

ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE

February 16, 2009

3:17 p.m.

MEMBERS PRESENT

Representative Kurt Olson, Chair
Representative Mark Neuman, Vice Chair
Representative Mike Chenault
Representative John Coghill
Representative Bob Lynn
Representative Robert L. "Bob" Buch
Representative Lindsey Holmes

OTHER LEGISLATORS PRESENT

Representative Carl Gatto
Representative Harry Crawford (on teleconference)

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE RESOLUTION NO. 5

Opposing any federal legislation that seeks to eliminate the private election phase of union recognition campaigns or that seeks to impose compulsory and binding arbitration on employers.

- MOVED HR 5 OUT OF COMMITTEE

HOUSE BILL NO. 22

"An Act relating to requiring subcontractors who do not have employees and who are acting as independent contractors to secure payment for workers' compensation, and to requiring subcontractors who fail to secure payment of workers' compensation to pay additional premiums incurred by contractors because of that failure."

- HEARD AND HELD

HOUSE BILL NO. 102

"An Act relating to the Uniform Commercial Code, to the general provisions of the Uniform Commercial Code, to documents of title under the Uniform Commercial Code, to the Uniform Electronic

Transactions Act, and to lease-purchases of personal property; amending Rules 403 and 902, Alaska Rules of Evidence; and providing for an effective date."

- BILL HEARING CANCELED

PREVIOUS COMMITTEE ACTION

BILL: HR 5

SHORT TITLE: OPPOSING FEDERAL EMPLOYEE FREE CHOICE ACT

SPONSOR(S): REPRESENTATIVE(S) JOHNSON

01/30/09	(H)	READ THE FIRST TIME - REFERRALS
01/30/09	(H)	L&C
02/11/09	(H)	L&C AT 3:15 PM BARNES 124
02/11/09	(H)	Heard & Held
02/11/09	(H)	MINUTE(L&C)
02/16/09	(H)	L&C AT 3:15 PM BARNES 124

BILL: HB 22

SHORT TITLE: WORKERS' COMPENSATION: SUBCONTRACTORS

SPONSOR(S): REPRESENTATIVE(S) CRAWFORD, BUCH

01/20/09	(H)	PREFILE RELEASED 1/9/09
01/20/09	(H)	READ THE FIRST TIME - REFERRALS
01/20/09	(H)	L&C, FIN
02/16/09	(H)	L&C AT 3:15 PM BARNES 124

WITNESS REGISTER

JEANNE OSTNES, Staff
Representative Craig Johnson
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified and answered questions during the discussion of HR 5.

MILLIE DUNCAN, Administrator
Wildflower Court
Juneau, Alaska

POSITION STATEMENT: Testified in support of HR 5.

LINDA SHILTZ
Juneau, Alaska

POSITION STATEMENT: Testified in support of HR 5.

REPRESENTATIVE CARL GATTO

Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified during the discussion of HR 5.

REBECCA LOGAN, President
Associated Builders and Contractors (ABC-AK)
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HR 5.

SCOTT JUNGWIRTH, Chief Human Resource Officer
Providence Health & Services
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HR 5.

GARY HUME
National Federation of Business (NFIB)
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HR 5 and in opposition of the federal EFCA legislation.

STACY ALLEN
Health Care Representative; Registered Nurse
Laborers Local 341
Palmer, Alaska

POSITION STATEMENT: Testified and answered questions during the discussion of HR 5.

JEANINE ST. JOHN, Vice-President
Lynden Logistics (Lynden)
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HR 5.

HEIDI DRYGAS
General Counsel
Alaska District Council of Laborers
Anchorage, Alaska

POSITION STATEMENT: Testified and answered questions during the discussion of HR 5.

REPRESENTATIVE HARRY CRAWFORD
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified and answered questions via teleconference during the discussion of HR 5; and testified via teleconference as joint prime sponsor of HB 22.

HELENE ANTEL, Legal Counsel

International Brotherhood of Electrical Workers Local 1547
Palmer, Alaska

POSITION STATEMENT: Testified and answered questions during the discussion of HR 5.

TIM SHARP, Business Manager
Laborers Local 942
Fairbanks, Alaska

POSITION STATEMENT: Testified in opposition to HR 5.

PAUL GROSSI, Staff
Representative Harry Crawford
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 22 on behalf of a joint prime sponsor, Representative Harry Crawford.

ACTION NARRATIVE

[3:17:27 PM](#)

CHAIR KURT OLSON called the House Labor and Commerce Standing Committee meeting to order at 3:17 p.m.

Representatives Buch, Coghill, Lynn, Neuman, Olson were present at the call to order. Representatives Chenault and Holmes arrived as the meeting was in progress. Representative Gatto was also in attendance. Representative Harry Crawford testified via teleconference.

HR 5-OPPOSING FEDERAL EMPLOYEE FREE CHOICE ACT

[3:18:00 PM](#)

CHAIR OLSON announced that the first order of business would be HOUSE RESOLUTION NO. 5, Opposing any federal legislation that seeks to eliminate the private election phase of union recognition campaigns or that seeks to impose compulsory and binding arbitration on employers.

