

# OPEN SHOP GAZETTE

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Our good friends at Atkinson, Andelson, Loya, Ruud & Romo sent out an AALRR Alert in May notifying everyone that: “One April 28, 2009, a California Court of Appeal issued a divided opinion (2-1) in the case of State Building and Construction Trades Council v. City of Vista. The Court held that California’s prevailing wage laws do not address matters of “statewide concern.” As a result, Vista, a charter city, was not required to comply with prevailing wage requirements on public works projects financed solely from City revenues. The court considered the public works projects to be a “municipal affair” over which Vista has “paramount power”.

The *City of Vista* decision received significant press coverage and has been closely watched by other charter cities. Had the State Building and Construction Trades Council (the “Unions”) prevailed, it could have forced costly changes in contracting practices for many of California’s 114 charter cities, based upon estimates that prevailing wage requirements typically make public works jobs more costly than non-prevailing wage jobs. The *City of Vista* decision, however, represents a resounding defeat for Unions, who admittedly brought the lawsuit as a “test case”.

The Vista decision is good news for California charter cities and construction employers. If the ruling withstands review by the California Supreme Court, charter cities can build more local projects and provide more jobs in a struggling California economy. The decision may also encourage more cities to become charter cities.”

The Open Shop Gazette will continue to follow this case as it moves through the courts and will report all future events.

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As reported in the *Orange County Register* of June 5, 2009, *Support slips for bill sought by unions.*

“American presidents usually have a fairly brief honeymoon period during which they can get almost anything on their agenda enacted. After that, a degree of healthy skepticism sets in, and Congress starts to dig in its heels.

As he demonstrated Thursday in Cairo, Egypt, President Barack Obama is still enjoying something of a honeymoon with the world at large, but here at home his domestic agenda is starting to run into some headwinds.

The most obvious example is what is known to supporters as the Employee Free Choice Act and opponents as “card check.” This bill, the key item on the agenda of labor unions that backed President Obama, would change the way unions are certified to represent employees. Under current law, employers have the right to call for a secret-ballot election when a union moves to organize employees. If the free-choice act were to pass, elections would be bypassed, and a union would be certified if a majority of employees signed cards, with no confidentiality supporting it.

Union organizers say workers trying to organize businesses are routinely harassed and intimidated, while business interests say workers are sometimes intimidated by union organizers into signing a card. There is probably something to what both sides say.

Prospects for the legislation dimmed considerably when California Democratic Sen. Dianne Feinstein and Pennsylvania Republican-turned-Democrat Sen. Arlen Specter, who had supported similar legislation in the past, decided to oppose the bill. Sen. Feinstein said driving up the cost of doing business, which making it easier to unionize would do, when the economy is struggling, is just not a good idea. The U.S. Chamber of Commerce and the National Federation of Independent Business agree and are working hard to defeat the bill.

Sponsors are trying to come up with a compromise, and Thursday unveiled a group called Business Leaders for a Fair Economy in support of the proposal.

This proposal deserves to fail. A secret-ballot election is the best way to minimize intimidation from either union or management. Eliminating it would open the door to possible abuse – and possibly lead to increased costs for businesses already struggling with the recession.”

