

DAILY REPORT

AT ISSUE

Bottom line: The National Labor Relations Act is not broken. EFCA would be bad for employees, employers and our country.



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Employee Free Choice Act isn't free

EFCA WOULD COST workers the secret ballot, hinder collective bargaining and mandate draconian remedies

IN A DESPERATE ATTEMPT to reverse the precipitous decline in union membership over the last 30 years, recent initiatives by organized labor reflect a determined assault on workplace democracy designed to unionize new groups of employees regardless of whether those employees truly need or want union representation.

One of organized labor's primary tactics is to secure passage of the deceptively misnamed "Employee Free Choice Act" (EFCA). This highly controversial piece of legislation would radically alter the method by which employees select union representation and transform the process by which employers and unions negotiate collective bargaining agreements under the National Labor Relations Act (NLRA).

Drafted as proposed amendments to the NLRA, EFCA would effect three fundamental modifications to federal labor law:

1. First, EFCA establishes a mandatory card-check recognition process in lieu of the current secret ballot election system administered by the National Labor Relations Board (NLRB). Employees no longer would cast ballots on union representation in the privacy of a voting booth; instead, an employer would be required to recognize a

union as the employees' exclusive bargaining representative once the union presents signed authorization cards from a simple majority of the employees in the work group targeted by the union.



Card-check recognition would give unions a license to use high-pressure tactics against employees behind closed doors in order to obtain signed union authorization cards.

2. Second, EFCA sets forth special procedural requirements for reaching an initial collective bargaining agreement. These requirements would effectively eliminate the economic freedom of both the employer and the union to negotiate a collective bargaining agreement in their respective best interests by imposing mandatory binding arbitration in the event the parties fail to reach a first contract after four months of direct and mediated bargaining. Under this scheme, if the parties fail to reach agreement within the statutory time frame, a government arbitrator would impose the wage rates, health insurance, retirement plan, vacation schedule and all other terms of the initial two-year collective bargaining

agreement. EFCA currently provides no guidelines for an arbitrator to follow in establishing those terms.

3. Third, EFCA revises enforcement procedures against employers with respect to alleged unfair labor practices that occur during union organizing and alters the remedies available to the union and alleged discriminatees because of such violations. EFCA would establish additional remedies for such violations well beyond the “make-whole” remedy currently available under the NLRA. For example, the NLRB would have the authority to award treble damages against an employer in cases when an employer unlawfully discriminated against an employee based on his union activity related to an organizing campaign or the securing of a first contract. The alleged discriminatee could receive full back pay plus double that amount as a liquidated damages penalty against the employer. Furthermore, the NLRB could impose civil penalties of up to \$20,000 per violation against an employer found to have violated an employee’s rights under Section 7 of the NLRA.

Clearly, EFCA would make it much easier for unions to organize employees at companies throughout the U.S. Beyond the obvious, however, EFCA also poses a substantial threat to the rights of employees and employers alike that would significantly undermine effective labor-management relations and potentially impose considerable obligations upon employers. For

example:

EFCA lacks procedural safeguards. Card-check recognition would give unions a license to use high-pressure tactics against employees behind closed doors in order to obtain signed union authorization cards. The proposed legislation does not contain any provision allowing employees to “ratify” the card check. EFCA does not specify whether employees can decertify a union through a card-check majority.

Experience has shown that signed authorization cards do not necessarily reflect how the majority of employees really feel about union representation. Currently, an employee who signs a card out of ignorance or under duress is free to vote “no union” in a secret ballot election conducted by the NLRB several weeks later.

EFCA fails to provide any guidance with regard to the processing of authorization cards. How long will authorization cards be valid? Can an employee rescind or revoke his card, and if so, how? Will there be a process for detecting forged cards?

Card-check recognition would undermine employer “free speech” rights. It will lead to an uninformed/misinformed work force deciding the issue of unionization, because in some cases the employer will not learn of union activity until a majority of employees have signed cards. Currently, management has the opportunity to provide employees with facts about unions and the collective bargaining process

before they vote in a government-supervised election.

EFCA does not spell out how the employer can challenge the appropriateness of the bargaining unit for which the union is demanding recognition. What if the union seeks to represent employees in only one part of a facility?

The artificial deadline imposed by EFCA to reach a first contract (four months) is unreasonable and would not promote effective labor-management negotiations. The arbitration provisions of EFCA would completely undermine the employer’s power and leverage at the bargaining table. A union would have no incentive to reduce its bargaining demands prior to the arbitration procedure. Arbitration could substantially and arbitrarily increase the costs of a first union contract and likely lead to decreased competition in the marketplace and the higher cost of goods and services. An employer may be compelled to accept certain contract provisions contrary to the employer’s best interests, such as participation in a multi-employer defined benefit pension plan (many of which are underfunded), wage increases without regard to merit, restrictive work rules, seniority-driven promotion and layoff processes, cumbersome discipline and discharge procedures, and minimum staffing requirements, just to name a few.

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