May 24, 2011

U.S. House of Representatives
Committee on Education and the Workforce
Subcommittee on Health, Education, Labor and Pensions
2181 Rayburn House Office Building
Washington, DC 20515-6100

RE: Hearing on "Corporate Campaigns and the NLRB: The Impact of Union Pressure on Job Creation"

WRITTEN STATEMENT OF DAVID A. BEGO

Chairman Roe and Distinguished members of the Committee:

My name is David A. Bego. For the past twenty (20) plus years, I have been the president and CEO of Executive Management Services, Inc. (hereafter, "EMS"), a janitorial and facilities maintenance company headquartered in Indianapolis, Indiana, which I founded in 1989. I appreciate the invitation and the opportunity to speak to you on a topic on which I have, unfortunately, become quite familiar. From 2005 through 2008, EMS was subjected to a vicious corporate campaign by the Service Employees International Union, Local 3, based, at the time, in Cleveland, Ohio. While the campaign ultimately failed, it was at a substantial cost, both in the financial sense, and in terms of reputational and relationship damage. In light of these experiences, I have become an advocate against forced unionism, against legislation providing political favor to labor unions, and against the current labor board's agenda to empower Big Labor.

Introduction

I began EMS as a young entrepreneur with $30,000 and a dream of running a first-class company. Through hard work and good luck, EMS fulfilled my dream. EMS now has approximately 4,000 employees, maintains branch operations in twenty-two states, and services companies in thirty-eight states, as far east as New Jersey, and as far west as Utah. The EMS business model is to contract with companies for the provision of janitorial and maintenance services, to place our employees into customer facilities to provide such service, and to provide first class service through superior training and the proper tools and equipment. Unlike many of our competitors, our benefit is not necessarily reflected in the pricing. We do not cut corners to provide price advantages. Rather our edge is in our people, in the quality of our services, and in our ability to meet almost any customer need.

Our company is unique in that, in addition to standard office cleaning, we also provide such services in industrial and other environments with unique needs. We provide our services in steel mills, in processing plants, in laboratories and medical offices, and in educational settings, in addition to the standard commercial office environment.

We are on the forefront of the "green" movement. EMS is one of only two companies headquartered in the state of Indiana to obtain the GS-42 certification for green cleaning from "Green Seal," a non-profit organization devoted to setting environmental standards for cleaning, and promoting the use of environmentally responsible products, as well as providing education and training on environmentally

friendly cleaning services and products. Such certification assures its customers that EMS is on the forefront of providing healthy and environmentally friendly services.

I am not a person who is anti-union by nature. Nor am I one who believes that labor unions have necessarily exhausted their usefulness. Prior to my founding of EMS, I was employed by Central Soya as a supervisor in an experimental feed mill. As supervisor, I often supervised union employees. My perspective was that it did not matter whether the employees were union or not. To operate the mill effectively, the employees needed a clean and safe working environment, they needed to be treated fairly, and they needed to have the belief that management respected them. This philosophy served me well, as I was recognized as an individual with a unique ability to turn around problem mills and make them highly productive. In retrospect, perhaps this "ability" was not unique at all, rather just a philosophical belief in abiding by the "Golden Rule." Such treatment should be applied to all employees, union or not. For purposes of full disclosure, I believe that there are situations, particularly where employees are in work environments, which involve substantial threats to their safety or health, that labor unions fulfill a great need to maximize worker safety. However, the existence of a union alone does not necessarily make one position better than an equivalent position without union representation.

Unfortunately, events that have transpired over the past five to six years have made me aware of the efforts of certain labor unions attempt to impose forced unionism. This is an effort by labor unions, not to organize employees based on employee needs, but rather to organize companies, or at a minimum, subdivisions of a company, for the purpose of increasing membership and, ultimately, the union's political power. While the

union rhetoric remains that they are acting for the benefit of the employee, their actions clearly indicate they are not. To be perfectly clear – this practice of forced unionism is one to which I am very much opposed.

Forced Unionism and the Push for EFCA

A labor union's attempt at forced unionism is based on a business model. This model includes identification of a geographic area, identification of the potential business targets in that geographic area, and analysis of the total number of potential "members" which the union may acquire. It is simple statistical analysis. In many, if not most, cases there is no attempt by any employee of the companies targeted to reach out to the labor union for assistance.

