

THE JOURNAL RECORD

Thursday, March 26, 2009

www.journalrecord.com

\$1.00 • Vol. 114, No. 60 • Two Sections

Could a new labor law force business doors open to unions?

Tulsa labor consultants warn of threats; others dismiss charges

BY KIRBY LEE DAVIS
THE JOURNAL RECORD

TULSA - As union supporters once again put the Employee Free Choice Act before Congress, the Tulsa-based Labor Relations Institute offered a \$10,000 prize to the first federal arbitrator to prove he or she had indeed settled a first contract between a union and private employer in less than 90 days.

Twenty days later, LRI Chief Executive Don Wilson said no one had met the challenge.

That plays a bit like theatrical flare, suggested University of Tulsa labor law professor James C. Thomas, since up to this point, those mediators primarily handled union disputes with municipalities and other government bodies - not private employers.

But that's a key point to Wilson, whose 29-year-old firm has seen its products and services used in more than 10,000 union elections.

LRI's still-unclaimed reward refers to a key binding arbitration provision in the proposed law. That act, according to Wilson and some other theorists, could force businesses to not only allow employees to unionize, but take owners and management out of the process of forming that labor environment.

State union leaders scoffed at those fears, especially since Oklahoma operates under the 2001 Right to Work law, which gives employees the right to opt out of paying union dues.

"We don't go to employers looking to organize," said Jimmy C. Curry, president, secretary and treasurer with the Oklahoma State AFL-CIO. "It's the employees that come to us. When they've been mistreated or something's been done wrong, they come to us. We don't come to them."

That 90-day binding arbitration timeline has been overshadowed by a much-more debated element of the phoenix-like bill, the card check provision that would allow unions to set up shop without a formal employee vote if they can get 50 per-



PHOTO BY RIP STELL

Don Wilson, CEO of Labor Relations Institute, at his office in Broken Arrow.

cent of workers, plus one, to sign a card backing formation of a union.

Those two elements, with increased employer penalties, comprise the main sections of the Employee Free Choice Act, proposed legislation that was officially refiled for congressional scrutiny this month. While Don Wilson foresees the bill undergoing some revision through the legislative process, he fears the act will become law sometime this year, since union-favoring Democrats control both Congress and the White House.

Compromise talk by Starbucks, Costco and other companies mirror that admission, said Wilson, who founded LRI in 1980.

While LRI opposes all three sections of the Free Choice bill, Wilson sees binding arbitration as the most dangerous element. To some business advocates, it represents a fundamental challenge.

"The freedom and security of Oklahoma's work force will be negatively impacted if this bad piece of legislation becomes law," said Richard P. Rush, president and CEO of The State Chamber of Oklahoma.

Curry said he expects such talk from pro-business advocates - which is how he sees LRI. Thomas agreed.

"I think if you're objective, you have to examine who the messenger is," said Thomas, who has taught labor law at the TU College of Law for 40 years.

"What happens with the secret ballot, which the chamber of commerce sudden-

ly is embracing, is these employers spend all kinds of money with public relations firms to basically totally destroy the image of unionism and unions," said Thomas.

Union organizers have a difficult time countering this because "at that stage they have very little money," he said. "They're operating on a shoestring."

"Basically the Free Choice Act takes away from the employer this ability to use PR tactics to destroy the union's ability to unionize," said Thomas.

While Wilson could recall similar instances of peer pressure by union sympathizers and organizers, he put greater concern and emphasis on how the law would change the process establishing any new union.

Under the act's existing language, which Wilson admitted was somewhat vague, business leaders and union organizers would have only three months to iron out their first contract agreement. If that failed, the two parties would go before mediators, who had 30 days to find a solution. If that failed, the case would automatically go to arbitration under the Federal Mediation and Conciliation Service.

Since Wilson said most cases he's worked on have taken a year or more to iron out an initial contract, he thought the Free Choice Act timeline unrealistic. Since the act forces both sides into arbitration under the FMCS, which lacked much background in business, he said it gave

UNIONS

from page 1

unions no incentive to bargain and every incentive to await arbitration.

"I can't imagine what some of these contracts are going to look like," Wilson said.

Curry saw little merit to Wilson's concerns.

"It doesn't matter if they know something about the business or not," the union leader said of the arbitrators. "If they did, they may be biased. They will make decisions that will make common-sense and are unbiased."

Having operated with card check rules for municipal employees for several years, Curry said the state AFL-CIO has drawn no incidents or complaints of fraud, intim-

idation or abuse with the National Labor Relations Board.

Although he knew of no statistics on contract negotiation length, Curry said all municipal contracts were resolved quickly, without binding arbitration, except for one involving the city of Edmond. He said those talks have gone on 22 months without progress or arbitration.

"If 90 days is not right, is 22 months too long?" he said. "We'll discuss too long."

Whether the law will bring about an increase in union activity remained anyone's guess. While union membership has waned over the last 50 years, their influence on a decline since President Reagan broke the air traffic controller strike, some analysts have speculated today's economic problems could bring a revival of interest. Others have argued that today's com-

petitive world economy would hamper that.

Some, like Curry, even wondered if the Free Choice Act actually changes the playing field that much.

"All you have to have under present law is a majority of employees wishing to have a union," said Thomas - yet that freedom has not spurred dramatic increases in union membership. "We are at probably the very lowest level that anyone has seen labor at since the Depression, since the FDR years."

Wilson said union organization efforts have enjoyed more success in recent years, with vote ratifications sometimes approaching 70 percent.

"They don't need a Free Choice Act to stop employer intimidation because it doesn't take place in the first place," he

said. "Really, it's not true on either side. Most companies truly are educated in the process."

By speeding up the process, Thomas thought the act may have its biggest impact with construction firms and other short-project contractors.

"Building trade unions have a very difficult time organizing these work crews," he said. "By the time they get a company organized, the job's over with. If they have a card count, the union could probably send over enough people to get jobs with a contractor and immediately get recognition."

To Curry, the issue came down to human relations.

"I don't think employers need to be concerned, if they treat their employees right," he said.