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Unions

Management Attorneys Say Unions Increasingly Using Corporate Campaigns

Organized labor is increasingly turning to corporate campaigns that attack a company's reputation as a way to achieve union goals, and employers in the health care industry are particularly vulnerable, Randel K. Johnson said Jan. 13 at a panel discussion hosted by the U.S. Chamber of Commerce.

Johnson, vice president of Labor, Immigration, and Employee Benefits at the chamber, said that health care employers as well as employers in other industries heavily reliant upon their public reputation, such as hotels, are attractive targets.

"With health care employers, reputation is absolutely key. It is important to note that health care is unique because it literally deals with people's lives so these [reputation attacks] are particularly onerous," according to Michael J. Lotito, a partner with Jackson Lewis in San Francisco. Lotito emphasized that because the tactics used in a corporate campaign are largely about tarnishing reputations, they are better dealt with as public relations problems rather than legal problems 90 percent of the time.

The campaigns, which can be traced back to the 1970s, have become an increasingly popular union tactic since the 1990s and are frequently used by the Service Employees International Union, according to the chamber's Johnson.

Asked to respond to points made during the panel discussion, Jill Hurst, SEIU's organizing director, told BNA Jan. 14 that the union does not make false allegations of wrongdoing against employers. Hurst said that SEIU's corporate campaigns are part of its core mission to improve the lives of workers and their communities by holding companies accountable for their behavior.

Commentators at the discussion agreed that a company's best defense against a corporate campaign is likely to be a strong public relations offense. "This is a morality play. The first way to preempt a corporate campaign is to define yourself positively before negative characterizations by a union," Lotito said.

The panelists also generally agreed that the most successful strategy for companies confronted with a corporate campaign is a good relationship with its workforce.

A corporate campaign can be defined as a range of tactics used by unions to exert "top down" pressure on an employer, according to Mark A. Carter, a partner with Dinsmore & Shohl in Charleston, W.Va. Campaigns typically include coalition building with religious and other groups, public relations efforts, allegations of safety and health violations or wage and hour violations, as well as consumer boycotts and shareholder actions, Carter said.

The campaigns may be conducted in order to facilitate union organizing but may also be

used by unions to compel collective bargaining concessions or attain other union goals, according to Carter.

Speakers at the panel discussion said that corporate campaigns are the opposite of traditional, grass-roots labor organizing where the goal is to encourage workers to unionize and are instead aimed at "organizing employers" to force them to comply with union goals such as having the employer sign neutrality and card check agreements.

"Corporate campaigns [by organized labor] have bypassed the shop floor and have gone straight to the top floor," concurred Steven J. Law, chief legal officer and general counsel at the Chamber of Commerce.

The campaigns are not a "battle for the hearts and minds of employees but are about raw power and an attempt to get union dues," said Paul Salvatore of Proskauer Rose in New York.

Campaigns Linked to Dwindling Union Numbers

William P. Schurgin, an attorney with Seyfarth Shaw in Chicago, said that unions have turned to the corporate campaign because their "market share" of employee membership has dwindled to less than 8 percent of American workers in the private sector under traditional organizing methods.

Schurgin said that in the past unions were more successful at attracting membership because they could "sell" a range of benefits to workers on issues such as workplace safety and compensation—issues that have since become heavily regulated by state and federal agencies.

"Now, it is hard for unions to make their case for workers to join [a union] based on bread and butter issues. Unions are businesses and they are using corporate campaigns because [the campaigns] do not require them to win over employees. [Using] corporate campaign tactics unions win 90 percent of the time," Schurgin asserted.

Attorneys who spoke at the event on the use of corporate campaigns against the health care industry said the industry is also particularly vulnerable to the campaigns because it is heavily regulated on safety and health issues. Allegations of safety and health violations are easy for the unions to make and costly for companies to combat, they said.

In addition, employers such as hospitals may have relationships with religious institutions that sometimes partner with unions in the campaigns for social justice reasons—thereby making the company vulnerable to pressure from the religious institution, said Lotito.

Lotito said union campaigns against health care employers use tactics including attacking the employer's tax exempt status, publicizing negative accounts of executive compensation, and alleging the employer engages in improper debt collection practices or "redlining" by not locating hospitals or other facilities in largely minority neighborhoods.

And the tactics can be particularly costly for heavily regulated health care employers because the unions do not have to prove the health and safety allegations in order to force health care employers to expend significant resources attempting to disprove them, according to Ronald R. Kimzey, a partner with Ford & Harrison in Atlanta.

"Health care is perhaps the most heavily regulated industry in the [country. Occupational Safety and Health Administration] regulations are an area of great vulnerability for corporate campaigns against health care employers. [Allegations of violations] are easy to file—causing employers to use scarce resources that could better be spent on patient care," according to Kimzey.

The SEIU's Hurst disputed that assertion, saying she is not aware of the union making a significant number of safety and health related allegations against health care employers and said the union had not brought false claims against employers.

Unions are increasingly using a specific form of corporate campaign—shareholder activism through union pension funds—to achieve their organizing and bargaining goals, according to Homer L. Deakins Jr., a management attorney with Ogletree, Deakins, Nash, Smoak & Stewart in Atlanta.

“Shareholder activism is clearly the most significant development in the current era of corporate campaigns,” Deakins said. He said that shareholder activism is “going to get a lot worse before it gets better” because the Obama administration and Congress attribute some of the current economic crisis to poor corporate management on issues such as executive pay.

Deakins defined shareholder activism as “proposing shareholder resolutions to change corporate policies or personnel, threatening proxy voting attacks, [and] making public attacks on board members and senior management.” Challenges to executive compensation are one such attack, Deakins said.

Tactics include capturing control of the proxy voting of pension fund trustees, legitimizing proxy voting on the basis of nonfinancial social policy grounds, forging alliances with other investors, weakening the stock value of the company being targeted, and using negative publicity to damage the target company's image with its investors and the public, Deakins said.

Employers Should Focus on Preemptive PR

The panelists generally agreed with Lotito that companies—not just those in the health care industry—should be prepared to respond to a union's corporate campaign by having strong public relations strategies. In addition, companies should foster good labor-management relations, and should monitor workplaces to make sure the company is in compliance with applicable workplace laws and regulations.

“Businesses should develop positive relationships with their employees, [and] they should monitor their plants for OSHA and wage and hour violations. The better the relationship with employees, the better the chance you can succeed against a union's corporate campaign,” according to W. Melvin Haas III of Constangy, Brooks & Smith in Macon, Ga.

Kimzey concurred, saying “Make sure your house is in order. Fix any problems. If you are not prepared to fix the problems then all our comments today are moot.”

The panelists advised employers that are not prepared to make such efforts to consider settling with the union to avoid being the subject of a corporate campaign. “To fight or not to fight is the critical question. Are you prepared to take the [death of a] ‘thousand cuts’?” Salvatore said. He added that some employers may decide they are better off making a deal with the union earlier rather than later.

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