

The Employee Free Choice Act: Armageddon or Tempest in a Teapot?

The Employee Free Choice Act (EFCA) is the Orwellian name given to legislation designed to make it easier to organize employees in a workplace for union representation. This legislation has been introduced in multiple congresses and in slightly varying forms, but the one common element is that it has most employers and even some employees nervous that the EFCA would undermine their privacy when making the critical decision on voting to join a union.

Under current law employees seeking collective bargaining rights are allowed to hold a workplace vote once 30 percent of the workers have signed union authorization cards in what is called a card check. When that 30-percent threshold is reached, the National Labor Relations Board (NLRB) orders a secret ballot to be held. Employees then vote, by secret ballot, on whether they want to be represented by a union for collective bargaining purposes. If more than 50 percent of the employees sign such cards, an employer may choose to recognize the union or it may opt to hold a secret ballot. EFCA would eliminate the ability of the employer to opt for the secret ballot and would require the NLRB to certify the card check and union when the organizers submit cards amounting to a simple majority of the employees seeking representation.

Since the card check is a public declaration by a worker on their union views, critics contend that this corrupts the process, denies the workers the protection of a secret ballot and leaves them open to intimidation and abuse by either the employer or their pro-union coworkers. In fact the Supreme Court of the United States determined in a 1969 case that public card checks are inherently "unreliable."

Now that the Democrats control Congress and the White House speculation on the passage of the EFCA is a hot topic among the political set in the nation's capitol. The House version of the bill, HR 1409 currently enjoys more than 222 cosponsors, or members who have publicly declared their support for the bill. As this is already above the 217 votes needed for passage, the stage is set for a no-holds barred fight in the Senate, where the legislation currently has 39 cosponsors, meaning that an additional 21 votes will be needed. In March 2009, Nebraska Democratic Senator Ben Nelson declared that we would not support the EFCA. Proponents will need to get at least four Republican Senators to vote in favor of the bill for it to pass.

If you are an employee who supports the EFCA or an employer who opposes it, you certainly should make your opinion known to your Senators, " Said Andrew Fortin, a private club attorney based in Washington, DC. "This will be a very tough vote for those Senators who do not yet have a final position on this issue, and your input does matter." According to Mr. Fortin, there are numerous ways to influence your Senators. Writing a letter, working through your union or a local Chamber of Commerce, making a donation to an advocacy support group targeting the issue, will all serve to affect the process.

One big question is if President Obama will weigh in to support passage of the EFCA?

Since passage will require the investment of significant political capital, the President's support of EFCA could mean less political good will for his other priorities like health care. The razor-thin vote margin and the president's aloofness will continue to stoke the speculative fires, which is why both the business community and organized labor are focusing so intently on this issue.