[3:18:11 PM](#)

JEANNE OSTNES, on behalf of the prime sponsor, Representative Craig Johnson, stated that HR 5 was previously heard before the committee. She offered to review provisions of HR 5 if needed and to answer questions.

3:19:44 PM

MILLIE DUNCAN, Administrator, Wildflower Court, stated that she wished to speak in support of HR 5. She explained that she is the administrator of a skilled nursing home in Juneau. She recalled a scenario in 2003, such that a group of employees at the facility decided they wanted union representation and selected a union. The employees met with representatives and were given cards to collect signatures. She stated that employees visited other employees at their homes or surrounded some co-workers and waited until they filled out the cards. She further stated that some time later an employee related an incident that had happened during that time period. She said the employee told her that she had refused to sign the card and was shoved around in the bathroom until she eventually signed the card.

MS. DUNCAN emphasized that it is important to have a free election, no matter what the outcome. She stressed the importance for employees to have a safe workplace and not be intimidated and forced to make choices they don't want to make. She offered her belief that the current system of holding free and private elections is beneficial. She concluded by stating that she described the experience an employee had at Wildflower Court, which she said she thought was not a unique experience. She encouraged members to support HR 5.

3:21:46 PM

MS. DUNCAN, in response to Representative Lynn, answered that she did not make a police report since the employee talked to her sometime later. She added that she talked to the union about the incident. The union representative said that he/she did not have any control over actions taken between co-workers.

3:22:19 PM

MS. DUNCAN, in response to Representative Neuman, answered that the union held an election and employees voted in a union. However, negotiations proceeded but no agreement was reached between the administration and the union. Another election was held and the union was voted out, she stated.

MS. DUNCAN, in response to Representative Buch answered that she has read the Employee Free Choice Act (EFCA).

REPRESENTATIVE BUCH explained that elections are not eliminated by the EFCA.

MS. DUNCAN offered her belief that the election provision does not offer a private and secret ballot process.

REPRESENTATIVE BUCH responded that those of us that advocate options want to maintain the choices.

[3:23:45 PM](#)

LINDA SHILTZ explained that she works at Wildflower Court. She offered her support for HR 5. She related that as Ms. Duncan described, some employees desired union representation. She said that she made it known she was not in support of union representation, which resulted in a difficult work environment. She explained that she felt her employer was fair. She related that she did not want to pay union dues or have union representation. Ms. Shiltz stated that she appreciates the freedom of a secret ballot and the ability to vote privately for her choice similar to the process of most elections. She offered her belief that the private, secret ballot separates the U.S. from totalitarian types of governments. She opined that the election outcome does not matter. However, everyone should have the right to privacy, she stated.

[3:25:26 PM](#)

REPRESENTATIVE BUCH inquired as to whether Ms. Shiltz could compare wages and conditions in any other institutions.

MS. SHILTZ offered her belief that wages at Wildflower Court are similar to wages at Bartlett Memorial Hospital in Juneau. She related that Wildflower Court employees have benefits, retirement, health insurance, paid holidays, and personal leave.

MS. SHILTZ, in response to Representative Buch, responded that she is not sure if other nursing homes are similar to Wildflower Court. She mentioned that she was not aware of other nursing homes in Juneau.

[3:27:20 PM](#)

REPRESENTATIVE CARL GATTO, Alaska State Legislature, expressed his concern that the resolution implies that it is about "free-choice." He offered his belief that some people might interpret "free-choice" to mean that they have the right to commit someone

else to their way of thinking. He suggested that those people might think, "That's my choice. I can force you to raise your hand and commit to a position because it is my choice." He stressed that instance or circumstance would not be a valid choice. He stated that individually, each person has one vote, and his/her vote should be confidential. Totalitarian dictators often receive 99 percent of the vote, because people do not have free choice, he stated. He said he thinks it is reasonable and fair to interpret "free choice" as keeping a person's vote confidential. He indicated that as representatives of the people, the committee votes should be open. However, during elections constituents vote for or against their representatives in elections with a private, secret ballot. He related that the vote is private unless a person chooses to tell their representatives how they voted. He opined that the EFCA is mislabeled. He opined that the most reasonable position is to keep the voting process private.

3:30:09 PM

REPRESENTATIVE GATTO, in response to Representative Buch, answered that he has not read the EFCA in its entirety.

REPRESENTATIVE BUCH offered his belief that nothing in the EFCA or in the National Labor Relations Act of 1935 (NLRA) eliminates the opportunity for an election. He explained that no language prohibits employees from that right. He recalled testimony that described two elections that were conducted in Juneau. He recalled that one voted for union representation and one decertified the union. He inquired as to whether Representative Gatto could point out language that eliminates elections.

REPRESENTATIVE GATTO inquired as to the reason for the resolution is if a process is intact to vote for and against the union. He recalled that nurses at Providence Hospital elected to be members of IBEW. He further recalled the nurses later voted to decertify the union representation. However, he indicated that the election was conducted using a private ballot process and not a raise of hands. He said, "If indeed you're okay with everybody having a private ballot, I'm not sure why you would even support this bill."

REPRESENTATIVE BUCH recalled last legislative session that this body adopted a resolution, House Joint Resolution 25, which was to support the freedom to choose unions, and to support the EFCA of 2007 that was before the Congress at that time. He offered

his belief that HR 5 is unnecessary, which is why he said he has been asking these questions.

