



IS A CHANGE IN THE NATIONAL LABOR RELATIONS ACT ON THE HORIZON?

On March 1, 2007, the United States House of Representatives passed the “Employee Free Choice Act of 2007.” The bill passed by a 56 vote margin. The bill was sponsored by Rep. George Miller (D) of California. Louisiana Reps. William Jefferson (D) and Charlie Melancon (D) were two of the bill’s 233 co-sponsors. Only seven House Republicans joined as co-sponsors. Thirteen Republicans joined House Democrats in voting for the bill, and two Democrats voted against it. Sen. Ted Kennedy (D) of Massachusetts is expected to introduce similar legislation in the Senate. Sen. Mitch McConnell (R) of Kentucky pledged to fight the bill. Pres. George Bush is expected to veto the bill should it pass the Senate.

So what is the Employee Free Choice Act of 2007? What’s the big deal?

The Employee Free Choice Act of 2007 amends the National Labor Relations Act (which was last amended nearly 70 years ago) and provides new, more relaxed, rules for the selection of an employees’ collective bargaining representative (i.e., unions).

Where are we now, and what would the Act do?

Under the current National Labor Relations Act, employees select a bargaining representative through a secret ballot election process. Generally, in order to get to an election, a union seeking to represent employees must show the National Labor Relations Board that there is a sufficient showing of employee interest in favor of the union. Unions typically show there is an interest in the union by collecting employee signatures or signed authorization cards from 50% - 75% of employees.

The union then files a representation petition with the National Labor Relations Board. Approximately five weeks later (sometimes sooner), the Board conducts a secret ballot election, and all the effected employees are allowed to cast ballots in favor of, or against, the union.

During the period leading up to the election, both the union and the employer typically “campaign” and state their cases regarding union representation. However, employers are bound by the “TIPS” rules and may not threaten (“T”), intimidate (“I”), or make promises (“P”) to employees to encourage them to vote against the union and employers may

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not spy (“S”) on employees. Unions are not similarly bound.

In order for a union to be designated the employees’ collective bargaining representative, the union must win a majority of the votes cast in a secret ballot election. (Again, the National Labor Relations Board conducts the election.) Following the secret ballot election, if a union is certified as the employee representative, the employer and the union are then required to bargain in good faith over a collective bargaining agreement. However, the National Labor Relations Acts does not require either party to agree to anything. The Employee Free Choice Act of 2007 changes all that.

Among other things, the Employee Free Choice Act of 2007 eliminates secret ballot elections. Instead, once a union collects authorization cards from a majority of the employees, the National Labor Relations Board would certify the union as the employees’ bargaining agent without an election. The employer would not be allowed to state its case to its employees, and employees would not be allowed to cast ballots in secret, away from peer pressure and intimidation.

The Act would also severely impact the bargaining process. Under the Act, the parties would have 90 days to reach an initial contract. If an initial contract is not reached in 90 days, the parties would then have an additional 30 days to reach an agreement with the assistance of the Federal Mediation and Conciliation Service. If the parties are unable to reach an agreement after 120 days, the issue would be submitted to binding arbitration, and an arbitrator (not the parties) would determine the terms of the initial contract, and the parties would be bound for two years.

The Employee Free Choice Act of 2007 is a hot item. Unions have rallied and are pushing for passage of the Act. Likewise, business leaders are equally energized and have spoken out against the legislation.



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