



The Free Enterprise Nation

Government-coerced Unionization

POSITION PAPER

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SUMMARY

Marking the first 100 days of the Obama administration, Service Employees International Union (SEIU) President Andrew Stern proclaimed, "SEIU is on the field, it's in the White House, it's in the administration."¹ Indeed it is. The SEIU spent \$67 million on politics in 2008. Stern was listed at the most frequent visitor to the White House between inauguration day and the end of October, with 22 visits.

Together with 16 other unions who gave at least 90% of all of their political contributions to Democratic candidates,² unions are now getting their "payback" from local, state, and federal government officials that they helped to put in office. The result is the use of federal and state government power and the use of taxpayer dollars to force unionization on government contractors, private sector workers, and even more government employees.

At stake is the 1% to 2% of compensation that is taken as union dues to be used to support even more union organizers, extract even more pay and benefits concessions from unwitting taxpayers, and to support union-friendly candidates.³ Some unions even maintain "anti-candidate" funds to be used against recalcitrant candidates or elected officials. Unions contributed more than \$300 million toward election campaigns in 2008 to influence elected officials to support legislation and regulation that seeks to force union membership on workers.⁴

The use of taxpayer dollars to coerce unionization in order to funnel funds to unions in the form of dues that are used to support the elected officials who then authorize the expenditure of those same taxpayer dollars in ways that benefit only the unions, is a clear and present danger to free enterprise and thus to our economy as a whole.

The proposed Employee Free Choice Act, currently pending in Congress, and Executive Orders 13495, 13496 and 13502 signed by President Obama within weeks of his inauguration, represent clear and concerted efforts to force unionization on private and public sector workers.

Currently only 12.1% of the U.S. workforce is unionized: 7.5% of this is the private sector.⁵ An estimated 40% of all public sector workers are currently unionized. Current proposed laws and enacted Executive Orders seek to amend or contradict U.S. labor law to force union membership on workers. Currently, federal tax dollars are being directed

¹ Maher, Kris. (2008, May 16). SEIU Campaign spending pays political dividends. *Wall Street Journal*. <http://online.wsj.com/article/SB124243785248026055.html>

² The Center for Responsive Politics, <http://www.opensecrets.org/orgs/list.php?order=A>.

³ Heritage Foundation, Sherk, James, February 21, 2007, "How Union Card Checks Block Workers' Free Choice", WebMemo #1366, <http://www.heritage.org/Research/Labor/wm1366.cfm>

⁴ Cybercast News Service, CNSnews.com, Lucas, Fred, August 19, 2008, "Union Elections Should Keep Secret Ballot, Chamber of Commerce Says", <http://cnsnews.com/news/print/34314>.

⁵ The U.S Chamber of Commerce, "Card Check: Learn the Basics", <http://www.uschamber.com/wfi/cardcheckbasics.htm>.

toward supporting unionized government jobs and advantaging unionized contractors over non-union competitors.

The Free Enterprise Nation holds that these actions undermine the principles of free enterprise upon which this nation was built, and that the American voter must be informed and urged to take action to reverse the standing Executive Orders and to prevent passage of additional legislation that would result in government-sponsored, endorsed, or coerced unionization. The Free Enterprise Nation has identified Government-Coerced Unionization as one of the top five economic threats to America in 2010.

EXECUTIVE ORDERS THAT FAVOR THE INTERESTS OF ORGANIZED LABOR

Early in 2009, President Obama signed three executive orders which strongly favor the interests of organized labor and will affect many employers that enter into contracts to provide goods or services to the federal government.⁶

The workings of Executive Orders are explained by Jeffrey Fox of ThisNation.com: “Executive Orders (EOs) are legally binding orders given by the President to Agencies of the Federal Government. EOs are generally used to direct federal agencies and officials in their execution of congressionally established laws or policies. Congressional approval is not required for EOs to take effect, but they have the same legal weight as laws passed by Congress. EOs are controversial because they allow the President to make major decisions, even law, without consent from Congress. This runs against the general logic of our Constitution -- that no individual should have power to act unilaterally.”⁷

