



Health Care Labor Report

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Canadian Experience Previews Card Check and Expedited Elections in the U.S.

By John Mortimer

For decades now, much of Canada has been subject to laws similar to key provisions found in the proposed *Employee Free Choice Act* (EFCA). Therefore, the Canadian experience is instructive for Americans who are concerned about the full impact this bill could have on the American workplace and economy. This article is the first in a series that will help American employers understand what to expect and how to react to the changes that will likely be forthcoming.

First, some background on unions in Canada. Private sector unionization at the end of 2007 was about 18.3%, compared to 8.2% in the U.S. Overall unionization, including the public sector, stands at 31.8%, compared to 13.3% in the U.S. (Note: these numbers include total coverage – thus all unionized workers whether or not they are actual union members – the more widely reported 7.5% for the U.S. is, apparently, actual union member density.)

Are Canadians more pro-union than Americans? No. Back in 2003, even our labour umbrella group, the Canadian Labour Congress, a Canadian version the AFL-CIO, found that only one-third of Canadians wanted to join a union. Even more interesting, the survey also found that only 40% of unionized employees indicated that they were likely to vote for a union if given a new opportunity to choose. These results are from polls commissioned by unions.

Canada's higher rates of unionization are a result of pro-union labor laws or, more accurately, *pro-union leader* labor laws. When coupled with the wide powers of interpretation, prioritization and administration that are given to Canadian labor boards, who often possess a bias in favour of unionization, these laws and our labor boards deny employees a real and informed choice about unionization.

With three of five National Labor Relations Board (NLRB) positions vacant, Americans will soon see a significant shift in policy and are likely going to learn what Canadians have seen play out for years — labor board decisions can be more critical than the words in law. I predict numerous prior NLRB rulings will be overturned or revised in a direction that will benefit union leaders, but not necessarily help American workers or employers, let alone the economy.

In Canada, employees have the right to oppose unionization but labor boards rarely help employees to achieve this right. In fact, we have witnessed situations where boards will mislead employees and even try to talk them out of opposing unionization!

The NLRB is already not the easiest agency (or Web site) for employees to navigate and American workers should expect choppy seas ahead.

This is not the only tactic that union leaders will want to import from the North; first contract arbitration is another overlooked aspect of the EFCA that will affect employers and employees. The most recent high profile first contract

arbitration in Canada saw the wages of the employer increased by up to 30% by the arbitrator – effective immediately. The employer was forced to close this part of its operation.

In the U.S., some labor experts also predict that Congress may trade Canadian style expedited elections for card check procedures. In some Canadian provinces, union elections are held within five to 10 days of the union's presentation of the petition for certification or recognition, compared to 42 days in the U.S. This will be a loss for union leaders who see card check as the key to increasing the number of workers they represent, but unions already have their sights set on the next mid-term elections with a goal of defeating legislators who do not support EFCA, not just defeating those who oppose it.

If the card check procedure becomes law in the U.S., Canadian research suggests that union recognition success rates will rise by almost 20%. Other studies suggest that, over time, card check will result in a minimum 3% to 5% increase in union density. That translates into a 25% to 40% increase in U.S. unionization – and possibly higher as the analysis by the authors was characterized as “conservative.” Using average U.S. union dues that would mean almost half-a-billion dollars in additional union revenue for every 1% rise in overall union density. As such, a 5% increase would equate to approximately \$2.5 billion – a significant boost in funding for union organizing and advocacy campaigns as well as for supporting and opposing individual politicians.

Other Canadian research on employee engagement and employer profitability demonstrates that unionization does not have a positive impact on economic performance in Canadian workplaces. Unionization has been associated with declines in employee productivity, research and development spending as well as a reduction in profits.

Considering all the above, American employers need to prepare for this “perfect storm.”

What can American employers expect? How should they respond? My advice – be prepared for a different level of union activity. Start by educating management and your employees.

Remember, the majority of workers do not want to be unionized and some employees will exercise their legal rights to actively oppose unionization just like their co-workers who promote it. If you develop and ensure that your organization is an employer of choice workplace, it becomes difficult for a union to take card signing beyond token levels.

But the reality is employers and supervisors make mistakes. Unions have card-signing tactics that range from peer pressure to fraud – forging the signatures of employees onto authorizations cards for the purpose of card check recognition. Every employer should undertake proactive preparations for the new labor board and whatever legislation is passed now and in the years ahead.

John Mortimer is president of the Canadian LabourWatch Association and a human resources consultant.