Once the labor union has identified the scope of its target, its representatives then reach out to the companies to be impacted. The representative approaches a key executive of the employer in a relatively friendly matter, requesting a meeting. When they are granted this meeting, the labor union representative informs the company that it intends to unionize the workforce and that it wishes for the company to sign a "Neutrality Agreement" in which the company will agree to remain "neutral[1]." The union's definition of "neutrality" however, is surprisingly one-sided. Per the terms of the the agreement, the company is required to (1) produce the names of all of it's employees and their contract information, (2) agree not to say anything negative about the union or otherwise interfere with their attempts to organize the company's employees, and (3) agree to accept the union as the representative of the company if they produce

[1] The Neutrality Agreement presented to Executive Management Services by the SEIU Local 3 for signature is enclosed as Attachment 1. EMS has obtained copies of other Neutrality Agreements entered into by the SEIU, and all are in substantially the same format as Attachment 1.

authorization cards[2] for more than fifty percent (50%) of the class of employees. This automatic recognition would be in lieu of the holding of a secret ballot election by the National Labor Relations Board, the federal agency charged with the oversight of labor matters and the administration of such representation elections. The system proposed in the neutrality agreement is very much like the "card check" legislation that has been proposed under the misnomer of the "Employee Free Choice Act," which has been before Congress on multiple occasions over the past several years, and which its proponents have been unable to pass.

If the company refuses to sign the neutrality agreement, or if it otherwise takes action which the union finds, in its own definition, not to be "neutral," the union begins to target the company through a variety of means, including smear campaigns, deceptive representations, filing of frivolous charges with government agencies, the targeting of the company's employees and customers, and other actions ultimately designed to force the company to capitulate to the union's demands.

It does not make one bit of difference to the union who the company is, how well they treat their employees, how much better they pay their employees, or what benefits they provide. In short, the unions utilizing the forced unionization drives, ARE NOT, in any way, concerned with the best interests of the employees, and they are not motivated, by the "injustices" they allege to have been committed by the company.

The SEIU at My Doorstep

Prior to 2005, I would not have believed such a scenario to actually exist. In that year, however, the SEIU came to my doorstep. It began with calls in December of 2005,

[2] The Union Authorization Card utilized by the SEIU local 3 is enclosed as Attachment 2.

and finally an arranged meeting with SEIU contract administrator Dennis Dingow in April 2006. Mr. Dingow provided the altruistic sales pitch of the SEIU – that they were interested in improving working hours and working conditions for janitors around the country. I pressed Mr. Dingow for details on the proposal he was setting forth. He was not forthcoming, but rather surprisingly evasive. I also asked for information as to which of our accounts the request for the union's representation had come from. Mr. Dingow did not have an answer. To date, I have received no information which leads me to believe that any of our employees took steps to affirmatively request the SEIU's assistance due to any work condition, wage or benefit, or other condition of employment.

I indicated to Mr. Dingow that he needed to provide me details of what the SEIU intended. He responded that they intended to organize all of the janitors in the Indianapolis area, and this included those employed by Executive Management Services, Inc. It was the desire of the SEIU that EMS be "neutral" in the process. I responded that I believed that EMS would be. Mr. Dingow indicated that by "neutral," he meant that they wanted EMS to sign a neutrality agreement.

As I researched the issue more carefully, spoke with advisors, and generally became more educated on the issue, it became clear to me that I simply could not agree to that which the SEIU was asking. First, I was not willing to give my employees confidential contact information to the SEIU. I was not sure if I could legally do so, and more importantly, I felt that the employees would be angered by the company divulging such information. I also feared that the union might abuse such information by contacting employees at inappropriate times, bothering those who may be uninterested through repeat contact, or placing undue pressure on the employee to commit to its cause

Second, it seemed clear to me that if the employees wanted to have a union, they could choose to do so through a secret ballot election, in much the same manner as traditional elections are conducted. In this manner, their votes would remain private and, more importantly, there wouldn't be a concern as to whether the employees were being improperly persuaded or bothered. The system of "card check," on the other hand, seemed to me to be both public and fraught with danger. Would organizers share the identities of employees who had abstained with those who had signed the cards? How would I know if organizers were harassing my employees? Would organizers attempt to meet them at their homes? While the rhetoric of the union is that they don't commit any undue influence, only in an election atmosphere are there proper safeguards to ensure that such influence is not exerted. In short, in my attempt to do that which was in the best interest of the employee, I simply could not see how it would be to their benefit to risk subjecting them to undue pressure, and to unilaterally sacrifice their right to vote on whether to be represented by this labor union.

There were additional conversations and meetings with Mr. Dingow. Ultimately, however, he recognized that I was not going to sign the Neutrality Agreement. I stated such, but also told Mr. Dingow on several occasions I was amenable to the SEIU petitioning for an election and would live with the results. It was at this moment that the relationship truly turned adversarial for the first time. Mr. Dingow stated to me, "Mr. Bego, we enjoy conversation but embrace confrontation. If you do not execute this Neutrality Agreement, we will begin to target you, your employees and your customers." Needless to say, Mr. Dingow's threat did not work. EMS did not capitulate, and a four-year, million-dollar battle ensued between EMS and SEIU ensued.