REPRESENTATIVE GATTO explained that he is in opposition of the pending EFCA before the Congress. He emphasized that the pending EFCA is not necessary. He offered his support for HR 5. In response to Representative Neuman, Representative Gatto responded by offering his belief that everyone should have the right to an election, which should be held as a secret ballot.

[3:34:15 PM](#)

REPRESENTATIVE BUCH offered his strong support of the right for everyone to have an election, too. He maintained that his view that HR 5 is unnecessary since this body passed a resolution last year.

[3:34:36 PM](#)

MS. OSTNES explained that currently, approximately 60 percent of the secret ballot elections are held during union organizing. She offered that the NLRA provides unions with the secret ballot choice. She related that the EFCA before the Congress last year passed the House of Representatives but did not pass the Senate. She pointed out that not only does the EFCA remove one option for a secret ballot, but it adds a fourth choice. She pointed out that employees are required to sign cards, not secretly, and when a majority of 51 percent is reached, the other options are no longer available. She stressed that only 51 percent of the employees make the choice for all of the employees, who never chose union representation. She offered that once 51 percent of the "card check" process is fulfilled, that union negotiations with the employer will begin. Therefore, the rest of the employees do not have the opportunity to vote, she stated.

MS. OSTNES related that if the negotiations are successful, the union represents the employees. And if an agreement is not reached within 130 days, a federal arbitrator is assigned, which creates a problem for the employer, she opined. Additionally, the process continues for two years, which is also a problem for an employer, she stated. She said she anticipates that the Congress will take the matter up since President Obama and Secretary Solis, the new Secretary of Labor have offered their support for EFCA. Thus, she emphasized that the HR 5 should be passed to inform the Congress that Alaska does not agree with the provisions of EFCA.

[3:37:40 PM](#)

MS. OSTNES, in response to Representative Lynn, explained that currently a secret ballot is allowed and unions prevail 60 percent of the time. However, if any EFCA bill passes the Congress, the union organizers would hand employees a card and once 51 percent of the workers sign the card, the union prevails and an election is not held, she related. Thus, if a group of 20 employees are considering whether to have union representation, and 11 sign the "card check", the remaining 9 employees would not have a choice in the matter. She opined that many smaller companies will be affected and unions would prefer to use the "card check" since it is less expensive for them than to hold an election.

[3:40:02 PM](#)

MS. OSTNES, in response to Representative Lynn, reiterated that an election would not be held.

REPRESENTATIVE LYNN related his understanding that HR 5 would not change the opportunity for an election. He inquired as to whether an election would be held.

MS. OSTNES explained that she has not been involved in an employer and union election.

[3:41:46 PM](#)

REPRESENTATIVE HOLMES offered that the majority rules and 11 people would determine the outcome of an election whether it is done by "card check" or ballot. She emphasized that under existing law the majority decides the outcome.

MS. OSTNES responded that the difference is that in an election all of the employees vote by secret ballot in private.

REPRESENTATIVE BUCH recalled two witnesses testified that elections were held. He related that the success of an election does not necessarily mean that the union prevailed. He offered his belief that union membership is down. He stated that his union membership has declined from 20 percent in the 80s to 12 percent today. Thus, he stated unions are losing. He related that unions may prevail on "the front end" but in the end employees are not able to obtain union representation. Additionally, he pointed out that "card check" was a component in the 1935 legislation. He opined it has not been used

frequently, but "card check" is not new. He further opined that instead of losing an option, employees would gain an option.

MS. OSTNES referred to members' packets and to a publication by the U.S. Department of Labor (US-DOL) titled "NEWS" dated January 28, 2009, that provides statistics for union membership in 2008. She stated that the publication reported that workers belonging to a union rose by 428,000 in 2008.

[3:45:47 PM](#)

CHAIR OLSON clarified that this issue has not been singled out as an issue to revisit. He explained that the legislature is revisiting other issues, such as the Public Employees Retirement System (PERS) and Teachers Retirement System (TRS), and wastewater discharge.

[3:46:27 PM](#)

REPRESENTATIVE NEUMAN related his understanding that HR 5 addresses the issue of privacy. He further related that the issue is not a matter of an election, but to ensure that employees have the opportunity to cast their vote in private, in a secret ballot.

MS. OSTNES agreed that the secret ballot is important. Additionally, the EFCA abandons the concept that parties should be bound only to the terms and conditions of employment when an agreement is reached, as well as that the act imposes penalties on employers and not the unions, she related.

[3:47:51 PM](#)

REPRESENTATIVE LYNN related his understanding that a person could sign the card in private and could mail it in.

MS. DUNCAN agreed that a person could choose to sign the card in private. She restated that the employee that came to her was intimidated by a group of other employees who supported union representation and shoved her around and the employee signed the card.

[3:49:20 PM](#)

REBECCA LOGAN, President, Associated Builders and Contractors (ABC-AK), stated that she wished to testify in favor of HR 5 and against the federal EFCA bill. She opined the EFCA bill is

poorly written legislation that contains loopholes. She explained that the EFCA replaces secret ballot elections with a "card check" process, and includes compulsory binding arbitration for first contracts, and an increase in unfair labor practice sanctions that are applied exclusively to employers. She referred to section 2 of the federal EFCA, which she identified as the section that removes the requirement for a secret ballot. She explained that the language in the bill removes the requirement for secret ballot elections and makes it optional.

