

Checking in: Union bill pulses on Maine businesses' radar

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While there seems little chance that the Employee Free Choice Act will sweep through Congress, as some opponents feared earlier in the year, Maine business leaders remain concerned about the union organizing measure, just as labor leaders remain strongly committed to it.

An informal poll of *Mainebiz* readers in March showed that 86% opposed the bill, and, judging from their comments, many are concerned about what will happen in the workplace if unions are allowed to organize more freely. A vote on some version of the bill is now expected in the fall, after Congress makes critical votes on health care and energy legislation.

The battle lines seem clearly drawn around the legislation's most controversial provision, which would allow organizers to bypass a secret ballot certification requirement and simply collect a majority of employee signatures to form a bargaining unit - the so-called "card check provision."

"We'd like to think that our board took a measured position," said Peter Gore, vice president for government affairs at the Maine State Chamber of Commerce in Augusta. "We don't want to be seen as anti-union. Unions have done some great things for working people over the years. But for us the heart of the matter is still the right of employees to decide in private."

The delay in Congress has everything to do with electoral arithmetic. While the bill would likely again pass the House - as it did in 2007 - it could also be stymied by a filibuster in the Senate, which takes 60 votes to overcome. There are currently 59 Democrats in the Senate, plus the still-undecided Minnesota race where Democrat Al Franken is leading, yet not all Democrats are firm supporters of the bill. Sen. Arlen Specter of Pennsylvania, who switched parties and voted for the Free Choice Act earlier as a Republican, said he now has reservations. Maine's two moderate Republicans, Sens. Olympia Snowe and Susan Collins, have opposed the bill in the past and have given no sign of changing their minds. If it does reach President Obama's desk however, he's expected to sign it.

Some experts say that businesses may eventually have to get used to the idea that unions - which have been declining in proportion to the private work force for four decades - may make at least a modest comeback. And making it easier for workers to organize could even be a positive economic force, they say.

Dueling television ads, including several shown in Maine, have made the choice over the Free Choice Act sound stark and threatening. The name of the bill, chosen by labor advocates, is

intended to rebut the chief claim of business opponents, such as the Maine State Chamber, that it would take away employees' right to a secret ballot election on whether to authorize a union.

"Workers still have the right to request an election if they want," said John Hanson, director emeritus of the Bureau of Labor Education at the University of Maine. "It's management that would no longer have that option."

Charles Colgan, professor at the Muskie School at the University of Southern Maine, agrees. "The problem that management has with the bill isn't the process, it's the result," he said. "They don't want more unions."

The "card check" provision would expand the law's current provisions, which allow organizers to collect signatures from 30% of the proposed bargaining unit and then request an election. No matter how many signatures are gathered, employers can now request a subsequent secret ballot election, which labor advocates say they often lose even when they have a majority of signatures.

"The widespread perception is that the system is rigged," said Colgan. Although the ballot itself is secret, companies can bar organizers from the workplace and often conduct intensive anti-union campaigns. The biggest problem, Colgan said, is that businesses can freely observe organizing activity. "They'll tell employees that even though it's a secret ballot, we're going to know."

Gore said the problem is just the opposite. Card check signatures are publicly available, and, whichever way certification goes, there will be employees on both sides of the fence. "It has the potential to divide workers from each other, as well as workers from management," he said.

Employers may be more worried, Hanson said, about a second major provision of the bill more than they are about card check. Even when union organizers win a certification election, employees must still negotiate a contract, and that doesn't always happen. Employees are under no compulsion to sign a contract, and if bargaining extends beyond a year, the process starts over although the union itself remains certified.

Union advocates frequently cite the case of a Rite Aid warehouse in California, where employees have bargained three times for a contract but still don't have one. The Free Choice Act would give the two sides four months to bargain, after which the dispute could be submitted to binding arbitration.

Hanson says that's fair, but Gore objects. "First you can create a union without a secret ballot, and then a contract can go into effect that employees have never had a say in," he said.

Opinions also differ on how much effect the bill would have in Maine. Only 14% of the Maine work force is unionized, down from 24% in 1983, and without the presence of public employee unions, the proportion would be minuscule. The paper mills, shoe shops and textile plants that formed the backbone of the Maine labor movement are gone or sharply downsized. The paper industry has shed nearly 10,000 jobs since 1990, "and almost every one of those jobs was unionized," said Gore.

Instead, some industrial unions like the Machinists and Teamsters have shifted some of their efforts to the public sector. Teamsters locals represent several police bargaining units in Maine, for instance.

The current targets of most organizing movements are national retailers like Wal-Mart, and large food processing companies - another major target - are largely absent from Maine, though there have been occasional organizing efforts at the former DeCoster Eggs Farms.

Hanson said that in other industrialized countries usually compared with the U.S., unions are largely accepted. In Canada, which has card check certification, employers rarely contest elections, and in Europe, "the main issue is which union will represent employees, not whether they'll be one."

But anti-union beliefs are much stronger here, and likely to persist whatever happens to the Free Choice Act, he said. "There's been a hundred years of battles between management and labor," with no sign of a let-up.

Gore thinks that a new law could be a significant impetus to forming more unions in Maine. "It isn't just the large companies that could be affected. You could go into a company with five employees, collect three signatures, and you'd have a union."

For his part, Colgan isn't sure the current bill is the right answer to balancing interests, but he said that "collective bargaining does have a place in the economy" for setting wages and benefits. The lack of bargaining, rather than unions per se, is what's missing, in his view.

In fact, rather than continued tussling of the two sides, he'd like to see a national commission of labor and management representatives come up with a package that could then be ratified by Congress. "We need a solution that's fair, that truly lets people make up their minds" about organizing, he said, adding that the current National Labor Relations Board process is inadequate.

Chris Hall, vice president of the Portland Regional Chamber of Commerce, agrees at least with that point. "Ideally, you'd have an honest broker that would truly be independent of either labor or management. We don't really have that now," he said.

Hanson said the biggest change from the last election is not in Congress but in the White House, where Barack Obama firmly supports labor's basic agenda. "You didn't have that kind of emphasis from either Carter or Clinton" among recent Democratic presidents, he said. "You'd have to go back to Kennedy or even Truman" to find a president as supportive. Obama, he said, "clearly sees a viable and strong labor movement as part of his agenda, to restore the middle class and create a better standard of living."

But the president is expected to bide his time on the issue, which he's barely mentioned since taking office. Until Congress gets the votes together behind the current version, or a possible compromise, the long-running debate will apparently continue.

Unions at a glance

In 2008, union members in the United States accounted for 12.4% of employed wage and salary workers, up from 12.1% a year earlier, the U.S. Department of Labor's Bureau of Labor Statistics reported in March. The number of workers belonging to a union rose by 428,000 to 16.1 million.

In 1983, the first year for which comparable union data are available, the national union membership rate was 20.1%, and there were 17.7 million union workers.

Other highlights from the report:

- Government workers were nearly five times more likely to belong to a union (36.8%) than were private sector employees (7.6%)
- Workers in education, training, and library occupations had the highest unionization rate at 38.7%
- Among states, New York had the highest union membership rate (24.9%) and North Carolina had the lowest rate (3.5%)
- In 2008, among full-time wage and salary workers, union members had median weekly earnings of \$886, while those who were not represented by unions had median weekly earnings of \$691.
- In Maine, of the 574,000 people employed in 2007, 67,000 were in a union, or 11.7%. That percentage bumps up to 13.8% if you include people represented by unions, or 79,000 workers.
- In 2008, the number of Mainers in a union rose to 71,000, or 12.3% of the working population, and the number represented by a union climbed to 84,000, or 14.7%