

Labor relations

An old-school Michigander at heart, Bob Battista was summoned to D.C. in 2002 by President George W. Bush, who thought the seasoned labor relations lawyer would make a fine chairman for the National Labor Relations Board. Battista stayed in Washington when his five-year term expired in 2007. Now in private practice at Littler Mendelson PC, Battista is keeping a stern eye on the Employee Free Choice Act. [Interview by Melissa Castro](#)

What made you stay in D.C. after your term was up? My wife. [Chuckles and squints.] She basically informed me that if we were going back to Michigan, I'd be going back myself. She was teasing, of course, but I didn't test that.

Looking at everything that's happened to Michigan's economy, what are your thoughts about being here instead of there? I have a lot of good friends in Michigan, and I feel a lot of sorrow when I see the condition it's in. It's an area that's built on the automotive industry, and the joke used to be "when GM sneezes, Michigan catches pneumonia."

It's not really much of a joke now, huh? Now you've got General Motors in bankruptcy and in seriously dire financial straits, and Michigan's got the highest level of unemployment and foreclosures in the country. There are a lot of good people who are hurting.

How much responsibility do you think labor relations has for what's going on there? I think the responsibility is equally shared. At least in the recent past, a lot higher-level GM executives realized that this was a period of time in which they could benefit financially, and they didn't want labor disputes to interrupt productivity or to interfere with the company's operations while they were there. As a result, I think some proposals might have been put on the bargaining table by the United Auto Workers with the idea that they'd probably be rejected. But those proposals were just accepted.

Like what type of proposals? Like the plant-closing provision — which has been suspended now — where if a plant is closed, the employees continue to receive 95 percent of their pay, and they don't have to take another job with GM unless it's within 50 miles of their home. That kind of thing.

Do you think there is a future for organized labor? I do think there's a future out there for organized labor. I think organized labor, to its great credit, has initiated many legislative acts that have become law, like the Occupational Safety and Health Act, the Civil Rights Act, the Family and Medical Leave Act, just to name a few. Now, employees say, "Why do I need you? We've got OSHA, we've got the Civil Rights Act, we've got the Family and Medical Leave Act." In some respects, it made them irrelevant to a nonunion group.

Which Washington industries — using that term loosely, I guess — are most sensitive to the impact of the Employee Free Choice Act? I think all industries are. There are efforts by UNITE-HERE to get into the hotels and into the resorts, that kind of business.

They're not already there? I don't believe they are present to the degree they are in other areas, like Philadelphia, New York and Chicago.

What would be the impact of the Employee Free Choice Act? I think

it's a bad law, frankly. It really permits a lot of peer pressure to be used if all the unions have to do is get a majority of the proposed bargaining unit to sign authorization cards. In the past, a lot of people signed cards knowing they still had the secret ballot and they could get their friends off their back by signing the card, knowing it was the secret vote that really counted.

The purpose of the act is to eliminate employer intimidation, right? Well that's what they say. All these allegations of coercive conduct by employers during the election period aren't borne out by what statistics we have at the NLRB. Objections were filed in only 9.6 percent of the elections held in fiscal year 2006. I can tell you that, yes, there are situations where organizers have been fired by unscrupulous employers, and when those kinds of cases are brought to the labor relations board, the employees have been put back to work with back pay.

Besides the potential for peer pressure, are there any other problems with the act? The second problem with the act is that it calls for binding interest arbitration if the two sides can't reach agreement in a very short time frame. So you're having something imposed on you by a third party after 120 days. And 120 days is a very short period even to negotiate a renewal [labor] agreement. But for a completely new agreement, that's just too short of a period. The agreement is a lengthy document, and there are complicated issues. You're trying to build trust across the bargaining table, and it takes time to do that. And there aren't even any guidelines as to how the arbitrator will be picked or what standards the arbitrator has to follow.

Do you think the act would build labor's membership? I think it probably would.

Is that a bad thing? I worry that, in many instances, people would unwittingly be swept into a union through peer pressure. Once you're in, it's oftentimes difficult to get out.

Are you saying there are unseen regrets an employee might have in becoming unionized? Well, an employee who becomes organized no longer has the opportunity to deal one-on-one with his employer on issues of wages, hours and terms and conditions of employment. That has to be collectively bargained. So perhaps he doesn't have the same control over his own personal life and his personal situation that he would have had before.

Does anybody in this economy? Yeah, I think people do.



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