MS. LOGAN related that the language specifies that if the National Labor Relations Board (NLRB) finds that a majority of the employees have signed an authorization card they shall not direct an election. However, the problem with the bill is that it does not lay out the option for the employees, such as who would initiate the efforts to hold a secret ballot, or how employees would be able to determine that they would prefer the election to the "card check." She offered that two weeks ago the legislative director for the American Federation of Labor and Congress of Industrial Organizations (AFL/CIO), Bill Samuels, said those rules have not yet been worked out with the NLRB. Thus, the law would pass without that option detailed, she noted.

MS. LOGAN also pointed out that nothing in the proposed federal statute settles the question of how arbitration panels will be set up, the scope of their powers, or ability to issue decrees on matters of fact and law. She opined that the EFCA does not make any effort to indicate the set of relevant considerations for the arbiter's decrees, which is in sharp contrast to the detailed specifications of procedures and standards in Alaska's law that requires interest arbitration in the public sector. She said, "Finally, with regard to the unfair labor practice sanctions that are applied exclusively to employers, it's really almost embarrassing that this bill doesn't recognize the fact that union organizers and overzealous pro-union employees are also capable of coercive behavior during a union election." She related that an entire department at the U.S. Department of Labor deals with union corruption and union coercion. She opined that to only have sanctions against employers is very unfair. She offered her support for HR 5.

[3:52:18 PM](#)

MS. LOGAN, in response to Representative Buch, explained that Section 3 of the EFCA of 2007, titled "Facilitating Initial

Collective Bargaining Agreements" only refers to the timeline of the arbitration.

REPRESENTATIVE BUCH emphasized that language makes it very specific, which he related is a component of the negotiations process.

SCOTT JUNGWIRTH, Chief Human Resource Officer, Providence Health & Services, asked to speak in favor of passage of HR 5. He offered that Providence Health & Services is opposed to the EFCA since it would fundamentally change the current union election system that is based on the principle of democracy. He explained that the current system allows for free and fair elections, in which ballots are cast in private, free from interference or influence by either side. He opined that open dialogue and a direct dialogue with employees provide the best means to carry out the healing mission. He related that his employer respects the rights of employees to be represented by a third party. He explained that his employer collaborates with more than 40 bargaining units across its facilities in western states such as Alaska or California. He further related that the employee should have the right to choose whether to be represented by a union through a fair election process, free from coercion or intimidation. He expressed concern with provisions in the EFCA that would impose mandatory binding arbitration if an agreement is not met in 30 days of a request for mediation on the initial collective bargaining agreement. He opined that it is in the best interests of the employer and employee to resolve issues through the process of collective bargaining as dictated by the NLRA.

[3:55:30 PM](#)

GARY HUME, National Federation of Independent Business (NFIB), related his personal experience, that he was a "union man" for 25 years. He explained that he left his job and now works in the private sector. He opined that he was more or less stifled in the union with little chance for improvement or to gain a better wage. He further opined that a person with 5 years of experience earned the same wages as he did. He stated that he opposes union infiltration into the private sector. He said, "And we already know that most of what is going on in the public sector is tied up with union fat." He reiterated that he is strongly opposed to the pending federal EFCA, which he opined has no merit.

[3:57:20 PM](#)

STACY ALLEN, Health Care Representative; Registered Nurse, Laborers Local 341, stated that she is a representative of the Labors Local 341 and a registered nurse.

MS. ALLEN stated that in 1996, she worked in a hospital. She related that she and her colleagues felt that the hospital management made some dangerous decisions that placed patients at risk as well as jeopardizing their nursing licenses. Despite discussions with management as patient advocates, management did not listen to the nurses. She offered that the nurses reached out to the union, Local 341. She pointed out that the nurses were at-will employees and management made it clear during the organizing campaign that employees had no rights. She indicated that the chief operating officer (CEO) told the nurses they were unprofessional, that the nurses did not care about their patients, only money. Additionally, management told the nurses that they would lose benefits and be laid off, she stated.

MS. ALLEN described the process as so intimidating, that the union filed an unfair labor practice with the NLRB. She remarked that the NLRB ruled that the CEO had committed an unfair labor practice. His penalty was that he was required to read a letter restating the NLRA provisions. However, he continued to berate employees, she mentioned. Despite the threats, the nurses won their election, she related. She noted that it took three years to obtain a contract due to delay tactics such as management only agreeing to meet for negotiations once or twice every few months. However, she said that over the past 12 years, nurses have developed a very cooperative relationship with the current management, that the employer and employees work together to benefit all parties. She explained that in her current job she is often contacted by health care employees who feel that their ability to provide good patient care is sometimes compromised by management's actions. Sometimes employees relate harassment or discrimination at the hands of a supervisor, she stated. She opined that employees, regardless of their rank, all expressed concern that they might be fired or subject to demotion in the event that management even knew that the employees held discussions with a labor union.

