

Source: Daily Labor Report: All Issues > 2009 > March > 03/30/2009 > Leading the News > Organizing: Union, Business Groups Set to Continue Battling Over Employee Free Choice Act

58 DLR AA-1

Organizing

Union, Business Groups Set to Continue Battling Over Employee Free Choice Act

Union and business organizations are expected to continue their respective crusades for and against the proposed Employee Free Choice Act in Congress, despite a key senator's recent opposition announcement that considerably dimmed the bill's chances for quick passage, stakeholders said March 27.

Sen. Arlen Specter (R-Pa.), who in 2007 voted to allow debate on the bill, formally announced his opposition to the measure March 24, dealing unions a significant blow in their efforts to advance the bill in the Senate (55 DLR AA-1, 3/25/09). Specter had been eyed by stakeholders as a potential 60th vote to break an expected filibuster of EFCA (S. 560, H.R. 1409)—the first major attempt in decades to significantly amend the National Labor Relations Act—in the Senate.

Specter's announcement took some pressure off the business community as well as three Democratic senators who were “on the fence” on the issue. Those senators include Sen. Blanche Lincoln (D-Ark.), Sen. Mark Pryor (D-Ark.), and Sen. Ben Nelson (D-Neb.).

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However, neither side of the battle appears to be ready to relent in this multi-million dollar lobbying campaign.

“It's full speed ahead,” said Michael Eastman, executive director of labor policy at the U.S. Chamber of Commerce, noting that the EFCA climate is “clearly a little bit different” after Specter's announcement.

However, Eastman said he has not seen a “seismic shift” in how the business sector plans to proceed in its campaign “to kill the bill once and for all.”

Eastman said the chamber's strategic plan is “fluid.” But he noted the chamber intends to reduce somewhat its expenditure of resources in Pennsylvania.

EFCA Details

EFCA, introduced in Congress March 10 (45 DLR AA-1, 3/11/09), would amend the National Labor Relations Act to require the National Labor Relations Board to certify a union as the representative of employees if a union presents signed valid union authorization cards from a majority of employees in the sought-after bargaining unit.

The measure also would allow parties that are unable to reach a first contract within 90 days of collective bargaining to refer the dispute to mediation by the Federal Mediation and Conciliation Service. If the FMCS is unable to bring the parties to agreement within 30 days, the dispute then would be referred to binding arbitration. In addition, the bill would provide for increased penalties for labor law violations by employers.

Republican lawmakers and business groups denounce the bill as a job-cutting, coercion-creating assault on the “bedrock of democracy” that they say would effectively end the secret- ballot representation election process.

In addition to saying that EFCA is needed to level the playing field between unions and management, Democratic lawmakers and union advocacy groups also have promoted the legislation as a remedy for the reeling economy, asserting that more unions would lead to better pay, benefits, and worker protections, while addressing long-term pay inequalities between low wage workers and management.

Unions Continue Pushing

Chris Chafe, executive director of Change to Win, said the unions intend to “continue full steam ahead” in the wake of Specter's announcement.

“The labor movement's approach to this has been that this is a fluid process,” Chafe said March 27. “We continue to be nimble on tactics to use to get our point across.”

Chafe said his organization, which has been working closely with the AFL-CIO in pushing for EFCA, will continue its dialogue with “several Republicans.”

“They're understanding that the system is broken,” Chafe said.

While the unions were hopeful that Specter would break rank with other GOP senators, he said they are also targeting Sens. Olympia Snowe (R-Maine) and Lisa Murkowski (R-Alaska), who have a “strong history with labor unions.” Sen. Susan Collins (R-Maine) also has been indicated as a possible target.

However, Snowe, Murkowski, and Collins have so far indicated they will oppose the bill.

Further, Chafe said unions are continuing a dialogue with Specter as well, and have

increased grassroots efforts in Pennsylvania.

“We don't view what he did as closing the door completely,” Chafe said.

Specter's Phones Jammed

Another labor source told BNA that efforts are being doubled in Pennsylvania to see if Specter “won't experience a change of heart.”

“He flip-flopped once, maybe he'll flip-flop again,” she said.

The official said that EFCA supporters have jammed Specter's Washington and district offices phone lines.

“His office is inundated with phone calls and letters,” she said. “The fight continues. Specter's decision was disappointing but it's not a game-changer. Is it the whole ball of wax? No.”

Compromise Possible?

Previously, both sides had said there was little room for compromise. Sen. Tom Harkin (D-Iowa), bill sponsor, originally proclaimed there would be no compromise, but since then has stressed that the bill would go through the amendment process.