Executive Order 13496: Notification of Employee Rights Under Federal Labor Laws

Executive Order 13496 was signed by President Obama on January 30, 2009. According to Goodwin Procter LLP, “Executive Order 13496 states that economy and efficiency in federal government procurement is most easily achieved when employees are well informed of their rights under federal labor laws, such as their right to organize and engage in collective bargaining under the National Labor Relations Act. Executive Order 13496 will require most contractors [and their subcontractors] that enter into new contracts with the federal government to post a notice of employee rights under federal labor laws in conspicuous locations. The Order revokes Executive Order 13201, which required most contractors who entered into contracts with the federal government to

⁶ Goodwin Procter LLP, March 18, 2009, “Labor & Employment Alert, New Executive Orders Favoring Organized Labor Will Affect Many Employers That Provide Goods or Services to the Federal Government”, <http://www.goodwinprocter.com/Publications/Newsletters/Labor-and-Employment-Alert/2009/New-Executive-Orders-Will-Affect-Many-Employers-That-Provide-Goods-or-Services-to-the-FG.aspx>.

⁷ ThisNation.com, Fox, Jeffrey, “What are Executive Orders”?, <http://www.thisnation.com/question/040.html>.

post ‘Beck Notices,’” which informed employees that they cannot be required to join a union as a condition of employment. “Executive Order 13496 does not prohibit employers from posting Beck Notices or require their removal. However, the provision requiring contractors to post Beck Notices will no longer appear in government contracts.”⁶

In their September 2, 2009 comments before the United States Department of Labor, Office of Labor-Management on the Proposed Rule-making for implementing EO 13496, the Associated Builders and Contractors, Inc. describe how EO 13496 and the Department of Labor’s proposed rule-making for its implementation seek to utilize the Procurement Act as the basis to regulate labor relations and/or to influence their outcome:

“Although EO 13496 does not expressly say so, it is clear that the model upon which it is based, *i.e.*, the President’s assertion of authority under the Procurement Act ‘to ensure the economical and efficient administration and completion of Government contracts,’ was EO 13201 (Beck Order), which EO 13496 expressly revoked. However, while there may arguably be a few similarities between the two executive orders, the substance and detail of EO 13496 and, in turn, the Department’s proposed regulations to implement EO 13496, go well beyond the sum and substance of the Beck Order and seek to influence the outcome of labor management relations in a manner that exceeds the authority which the President and Department assert under the Procurement Act and is also preempted by the National Labor Relations Act (NLRA).”⁸

Executive Order 13495: Non-displacement of Qualified Workers Under Service Contracts

President Obama signed Executive Order 13495 on January 30, 2009. According to Goodwin Procter LLP, this Executive Order affects a contractor’s ability to hire employees of their choosing “when a contract to provide services to the federal government expires and a new contract for the same services is awarded to a different contractor. Executive Order 13495 will generally require the new contractor ... to offer employment to the employees who worked under the expiring contract before the new contractor can hire new employees to perform the contracted work. The practical impact of this Executive Order is that non-union federal contractors who are awarded new services contracts, are more likely to be deemed ‘successors’ to the prior contractor’s bargaining relationship with a union representing the prior contractor’s employees.” The NLRA stipulates that “if the contractor is deemed a ‘successor,’ it is not

⁸ Associated Builders and Contractors, Inc., September 2, 2009, Before the United States Department of Labor, Office of Labor-Management Standards, Notice of Proposed Rulemaking 29 CFR Part 471 Notification of Employee Rights Under Federal Labor Laws RIN 1215-AB70 to Implement Executive Order 13496 (74 Fed. Reg. at 38488).

bound by the predecessor's labor contract, but it is obligated to negotiate with the union over a new collective bargaining agreement."⁶

Executive Order 13502: Mandating the Use of Project Labor Agreements on Federal Construction Projects

