

Employee Free Choice Act

“TALKING POINTS”

■ Overview

The Employee Free Choice Act (EFCA) would fundamentally change over 70 years of United States Labor Law by amending certain sections of the National Labor Relations Act. Broadly

stated, the changes severely limit employer free speech during critical time periods in the unionization process, and dictate terms and conditions of employment to private sector companies. Although often touted as pro-employee legislation, the EFCA

eliminates the current right of employees to vote for union representation in favor of a process which protects unions as an institution.

Enactment of EFCA has become the number one goal of organized labor. Unions have engaged in an intense, well-funded lobbying campaign to get EFCA to the verge of passage.

■ Why EFCA?

Simply, EFCA is seen as the answer to significantly declining membership numbers within the private sector labor movement. In 1950, 35% of the private sector workforce was unionized. Today, that figure

stands at approximately 8%. Enactment of EFCA is seen by some as a survival issue for private sector unions in the United States.

■ EFCA Consequences

1. Guarantee success in union organizing

EFCA would eliminate democratic secret ballot elections to determine union representation elections. Currently, a secret ballot election,

supervised by the National Labor Relations Board (NLRB), is held after a labor union presents signed union authorization cards from 30% of employees from within a proposed “bargaining unit”. The “secret ballot” provisions of this process are critical to employees making decisions in their own best interest, free from outside coercion or intimidation. Also, during the short time frame leading up to a union election, both employers and the union involved are extended a closely monitored, free speech period during which employees have the opportunity to consider the pros and cons of choosing union representation *in their own particular situation*.

authorization cards, signed by a majority of employees, totally bypassing the secret ballot election.

Some might ask, what’s wrong with that? If a majority of employees sign the cards, isn’t that the same as voting?

The secret ballot election and free speech protections are cornerstones of our democracy. NLRB supervision of the election ensures that it is conducted without fear, coercion or intimidation by either companies or unions. **In a secret ballot election, the employee is afforded an opportunity to vote on the basis of his or her own opinion on the need for a union and free from coercion from union officials and organizers, fellow workers, and management.**

Under EFCA, the free speech period leading up to the secret ballot election is eliminated. A union would be recognized as the bargaining agent for employees simply by presenting the same union

Even putting the issue of possible coercion aside, the EFCA eliminates the important free speech

. . . *continued*

EMPLOYEE FREE CHOICE ACT “TALKING POINTS” * PRINTING INDUSTRIES ALLIANCE

“campaign” period. It requires employees to make one of their most important decisions affecting their work life on the basis of limited, one-sided and very possibly false, information. In no other aspect of our society has it been suggested that eliminating free access to relevant information is somehow better for the decision makers involved. This is one of the ways that the legislation is revealed as not pro employee decision making, but rather offered purely in the interests of the union institutions seeking increased membership.

2. Mandated Union Contracts

EFCA, if enacted, creates the unprecedented situation of imposing contract terms on private employers. While current federal labor law governing private sector employers requires collective bargaining for unionized firms, it does not, so long as bargaining is carried out in good faith, mandate any particular result. The result of contract negotiations, including whether a contract is reached, is determined by the conduct of the parties at the bargaining table and is a reflection of the individual economic circumstances at play. The EFCA turns this fundamental private sector premise on its head and institutes a requirement for mandatory binding arbitration between the company and newly recognized union in the event agreement cannot be reached on their first contract.

Unlike the public sector situations where binding contract arbitration is utilized in limited taxpayer supported environments (police and fire negotiations, etc.), it makes no sense to take a private sector’s viability and its employees’ livelihood out of the hands of the very people whose futures are at stake. The EFCA does just that.

Under EFCA, if an employer and a union are engaged in bargaining for their first collective bargaining agreement and are unable to reach

3) Expose employers to significantly increased penalties if they are found to have committed unfair labor practices.

EFCA significantly limits employers’ abilities to provide an effective response to an organizing drive or collective bargaining situation due to significant increases in possible penalties for employer actions that could be deemed Unfair Labor Practices.

Further, under EFCA, the workers’ signatures on the union authorization cards could be made public to union officials, management and co-workers. Employees often sign authorization cards without receiving a complete explanation as to what they mean. Often cards are signed simply to minimize pressure or intimidation by pro-union segments of the workforce. If implemented, EFCA directly threatens employee privacy and diminishes employee rights to make a democratic and well informed choice on their own economic future.

agreement within ninety (90) days, either party is free to refer the dispute to federal mediation. If a federal mediator cannot convince the parties to settle the contract within thirty (30) days, the dispute would be referred to binding arbitration. This exposes the company to being potentially forced to accept contract terms that could jeopardize the organization’s ability to remain in business. Also this would effectively disenfranchise employees who would not have the ability to vote on the arbitrated contract settlement and may, as a result, be forced to accept contractual terms that may not be in their best interest.

For example, several unions representing employees in the graphic communications industry are associated with pension plans that are seriously under-funded and in critical financial condition. Many of these plans have reduced benefits to retirees over the past several years. Despite this fact, it is very likely that these unions will incorporate participation in these pension funds in contractual proposals for employees at newly organized companies. These employees would not have the opportunity to vote on participation in these pension funds if these contracts are implemented under this arbitration provision.

Under EFCA, unfair labor practice charges are given priority over other cases and the National Labor Relations Board would be required to seek injunctions requiring reinstatement of discharged workers before holding a hearing on the merits of the unfair labor practice charge. This effectively allows an employee who may have been discharged

EMPLOYEE FREE CHOICE ACT “TALKING POINTS” * PRINTING INDUSTRIES ALLIANCE

for reasons totally unrelated to union activity to be reinstated to the workforce before the merits of the unfair labor practice charge is decided.

EFCA also increases monetary penalties for unfair labor practices by employers during an organizing drive or until a first contract is reached. This includes:

- Employers would be liable for a \$20,000 civil penalty, per violation, if found guilty of an unfair labor practice violation.
- Employers would be exposed to up to triple back pay restitution for employees terminated and subsequently reinstated due to employer committing an unfair labor practice.

■ Current Status

The Employee Free Choice Act (HR800/S1041) passed in the House of Representatives in 2007. It was not brought to the floor of the Senate in 2008 due to a promised veto by President Bush. It will have to be resubmitted in both houses of Congress following the 2008 election. If elected, Barack Obama has indicated he would sign EFCA into law. John McCain voted against EFCA during a Senate vote in 2007.

For further information on the Employee Free Choice Act, visit

www.myprivateballot.com or www.gain.net

Or contact:

Tim Freeman, President, tfreeman@pialliance.org
Printing Industries Alliance, 636 North French Road,
Amherst New York 14228, (716) 691-3211.

Vicki Keenan, Vice President,
vkeenan@pialliance.org
Printing Industries Alliance, 663 Raritan Road,
Cranford, NJ 07016, (908) 276-4482