

## EFCA 2009 Battle Begins

*Few pieces of legislation are introduced in Washington with the circus-like atmosphere surrounding the March 10 reintroduction of the Employee Free Choice Act (EFCA). Proponents and opponents packed the day with made-for-media hearings, rallies, mass visits to legislators' offices (each side reportedly had 200-member cadres walking the halls of the Capitol), press releases, blog postings and news conferences. Such all-out attempts to draw attention to EFCA (Senate Bill 560 and House Bill 1409) are no great surprise. Not only has the divisiveness and debate about this legislation ramped up since President Obama was elected, but EFCA has fewer Democrat supporters in Congress now than when the original bill was introduced in 2007 – even though Democrats now hold more seats in both chambers.*

### Sharp Divisions

EFCA supporters predicted revitalization of the American economy if the bill passes, while opponents spoke of lost jobs and closed factories unless the measure is defeated. A U.S. Chamber of Commerce executive called it “Armageddon.”

Estimates of EFCA's economic impact varied wildly. A business-backed study claimed a potential annual loss of \$57 billion in national output. Two pro-EFCA Congressmen from North Carolina touted a report claiming that workers there would earn an additional \$483 million annually should union membership rates in the state increase by five percentage points. SEIU's Andy Stern cited a study claiming that “unionization could pump more than \$49 billion into the economy.”

EFCA supporters and opponents peppered legislators and the media with conflicting opinion polls: 82 percent of Americans in one poll support unions, while 54 percent in another poll oppose them. Stern claimed that a recent poll found 73 percent of the American public supports EFCA. At the other end of the spectrum, an American Trucking Association survey said 74 percent of surveyed union households oppose card check.

### What's in the Bill?

In terms of content, the new version of EFCA is

identical to the original. Despite the same language, opponents and supporters disagree sharply over how card check, EFCA's lightning rod, would work. Opponents say the bill would *replace* elections with card checks, while EFCA supporters claim the language allows *workers to* choose between an election or card check. (The actual bill is on the IRI Web site, [www.iriconsultants.com](http://www.iriconsultants.com).)

### What's next?

What's likely to happen with EFCA? Most observers predict easy passage in the House. The situation in the Senate is much different.

According to CBS News, 11 Democratic senators who cosponsored the 2007 version of EFCA aren't fully on board with the new bill. Also wavering, according to the *Wall Street Journal*, is Pennsylvania's Senator Arlen Specter, the lone Republican supporter of EFCA 2007.

According to one analyst, “The uncertainty surrounding their votes means that we're unlikely to see EFCA come up in the Senate until May or June, giving labor unions more time to lock up support, and Minnesota's Al Franken more time to win his court case and get seated in the Senate.” ABC's George Stephanopoulos reported that Senate Majority Leader Harry Reid won't bring up the measure until summer

at the earliest, possibly July.

Another analyst speculates, “Despite labor’s pressure for a fast, ‘rip-off-the-Band-Aid’ vote, senators Blanche Lincoln (D-AR) and Mary Landrieu (D-LA) are not inclined to move quickly. That could hang up the measure for months, perhaps pushing it into the midterm election year of 2010, according to people on both sides.”

Yet another reports, “Every day the bill sits in the Senate not going anywhere, the more time business groups have to garner support for amending it, if not killing it outright.”

The pressure on Specter and wayward Democrats could become enormous. Senior SEIU official Stephen Lerner, asked on MSNBC if the union would “under any circumstances” forgive a Senator who voted against the measure, replied: “If somebody votes against this bill to help rebuild the middle class in this country, that would not be forgivable.”

Supporting that thinly veiled threat, SEIU earlier this year launched a \$50 million “Change That Works” campaign, which, in tandem with the union’s “Accountability Project,” will work to ensure that legislators who vote against labor-friendly legislation don’t get reelected.

The rhetoric on the other side was equally harsh. U.S. Chamber of Commerce chief Tom Donohue told opponents of the bill to take a hard line with members of Congress.

“On this deal... there’s no compromise,” said Donohue. “There’s no credit for amending the bill. The only credit anyone gets is for voting against cloture. Am I clear?”

Numerous possible compromises are being discussed as a way to attract fence sitters or mollify opponents. For example:

- Require language on union authorization cards to make clear to employees that signing a card is equivalent to voting to join a union
- Extend the amount of time before mandatory arbitration kicks in, perhaps to as long as a year, from the 120 days proposed in the current bill

- Replace the card-check provision with expedited, secret ballot elections that would be held within five to 10 days after a union files a petition with the NLRB
- Bring government-appointed arbitrators on board only when first-contract bargaining talks have completely failed, not within a specified period of time
- Eliminate binding arbitration
- Keep employer fines where they are today, rather than the proposed \$20,000 per unfair labor practice violation, plus treble damages for employees
- Increase from the current 50 percent to 75 percent the number of card check signatures required for union certification

And, despite all the energy that is being spent on card check, some in Washington are speculating that the card check provision is just a stalking horse that was proposed by unions simply to distract attention from their true goal: faster elections. Unions will fight for card check as long as they can, the thinking goes, then “settle” at the 11th hour for expedited elections.

## What to do?

What should employers do with all this contradictory information? We think it’s smart business to assume that a) EFCA, in some form, will become law, and b) it will make organizing much faster and easier for unions.

Equally critical for employers is speed. Organizations that want to maintain a direct working relationship with employees need to start taking action now, long before union organizers show up at their door – or at employees’ doors.

What’s more, whether it’s with card check or expedited elections, the policies and practices that motivate employees to ignore unions, especially employee engagement and communication, also increase organizational effectiveness, productivity and profitability.

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