

Congress Considers “Patriot Corporations of America Act”

WORKPLACE: Union organizers expected to benefit.

A Congressional committee is currently reviewing a bill titled the “Patriot Corporations of America Act of 2009” (H.R. 1874), which would take effect for taxable years beginning after December 31, 2009. The bill’s stated purpose is “to provide federal contracting preferences for, and a reduction in the rate of income tax imposed on, Patriot corporations, and for other purposes.”

Employers should be on the lookout for those “other purposes.” One of the less-publicized goals of this bill appears to be to dramatically increase the success rate of union organizing drives.

The bill’s definition of “Patriot Corporation” includes nine requirements that a corporation must satisfy to qualify for the bill’s benefits – a five percent reduction in taxable income and a preference in bidding for federal contracts.

From a labor relations perspective, the most controversial requirement is that the corporation must maintain at all times during the taxable year “neutrality in employee organizing drives and [have] in effect a policy to that effect.” This is code for staying quiet if a union tries to organize your company.

This would be a very steep price for union-free companies to pay in exchange for the Patriot Corporations Act’s benefits. Under existing law, an employer is not required to stay neutral in a union organizing drive, unless it voluntarily enters into a so-called “neutrality agreement” with a union.

If an employer must stay neutral during a



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union organizing drive, the union’s chances for success improve exponentially. For this reason, unions would likely target “Patriot Corporations” for their organizing efforts.

Some “neutrality agreements” also contain a “card check” provision, under which the company must recognize a union if at least 51 percent of employees sign union pledge cards. The so-called “Employee Free Choice Act of 2009,” also pending in Congress, would impose “card check” provisions on all employers.

The current version of the Patriot Corporations Act is silent on whether employers must adopt “card check” procedures, but it is possible such a requirement could be imposed by administrative regulation if the Act becomes law. Again, this would make it significantly easier for union organizing campaigns to succeed.

In addition to neutrality during union organizing drives, businesses would have to satisfy these other requirements during each taxable year to be designated as “Patriot Corporations”:

- at least 90 percent of goods and services sold must be produced in the United States;
- the company must pay at least 70 percent

of standardized health insurance plan costs for the benefit of employees;

- all National Guard and Reserve employees called to active duty must be paid full differential salary and insurance benefits;

- at least 50 percent of research and development, based on cost, must be conducted in the United States;

- management compensation cannot exceed 10,000 percent of compensation for the least-compensated full-time employee;

- at least 5 percent of paid wages must be contributed to a portable pension fund for the benefit of employees; and

- has not violated any Federal regulations on labor relations, workplace safety, the environment, consumer protection, or any other regulations specified by the Secretary of the Treasury.

It is too soon to tell whether the Patriot Corporations Act will become law, or if the current bill’s pro-union provisions will remain intact. Nevertheless, employers should prepare themselves for the impact of this potential new law and become acquainted with their options.

From our vantage point, union organizing has increased substantially since President Obama won the election. This trend is likely to continue since President Obama is so staunchly pro-union. Even if this law does not pass, employers need to ready themselves for how to legally respond to a union organizing effort.

Richard S. Rosenberg is a founding partner of Ballard Rosenberg Golper & Savitt LLP, a management side labor law firm in Glendale. Rosenberg was recently selected as one of the 25 best lawyers in the San Fernando Valley. He may be reached at (818) 508-3700 or rrosenberg@brgslaw.com.