

Protecting Hospital Employees' Confidential Decision to Unionize Employee Free Choice Act

Issue *The Employee Free Choice Act* (H.R. 1409/S.560) seeks to overturn a long-standing policy, established more than 70 years ago in the *National Labor Relations Act* (NLRA) that guarantees employees the right to determine whether they wish to be represented by a particular union through a secret ballot election. This bill, with a misleading title, would enable union organizers to represent employees by presenting a majority of union authorization cards to the employer – also referred to as the “card-check” process – and would force negotiating parties into binding arbitration if they are unable to agree on a first contract within an specified period of time.

While it currently appears that neither the House nor Senate have sufficient votes for cloture, several alternative proposals have begun to surface.

View The AHA and ASHHRA oppose H.R. 1409/S. 560_ because it would jeopardize hospital employees' right to confidentiality in unionization elections. The legislation undermines the bedrock principle of free and fair elections where ballots are cast in private and not in the shadow of outside influences and pressure. Under current law, the National Labor Relations Board protects the interests of both the employer and the employee by ensuring that both sides have an opportunity to make their case, and that those employees are able to express their decision in private. The legislation would do away with that safeguard.

H.R. 1409/S.560_ would amend the NLRA by requiring employers to recognize a labor union solely through the card check process, thus permitting unions to avoid elections where employees make decisions free from interference. Under the card check approach, union authorization cards are signed in the presence of an interested party, for example, a union organizer or a pro-union co-worker. The cards are then presented as representing the true intent of the workers.

The hardworking men and women in our nation's hospitals are entitled to choice, and the AHA and ASHHRA have long supported the compassionate work of the caregivers who work in our hospitals and are committed to providing them every protection afforded to them, including confidentiality in their decision to unionize. We believe H.R. 1409/S 560_ strips away existing safeguards assured under federal law and leaves workers unprotected from outside influence and pressure.

Some proponents of the bill argue that the card check process is necessary because the National Labor Relations Board (NLRB) is not holding representation elections in a timely manner. However, the 2008 NLRB Annual Report indicates that initial elections are held within a median of 38 days and 95.1 percent of all initial elections are conducted within 56 days of the filing of the petition.

Equally troubling, H.R. 1409/S. 560_ also would effectively allow a third party arbitrator to craft a contract. Under the bill, employers and unions have 120 days after certification to negotiate a first contract -- an unreasonably short amount of time given the complexity of hospital finances, staffing and quality of care issues. With binding arbitration, workers lose their say on the terms of their contract. The bill would not permit workers to terminate arbitration. Workers cannot vote down a contract and send the union back to the negotiation table under binding arbitration, and they cannot reject an arbitrator's ruling. Under the proposed legislation, once an arbitrator is called in, his or her word is final.

The nation's hospitals are currently in a financial crisis and cannot afford to be placed in a position where a third party is authorized to make critical financial decisions that could reduce access to care. Hospitals plan their budgets many months in advance. Allowing a third party to obligate a hospital to pay unanticipated increases in wages and/or benefits in the middle of a fiscal year would require a hospital to make cuts elsewhere-such as limiting services, postponing a purchase of equipment or abandoning new construction plans to expand services. This burden would be particularly onerous on hospitals that serve a large Medicaid or uninsured population. Those hospitals are already operating in the red and cannot absorb these unanticipated increases. Unanticipated changes in non-economic terms of employment, such as staffing and assignments, could also adversely impact hospital operations. With the increasing numbers of uninsured patients and limited access to capital, adding this additional uncertainty will further jeopardize health care services.

The AHA and ASHHRA do support the *Secret Ballot Protection Act of 2009* (H.R. 1176/S. 478) which ensures the long-standing federal policy of secret ballot elections. H.R. 1176/S. 478 would amend the NLRA to require that union recognition be based on a secret ballot election conducted by the National Labor Relations Board. A secret ballot process helps ensure fairness in the election process and will not otherwise change the manner in which parties (unions and employers) conduct themselves in elections under the NLRA.