MS ALLEN said, "After all management sets your schedule. Management approves or denies your vacation. Management awards or denies overtime. Management promotes, demotes, and determines your rate of pay." She stated that from her observations as an employee participating in an organizing

campaign that it is very difficult for employees to reach out to a labor union under the current system. She related her understanding that the EFCA would help alleviate some of the natural constraints. She urged the committee not to pass HR 5.

4:00:51 PM

MS. ALLEN, in response to Representative Buch, explained that the union process started in 1995 and the election was held in September 1996. She described the campaign as acrimonious. She indicated that the employer tried hard to discredit the union and the employees feared they would lose their jobs. In further response to Representative Buch, she offered her belief that joining the union made a huge difference. She surmised when employees in a hospital are represented by a labor union, that communication is opened up. She complained that the hospital had been overloading employees, some nurses were laid off, and the hospital had not purchased adequate supplies. She opined that union representation made a difference. She remarked that employees have a safe environment to air issues, and the nurses collectively approach management with issues that arise. Additionally, she mentioned that management pays attention to any issues, which did not happen when a nurse individually brought up an issue.

4:03:28 PM

JEANINE ST. JOHN, Vice-President, Lynden Logistics (Lynden), stated she would like to testify in support of HR 5, effectively opposing the EFCA, which is commonly referred to as the "card check" bill. She offered her belief that the EFCA approach is unnecessary and a poor approach to labor management practices. She emphasized that the Lynden companies strongly oppose such legislation. She related that the current process of secret ballot elections is the appropriate process to ensure that employees are not subject to threats or coercion. She surmised that the EFCA would take away the rights of employees to use the secret ballot to make the decision of whether to organize in the workplace. She highlighted that Lynden has union and non-union representation in various parts of its company. She stressed that Lynden strongly supports the decision for its workers to work through collective bargaining units and the methods by which votes are taken to make decisions. She observed that the current mechanism operates fairly.

MS. ST. JOHN opined that critical decisions should be based on information pertaining to the process in an atmosphere free from

intimidation. She emphasized that employees cannot make reasoned choices if they only hear one side of issue. She expressed concern that the federal government would be involved into the contract negotiation process as proposed by the EFCA. She expressed concern over the potential for a government employee presiding over mandatory binding arbitration, with the potential to impose his/her decision on the employer and the bargaining unit for up to two years. Additionally, she also expressed concern that a government employee would have sufficient knowledge of the industry and specific issues in the workplace to make an educated decision. She pointed out that provisions are not in the proposed EFCA that would change the arbitrator's decision during the two year period.

MS. ST. JOHN opined that the proposed "card check" bill does not offer guidance pertaining to the proposed binding arbitration process, the method for choosing an arbitrator, or the manner for challenging his/her decision. Instead, the EFCA bill would allow the government to convey authority to a third party to essentially decide what a private sector employer must provide in terms of wages and benefits free from the checks and balances of unit ratification. While the EFCA raises other additional issues, she stated she only wished to address the two issues. She urged members to vote yes on HR 5 and to continue to support the employees' ability to make decisions through a thoughtful, private ballot process without the potential for coercion or threat.

[4:06:49 PM](#)

HEIDI DRYGAS, General Counsel, Alaska District Council of Laborers, as general counsel for the Alaska District Council of Laborers, related that she would like to clarify provisions in the EFCA. She explained the process and emphasized that the EFCA does not take away the secret ballot provision of the NFLA. She explained that if 30 percent of the employees want to hold an election, they can file a petition to do so. She referred to HR 5, stating that the language stating federal supervision of union recognition elections by the National Labor Relations Board has been a legal requirement for at least 60 years is incorrect.

MS. DRYGAS stated that currently there are two ways for recognition as a bargaining representative. One, is to hold an election as established by section 9 (c) of the NLRA, and the other is through a majority sign-up. She explained that under the EFCA, the union presents a majority of the cards to the

employer and the employer has an option to voluntarily recognize the union as the exclusive representative of the employees, which she offered has happened with some large employers such as Kaiser Permanente. She offered that the EFCA takes that choice away from the employer and gives it to the employees who through signing cards indicate they want union representation, she stated.

MS. DRYGAS referred to two clauses in HR 5, which state that the private ballot elections will guarantee an outcome unaffected by outside pressures, as well as that "card checks" will create an opportunity for employers and union organizers to retaliate against employees because of their votes. She said, "In reality, nothing could be further from the truth. In the first seventy years of the NLRA, there have been only 42 documented cases of fraud or coercion found against unions in the submission of authorization cards." She observed that is less than one case per year. According to an Economic Policy Institute Issue brief dated January 29, 2009, the majority sign-up has been recognized as a means to union representation, she stated. In contrast, she noted that in 2007, the NLRB annual report identified 29,000 cases of intimidation and coercion by employers against employees. She pointed out that an NLRB study of 400 union elections identified that 32 percent of employees who actively supported the union were fired. She said, "The truth is that this is a lopsided problem, which is one of the reasons we're urging passage of this act, and a vote against this resolution." She stressed that the Alaska District Council of Laborers seeks a fair process for employees, free of employer intimidation and coercion. She opined that our country is based on a simple principle of majority rule. She offered her belief that 47 percent of America did not vote for Barack Obama for president, yet he is still the President of the United States of America. She noted that union representation is no exception. She pointed out that majority rule has been in place since the inception of the NLRA in 1935.