Executive Order 13502 was issued by President Obama on February 6, 2009. According to McKenna, Long and Aldrich, LLP, the order "allows and encourages federal agencies to require contractors to use Project Labor Agreements (PLA) on Federal construction projects of \$25 million or more. A PLA is a pre-hire collective-bargaining agreement – often involving multiple employers and multiple unions – designed to systemize labor relations at a construction site. According to the order, PLAs promote efficient and timely completion of large-scale construction projects and prevent many of the problems inherent in such construction."⁹

The premise used to justify Executive Order 13502 is that it is needed to prevent labor disputes on construction projects. A report by the Beacon Hill Institute proves this justification to be false. Indeed, the Beacon Hill Institute report examined nearly \$57.3 billion in construction projects completed from 2001-2008 costing or exceeding \$25 million and found NO disputes attributable to NOT having a PLA.¹⁰

In actuality, Executive Order 13502 seeks to force unionization on non-union construction companies working on federal construction projects. The construction industry is an industry with a comparatively high union membership. Even so, union membership is only 16% of the construction industry workforce. This means that 84% of the construction industry prefers to work non-union.¹¹

Executive Order 13502 is a costly giveaway to the construction unions and provides no proven benefit to taxpayers. The Beacon Hill Institute report showed that PLAs reduce competition and add costs to construction projects. In fact, 70-98% of the non-union contractors responding to various surveys stated that they would be less likely to bid on projects requiring PLAs and that PLAs increase the cost of construction projects by 12% to 18%.¹⁰ Executive Order 13502 has already begun to be challenged in court as promoting a discriminatory practice.¹²

⁹ McKenna, Long and Aldrich, LLP, February 10, 2009, "President Obama Signs Executive Order Allowing Agencies to Require Project Labor Agreements (PLA's) on Large Construction Projects", <http://www.mckennalong.com/news-advisories-2072.html>.

¹⁰ The Beacon Hill Institute at Suffolk University, August, 2009, Tuerck, David G., PhD, Glassman, Sarah, MSEP, Bachman, Paul, MSIE, "Project Labor Agreements on Federal Construction Projects: A Costly Solution in Search of a Problem", <http://www.beaconhill.org/BHISTudies/PLA2009/PLAFinal090923.pdf>.

¹¹ United States Department of Labor, Bureau of Labor Statistics, January 28, 2009, "Union Members in 2008", <http://www.bls.gov/news.release/union2.nr0.htm>.

¹² PRNewswire, Associated Builders and Contractors, October, 6, 2009, "ABC Member Files Protest Against U.S. Department of Labor Project Labor Agreement",

UNION CONTRIBUTIONS TO FEDERAL POLITICAL CAMPAIGNS

According to the Center for Responsive Politics and its website OpenSecrets.org, union organizations represented one-third of the total contributions on their “Heavy Hitters” list, which is the total contributions for the 100 biggest givers in federal-level politics since 1989.² Unions were heavily represented among the top 10 givers, including the American Federation of State, County & Municipal Employees; International Brotherhood of Electrical Workers; National Education Association; Laborers Union; Service Employees International Union; and Carpenters & Joiners Union.

Likewise, a *Wall Street Journal* article pointed to Labor Department filings that showed the SEIU International spent about 20% of its annual budget, or some \$67 million, on politics in 2008.¹ The AFSCME reported spending \$63 million on politics in 2008, just under one-third of its budget. Another \$13 million went to politics in 2008 from the International Brotherhood of Teamsters, and the United Auto Workers channeled \$11 million toward politics in 2008.

GOVERNMENT-COERCED UNIONIZATION

The leading contributor to the Democratic Party during the last two decades, *The American Federation of State, County and Municipal Employees*, is a driving force behind the forced unionization of over 233,000 home-based daycare providers within fourteen states. Michelle Berry from Michigan is one of them.

