

COALITION FOR A DEMOCRATIC WORKPLACE

July 17, 2012

Dear Chairman Rehberg and Ranking Member DeLauro:

On behalf of millions of job creators concerned with mounting threats to the basic tenets of free enterprise, the Coalition for a Democratic Workplace writes to express our support for three important provisions in the FY 2013 Labor, Health and Human Services, Education and Related Agencies Appropriations Bill.

The Coalition for a Democratic Workplace (CDW), a group of more than 600 organizations, has been united in its opposition to the so-called “Employee Free Choice Act” (EFCA) and EFCA alternatives that pose a similar threat to workers, businesses and the U.S. economy. Thanks to the bipartisan group of elected officials who stood firm against this damaging legislation, the threat of EFCA is less immediate this Congress. Politically powerful labor unions, other EFCA supporters and their allies in government are not backing down, however. Having failed to achieve their goals through legislation, they are pushing the National Labor Relations Board (NLRB or Board) and the Department of Labor (DOL) toward what appears to be an all-out attack on job creators and employees in an effort to enact EFCA through administrative rulings and regulations.

The three provisions in the bill will help stop the NLRB from implementing this “backdoor” card check through the regulatory process. The first would address the Board’s August 2011 decision in *Specialty Healthcare*, which has opened the door to proliferation of micro-unions within a workplace.

Micro-unions make it easier for unions to organize by permitting them to form smaller bargaining units that often exclude those similarly situated employees who oppose unionization. This effectively disenfranchises those employees. Prior to the *Specialty Healthcare* decision, bargaining units had to include employees who share a “community of interest.” Smaller units were only permissible where the employees in the proposed unit had interests that were “sufficiently distinct from those of other employees to warrant the establishment of a separate unit.” This prevented swarms of small, “fractured units,” of similarly situated employees. Now businesses face the possibility of having to manage multiple, small units of similarly situated employees with increased chances of work stoppages, as well as potentially different pay scales, benefits, work rules and bargaining schedules. For example, in a current case in New York City, the NLRB regional office is allowing a collective bargaining unit of just the salespeople in the women’s shoe departments on specific floors of a retail establishment. Micro-unions will greatly limit an employer's ability to cross-train and meet customer and client demands via lean, flexible staffing because employees will no longer be able to perform work assigned to other units. Employees also will suffer from reduced job opportunities, as promotions and transfers will be hindered by organizational unit barriers.

The second provision in the Appropriations bill would stop the Board's final rule on "ambush" elections (*Representation-Case Procedures*, 76 Fed. Reg. 80138). The "ambush" rule would drastically change the process for union representation elections and severely limit worker access to information needed to make an informed decision about whether or not to vote in favor of a union. While a U.S. District Court struck down the rule in May on procedural grounds, the judge noted his decision does not prevent the NLRB from fixing the procedural failures and reissuing the rule. The NLRB Chairman has indicated that the Board's goal of speeding up elections remains a priority and options are being considered on how to move forward.

The third provision would prohibit funds from being used to implement the DOL's controversial "persuader" rulemaking (*Labor-Management Reporting and Disclosure Act; Interpretation of the "Advice" Exemption*, 76 Fed. Reg. 36178). In June 2011, DOL proposed radical changes to the regulations interpreting Section 203 of the Labor-Management Reporting and Disclosure Act (LMRDA), which contains federal reporting and disclosure requirements regarding individuals and entities hired by employers "to persuade employees to exercise or not exercise or persuade employees as to the manner of exercising, the right to organize...."

Employers and "persuaders" are obligated to file public reports with DOL, disclosing finances and other information if they engage in covered activity. Since LMRDA was enacted, however, attorneys, trade associations and other third party advisors and their clients (employers) have been exempt from these reporting requirements when they discuss union organizing with an employer as long as they do not directly interact with employees. DOL's proposed rule would eliminate this "advice" exemption, and in doing so trample on rights to confidential legal advice. Furthermore, employers will likely be required to start filing persuader reports if they seek assistance on general workplace policies. Advisors could become persuaders merely by hosting conferences or meetings with a focus on labor relations. These changes are alarming, particularly considering criminal penalties could be imposed for non-compliance.

Each of these provisions would help address the drastic labor law changes that the NLRB and DOL seek to promote. If left unchecked, the actions of the NLRB and DOL will fuel economic uncertainty and have serious negative ramifications for millions of employers, U.S. workers they have hired or would like to hire, and consumers.

Sincerely,

A handwritten signature in black ink, appearing to read "G. Burr", with a long horizontal flourish extending to the right.

Geoffrey Burr
Chair, the Coalition for a Democratic Workplace