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LEGISLATIVE ALERT!

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November 28, 2011

The Honorable John P. Kline
Chairman
House Education and the Workforce
2181 Rayburn House Office Building
Washington, D.C. 20515

The Honorable George Miller
Ranking Minority Member
House Education and the Workforce
2181 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Kline and Ranking Minority Member Miller:

On behalf of the AFL-CIO, I urge you to vote against H.R. 3094, the Workforce Democracy and Fairness Act, when it is considered by the House of Representatives. Masquerading as a bill to protect the status quo with respect to elections supervised by the National Labor Relations Board, H.R. 3094 would actually mandate delays, giving companies more power to wear down support for the union and creating new opportunities for stalling elections. The result of this bill will be to make workers wait months, perhaps years before they are allowed to vote on whether to form a union. The bill would also destroy 75 years of NLRB case law that has governed the appropriateness of bargaining units, giving companies more power to gerrymander the eligibility of voters in a union representation election in order to unfairly skew the results.

Under H.R. 3094, no election may occur sooner than 35 days after the filing of an election petition, even if all parties agree to an earlier date. But the bill does not limit how long an election may be delayed as a result of employer claims, challenges and litigation. The bill would mandate a full pre-election hearing on any "relevant and material" issue, broadly defined to include virtually any issue, even those that are not in dispute and not material to the appropriateness of the bargaining unit. By incentivizing marathon pre-election hearings, the bill would reward wasteful litigation and increase taxpayer costs by requiring findings on unnecessary and extraneous issues.

In a further effort to deny workers their right to choose whether to form a union, H.R. 3094 imposes restrictions on workers' opportunities to receive information from unions, but does nothing to curb the power of companies to force workers to listen to their anti-union propaganda, under the threat of discharge if they try to object. Moreover, it fails to protect workers who are fired, threatened, or interrogated because they want to exercise their federal statutory right to form a union. In fact, current remedies for well-documented, wide-spread violations of workers' rights have been regularly criticized as paltry and ineffective, treated by companies as merely a cost of doing business.

H.R. 3094 would also overturn the recent *Specialty Healthcare* decision, in which the NLRB applied to non-acute health care facilities, mostly nursing homes, the same community-of-interest standard that it has traditionally applied to determine the appropriateness of bargaining units in other industries. While the U.S. Court of Appeals for the District of Columbia upheld that standard in 2008, the bill broadly applies a one-size-fits-all test in disregard of the particular needs of specific industries and circumstances. The bill's newly minted test will create uncertainties for the parties as this vague new standard is repeatedly litigated.

H.R. 3094 has one goal: to empower companies which want to delay elections so they can mount one-sided, anti-union campaigns, both legal and illegal, to discourage workers from freely choosing whether or not to form a union. At a time when more and more experts are recognizing that middle class incomes are falling in tandem with the declining rate of union membership, Congress should be finding ways to protect workers' freedom to form a union, not throwing up roadblocks to the exercise of this fundamental right.

Sincerely,

A handwritten signature in black ink, appearing to read 'William Samuel', written in a cursive style.

William Samuel, Director
Government Affairs Department

c: Members of the Committee on Education and the Workforce