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Organizing
**Negotiators Trying to Reel in Support
Of Wavering Senators on EFCA Issue**

Supporters of the proposed Employee Free Choice Act (H.R. 1409, S. 560) continue to search behind the scenes for a compromise bill that could assuage the concerns of at least 12 Democratic senators who have not committed to support the legislation in its current form.

The group of wavering Democratic senators includes Sens. Michael Bennet(Colo.), Thomas Carper (Del.), Kent Conrad (N.D.), Dianne Feinstein(Calif.), Mary Landrieu (La.), Blanche Lincoln (Ark.), Ben Nelson(Neb.), Mark Pryor (Ark.), Mark Udall (Colo.), Arlen Specter (Pa.), Mark Warner (Va.), and Jim Webb (Va.).

The controversial legislation, which is pitting unions and business groups against one another with dueling multi-million dollar campaigns, aims, among other things, to make it easier for workers to form unions by allowing a choice between a secret ballot election or majority sign-up through a check of union authorization cards. Passage of the bill would represent the first major revision in federal labor law in 50 years.

Eddie Vale, a spokesman for the AFL-CIO, said June 16 that the unions are not overly concerned about the number of Democratic senators who are not in line to back the bill.

“Everybody's comments are usually followed by ‘in current form,’ ” Vale said. “Once a compromise comes out we are confident [the Senate] will pass it.”

Glen Spencer, executive director of the U.S. Chamber of Commerce's Workforce Freedom Initiative, told BNA June 16 that it was “encouraging that there's such a long list of thoughtful senators against the bill.”

On a possible compromise bill, Spencer said he hopes “they don't leap at something with a new name that is essentially the same bill.”

Legislation Would Amend NLRA

EFCA, introduced in the Senate March 10 (23 LRW 385, 3/12/09), would amend the National Labor Relations Act to require the National Labor Relations Board to certify a

union as the bargaining representative of employees if a majority of unit employees signs valid union authorization cards.

The legislation would allow unions to continue to petition for NLRB-supervised secret ballot elections, if they choose, once 30 percent of the workers have signed union authorization cards.

The legislation also would allow for mediation and arbitration of first contracts if the parties fail to reach agreement within certain time periods. In addition, the bill would provide for increased penalties for labor law violations by employers.

With Senate Republicans solidly against the bill, supporters would need 60 votes to overtake an expected filibuster. Currently, there are 40 Republicans, 57 Democrats, and two independents who caucus with the Democrats. A Minnesota Senate seat remains unfilled due to court challenges to the election between former Sen. Norm Coleman (R-Minn.) and Al Franken (D).

Passage in the House is considered a foregone conclusion by the majority of stakeholders. The House would only take up the bill if the Senate approves it. Identical legislation passed the House in March 2007 on a 241-185 vote.

Sen. Tom Harkin (D-Iowa) has indicated he would like to bring the bill up in July, but he also has said he intends to wait for the resolution of the Minnesota seat. Further, Harkin likely would have to wait for the return of Sen. Edward Kennedy (D-Mass.) and Sen. Robert Byrd (D-W.Va.), both recuperating from illness.

Harkin has said that any alternative would have to include three “core” principles: give workers the ability to choose between majority sign-up and secret ballot elections; require unionized workers to receive a first contract “date certain,” and “meaningful” penalties for labor law violations.

Many stakeholders had initially viewed Specter's vote as the possible “magical 60th vote” to move the bill out of the Senate, but Specter dashed those hopes March 24 when he announced he would vote against cloture (23 LRW 469, 3/26/09). Specter's announcement, over the following weeks and months, gave several Democratic senators political cover to publicly oppose the bill in varying degrees.

Harkin, Specter Hashing It Out

After Specter's switch from the Republican to the Democratic Party, supporters became hopeful that the senator may have had a change of heart about EFCA, but he made clear repeatedly that he would not support a cloture vote on the bill as written (23 LRW 673, 4/30/09).

Harkin's staff and Specter's staff have been in meetings on a regular basis over the past

several weeks trying to hash out an alternative that would be palatable to enough senators.

Harkin has said that any alternative would have to include three “core” principles: give workers the ability to choose between majority sign-up and secret ballot elections; require unionized workers to receive a first contract “date certain,” and “meaningful” penalties for labor law violations.

Harkin certainly has his work cut out for him considering he has several Democrats wavering on the legislation.

Bennet appears to be uncommitted to the bill with stakeholders classifying him as “undecided,” but his reason is not clear.

“My focus right now is on the many decisions we must make to create good paying jobs, jump-start our economy and prepare our kids for the 21st Century,” Bennet said. “I will continue to work with all interested parties to make the best decision for Colorado.”

