Union Organizing in Faculty Units in Higher Education in Missouri

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PRIVATE SECTOR EMPLOYERS

- The National Labor Relations Board and the “Perfect Storm”-- Resulting In Increased Union Organizing Activity At Institutions of Higher Education.
The National Labor Relations Act (NLRA)

- Evolved in 1935
- Two Fold Purpose
  - Prevent Unfair Labor Practices
  - Create a mechanism for employees to engage in self organization (become unionized)
- In 1950’s Union density was approximately 35%
- Most recently, union membership among private sector employers is at 6.7%
The Reaction of The National Labor Relations Board (NLRB)

- Expand its relevance by enhancing “PCA” protection (impacts on all private employers, not simply The “unionized” shop.)

- Enhance the prospects for successful union organizing.

- How Has The NLRB Done This?
THE NATIONAL LABOR RELATIONS ACT SECTION 2 –
THE DEFINITIONAL FRAMEWORK

• Section 2(2)-- The term “employer” includes any person acting as an agent of an employer, directly or indirectly but shall not include the United States Government or any wholly owned government corporation --- or any State or political subdivision thereof...

• Section 2(3)-- The term “employee” shall include any employee, and shall not be limited to the employees of a particular employer, ....but shall not include any individual employed as an agricultural laborer, ... or any individual having the status of an independent contractor, or any individual employed as a supervisor.
Section 2(5)-- The term “labor organization” means any organization of any kind, or any agency or employee representation committee or place, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.
THE NLRA - - DEFINITIONAL FRAMEWORK—(Cont.)

• Section 2(11)-- The term “supervisor” means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of merely routine or clerical nature, but requires the use of independent judgment.
THE NATIONAL LABOR RELATIONS ACT (NLRA)

- Section 7-- Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3) [section 158(a)(3) of this title].
THE NATIONAL LABOR ACT (NLRA) SECTION 9 AND THE REPRESENTATION PROCEDURE

• Outlines a statutory procedure by which “employees” can designate or select a representative for purposes of collective bargaining.
THE NLRB’s LIBERALIZATION OF THE REPRESENTATION PROCESS

- Electronic Filing of Representation Parties
- Employer Must File a Statement of Position (No “Hiding the Ball”)
- Pre-Election Hearing Begins 8 Days After Filing of Petition
- Issues Subject to Litigation are Very Narrow
- Voters Eligibility List Enhanced to Include personal phone numbers and email addresses
- Elections Conducted Much Quicker
For a number of reasons Adjuncts and Graduate Assistants are “attractive targets” for enterprising unions.

- The SEIU and “Adjunct Action”
- The Success of the SEIU Nationwide
NLRB RULINGS WHICH HAVE AIDED UNION ORGANIZING IN HIGHER EDUCATION

• In \textit{NLRB v. Catholic Bishop of Chicago}, 440 U.S. 490 (1979)-- the Supreme Court concluded that the NLRA must be construed to exclude teachers in church operated schools.

• In \textit{Pacific Lutheran University}, 361 NLRB No. 157 (2014)-- the NLRB adopted a 2 part test that allowed the NLRB to assess jurisdiction over faculty members teaching at a self-identified college or university.
NLRB RULINGS WHICH HAVE AIDED UNION ORGANIZING IN HIGHER EDUCATION (Cont.)

- In Brown University, 342 NLB 483 (2004)-- the NLRB concluded that Graduate Student Assistants were not employees under the NLRB
- But in Trustees of Columbia University, 364 NLRB No. 90 (8/23/16)-- The NLRB concluded Graduate Student Assistants were employees under the NLRA
POTENTIAL STRATEGIES TO IMPLEMENT
PUBLIC SECTOR EMPLOYERS
ARTICLE 1, SECTION 29 OF THE MISSOURI CONSTITUTION

• That employees shall have the right to organize and to bargain collectively through representatives of their own choosing.
CHAP 105: STATE BOARD OF MEDIATION

- A mini NLRB for Public Employees
- Representation Cases
- Not Unfair Labor Practices Cases
- Representation Cases and Elections for “Employees... of any public body” (§105.510)
- **Carve Outs** from Chapter 105 (No Elections): Police, Deputy Sheriffs, Missouri State Highway Patrolmen, Missouri National Guard, all Teachers of all Missouri Schools, Colleges and Universities
HOW DO CARVED OUT FACULTY EXERCISE THEIR CONSTITUTIONAL RIGHTS?

- Card Check; or
- Secret Ballot Election (per Ordinance or Resolution)
CARD CHECK

In Eastern Missouri Coalition of Police, Fraternal Order of Police, Lodge 15 v. City of Chesterfield, 386 S.W.3d 755 (Mo. 2012): The City of Chesterfield was required to bargain with a union simply because the union had obtained and submitted authorization cards signed by a majority of the City’s police officers and sergeants.

• No Secret Ballot Election
• Just like EFCA – Employee Free Choice Act – Failed in 2007-2009 in U.S. Congress
The dangers of authorization cards:


... employees often sign authorization cards for reasons having little or nothing to do with an informed, uncoerced willingness to have a union bargain for them. In a typical organizing campaign, like the campaign in this case, authorization cards are handed out to a group of employees after a union organizer’s speech. In such a setting many employees may be induced to sign an authorization card because others in the group have signed – a kind of group psychology – without ever having read the card’s language. Other employees may sign cards because they fear union retaliation, or simply because they want the union organizer to leave them alone.
SECRET BALLOT ELECTION
(PER ORDINANCE OR RESOLUTION)

Recently, the Missouri Court of Appeals, Western District, in *West Central Missouri Region Lodge #50 of the Fraternal Order of Police v. The City of Grandview, Missouri*, ___ S.W.3d ___ (Mo. App. 2015):

A Public body can refuse card check if it has in place on ordinance that regulates the procedure for conducting a secret ballot election.
CONSEQUENCES OF NO ORDINANCE

• CARD CHECK!!!

• WHY NOT ENACT THE ORDINANCE??
ORDINANCE / ELECTION
PROCEDURE DESIGN

1. **Control over the Petition**
   - Showing of Interest?
   - Union Financial Disclosures
   - Filing Fee

   - **Control over the Composition of Bargaining Unit**
     - Board of Trustees (or sub-unit) decision
     - Avoid (or allow) Micro-Units
     - Adjuncts – In or Out?
     - Grad Students – In or Out?
     - Who are/are not Supervisors and/or Managerial employees
3. **Hearing Process**
   - If union disputes Trustees’ decision
   - Control timing, Hearing Officer, precedent considered

   - **Secret Ballot Election**
   - Specify Timing
   - Trustees appoint neutral to conduct
   - Post-Election Objections
   - Potential Hearing
   - Trustees (or sub-unit) enter ruling
5. **Sunset on Duration of Union Certification**

6. **Regulate Collective Bargaining**
   - Limit on Duration of CBA