

CLIENT ALERT

U.S. Senate Holds Hearings on the Employee Free Choice Act

April 2, 2007

On March 27, 2007, the U.S. Senate Committee on Health, Education, Labor and Pensions held its first hearings concerning the Employee Free Choice Act (“EFCA”) (H.R. 800, 110th Cong. (2007)). The EFCA aims to enact sweeping reforms to the National Labor Relations Act by overhauling the way in which employees choose whether or not to be represented by a labor organization for collective bargaining. The EFCA, also known as the “card check” bill, would effectively replace the secret ballot election, the process that has been used by employees for more than seventy years to decide whether or not to join a labor organization, with a process that would require an employer to recognize and bargain with a labor organization based upon authorization cards signed by a majority of employees. The U.S. House of Representatives passed the EFCA on March 1, 2007 by a vote of 241-185. The bill was introduced in the Senate (S. 1041) on March 29, 2007 by Senator Edward Kennedy (D-Mass.), who has said that he will seek “quick action” on the legislation.

Currently, when a labor organization seeks to represent a group of employees, the National Labor Relations Board (“Board”) conducts a secret ballot election, the results of which are based upon the majority of those employees who vote in the election. The Board conducts such elections when presented with evidence, including authorization cards, that thirty per cent of the employees in the proposed bargaining unit desire representation. Under the EFCA, if a labor organization, employee, group of employees or other individual presents authorization cards signed by a majority of employees in an appropriate bargaining unit, the Board will certify the labor organization as the employees’ exclusive bargaining representative based solely on the signed authorization cards.

The EFCA would also have a significant impact on the bargaining process for an initial collective bargaining agreement by requiring bargaining to commence no later than ten days after a request for bargaining is made. If, after ninety days following the commencement of negotiations the parties have failed to reach an initial agreement, the EFCA authorizes either the employer or labor organization to enlist the aid of the Federal Mediation and Conciliation Service to mediate disputes that have prevented agreement in collective bargaining. Under the EFCA, if the parties fail to reach agreement in collective bargaining thirty days after the referral to mediation by one of the parties, the dispute is referred to binding arbitration. In that event, a panel of arbitrators will set the terms of the parties’ collective bargaining agreement, which will be binding on the parties for two years.

The EFCA would also increase the penalties imposed on employers for committing unfair labor practices during the course of an organizing drive or during negotiations for a first collective bargaining agreement. Currently, employees who have lost income as a result of an employer’s unlawful conduct are awarded back-pay. Under the EFCA, such employees are entitled to additional “liquidated damages” in the amount of two-times the back-pay figure determined by the Board. Other provisions of the EFCA propose changes to current law by increasing the types of unfair labor practice charges for which the Board is required to seek injunctive relief from federal courts, and by adding civil penalties that may be levied against employers who commit unfair labor practices.

In his opening statements at the March 27 hearing, Senator Kennedy said the EFCA “will enable hardworking Americans to make their own decision” about seeking representation by a labor organization and eliminate the threat of coercion in seeking such representation. Opponents of the bill have criticized the measure as infringing on employee free choice and limiting due process.

President Bush has indicated he will veto the EFCA.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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