She owns and runs a private day-care service in Michigan. Although she owns her own business and contracts independently to provide day care services, she was informed by the Michigan Department of Human Services that she is a government employee and union member. The agency thus withholds union dues from the child-care subsidies it sends to her on behalf of her low-income clients. Those dues are funneled to a public-employee union that claims to represent her. Ms. Berry never voted to be part of a union and does not want to be part of a union.¹³

How did this happen? Patrick J. Wright and Michael D. Jahr of the Mackinac Center in Michigan described this process in the *Wall Street Journal*:

“Ms. Berry did not choose to be a union member. This decision was forced upon her. Indeed, a year ago in December, Ms. Berry and more than 40,000 other home-based day care providers throughout Michigan were suddenly informed

<http://www.reuters.com/article/pressRelease/idUS164244+06-Oct-2009+PRN20091006>.

¹³ *Wall Street Journal*, Wright, Patrick J. and Jahr, Michael D., December 29, 2009, “Michigan Forces Business Owners Into Public Sector Unions”, <http://online.wsj.com/article/SB10001424052748703478704574612341241120838.html>

they were members of Child Care Providers Together Michigan—a union created in 2006 by the ***United Auto Workers and the American Federation of State, County and Municipal Employees***. The union had won a certification election conducted by mail under the auspices of the Michigan Employment Relations Commission. In that election only 6,000 day-care providers voted. The pro-labor vote turned out.

Michigan is just one of 14 states who have now enabled home-based day-care providers to be organized into public-employee unions, affecting about 233,000 people. And nine states have done so with home health-care providers. It's telling that in several states that have gone down this road, state and federal subsidies are the source of the union dues. In Michigan, the scheme is essentially throwing a cash lifeline to unions like the UAW, which are hemorrhaging members.”¹³

STRONGARM TACTICS IN UNIONIZING THE PRIVATE SECTOR

David Bego is familiar with the ***Service Employees International Union, aka, SEIU***. He wrote a book about his ordeal with them entitled “The Devil at My Doorstep.” Bego is the owner of Executive Management Services (EMS), a commercial cleaning and facility maintenance business with nearly 5,000 employees in 33 states. Bego takes pride in furnishing his employees with above average market pay for the work they do as well as health-care and vacation benefit packages far superior to those of their unionized competitors.¹⁴

According to the National Right to Work Committee,¹⁴ in September 2006, SEIU threatened Bego with an ultimatum: either become unionized or expect to get hit hard. Because he refused to be intimidated by SEIU, Bego, along with his family, his employees, his business, and their customers, were subjected to a relentless SEIU campaign of vilification and harassment. His company locations were picketed and customers were pressured to stop doing business with EMS. Finally, in November 2007, EMS was able to start fighting back and filed 33 separate unfair labor practice charges against SEIU leaders with the National Labor Relations Board (NLRB). The Indianapolis regional office of the NLRB filed a complaint based on those charges in April 2008. A month later, SEIU leaders agreed to stop picketing EMS and harassing their customers.¹⁴

EMPLOYEE FREE CHOICE ACT –CURRENTLY PENDING IN CONGRESS

Employee Free Choice Act (EFCA) H.R. 1409, also known as the Card Check¹⁵ Bill, was proposed on March 10, 2009. The purpose of the Act is stated as “to amend the

¹⁴ National Right to Work Committee, National Right to Work Newsletter – November/December 2009, Card-Check' Survivor Tells His Story: A 'Nasty, Ugly, Three-Year, Million-Dollar War I Did Not Ask For', <http://www.nrtwc.org/nl/nl200912p8.pdf>.