Officials from the chamber have also made similar proclamations indicating opposition to compromise language.

Chafe said Change to Win “is always in active dialogue to explore” alternative options.

And, he noted that there were “signs of splintering in business sector already.”

'Third Way.'

Chafe was referring an announcement March 22 by three large companies—Costco Wholesale Corp., Starbucks Coffee Corp., and Whole Foods Market Inc.—of the formation of an ad hoc “Committee for a Level Playing Field for Union Elections” to discuss a “third way” approach to reforming labor law (54 DLR A-12, 3/24/09).

The companies said their proposal would protect employers' rights to demand a secret ballot election. The proposal would guarantee a fixed time period for the secret-ballot election to certify or decertify a union and would allow management to initiate a union decertification through a secret ballot. The proposal also includes increased penalties for serious violations of the law by labor or management and expedited procedures to impose them.

However, a number of lawmakers from both sides immediately dismissed the companies' proposal.

EFCA Issue to Remain

Scott M. Wich, a management attorney with New York City-based Clifton Budd & DeMaria LLP, does not expect either side to let the issue fade away.

"EFCA is still alive," Wich said. "I don't think Specter's decision defeats the bill, it's too big of an issue."

Wich said Specter's decision was hardly a surprise, so "we are where we were two weeks ago."

"They have a real difficult sell with card check," Wich said.

Wich said his firm has been advising large and small businesses on a "proactive approach to handle EFCA," if it were to become law.

Wich said that under EFCA, companies could have a difficult time trying to determine whether an organizing effort was under way, and when to give "guidelines to employees about what unions mean and don't mean."

Anti-EFCA Legislation

Prior to EFCA's introduction, legislation (S. 478) that would ensure employees in union organizing campaigns the right to a secret ballot election conducted by the NLRB was introduced Feb. 25 (38 DLR A-13, 3/2/09).

Senate Majority Leader Harry Reid (D-Nev.) placed the measure, dubbed the Secret Ballot Protection Act, on the Senate's legislative calendar Feb. 27, allowing the legislative body to turn to it at any time.

Although Reid opposes the bill, he put in on the calendar "as a favor" to Sen. Jim DeMint (R-S.C.), according to Reid spokesman Jim Manley, who said it was not unusual for Reid to place opposing bills on to the calendar.

The bill would amend the NLRA to make it an unfair labor practice for an employer to recognize or bargain with a union that has not been selected by a majority of employees in a secret ballot election conducted by NLRB.

The bill also would make it an unfair labor practice for a union to cause or attempt to cause an employer to recognize or bargain with a union that has not been selected by a majority of employees in a secret ballot NLRB election.

The bill, authored by DeMint and having 19 Republican co-sponsors, is considered a GOP preemptive strike against EFCA.

Rep. John Kline (R-Minn.) introduced similar legislation (H.R. 1176) to DeMint's bill in the House on Feb. 25. That bill has 111 co-sponsors, including House Minority Leader John Boehner (R-Ohio), and it was referred to the House Education and Labor Committee.

Since Committee Chairman George Miller (D-Calif.) is opposed to the bill, it is unlikely to be taken up by the committee.

EFCA-Related Bill

Another EFCA-related bill, the National Labor Relations Modernization Act (H.R. 1355), was introduced March 5 by Rep. Joe Sestak (D-Pa.).

The bill, with no co-sponsors, seeks to amend the NLRA to require employers to provide labor organizations with equal access to employees prior to an election regarding representation and to prevent delays in initial collective bargaining.

The bill would require that not later than 30 days after an election is directed, the employer shall notify the union of any activities the employer intends to engage in to campaign in opposition to recognition of the representative.

The bill would require that the employer provide the representative with equal access to the place of employment to campaign in favor of recognition of the representative, including the opportunity to hold an equal number of meetings with individual employees or groups of employees.

The bill would cover any employer of 20 or more workers and would require employers to meet and begin bargaining with a certified union no later than 10 days after receiving a written bargaining request.

If after the expiration of the 120-day period beginning on the date on which bargaining begins, the parties have failed to reach an agreement, the Sestak bill would provide that either party may notify the FMCS to request the appointment of an arbitration panel.

Whenever such a request is received, the FMCS would appoint an arbitration panel to bring the parties to agreement within 120 days.

If that fails, the panel would render a decision settling the dispute in no later than 30 days, under the bill.

The Sestak bill was referred to the House Education and Labor Committee, where it is unlikely to be brought up.

By Derrick Cain

Text of the proposed Employee Free Choice Act may be accessed at
<http://op.bna.com/dlrcases.nsf/r?Open=vros-7q2k6j>.