On advice of our counsel, we instructed our managers to keep detailed records of the activities any organizing activity which occurred. We provided extensive training and instruction to our managers and supervisors on compliance with the National Labor Relations Act. Our various accounts were in close communication with our human resources department, and they, in turn, were in close communication with the executive staff and our legal advisors. What developed out of these efforts was a detailed record of the SEIU's corporate campaign against EMS. In addition to the noisy rallies and constant handbilling which typically occasion these campaigns, the actions of the SEIU included:

- From January 2007 to May 2008, the SEIU, not the employees of EMS, filed thirty-six unfair labor charges against EMS with the National Labor Relations Board. Approximately twenty-four of these were dismissed or voluntary withdrawn as having no merit. The remainder was resolved pursuant to a settlement agreement entered into between EMS and the SEIU (discussed further below).
- The SEIU assisted in the filing of three complaints with the Occupational Safety and Health Administration (or the state equivalent agencies). Two of these complaints alleged acts against EMS in facilities in which we were not present. The third made allegations that EMS required its employees to dispose of human body parts from biological labs. This, of course, made our customer very worried and generated a phone call from the appropriate governmental agency. However, we were able to quickly resolve and dismiss the concern.

- The SEIU paid religious leaders to support its cause, including distributing letters against EMS, holding rallies, and staging sit-ins and hunger strikes. At one point, this group of religious leaders requested that I meet with them. I did so, and found their motivations to be based on lack of knowledge and misinformation provided by the union. For example, this group believed that the wages and benefits provided by EMS to its employees were inferior to those, which had been secured by the SEIU to other accounts in the geographic area and in similar areas. Union contracts that have been obtained by EMS have proven this not to be the case.
- Over a dozen members of the SEIU trespassed into one of the largest buildings in downtown Indianapolis, and one of the largest accounts of EMS, and caused to be released hundreds of purple balloons into the building's five-story atrium[3].
- The SEIU staged a lemonade stand on a public street at which they provided free lemonade to passer-bys if these persons would call the CEO of a customer of EMS and request that they cease business with EMS and find a "responsible" contractor. The SEIU even supplied the cell phone from which these calls were made.

[3] Attachment 3 consists of a photograph taken during the event of the SEIU's balloon release in the atrium of a building in downtown Indianapolis.

- The SEIU accessed the roof of the Western Southern Insurance corporate headquarters in Cincinnati, Ohio and hung a massive multi-story banner[4].
- The SEIU filed frivolous charges with the NLRB, and then distributed fliers indicating that EMS was under investigation by the "federal government" for "unfair labor practices," including the harassment and intimidation of its employees.
- Distributed fliers making unsubstantiated allegations of civil rights violations[5].
- The SEIU utilized religious organizations to interfere with the international business affairs of a customer of EMS, in an effort to pressure the customer cease business with EMS. This included paying for a disgruntled employee of EMS to be flown to London to embarrass the customer at an economic conference.
- On Halloween night in 2007, the SEIU had children trick or treat in my residential neighborhood. The children were instructed to hand out fliers at each house they went to for candy. These flyers claimed that buildings cleaned by EMS were "Houses of Horror" where employees were abused and mistreated every night[6]. Meanwhile, union organizers were in cars driving the streets of my neighborhood!
- Organizers continually harassed our employees trying to coerce them into signing union cards.

[4] Attachment 4 is a photograph of the banner hung from the rooftop of the corporate headquarters of Western Southern Insurance. "Justice for Janitors" is a reference to a campaign in which the SEIU, including SEIU Local 3, was involved.
[5] A copy of one of the flyers alleging "civil rights abuses" is attached as Attachment 5.
[6] See Attachment 6.

- The SEIU Infiltrated local governments to obtain favorable decisions for the SEIU, and used politicians in an attempt to have EMS contracts canceled in favor of responsible contractors, a euphemism for union contractors.

The details of the campaign are more fully set forth in my book, *The Devil at My Doorstep*[7]. The examples above are but a small sampling of the hundreds of tactics we were forced to endure. By these examples, however, it is my hope to demonstrate the manner in which the SEIU utilized government agencies and the media in general to accomplish their own objectives. This campaign against EMS was a prime example of their utilization of the strategy of a "death by a thousand cuts."