¹⁵ Card Check, also called majority sign-up, is a method of organizing workers into a labor union through the use of a public ballot. Under Card Check, if union organizers can persuade more than

National Labor Relations Act to establish an efficient system to enable employees to form, join, or assist labor organizations, to provide for mandatory injunctions for unfair labor practices during organizing efforts, and for other purposes.”¹⁶ Indeed, the bill’s goal is to amend the National Labor Relations Act, which provides private sector workers the *right to choose* whether they wish to be represented by a union. The bill is the number-one legislative priority of major U.S. labor unions and its aim is to make it easier for unions to organize workplaces and halt the 40-year decline in private-sector union membership.¹⁷

The Act has two provisions. The first one allows a union to substitute, at its option, a card check selection for the current secret ballot election. This provision was eliminated from the Act in July 2009 when several moderate Democrats came to realize the unconstitutionality of the provision.¹⁷ Indeed, the secretive and coercive nature of the card-check system infringes on the ordinary rights of political association that are guaranteed to workers, and perhaps their employers, under the First Amendment protections of freedom of speech.¹⁸

As a demonstration of the forced-unionization mindset at hand in the current Administration, however, it is important to understand the terms of this original provision. As Richard Epstein of the University of Chicago Law School describes in a Cato Institute publication, “The card check rules allow unions to collect the cards at any location in whatever manner they see fit. They may do so in secret, so as to avoid an employer anti-unionization campaign and any discussion among workers as to the desirability of accepting union representation. The EFCA contains no provision for National Labor Relations Board (NLRB)¹⁹ supervision of the card-check — e.g., signatures before an NLRB representative or storage in neutral hands. Workers are NOT allowed to pull their cards (which are valid for six months) from the union and the employer is NOT allowed to challenge any card on the ground that it was obtained under duress, misrepresentation, or false promises.”¹⁸ In simple terms, the law allows union representatives to intimidate workers to get them to sign the cards and then provides employers no recourse to correct this injustice. The clear and undeniable

50% of workers at a facility to sign cards, they win. The election process that was established under the National Labor Relations Act is a secret ballot process, where voters’ choices are confidential. The aim of the secret ballot is to ensure the vote reflects a sincere choice by forestalling attempts to influence the voter by intimidation or bribery. The Card Check provides no protections against intimidation and bribery in the attainment of signatures.

¹⁶ THOMAS, Library of Congress, <http://thomas.loc.gov/cgi-bin/query/z?c111:H.R.1409>.

¹⁷ New York Times, Greenhouse, Stephen, July 16, 2009, “Democrats Drop Key Part of Bill to Assist Unions”, http://www.nytimes.com/2009/07/17/business/17union.html?_r=3&hp.

¹⁸ The Cato Institute, Epstein, Richard, A., Regulation, Spring 2009 edition, “The Ominous Employee Free Choice Act”, <http://www.cato.org/pubs/regulation/regv32n1/v32n1-7.pdf>.

¹⁹ The National Labor Relations Act (the “Wagner Act”) gives private sector workers the right to choose whether they wish to be represented by a union and establishes the National Labor Relations Board (NLRB) to hold elections for that purpose.

unconstitutionality of this provision is the reason EFCA is frequently compared to George Orwell's *1984*.

The second provision of EFCA is still intact. As Epstein continues, EFCA introduces "compulsory interest arbitration that authorizes a panel of arbitrators ... to hash out an initial two-year 'contract' binding on the parties, who have no recourse to judicial review. The EFCA establishes an impossibly rapid timetable for negotiations."¹⁸ The U.S. Chamber of Commerce warns how harmful this measure will be to U.S. competitiveness, particularly that of small businesses. This impact on small businesses is not to be discounted since small businesses represent about 50% of the U.S. GDP and have historically been the growth engine that pulls the country out of distressed economic times. Forced unionization measures such as those described below by the U.S. Chamber of Commerce will only serve to increase current unemployment levels:

"The binding arbitration section of EFCA has the obvious flaw of forcing the complex negotiation of a contract into a compressed time frame. But it also brings the Federal government into contract talks, which was never intended under the National Labor Relations Act.

"Far from leading to productive bargaining, as unions claim, binding arbitration is likely to cause just the opposite. If a union feels it's losing the edge in contract talks, it has every incentive to stonewall and wait for an arbitration panel to hand down a contract.

