiLorenzo¹

For employers, a perfect storm of economic and historical forces promise tremendous changes in the labor and employment law landscape. This coming year could bring the most far reaching changes since 1935 when the Fair Labor Standards Act (minimum wage and overtime) and the National Labor Relations Act were passed by a Democratic Congress and signed into law by a Democratic President, Franklin Delano Roosevelt. FDR believed that the economic crisis posed a serious risk that wages and prices would fall. Both Acts were designed to help maintain a middle class by regulation and create a favorable climate for Unions to organize employers. The election of President Obama and these economic times, presents many similarities between 1935 and 2009.

After spending hundreds of million dollars in the last three presidential elections in an attempt to achieve labor law reform, organized labor has hit pay dirt with the election of President Obama. He has promised to sign the Employee Free Choice Act (EFCA), giving unions a much greater opportunity to become certified as a bargaining representative for a group of employees. Also, it will ensure they are able to negotiate that all-important first contract by guaranteeing interest arbitration. President Obama has indicated he is dedicated to restoring the middle class in this country and, according to him, the EFCA assists in that goal. This was similar to FDR's view of the role that passage of the NLRB would play during the Great Depression. There are, however, many significant differences between 1935 and 2009.

The biggest difference between these two periods is the existence of a global economy and America's place in it. In 1935, America was potentially the world's leading industrial power, slowly being forced out of its isolationist policy by world forces. In other words, America was the China of 2009. Manufacturing was king and we produced the world's products. The rise of unions in the United States, to an all time high in 1954 of 32 % of the private sector, did little to slow this world's appetite for America's products. World-wide competition was not the issue, production capacity and where to find it, was the problem. Today, the model is reversed. We have plenty of industrial capacity – it's the competition that causes the world to look elsewhere for the majority of manufactured items. Tough environmental laws and high labor costs cause an un-level playing field and make it very difficult, if not impossible, to allow the United States to manufacture many items here at home - shoes, clothes, and, most recently, the possibility that automobiles may be added to the endangered species list. In today's world

economy, efficiency, flexibility, innovation and adaptability are the key search words. Union-speak, such as entitlement, legacy cost, seniority and status quo, are not part of the lexicon of this millennium.

It remains to be seen whether the law of the land in 2009 will include the EFCA and in what form. Will the unions give up the secret ballot election for a quick election (5-21 days)? Will they try to hold on to the card check mechanism and give up interest arbitration? How bad do they want the enhanced penalties for employer unfair labor practice charges? Will they insist on being inconsistent and continue to want a secret ballot election to vote the union out, but not in, and not increase the penalties for union unfair labor practices? It will be interesting to see how these questions get answered. Of course, the ultimate question is whether legislation can make unions relevant in the private sector in the United States in 2009. I am convinced they are relevant in China in 2009; problem is— their President Elect is not Barack Obama.

Happy New Year and Be Careful Out There!

(Footnotes)

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