Although Carper supports bringing the bill to the floor for debate, the senator would not support final passage of the bill if the card check language remained, according to a Carper aide.

In a statement, Carper explained his opposition to the card check provisions.

“I do have some reservations about the section of the bill that provides for card check elections,” Carper said. “Card check elections are not a reliable way to determine the true wishes of employees, while the secret ballot method remains the fairest way to determine whether the employees in a workplace truly want to be represented by a union. Nonetheless, because of the vital importance of this issue to so many Americans, I believe this bill deserves to come to the floor of the Senate for debate.”

Carper is an active supporter, however, of EFCA's provisions dealing with increased fines for employers who unlawfully fire employees involved in organizing or other union activity.

A Conrad aide told BNA that the senator is uncommitted to the bill as written. “He hasn't made any comments. He alluded to waiting to see the final bill.”

Feinstein Pushes Mail-In Option

Feinstein opposes the bill as written, but would like to see a compromise bill emerge from EFCA's ashes. Feinstein has suggested a mail-in option where workers could mail in their authorization cards.

Backers of this approach argue that there would be less intimidation by employers and

by union supporters. However, EFCA opponents argue that union supporters would just visit the homes of employees.

Landrieu's position on cloture is not clear, but it is clear that she is not fully on board with the legislation.

“Senator Landrieu is carefully reviewing the issue,” said Landrieu communications director Aaron Saunders. “She understands that it is a heated debate and wants to make an informed decision. Part of that process is actively meeting with interested groups on both sides. Senator Landrieu is also reviewing the bill.”

Lincoln has reiterated that she cannot support the bill in its current form but would consider compromise legislation.

“While I may not have been clear about my position in the past, I am stating today that I cannot support Employee Free Choice Act in its current form and I can't support efforts to bring it to Senate consideration in its current form,” Lincoln said in response to a question following an April 6 speech in Little Rock.

“I will consider alternatives that have the support of both business and labor,” according to a statement of her remarks provided to BNA by an aide of the senator.

Nelson opposes the legislation as written, but may support a compromise bill.

“I haven't seen exactly what was put in, but if what was put in is the same as it's been described, I'm not in support of that,” Nelson said. “But I also believe there'll be a major effort to modify it before it ever comes for consideration, and I'll have to take a look and see what it is then.”

In a statement, Pryor said the current bill is flawed, but he would consider amendments and urged both sides to work together, “but so far, neither side is currently open to compromise.”

Udall has not made many public comments about the issue but stakeholders consider him “on the fence.” Udall indicated that he intends to vote for cloture, but may vote against the legislation in the end.

Specter Wish List

After his dramatic EFCA opposition notice on the Senate floor, Specter released a list of possible amendments to the NLRA to expand labor's clout in collective bargaining. These include:

- Establishing timetables to require an election to be held within 10 days of the filing of a joint petition. In the absence of a joint petition, NLRB would be required to resolve

bargaining unit and eligibility issues within 14 days of the petition, and the election would be held seven days later.

- Making it an unfair labor practice for a union or employer official to visit an employee at home for any reason related to the organizing campaign; for an employer to hold a captive audience meeting with employees unless the union has equal time; for an employer or union to engage in campaign-related activities within 24 hours prior to the election.
- Authorizing the NLRB to impose treble back pay when an employee is unlawfully fired.
- Authorizing civil penalties up to \$20,000 per violation if the NLRB finds an employer or union willfully and repeatedly violated employees' statutory rights during an organizing drive.
- Requiring negotiations on a first contract to begin within 21 days after union certification, with either party calling for mediation by the FMCS if there is no agreement after 120 days.
- Requiring the establishment of a schedule for negotiation as well as imposing costs and attorneys' fees upon a finding that a party is not negotiating in good faith.

Specter has also suggested he might support a “baseball-style” approach to mandatory arbitration, where a third party would choose between “last, best offer” contracts from each side.

Warner Wants Cloture

Warner said he believes that there is need for reform in the NLRA and indicated he would support a cloture vote. He stopped short of endorsing the bill.

“I intend to evaluate any prevailing proposal to ensure that it allows workers and employers to be adequately informed and that it ultimately provides a fair and level playing field for both management and labor,” Warner said in a statement.

As for Webb, “I can tell you that he doesn't believe this is the appropriate time to introduce this legislation or to be debating it,” an aide to Webb said. “He's always been a strong supporter of the right to collective bargaining, but as written, he would look towards improving the legislation in a way to make it more fair and equitable.”

By Derrick Cain