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# AGC KEY VOTE

March 1, 2007

The Honorable Neil Abercrombie
United States House of Representatives
1502 Longworth House Office Building
Washington, DC 20515

Dear Representative Abercrombie:

On behalf of the Associated General Contractors of America (AGC), I am writing to you today in defense of the existing process for employees to determine if they would like to have union representation. AGC respects the right of employees to exercise their statutory right to determine whether or not to be represented by a union, but believes that sole reliance on a card-check process as proposed in the so-called Employee Free Choice Act is a poor way to gauge the employees' true preferences. The status quo, which allows both card-check and secret ballot elections, remains the fairest way to make this determination.

AGC represents more than 32,000 firms (both union and open shop firms), including 7,000 of America's leading general contractors, and over 11,000 specialty-contracting firms. More than 13,000 service providers and suppliers are also associated with AGC through a nationwide network of chapters. AGC strongly believes that the worksite should be free of coercion by both management and labor.

Under current law, an employer may voluntarily recognize a union if the union presents an adequate number of signed authorization cards, signatures on a petition, or other evidence of majority support. However, if the employer questions the validity of the showing of support, it can refuse to grant voluntary recognition, and the union must petition the National Labor Relations Board to conduct a secret-ballot of the employees in order to become their bargaining representative.

The construction industry is in rather a unique place in this debate. Due to the unique nature of the industry, Congress enacted Section 8(f) of the National Labor Relations Act, which allows an employer "primarily engaged in the construction industry" to recognize a union as its employees' representative and to enter into a collective bargaining agreement with a union absent a showing of employee support. The legislative history reflects various reasons for this exception, including the employer's need to know its labor costs before bidding on projects and its need to have an available supply of skilled craft workers ready for quick referral. Moreover, employment in the industry is typically short and sporadic, with employees often working "for many employers and for none of them continuously." Thus, determination of an appropriate bargaining unit and of employees' support for the union can be difficult in the construction industry, so Congress has provided the industry with an alternative method of achieving union representation. The parties to an 8(f) agreement (also known as a "pre-hire

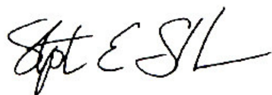
agreement") enjoy many of the same benefits as parties to a regular collective bargaining agreement authorized under Section 9(a) of the Act. The primary distinction is the employer to an 8(f) agreement has no ongoing duty to recognize or bargain with the union following contract expiration, while the employer to a 9(a) does. A construction union can attain a 9(a) relationship by utilizing the same voluntary card-check recognition and secret-ballot elections procedures available outside the industry where feasible. As a practical matter, signatory contractors continue to engage in collective bargaining with construction unions in order to retain a trained workforce.

The present system supports the overarching objectives of the Act: the promotion and protection of employee free choice and labor relations stability. Legislation that mandates certification of a union based solely on a showing of signed union authorization cards would eliminate the safeguards currently provided in the Act, stripping employees of their right to freely and anonymously choose a representative well beyond the limited exception for construction in Section 8(f). NLRB-conducted elections are the preferred method for 9(a) union selection because they are conducted under "laboratory conditions" that protect against employee intimidation and interference and that help to ensure an outcome that is the true representation of the employees' wishes. Furthermore, in the construction industry, eliminating such elections means that contractors could be forced to enter into 9(a) collective bargaining relationships – which can entail long-lasting legal responsibilities and effects – based only on the largely unregulated and unreliable method of card checks.

AGC is also concerned about mandatory mediation and arbitration provisions contained in the proposed legislation. Under current law, the employer and union have a duty to bargain in good faith over wages, hours, and terms and conditions of employment. However, the parties are under no obligation to reach an agreement within a certain time frame or even to reach an agreement at all, provided they are conforming with the "good faith" obligation. The proposed legislation would impose arbitrary, short deadlines for unsupervised negotiations and for mandatory mediation before the Federal Mediation and Conciliation Service. Moreover, if an agreement is not reached within those short deadlines, the dispute would be referred to binding arbitration. As a result, a third party could dictate the economic terms of a collective bargaining agreement after only a brief time for bargaining. These provisions constitute excessive government interference into business relationships in violation of the purposes of the Act. In enacting the statute, Congress was clear that it did not intend for the government to become a party to collective bargaining negotiations and impose its own views of a desirable settlement. As stated in the legislative history, "[T]he essence of collective bargaining is that either party shall be free to decide whether proposals made to it are satisfactory." That value should still be honored today.

AGC appreciates this opportunity to share our views on this particular issue. Our members have confidence in the current system and believe that the status quo should remain in place.

Sincerely,



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