

THE INSIDE PERSPECTIVE

LABOR AND EMPLOYMENT LAW SOLUTIONS FOR EXECUTIVES AND HR PROFESSIONALS



SMITH MOORE LLP
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To Vote or Not to Vote... Could Union Elections Disappear?

In March, the U.S. House of Representatives passed a bill to amend the National Labor Relations Act ("NLRA") by eliminating the secret ballot process employees have long used to decide whether to join a labor union. Named the "Employee Free Choice Act of 2007," the House bill and a similar one sponsored by Senator Kennedy are now before the Senate for consideration.

For decades, union organizing campaigns have typically begun with organizers convincing employees to sign what are referred to as "authorization cards." These cards state that the employee authorizes the particular union to represent the employee in collective bargaining. If 30% of an appropriate "unit" of employees signs such cards, a private election, for or against the union, is triggered. If more than 50% of unit employees sign authorization cards, the employer may opt to recognize the union voluntarily through a card check procedure, or it may continue to insist that a private election be held to verify the employees' support for the union.

The proposed legislation would bring several key changes including:

- If more than 50% of unit employees sign authorization cards, the employer would be compelled to recognize the union without a secret ballot election. Critics of this proposal emphasize that, without the right to vote in private, employees could succumb to public pressure and sign cards. Employers would also lose the pre-election period to convince employees that a union is unnecessary.
- Once an employer must recognize a union, the employer and the union would have ninety days to reach a collective bargaining agreement. If terms remain in dispute, a federal mediator would assist in negotiations for thirty days. If an agreement is still not reached, a federal arbitrator would take over, decide any disputed terms and conditions of employment and mandate a two-year contract on the parties.

By removing an employee's right to cast a private vote for or against a union and by inserting a federal decision-maker into the negotiation process, the proposed amendments to the NLRA would fundamentally change long-standing law.

TIP

Employers should closely watch the Employee Free Choice Act of 2007 as it moves through Congress. If enacted, the law would facilitate union organizing and change the nature of collective bargaining. Updates will be posted at www.smithmoorelaw.com/publications.asp.



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The firm restricts its practice in the labor and employment area to the representation of management.

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