MS. DRYGAS referred to language in proposed HR 5, which states that private balloting in elections exemplifies American ideals. She opined that these types of claims that equate typical elections in this country with the NLRB elections are false. She stated that the reality is that the two types of elections barely resemble each other. She surmised that there are few democratic principles to glean from NLRB elections. She pointed out that elections for union representation usually occur on employer property and campaign finance laws do not apply. Thus, employers can spend unlimited resources to defeat unions, and

often do, she further opined. She concluded that nothing in union elections resembles whatsoever the democratic ideals that citizens strive for in elections in our country.

4:11:28 PM

MS. DRYGAS, in response to Representative Buch, related the union election process. She stated that typically employees approach a union when they are dissatisfied with their employer's response to an issue. She explained that a union representative will generally speak to a few employees to ascertain the circumstances before it moves forward with an organizing campaign. At that time, since the union does not have access to a list of employees, the process moves forward by word of mouth, and the union collects bargaining cards, she stated. She observed that this process has been in effect for over seventy years under the NLRA. She indicated the signature collection process can take several months. She offered that in her experience, she has never faced a situation where the union representative has used coercion or threats to collect signatures. She said, "It's just not the way we do business."

MS. DRYGAS pointed out that the union still has to reach the election process and then win an election. She related that the union representatives rely on the employees and must convince employees that union representation is best for them. Thus, coercion does not work, she surmised. She explained that the union can petition the NLRB if it collects 30 percent or more of the authorization cards. She opined that the union will generally obtain about 75 to 80 percent of the bargaining cards before it will petition the NLRB. She reiterated that elections are lopsided because the employer can disseminate information on the intranet, while the union representative must conduct his/her business after hours, or on breaks, or at coffee shops. She opined that the employer has a clear advantage in union elections. Once the NLRB is petitioned, authorization cards are verified against the employer's list to ascertain that the threshold is met. She related that once the threshold is met, an election date is set and takes place on the employer's property.

4:16:09 PM

REPRESENTATIVE HARRY CRAWFORD, Alaska State Legislature, stated that as a former union organizer that he never participated in an election since his employer always fired him prior to an election being held. He offered that elections are usually held

one to two years from the start of the process. He recalled statistics mentioned that unions prevail 60 percent of the time. However, a more meaningful question would be to determine the number of elections that were requested that were not held. He surmised that would be a much larger percentage. He opined that the only reason the EFCA has occurred is due to the thousands of employees nationwide have been denied the right to join a union through employer coercion and delays by the NLRB. He further recalled an instance in which the NLRB delay was over three years.

[4:18:56 PM](#)

HELENE ANTEL, Executive Counsel, International Brotherhood of Electrical Workers (IBEW) Local 1547, stated that she has been an attorney for 23 of 30 years specializing in labor law. She pointed out that strong emotions exist, locally and at the national level. She remarked that people's opinions vary across a broad spectrum about what the EFCA means. She offered to provide several facts. She opined that legislation is not pending nor in recent years considered, that seeks to eliminate the private election phase of union recognition campaigns. She opined that the fundamental purpose of HR 5 is inaccurate. She stated that the pending EFCA act will not eliminate secret ballot elections. Thus, those who are afraid the EFCA will eliminate the secret ballot have unfounded fears. She offered to outline six circumstances under which secret ballot elections will continue.

[4:20:56 PM](#)

MS. ANTEL related, that first, if employees want a secret ballot election, they may elect not to sign authorization cards. Second, prior to a "card check" certification by the NLRB, employees may change their mind and withdraw their authorization cards. If card withdrawals bring the number down below 50 percent plus 1, a secret ballot election will be conducted. Unions can request recognition without cards from the majority of employees, and the secret ballot election will be conducted by the NLRB. She stated that unions can request recognition from the employer, and if the employer agrees to do so, a volunteer recognition may happen. If not, a secret ballot election will be held. She remarked that EFCA permits the employer to challenge the composition of the bargaining unit. If the NLRB changes the unit, and the definition is different and the union no longer has a majority of cards, a secret ballot election will be conducted. She indicated that EFCA permits the

employees to change their minds and choose not to be represented by a union, in which case a secret ballot election will be conducted. Finally, she noted that if the employer has reason to believe that the union no longer represents a majority, the employer can request a secret ballot election.

MS. ANTEL reiterated that anyone who has drawn the conclusion that EFCA removes a secret ballot election is mistaken. She explained that the EFCA gives the employees the choice whether or not to sign authorization cards to be represented by a union or to hold a secret ballot election. She emphasized that under the current law, the choice whether or not to force employees into an election process is the employers. She said, "The current law actually should be called the Employer Free Choice Act because it is up to the employer completely to decide whether or not its employee must participate in a secret ballot election." She concluded by noting that it has been claimed that EFCA is flawed because the administrative regulations are not set forth in the bill. However, bills do not contain administrative regulations, she stated.