It is important to understand that, throughout this process, I consistently communicated to the SEIU that EMS was happy to participate in an election. In June 2007, I even took out an advertisement in the Indianapolis Star calling on the SEIU to either "Fish or Cut Bait[8]." I did not want to continue through this campaign, and hoped that through the court of public opinion I could place pressure on them to agree to an election, in which I was confident the employees would choose not to go with the SEIU as their bargaining representative. This did not work, as the SEIU simply did not have any interest whatsoever in an employee election.

On September 25, 2007, EMS was notified by a representative of the SEIU that seven of EMS's workers several of which we believed to be union salts were going on strike – a first in the nearly twenty year history of EMS. Eventually a total of ten workers

[7] For more information on the book *The Devil at My Doorstep*, visit http://www.thedevilatmydoorstep.com.
[8] The newspaper advertisement inviting the SEIU to engage in a secret ballot election is included as Attachment 7.

(out of approximately 350 in the Indianapolis area) went on strike, representing approximately three percent (3%) of our Indianapolis workforce. The notice indicated that the strike was due to unfair labor practices. We knew based on the activities of the union to date, that this was not true.

The Involvement of the NLRB

In May 2008, following nearly two (2) years of picketing, harassment, wrongful accusations, and defamatory language, I agreed to enter into a settlement agreement with the SEIU with an intent and hope of ending the entire campaign. Both EMS and the SEIU had filed unfair labor practices charges with the NLRB against the other. By entering this agreement, the SEIU was agreeing to no longer picket or threaten to picket EMS in Central Indiana. EMS was required only to abide by the provisions of the National Labor Relations Act, which I believe had been done any way. In my mind, there was little reason not to enter this agreement. By the Agreement, there was no finding that EMS had engaged in any wrongdoing, and no admission by EMS as to such. Had either of these elements been a requirement of settlement, I almost certainly would not have agreed to execute the document. Entering the Settlement Agreement was simply an attempt to put the events of the corporate campaign behind me.

Shortly after execution of the Settlement Agreement, however, I was notified by the union that eight (8) workers that had gone on strike were demanding reinstatement. Upon consultation with my attorneys, I refused. From the start, it was clear that the worker’s strike was a recognitional strike with economic motivations. The signs that were carried in the course of the picketing, and the handbills which were distributed,

consistently made reference to "worker wages," "health care," "worker benefits," and "working conditions," or they made generally reference to EMS not being a "responsible" company. It was rare when a handbill referenced an unfair labor practice. The strike simply did not have a "unfair labor practice" component to it.

Upon receiving notice of EMS' refusal to reinstate the employees, the union again filed multiple unfair labor practice charges against EMS. We were comfortable that the NLRB would rule in our favor on the issue. The settlement agreement itself identified that the SEIU had engaged in illegal recognitional picketing when it had not filed a petition with the board to be recognized as the bargaining representative of the employees, and had set forth the union's agreement not to engage in any further picketing of Executive Management Services in Central Indiana or engage in secondary boycotting against EMS where the purpose was to force EMS to recognize bargain with the SEIU.

To our shock, the NLRB, an agency whose mission statement clearly states it is bound to protect the secret ballot election and administer the NLRA act fairly without prejudice to employees, employers and unions, agreed with the SEIU and the General Counsel filed charges against EMS for refusing to reinstate the employees in retaliation for their support of the union. It was the position of the NLRB that EMS had engaged in unfair labor practices, and that this -- at least in part -- motivated the employees to engage in a strike, and that because the strike was an unfair labor practice strike, the employees had the right to reinstatement.

The position was absolutely preposterous. The SEIU had concocted an elaborate scheme involving the filing of a frivolous charges by organizers, not EMS employees, to convey the illusion of a multitude of "unfair labor practices" to support the notion that the

strike was motivated by the unfair labor practices. Despite this, the NLRB, in the settlement agreement, had required the SEIU to no longer engage in illegal recognitional picketing and refrain from secondary boycotting. The NLRB was now reversing course and stating to EMS that it believed the picketing to have been motivated by unfair labor practices.

I can only believe that the position taken by the NLRB was either motivated by bias by the General Counsel's office in favor of the local union, or was the result of gross incompetence. In reviewing the numerous handbills and picket sign, there can be no doubt that the strike was an attempt for recognition by the union, and was economically motivated. The record from the hearing also shows that some of the striking employees produced affidavits indicating that no unfair labor practices had been committed. Nevertheless, the NLRB utilized their testimony in an effort to prove the unfair labor practices, despite their previous affidavits.

