

Senator Specter Speaks on Employee Free Choice Act/Card Check

Washington D.C.
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U.S. Senator Arlen Specter (R-Pa.) today spoke on the Senate floor concerning the Employee Free Choice Act/Card Check.

Senator Specter's full floor statement, including the appendix, follows:

I have sought recognition to state my position on a bill known as the Employee Free Choice Act, also known as card check. My vote on this bill is very difficult for many reasons. First, on the merits, it is a close call and has been the most heavily lobbied issue I can recall. Second, it is a very emotional issue with Labor looking to this legislation to reverse the steep decline in union membership and business expressing great concern about added costs which would drive more companies out of business or overseas. Perhaps, most of all, it is very hard to disappoint many friends who have supported me over the years, on either side, who are urging me to vote their way.

In voting for cloture - that, is to cut off debate - in June 2007, I emphasized in my floor statement and in a law review article that I was not supporting the bill on the merits, but only to take up the issue of labor law reform. Hearings had shown that the NLRB was dysfunctional and badly politicized. When Republicans controlled the Board, the decisions were for business. With Democrats in control, the decisions were for labor. Some cases took as long as eleven years to decide. The remedies were ineffective.

Regrettably, there has been widespread intimidation on both sides. Testimony shows union officials visit workers' homes with strong-arm tactics and refuse to leave until cards are signed. Similarly, employees have complained about being captives in employers' meetings with threats of being fired and other strong-arm tactics.

On the merits, the issue which has emerged at the top of the list for me is the elimination of the secret ballot which is the cornerstone of how contests are decided in a democratic society. The bill's requirement for compulsory arbitration if an agreement is not reached within 120 days may subject the employer to a deal he or she cannot live with. Such arbitration runs contrary to the basic tenet of the Wagner Act for collective bargaining which makes the employer liable only for a deal he or she agrees to. The arbitration provision could be substantially improved by the last best offer procedure which would limit the arbitrator's discretion and prompt the parties to move to more reasonable positions.

In seeking more union membership and negotiating leverage, Labor has a valid point that they have suffered greatly from outsourcing of jobs to foreign countries and losses in pension and health benefits. President Obama has pressed Labor's argument that the middle class needs to be strengthened through more power to unions in their negotiations with business. The better way to expand labor's clout in collective bargaining is through amendments to the NLRA rather than on eliminating the secret ballot and mandatory arbitration. Some of the possible provisions for such remedial legislation are set forth in an appendix to this statement.

In June 2007, the vote on the Employee Free Choice was virtually monolithic: 50 Senators, Democrats, voted for cloture and 48 Republicans against. I was the only Republican to vote for cloture. The prospects for the next cloture vote are virtually the same. No Democratic Senator has spoken out against cloture. Republican Senators are outspoken in favor of a filibuster. With the prospects of a Democratic win in Minnesota, yet uncertain, it appears that 59 Democrats will vote to proceed with 40 Republicans in opposition. If so, the decisive vote would be mine. In a highly polarized Senate, many decisive votes are left to a small group who are willing to listen, reject ideological dogmatism, disagree with the party line and make an independent judgment. It is an anguishing position, but we play the cards we are dealt.

The emphasis on bipartisanship is, I think, misplaced. There is no special virtue in having some Republicans and some Democrats take similar positions. The desired value, really, is independent thought and an objective judgment. It obviously can't be that all Democrats come to one conclusion and all Republicans come to the opposite conclusion by expressing their individual objective judgments. Senators' sentiments expressed in the cloakroom frequently differ dramatically from their votes in the well of the Senate. The nation would be better served, in my opinion, with public policy determined by

independent, objective legislators' judgments.

The problems of the recession make this a particularly bad time to enact Employees Free Choice legislation. Employers understandably complain that adding a burden would result in further job losses. If efforts are unsuccessful to give Labor sufficient bargaining power through amendments to the NLRA, then I would be willing to reconsider Employees' Free Choice legislation when the economy returns to normalcy.

I am announcing my decision now because I have consulted with a very large number of interested parties on both sides and I have made up my mind. Knowing that I will not support cloture on this bill, Senators may choose to move on and amend the NLRA as I have suggested or otherwise. This announcement should end the rumor mill that I have made some deal for my political advantage. I have not traded my vote in the past and I would not do so now.

Appendix

SOME SUGGESTED REVISIONS TO THE NATIONAL LABOR RELATIONS ACT

(1) Establishing a timetable:

- (a) Require that an election must be held within 10 days of a filing of a joint petition from the employer and the union
- (b) In the absence of a joint petition, require the NLRB to resolve issues on the bargaining unit and eligibility to vote within 14 days from the filing of the petition and the election 7 days thereafter. The Board may extend the time for the election to 14 additional days if the Board sets forth specifics on factual or legal issues of exceptional complexity justifying the extension.
- (c) Challenges to the voting would have to be filed within 5 days with the Board having 15 days to resolve any disputes with an additional 10 days if they find issues of exceptional complexity.

(2) Adding unfair labor practices:

- (a) an employer or union official visits to an employee at his/her home without prior consent for any purpose related to a representation campaign;
- (b) an employer holds employees in a "captive audience" speech unless the union has equal time under identical circumstances;
- (c) an employer or union engages in campaign related activities aimed at employees within 24 hours prior to an election.

(3) Authorizing the NLRB to impose treble back pay without reduction for mitigation when an employee is unlawfully fired

(4) Authorizing civil penalties up to \$20,000 per violation on an NLRB finding of willful and repeated violations of employees' statutory rights by an employer or union during an election campaign

(5) Require the parties to begin negotiations within 21 days after a union is certified. If there is no agreement after 120 days from the first meeting, either party may call for mediation by the Federal Mediation and Conciliation Service

(6) On a finding that a party is not negotiating in good faith, an order may be issued establishing a schedule for negotiation and imposing costs and attorney fees.

(7) Broaden the provisions for injunctive relief with reasonable attorneys' fees on a finding that either party is not acting in good faith

(8) Require a dissent by a member of the Board to be completed 45 days after the majority opinion is filed;

(9) Establish a certiorari-type process where the Board would exercise discretion on reviewing challenges from decisions by an administrative law judge or regional director.

(10) If the Board does not grant review or fails to issue a decision within 180 days after receiving the record, the decision of the administrative judge or regional director would be final.

(11) Authorizing the award of reasonable attorneys' fees on a finding of harassment, causing unnecessary delay or bad faith

(12) Modify the NLRA to give the court broader discretion to impose a Gissel order on a finding that the environment has deteriorated to the extent that a fair election is not possible.