[4:23:28 PM](#)

MS. ANTEL, in response to Representative Buch, answered that very few employee groups are fortunate enough to begin work under a collective bargaining union since the employer has the ability to delay the bargaining process by a year or two. She opined that the employer has the ability and power to make certain that a collective bargaining unit agreement never results. In further response to Representative Buch, Ms. Antel stated that current elections would take place on the employers' property, employers do not provide a list and the employer can hold the employees captive and talk to them about all the "horrible things that will result if the employees vote for the union." She opined that the employers have the ability to "corner" employees. She said, "To say that the current law protects employee choice is to be dishonest." She opined that the current law allows the employer to dictate when and under what circumstances their employees will be able to organize.

[4:26:40 PM](#)

TIM SHARP, Business Manager, Laborers Local 942, offered that he has worked 15 years as a union representative, and has spent the past 10 years as a union organizer in Alaska, as well as having worked on union campaigns nationwide. He offered his first-hand experience in Alaska. He stated that he would like to speak

strongly against HR 5. He characterized HR 5 as a thinly veiled attempt to try to keep American workers at a huge disadvantage and prevent them from union representation at their workplace. He opined that businesses that are pushing for changes are not concerned about their employees, but their own profits, which may be reduced by wages, benefits, and safety practices for the workers.

MR. SHARP stated that organizing is not an easy task, even with the NLRB overseeing elections, that regularly employees are affected by coercion, threats, surveillance, and intimidation. He further opined that businesses asked for HR 5, not workers. He stated that businesses are primarily testifying against the EFCA, not the workers. He pointed out that choosing a union is a worker's right, not the company's choice. He surmised that hundreds of thousands of workers are reflected in surveys. He stressed that in one instance in Alaska after two elections and ten years of negotiations that the workers could not obtain a first contract agreement. He opined that the EFCA fixes the problem and would offer workers a fair chance to decide if they want to be in a union.

MR. SHARP, in response to Representative Buch, explained that unions frequently obtain a minimum of 75 percent, but closer to 100 percent of authorization cards prior to elections. He opined that the 45 days prior to election represents an opportunity to fire workers or coerce them to "melt" the level of support. He further opined that unions frequently don't move forward unless they can win, but that the current system is "skewed" against workers.

[4:33:28 PM](#)

CHAIR OLSON, after first determining no one else wished to testify, closed public testimony on HR 5.

[4:33:38 PM](#)

REPRESENTATIVE BUCH stated that the committee has taken considerable testimony and that he has amendments to offer.

CHAIR OLSON advised Representative Buch that the amendments in question were prepared last Friday and could have been presented to the committee within 24 hours of the meeting. He stated that doing so would have followed the committee's guidelines.

[4:33:55 PM](#)

REPRESENTATIVE BUCH asked to read the following into the record:

I wish to express my displeasure about the 24-hour policy that has been imposed on submitting amendments. I have the right as a legislator to offer amendments at any time on bills that I'm asked to vote on. And, under parliamentary rules, the Chair has an obligation to consider any amendment that I or other members offer. In addition, these bill packets are sent by email unlike any of the other committees who deliver paper copies of each packet to my office 24 hours in advance. It takes one hour for my staff to assemble the bill packet, which leaves me less than 5 hours to review its contents. How am I to get my amendments in 24 hours in advance when I don't even receive the bill until 6 hours in advance. The 24-hour policy means that there is no way for me to offer amendments. If I try to offer amendments on the House Floor, I would be told that the committee is the proper place to do this. This system stifles debate and pushes through legislation without full consideration. I respectfully ask the Chair to eliminate this policy.

[4:35:35 PM](#)

CHAIR OLSON reiterated that Representative Buch received the amendments last Friday, February 13, 2009. He recalled that Representative Buch spent an hour in his office discussing other matters with no mention of any amendments. He noted that Representative Buch's comments are on the record.

[4:35:54 PM](#)

REPRESENTATIVE HOLMES asked to second the issue raised by Representative Buch. She related that it is difficult to get everything completed timely when bill packets arrive late in all committees. She related her understanding that in this instance this is the second time this bill is being heard. However, she stated that requiring amendments 24 hours in advance is difficult.

REPRESENTATIVE NEUMAN pointed out that bills are read across the floor and at that time legislative staff can research any issues.

[4:37:03 PM](#)

REPRESENTATIVE HOLMES inquired as to whether the 24-hour rule for amendments is a general policy rule.

CHAIR OLSON advised committee members that a letter was sent to every committee at the beginning of the session that outlined the committee policies.

REPRESENTATIVE BUCH respectfully acknowledged that Chair Olson allowed him to read his opposition to the policy on the record.

[4:38:38 PM](#)

REPRESENTATIVE HOLMES referred to page 2, lines 17 and 18 of the resolution and inquired as to how HR 5 prohibits free speech and free association.

MS. OSTNES responded that the language refers to the privacy of secret balloting. She said that the state has a provision to support constitutional right to privacy.

REPRESENTATIVE HOLMES stated that the resolution states that it attacks the constitutional rights to associate and speak freely. She inquired as to how the EFCA applies since the language referred to is the first amendment of the U.S. Constitution.

MS. OSTNES said she did not know.

[4:40:15 PM](#)

REPRESENTATIVE HOLMES referred to page 2, lines 20 and 21 of HR 5, which she related says that employees who do not vote in favor of union representation should not be forced to accept union representation and pay mandatory union dues. She inquired as to whether Ms. Ostnes could identify part of the EFCA that makes any change to the underlying law of basically, the majority rule, and minority is bound by that. She offered her understanding that the EFCA does not change the underlying law.