Further, it was absolutely clear in speaking with the employees, that the strike was completely motivated by economics. The employees appeared to have been coached in to discuss unfair labor practices in their testimony. They made reference to "UPLs" and "unfair practice labors," as if to indicate that they knew they were to say something to this effect, but not fully understanding what it meant. In the decision rendered by Administrative Law Judge Arthur Amchan, he wrote, " . . . at many points it is clear to me that the testimony of General Counsel's witnesses is contrived and very likely to be untruthful[9]." *Executive Management Services, and Service Employees International Union, Local 3 and Service Employees International Union, Local 1, Cases 25-CA-30221, 25-CA-30223, 25-CA-30226, 25-CA-30266, 25-CA-30328, 25-CA-30392, 25-CA-*

[9] The link for Judge Amchan's decision may be found at Attachment 8.

30459, 25-CA-30485, 25-CA-30486, 25-CA-30487, 25-CA-30489, 25-CA-30553, 25-CA-30537, 25-CA-30690, 25-CA-30692, 25-CA-30693, 25-CA-30694, 25-CA-30695, 25-CA-30697, 25-CA-30698 (2009) at page 5. Further, Amchan wrote, "[the] record indicates at least several instance of outright fabrication." *Id.*

When Judge Amchan rendered his decision in favor of EMS, it was my belief that the ordeal was finally finished. Once again, I was to be surprised. Despite the overwhelming evidence to the contrary, and the convoluted and clearly false testimony of the NLRB's witnesses, the General Counsel of the NLRB appealed Judge Amchan's decision to the five-member NLRB in Washington. In June, 2010, Chairperson Liebman, along with members Schumber and Pierce, issued a decision in favor of EMS finding that the strike was not, in any way, motivated by unfair labor practices, and was instead only a strike motivated by a desire to force the company to recognize the SEIU as the bargaining representative of the employees[10].

Current Actions of the NLRB

As an individual who has witnessed first-hand the unsavory tactics employed by some labor unions in their corporate campaigns to force unionization on companies and their employees, I am troubled by the direction of the current labor board, their current path of implementing the agenda of big labor, and their unapologetic actions in contravention of the will of Congress. Over the past five to six years, Congress has failed to generate the support necessary to pass the disastrous Employee Free Choice Act ("EFCA"). The goal of EFCA was to provide labor unions the tools to bypass the secret ballot process to increase its struggling membership. The current labor board is

[10] The link to the NLRB's decision is found in Attachment 9.

accomplishing this goal through its rulemaking, overruling of case law precedent, and though the General Counsel's issuance of enforcement directives to the NLRB field offices. Much of the action that has been taken is designed to provide labor unions with greater ability to pressure employers and their employees to execute neutrality agreements and check cards without consequence. The NLRB has recently issued rulings expanding their rights without running afoul of rules on bannering, secondary boycotting, and even the making of verbal threats. These actions are all designed to increase the labor union's ability to utilize the card check process, rather than the traditional secret ballot.

The question of why Congress left an exception to the secret ballot election open in the NLRA when it passed the Taft-Hartley amendment in 1947 should be considered. Was it to provide labor unions with an opportunity to run smear campaigns against employers in the form of corporate campaigns? Or was it, as the language suggests, simply an avenue left available to unions and employers that decided to work conjunctively for the employees? If it was the later, have we been faced with years of erroneous case law which has led us to where we are today?

Of further concern are the various memorandums issued by the interim General Counsel, wherein he has sought to broaden the fines and penalties that are assessed in situations involving violations of the National Labor Relations Act. While these policies appear neutral on their face, they are in fact a sword to be used by big labor in its corporate campaign arsenal when organizing employers. As was seen in the case of EMS, the labor union never hesitated to use the process of filing unfair labor practice charges in an effort to exert pressure to make EMS capitulate with its demands. Despite

the fact that the union was unsuccessful on all of its charges, there was no mechanism to deter such behavior. To date, there exist no penalties against either unions or employers for filing frivolous claims with the NLRB or any other administrative agency. Until such laws are enacted, it should be expected that the labor unions will continue to use all weapons in its arsenal, as it is in their business model to do so.

Finally, I fine it unfortunate that Congress has continued to allow the National Labor Relations Act to function as a biased and politically motivated piece of legislation. The Act is a creature of the legislature. Rather than drafting the legislation in such a manner as to control the process, thereby removing politics from the equation, Congress has left the NLRB with a tremendous amount of authority to dictate the outcome of labor matters. It should, therefore, be expected that without implementation of the proper safeguards and controls, this trend shall continue. So long as politicians receive benefits from their friends in big labor, the NLRB can never be independent and free from political influence, and its integrity shall always be compromised.

Thank you again for the opportunity to present this information to you today. I am happy to provide the Subcommittee with additional information that it may deem to necessary or helpful, and to answer any questions from the members.

Respectfully Submitted,

David A. Bego