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KEY POINTS:

- Union Support for Barack Obama
- Union Agenda
- Key Components
- Problems
- Actions You Can Take
- Support

Status Report: Employee Free Choice Act

According to the Federal Election Commission, organized labor spent \$58 million in campaign contributions, with 91 percent going to Democrats. Another \$44 million was spent by the labor movement to support the Obama presidential campaign - almost as much as the \$53 million the Republican National Committee spent to support McCain. According to the AFL-CIO and the Change to Win Coalition the amount spent was much higher. They claim that unions and their political action committees spent over \$450 million to get Barack Obama elected.

John Sweeney, head of the AFL-CIO, claims that in the last four days of the campaign, 250,000 volunteers from AFL-CIO member unions made 5.5 million phone calls and visited 3.9 million union households. He said unions contacted a total of over 13 million voters in 24 states, with some undecided union members being contacted more than 30 times through phone calls, household visits and workplace conversations. Union leaders also claim that union members were pivotal in helping Mr. Obama win several battleground states, including Florida, Indiana, Nevada, Ohio, Pennsylvania and Wis-

consin. According to a voter poll by Peter D. Hart Research Associates, 67 percent of members of A.F.L.-C.I.O. unions voted for president-elect Barack Obama and 30 percent for Senator John McCain.

employees at a workplace signed cards authorizing a union to be their “sole and exclusive bargaining representative.” Currently, employers can demand that workers hold secret-ballot elections – most of which are



Service Employees International Union members celebrating the Obama victory

Now that the election is over, and Barack Obama has been elected the 44th President of the United States, union leaders can be expected to solicit *payback* for their support of the newly-elected President.

The union agenda

Labor’s number one priority is a piece of legislation called the **EMPLOYEE FREE CHOICE ACT**, also known as the card-check bill. The bill would give workers the right to be represented by a union as soon as a majority of

supervised by the National Labor Relations Board, part of the federal government – to determine whether or not to become part of a union.

The House approved this bill last year. In the Senate, there were 51 votes for the card check bill, but it stalled because supporters could not overcome a Republican filibuster. Democrats gained at least six Senate seats on November 4th, giving their caucus at least 57 seats, but still fell short of the 60 Senate votes they need to

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overcome a filibuster, in its present form. The labor movement needs the EFCA to help ensure its own survival but may be forced to accept a compromise in order to get the measure passed.

With union membership sliding to 7.5 percent of the private-sector work force, one-third the rate in 1983, unions see enactment of the bill as the single most important step toward reversing their loss of membership and power. Some labor leaders predict that if the bill is passed, unions—which have 16 million members nationwide—would add at least five million workers to their rolls over the next few years.

The Service Employees International Union (SEIU) has pledged to mobilize tens of thousands of union members – and organizations they financially support (like ACORN) - to urge president-elect Obama and Congress to enact the Employee Free Choice Act (EFCA) within the first 100 days after Inauguration Day, January 20th. Barack Obama co-sponsored the legislation and pledged to fight for its passage as President, and to sign it into law.

“This is the biggest labor fight of a generation in Washington,” said David French, Vice President of Government Relations for the International Franchise Association, part of the business-funded Coalition for a Democratic Workplace, which opposes the

legislation. *“This battle is not about fixing ills in labor law; this battle is about changing the rules so unions always win.”*

Key Components

- **Union certification on the basis of signed authorization cards** as opposed to an NLRB election. Currently, a showing of interest of 30% or more of the bargaining unit initiates a government-supervised election ;
- **Civil fines of up to \$20,000 per violation for employers** found to have willfully violated employee rights during an organizing campaign or first contract drive. Currently, no fines are provided for in the National Labor Relations Act (“NLRA”);
- **Treble back pay for employees discharged or discriminated against** as a result of union activity during an organizing campaign or first contract drive (currently, the NLRA only provides for actual lost wages);
- **Mandatory injunctions against employers** who discharge or discriminate against employees, or who threaten such, or who engage in conduct which significantly violates employee rights during an organizing campaign or first contract drive (currently, the seeking of an injunction is discretionary with the NLRB);
- **Interest arbitration of initial collective bargaining agreements** in the event the parties are unable to come to an agreement within 120 days following certification of the union, the Federal Mediation and Conciliation Service can intervene. If the FMCS is unable to conclude negotiations between the parties within 30 days, the EFCA provides for mandatory interest

arbitration under procedures and regulations to be developed by the FMCS. **The arbitration award would be binding on the parties for a period of two years.**