MS. OSTNES responded that President Obama repealed executive order number 13201 on January 30, 2009. She stated that action to repeal the executive order takes away that right. She opined that the union dues that are collected can be used for union politics, lobbying and non-bargaining activities.

REPRESENTATIVE HOLMES offered her interpretation that the clause says basically that if you did not vote for union, that you

should not have to be represented by the union. However, she said she thought that the majority rule applied. She opined that she did not see how this resolution would address anything in the EFCA.

MS. OSTNES pointed out that she thought this would apply to mandatory union dues.

[4:42:02 PM](#)

REPRESENTATIVE HOLMES referred to the next clause, which says that compulsory binding arbitration is fundamentally unconstitutional.

MS. OSTNES related that this refers to the takings clause of the constitution. She explained that you could have a federal arbitrator mandate that an employer must pay \$50 for an employee when the employer can only afford to pay \$25.

REPRESENTATIVE HOLMES suggested that clause is not very clear. She referred to page 1 of HR 5, to the secret ballot cornerstone, and inquired as to whether all elections are held by secret ballot.

MS. OSTNES said she did not know. She surmised that the majority of the time, votes are held by secret ballot, which should be allowed.

REPRESENTATIVE HOLMES stated that she does not have a secret ballot in the legislature, nor does she have a secret ballot at any community council meetings.

MS. OSTNES agreed, but suggested that the difference is that it is her choice to participate.

[4:43:52 PM](#)

REPRESENTATIVE NEUMAN moved to report HR 5 Version 26-LS0419\R out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE BUCH objected.

A roll call vote was taken. Representatives Representative Chenault, Lynn, Neuman, Coghill, and Olson voted in favor of moving to report HR 5 from committee. Representatives Buch and Holmes voted against it. Therefore, HR 5 was reported out of

the House Labor and Commerce Standing Committee by a vote of 5-2.

[4:44:39 PM](#)

The committee took an at-ease from 4:44 to 4:49 p.m.

HB 22-WORKERS' COMPENSATION: SUBCONTRACTORS

[4:49:15 PM](#)

CHAIR OLSON announced that the final order of business would be HOUSE BILL NO. 22, "An Act relating to requiring subcontractors who do not have employees and who are acting as independent contractors to secure payment for workers' compensation, and to requiring subcontractors who fail to secure payment of workers' compensation to pay additional premiums incurred by contractors because of that failure."

[4:49:20 PM](#)

PAUL GROSSI, Staff, Representative Harry Crawford, Alaska State Legislature, speaking on behalf of a joint prime sponsor of HB 22, Representative Harry Crawford, stated that the bill would require sole proprietors that are subcontractors to carry workers' compensation on themselves. He offered that this bill would address a long-standing issue that identifies whether a subcontractor is actually a subcontractor or an employee. He stated that in the worst case, a worker is injured, does not have workers' compensation insurance, and files a claim against the contractor. He explained those claims would go to the Workers' Compensation Board to determine whether the injured worker is an employee or a subcontractor. He indicated that if the injured worker is found to be an employee that the employer must cover the Workers' Compensation claim. However, if the Workers' Compensation board finds that the injured person is determined to be a subcontractor, he/she is personally liable or their insurance company must pay the claim.

[4:51:34 PM](#)

MR. GROSSI related that the more common instance arises when a contractor wins a bid, begins the job, and during an insurance audit, the insurance company requires the contractor to pay additional premiums, which reduces the contractor's profit. The most common complaint is that some contractors cover their employees, but other contractors call their workers

subcontractors when in reality they are employees to avoid paying Workers' Compensation premiums and to obtain a bidding advantage. Additionally, the employee affected work in the construction industry, which poses higher risks for injury. In the event the worker is injured and not covered by workers' compensation, the potential exists to shift the cost to a hospital. He opined that in many instances the workers are truly subcontractors. He stressed that this bill removes the uncertainty and removes the doubt of liability and coverage.

[4:54:06 PM](#)

REPRESENTATIVE HARRY CRAWFORD, Alaska State Legislature, speaking as joint prime sponsor of HB 22, stated that he has worked on this issue since he has served in the legislature. He explained that this issue relates to liability. He stated that many general contractors hire subcontractors with the expectation that the subcontractors hold workers' compensation insurance, and often the subcontractors provide proof of coverage. He pointed out when a subcontractor drops his/her insurance and someone is subsequently injured, that the liability falls on the general contractor. However, he opined, the liability should rest with the subcontractor. This bill requires that the right person has the liability. He offered that it is not imposing a requirement that a sole proprietor acquire insurance for himself/herself. He described a scenario in which a person is building a home and hires a sole proprietor to build a deck. He indicated that the person building the deck is not required to hold workers' compensation insurance. However, if a general contractor builds the home and hires a subcontractor to build a deck that under this bill the subcontractor must hold workers' compensation insurance, he stated. He emphasized that HB 22 erases all doubt as to who is liable. Representative Crawford opined that this bill helps ensure a fair and level playing field for general contractors and subcontractors.

[4:56:49 PM](#)

CHAIR OLSON announced that HB 22 would be held over for further consideration.

[4:57:00 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 4:57 p.m.