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Organizing: Mandatory Arbitration Provisions in EFCA Crucial to Bill's Success,
Lawmaker Says

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Organizing

Mandatory Arbitration Provisions in EFCA Crucial to Bill's Success, Lawmaker Says

Controversial mandatory arbitration provisions within the proposed Employee Free Choice Act (S. 560, H.R. 1409) are key to the legislation's ultimate effectiveness, a lawmaker and a professor said May 13.

During a teleconference conducted by American Rights at Work, Rep. Phil Hare (D-Ill.) and Thomas Kochan, professor at Massachusetts Institute of Technology's Sloan School of Management, told reporters that the provisions are "absolutely necessary."

"Without binding arbitration, this bill is like a car without a transmission," Hare said. "It looks nice but its not going anywhere."

The measure would allow parties that are unable to reach a first contract within 90 days to refer the dispute to the Federal Mediation and Conciliation Service.

If the FMCS is then unable to bring the parties to agreement within 30 days, the dispute then would be referred to binding arbitration.

The provision is particularly distasteful to Republican lawmakers and some Democratic lawmakers, who are wary of government intervention in establishing pay rates and other contract details.

Supporters argue that under current law, employers drag out first contract negotiations after workers vote for union representation for long periods of time, and often no contract is reached.

Hare said business sector opposition to the provision amounts to "being able to pay less" to workers.

EFCA Details

The bill, introduced in the House and Senate March 10 (45 DLR AA-1, 3/11/09), would amend the National Labor Relations Act to, among other things, establish a procedure whereby the National Labor Relations Board would certify a union as the bargaining

representative of employees if a majority of employees of the unit signs valid union authorization cards. The legislation also 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.

Kochan told reporters that the “basic problem is that data shows 46 percent of unionized workers never get a contract. That's a tragedy.”

He said the business sector has been misrepresenting the provision by claiming that unions would use the arbitration option in all contract disputes. The bill allows unions and employers to extend the mediation deadline if both sides agree to doing so.

Kochan said it is “another myth” that the government would select an arbitrator with no experience in the employer's respective field. Kochan said there would “be vetting by unions and companies” of arbitrators.

He said the process could be set up to allow for a neutral arbitrator, an employer-chosen arbitrator, and a union-chosen arbitrator. “We can design a fair process,” Kochan said.

Chamber Disagrees

Justin Hakes, spokesman for the U.S. Chamber of Commerce, said the binding arbitration provisions amount to “an unprecedented government intrusion in the workplace.”

Hakes said there is “nothing in the bill” stating that an arbitrator with experience in the company's business field would be selected.

“Just because a professor says that's the way it will work doesn't mean that,” Hakes said. “It's not in the bill.”

Hakes added that the legislation “leaves many things vague and foggy.”

By Derrick Cain