Lack of Standards and Procedures

While there is language in the proposed EFCA referring to first contract arbitration, employers are not provided any statutory guidance as to:

1. Who will compose the arbitration board deciding the terms of the parties’ first contract?
2. What limitations or standards, if any, must be met in rendering the award?
3. What procedural safeguards will be available to employers in arbitration proceedings?
4. What standards of review will the federal courts have in reviewing challenges to an interest arbitration award?
5. Will the parties pay the members of an arbitration board, or will they be taxpayer-paid?
6. Does the EFCA unduly infringe on the constitutional right of employers to contract?
7. Will unions have a right to view the financial books and records of an employer in interest arbitration under EFCA?
8. How will first contract arbitration panels under the EFCA decide critical non-economic provisions of the collective bargaining agreement?
9. Will the EFCA result in bankruptcy courts having expanded authority to reject first contract arbitration awards?

10. How would statutes in Right to Work states be affected if the EFCA becomes the law of the land?

11. How would an “appropriate bargaining unit” be defined? Would it include independent contractors, temporary employees, managers, professionals, and/or supervisors?

12. How would an “election bar” be affected? Present federal law prohibits holding an election in any collective bargaining unit in which a valid election has been held during the preceding 12 month period. In a “card-check” environment would the 12 month bar still apply?

What Can You Do Right Now?

Every non-union employer should be concerned about the provisions contained in the proposed Employee Free Choice Act. Employers in so-called **RIGHT TO WORK** states should be especially concerned since the twenty-two Right to Work states represent fertile ground for organizing under EFCA.

Depending on the size of the potential bargaining unit, fighting off a union organizing drive can be very costly. In today’s market, it would not be unusual for an employer to pay \$250,000 to \$300,000 for a six week campaign, using a one thousand employee unit as a benchmark. That price tag would not include charges from an outside attorney, or the cost of lost productivity. And, what if the employer loses? In that case, the employer might look forward to nearly six months of

negotiations, during which time attorney fees would accrue, along with the cost of internal preparation for the negotiations process and more lost productivity. And in the end, the employer might still be forced to live with an undesirable collective bargaining agreement.

Prevention is much less expensive. A simple evaluation of your policies and management practices will provide your organization with the information you would need to identify any problem areas and prioritize resource allocation. The outcome of this upfront intervention would also make it more difficult for a union to interest your workers in membership. Few people would pay a union for what management is giving them for free.

Employers concerned with unionization should:

1. Intensify their focus on proactive and preemptive supervisory training;
2. Conduct organizational climate surveys to identify potential hotspots, including management practices that might lead to interest in a union;
3. Evaluate and improve employee communication programs; and,
4. Evaluate policies and practices about which employees currently complain, and make appropriate modifications where necessary.

These simple suggestions are steps that employers should be taking even without the pressure of the proposed legislation.

Some employers will need the help of experienced resources that they do not presently have on staff. If that is the case with your organization, **HELP IS AVAILABLE FROM LABOR CRISIS, INC.**, a full service employee relations firm that has been in business as a resource to management since 1988.

Call us to see if we can assist you to become less vulnerable to the changing labor relations climate being advanced by organized labor across the United States. A comprehensive overview of our services can be found on our website: www.laborcrisisinc.com.

Call me directly. A simple telephone call can be the first step in protecting your company against a union agenda that can be very expensive if you wait too long.

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“Prevention is much less expensive than the cost of negotiating with a union and administering a collective bargaining agreement