

## **CHATTANOOGA AREA CHAMBER OF COMMERCE ISSUE BRIEFING**

### **Employee Free Choice Act or “Card Check” April 2009**

#### **At Issue**

In the late 1950's, it is estimated that one-third of the American workforce was unionized. When the Bureau of Labor Statistics began compiling that number in 1983, just over 20% was unionized. Today that number has declined to 12%, with only 7.5 percent of the private sector workforce belonging to a union and the rest working in government jobs. The government sector is the only segment where the unions' market share is growing.

The Employee Free Choice Act (EFCA) or “Card Check” would completely reverse this trend, and open up more segments of the economy to union organizing, especially small business. All companies are potentially impacted by this effort.

#### **Eliminating the Secret Ballot Process**

Under the existing secret ballot process, union organizers ask workers at a facility to sign cards indicating an interest in an election. Once 30% have signed cards, the union can petition the National Labor Relations Board (NLRB) to hold a secret ballot election. Both the union and the employer are given the opportunity to make their case, after which workers cast their votes in a federally-supervised election. If the union gets more than 50% of the votes (by a secret ballot), they are certified by the NLRB and the employer must begin collective bargaining.

Although secret ballot voting would not be banned under the bill, it would have the same practical effect. Companies lose their right to request a secret ballot election. Under EFCA, unions can avoid significant time, expense, and risk that comes with secret ballot elections. Once the union organizers meet the 50% plus one threshold, the NLRB would be required to certify the union and be prohibited from ordering a secret ballot election. Also, a union would not be obligated to tell an employer it is launching an organization drive.

Workers could be asked to sign a card almost anywhere, including at their homes at night. Union organizers could go back to any worker who declines to sign over and over again until they get the desired result.

#### **Enacting Binding Arbitration**

Most of the attention to the EFCA centers around the effective elimination of secret ballot voting. However, other portions of the legislation are equally contentious and seen as injurious to business.

One of the most immediate changes an employer would face is collective bargaining with a newly formed union must commence within 10 days. If parties have not completed the first contract within 90 days, then either side may refer the matter to the National Mediation and Conciliation Service (NMCS). NMCS has 30 days from the date of the request to strike a deal agreeable to both sides.

If the mediation effort fails, either side can refer the matter to a federal arbitration panel. The arbitration panel will hand down a contract that is binding on both sides for two years. Under current law, the NLRB does not directly engage in contract negotiations except in an advisory or mediating capacity. That would change under EFCA, but the bill does not define the make up of the arbitration panel or establish any further regulatory appeal rights. As with any case, a dispute could be taken to court. The bottom line is that a union is guaranteed a first contract.

### **Current Status**

The EFCA was introduced in 2005 and 2007. In the 2007, the bill passed the US House of Representatives along largely partisan lines. Despite 51 votes in favor of the bill in the Senate, it failed to reach the 60 votes necessary to cease debate and proceed to a formal vote.

The bill was reintroduced in this Congress on March 10, 2009, and is a high priority item for both the new Administration as well as the House and Senate leadership. Because the bill has passed the House only to be stopped in the Senate, House Speaker Nancy Pelosi has indicated that the House will not move on the bill until the Senate acts first. Rep. George Miller of California is Chairman of the House Committee on Education and Labor, and is the sponsor of the House bill (H.R. 1409). Sen. Edward Kennedy of Massachusetts is Chairman of the Senate Committee on Health, Education, Labor, & Pensions, and is sponsor of the Senate bill (S.B. 560).

Positions of the Tennessee Congressional Delegation break down as follows:

- Sen. Lamar Alexander (R) - No
- Sen. Bob Corker (R) - No
- Rep. Marsha Blackburn (R) - No
- Rep. Steve Cohen (D) - Yes
- Rep. Jim Cooper (D) – Leaning Yes
- Rep. Lincoln Davis (D) – Leaning Yes
- Rep. Jimmy Duncan (R) - No
- Rep. Bart Gordon (D) – Leaning Yes
- Rep. Phil Roe (R) - No
- Rep. John Tanner (D) – Leaning Yes
- Rep. Zach Wamp (R) - No