"Binding arbitration would mean that both parties are likely to get stuck with a contract they don't like. From the union perspective, that's fine, they would prefer a bad contract to no contract. But for an employer, you could be stuck with a contract that [is] completely incompatible with your cost structure and your business model-and you would have to live with that contract for two years.

"Even worse, from a worker's perspective, binding arbitration would deny them the ability to vote on the pay, benefits and working conditions in their new contract. Since the contract handed down by the arbitrator is binding, workers would lose the opportunity to change provisions they thought were unfair."²⁰

As described above, the purpose of the Employee Free Choice Act is to amend the National Labor Relations Act, which provides a worker the *right to choose* whether or not to be represented by a union. Comments made by union leaders following the modification of the Card Check provisions in July 2009 foretell their confidence that

²⁰ The U.S Chamber of Commerce, "Card Check: Learn the Basics", <http://www.uschamber.com/wfi/cardcheckbasics.htm>.

current U.S. labor law is being changed to be more pro-union. As reported in the *New York Times*, “One top union official, who insisted on anonymity ... said, ‘Even if card check is jettisoned to political realities, I don’t think people should be despondent over that because labor law reform can take different shapes.’”¹⁷ Executive Orders 13495, 13496 and 13502, previously discussed, are examples of the actions being taken by the current Administration to change U.S. labor law to be more pro-union.

THE UNION AGENDA FOR 2010

Even with Executive Orders 13495, 13496 and 13502, and the proposed Employee Free Choice Act on the Congressional agenda, unions have still more changes planned for the upcoming year. In addition to the Employee Free Choice Act and Card Check, there are four key issues that are likely to take the forefront in 2010. Terrence Scanlon, president of the Capital Research Center, highlighted these in his article in the *Washington Times*.²¹ They are described below:

1. **Union Pensions Bailout:** Many union-managed multiemployer pension funds are poorly funded and the unions want the U.S. taxpayers to bail them out. There are a number of bills floating around in Congress promoting this bail out.
2. **Union Reporting Requirements:** The Bush Labor Department instituted rules requiring unions to disclose and itemize how they spend their money. Union leaders do not like this requirement because it sheds light on how union funds have and are being misspent. The Obama Labor Department is working to reduce these reporting requirements and delaying or canceling any new requirements.
3. **More Stimulus:** Before the House recessed in 2009, it passed a \$155 billion stimulus bill. The Senate will be taking this bill up soon. As with the earlier stimulus bill, this would be, essentially, about preserving heavily unionized government jobs, or advantaging unionized contractors over their non-unionized competitors.
4. **National Labor Relations Board:** The Obama Administration’s appointments to the National Labor Relations Board have a lot of observers concerned. The role of the NLRB is to interpret labor law and oversee unionization elections. Craig Becker, the nominee, served as associate counsel of the Service Employees International Union, SEIU. He also helped to lay the intellectual groundwork for card check legislation.²¹

²¹ Washington Times, Scanlon, Terrence, January 4, 2010, “Will 2010 Be Labor’s Turn?”, <http://www.washingtontimes.com/news/2010/jan/04/will-2010-be-labors-turn>.

CONCLUSION

The current Administration is seeking to promote a pro-union agenda and is seeking to achieve its objective through the use of legislation, regulation and the improper use of taxpayer dollars, including massive amounts of new debt that will burden taxpayers for generations. The Employee Free Choice Act should more accurately be called the "Employee No Choice Act"²² as it seeks to take away a worker's *right to choose* to be represented by a union. Additionally, the theme of "No Choice But the Union Choice" is echoed in Executive Orders 13495, 13496 and 13502. Through these Executive Orders, President Obama is implementing drastic changes to existing U.S. labor law and employing federal funds and contracts to coerce unionization, without public debate and the consent of Congress. The Free Enterprise Nation believes this is an unconstitutional abuse of power by the President and the Congress and represents a significant danger to the American economy.



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²² Heritage Foundation, Chao, Elaine, April 20, 2009, "Two Steps Back on Labor Rights", <http://www.heritage.org/Press/Commentary/ed050409c.cfm>.