



## LABOR PAINS: BARACK OBAMA, CONGRESS AND THE BATTLE OVER THE EMPLOYEE FREE CHOICE ACT

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### ELECTIONS HAVE CONSEQUENCES

Barack Obama is now the president-elect of the United States. The Democratic Party has a firmer grip on their control of Congress. House Speaker Nancy Pelosi is emboldened by a mandate to pursue an agenda of 'change' and her counterpart in the Senate, Harry Reid, can work with a near filibuster-proof majority. Democrats have an opportunity to reshape America with an agenda that can create lasting effects for the next several decades. There are daunting challenges and unique opportunities when addressing issues involving the capital markets, two wars, energy, education and a myriad of other topics. The struggle between business and labor unions figures prominently on Washington's agenda, too. This article will examine the fight over the proposed Employee Free Choice Act, popularly known as the "card check" bill.

### EMPLOYEE FREE CHOICE ACT

The Employee Free Choice Act (EFCA) is proposed legislation meant to amend the National Labor Relations Act in order to improve the chances of increasing labor union membership. The bill has many supporters and just as many detractors. EFCA is mostly known for its "card check" provision that would do away with secret-ballot elections. The EFCA, if it becomes law, would also create new arbitration requirements. The bill was first passed in the House in 2007 but stalled in the Senate due to a filibuster mounted by the Republican minority. President Bush had

*"You don't ever want a crisis to go to waste; it's an opportunity to do important things that you would otherwise avoid." -Incoming White House chief of staff, Rahm Emanuel*

vowed to veto EFCA if it ever came across his desk, but President-elect Obama has vowed to sign it into law. Obama and Vice President-elect Joe Biden, as senators, were co-sponsors of EFCA.

### CARD CHECK

What the card check bill would do is allow unions to get workers to sign a card instead of voting in a secret-ballot election. Signatures from 51 percent of workers would be enough to form a union. Unions prefer card-signing because a union mobilization effort can be waged without a company's knowledge. Under the current secret-ballot process, employers are able to mount an opposition campaign as a way of persuading workers not to join a union. The card check portion of the bill is what arouses the most passion on both sides of the equation. John Sweeney, president of the AFL-CIO told the Wall Street Journal, "It is the most important issue that we have." Dan Yager, spokesman for HR Policy Association echoed, "This is one the business community is united on." AFL-CIO Secretary-Treasurer Richard Trumka countered that the election results mean "the prospects of passage have increased dramatically."

### ARBITRATION

The binding-arbitration section of the bill does not receive as much attention but is also noteworthy. Currently, if employers and a union do not agree on a contract within a year, the union forfeits its right to be an 'exclusive bargaining agent' on behalf of the employees. Under the new law, if passed,

an arbitrator would be appointed to impose a contract if there is no agreement within 120 days of the union's formation. Randel Johnson, vice president of labor policy for the U.S. Chamber of Commerce, said binding-arbitration is "unacceptable to the business community."

### **BUSINESS LEADERS OPPOSE EFCA**

An array of business leaders and advocates oppose this bill for several reasons. Tom Donohue, the chamber's president, urged that the bill not be passed in light of the current economic conditions. According to *The Hill*, a congressional newspaper, Donohue warned that passage of the bill would have "serious implications" for the nation's economy. The Chamber advertised in several senate races hoping to make it harder for the Senate to break filibusters on union-supported bills. John Engler, president of the National Association of Manufacturers, warned the incoming administration that this bill "is not the issue to build a relationship on." According to the *Washington Business Journal*, Engler and Donohue plan to fight "vigorously."

George McGovern, 1972 Democratic presidential candidate, and a friend of big labor also spoke out against the bill. In a *Wall Street Journal* Op-Ed, McGovern wrote "we cannot be a party that strips working Americans of the right to a secret-ballot election...coercion from all sides would be a betrayal of what we have always championed." McGovern is worried about the effects of employers and union officials finding out which workers have and have not signed a union card.

### **ORGANIZED LABOR EXPECTS RESULTS**

Prominent labor unions see this bill as an opportunity to dramatically increase labor union membership. The unions pin their hopes on a White House that will listen to their concerns. In fact, union workers played a substantial role in helping elect Obama and many Democrats to Congress. The AFL-CIO estimates that a quarter-million

union volunteers campaigned for various candidates and issues. The powerful union claims to make a difference in key battleground states like Ohio and Pennsylvania. According to Peter Hart Research Associates, union members supported Obama by a 68-30 margin and Sweeney expects much in return. Sweeney stated, "We are determined to enact a new economic agenda that will lift America's working families and restore confidence in the future for our children...We need changes attuned to today's world that are as bold and as visionary as the economic changes FDR made so many decades ago."

### **CONCLUSION**

While the EFCA's chances of passage are greatly increased with a new president and an ambitious Democratic congressional majority, it still faces an uphill climb to success. The House, under Nancy Pelosi's leadership, is certain to act quickly in once again voting in favor of EFCA. Obama will be waiting in the White House to sign the bill but a political drama will be played out in the Senate. Republican leader Mitch McConnell will mount a vigorous battle to make sure a filibuster is successful and that EFCA does not reach the Oval Office desk. McConnell will surely appeal to moderate Democrats from right-to-work states.

Nothing is certain but a modest prediction can be made. As is Washington's fashion, a compromise will be forged and both sides will be able to claim victory. Hal Coxson, the Washington labor lawyer suggested to the *Wall Street Journal* that labor advocates might budge on union elections. He said they might propose keeping secret ballots but cutting election notices to just five days as a way of blunting an employer's ability to persuade workers not to join a union. Coxson warned the AFL-CIO and other labor unions of an "overreach" if they try to get everything they want.

However, anything is possible. Obama might ride a popular wave of reform and be able to cajole enough senators to make sure the bill breaks the Senate logjam. Or, both sides may dig in their heels and the bill might languish in the Senate. If that is the case, labor unions will not go quietly and can be sure to mount a new effort to revive the Employee Free Choice Act when a new Congress convenes in 2011.

#### ABOUT THE AUTHOR:

Thomas Galvin is an Analyst for the Labor Analytics Group (LAG) and studies labor markets across the nation. His responsibilities include acquiring essential information and working with the group in providing clients with site selection advisory services. Thomas interacts with employers, economic development councils and staffing agencies in support of the group's market evaluation efforts.

Prior to joining CBRE, Thomas was an associate with the redeveloper RockWater Partners. Thomas worked directly with the president, analyzed potential transactions and played a key role in business development. Prior to RockWater, Thomas was development manager for Foursite Development. His responsibilities involved the construction management of a state-of-the-art storage facility, C3 Modern Storage.

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