

EMPLOYEE FREE CHOICE ACT: Status and Strategies

Michigan Manufacturers Association

June 5, 2009

BUTZEL LONG

ATTORNEYS AND COUNSELORS

Craig M. Stanley

stanley@butzel.com

- I. EFCA vs. Current Law and Procedure**
- II. Potential Compromises**
- III. Consequences of EFCA Compromise**
- IV. What to do NOW**



EXISTING LAW AND PROCEDURE

Union Recognition

- Mandatory only through NLRB-conducted secret-ballot election.
- Employer may VOLUNTARILY recognize union based on proof of majority support—e.g., “Neutrality” agreements.

LAW & PROCEDURE UNDER EFCA

Union recognition

- “Card Check.” Mandatory recognition if majority of employees sign valid authorizations.

NEGOTIATIONS: CURRENT LAW

- If union wins, employer must negotiate upon union's request within reasonable time
- Employer must “meet and confer” in “good faith”
- No time restriction on negotiations
- Economic weapons: Union strike; Employer lockout and/or impasse and implementation
- After one year, employees may decertify, and employer may withdraw recognition or seek election

NEGOTIATION/ARBITRATION UNDER EFCA

Negotiating initial contract:

- Parties meet within 10 days of union recognition demand.
- Employers must “make every reasonable effort” to reach an agreement.
- If no deal after 90 days, either party may bring in the FMCS.
- If still no deal after 30 more days, mandatory and binding interest arbitration.
- Arbitration decision binding for 2 years.

EXISTING NLRB ENFORCEMENT LAW AND PROCEDURE

Easy for employers to delay election and results

- Challenge voting unit
- File or commit unfair labor practices (ULPs)
- File post-election objection and challenges

NLRB remedies for employer ULPs:

- Blocking charges—delay election
- Re-run election
- Reinstatement and backpay (simple interest)

ENFORCEMENT LAW AND PROCEDURE UNDER EFCA

“Strengthening Enforcement”

- Expedited election-related ULP investigations; priority over all other cases.
- Remedies for ULPs:
 - Triple damages for discharges (3 Xs backpay)
 - Up to \$20,000 for “willful or repeated” ULPs

BUTZEL LONG
ATTORNEYS AND COUNSELORS

POTENTIAL COMPROMISES



Potential Compromises

Union Recognition

- Card Check: Dead at least in the short term
- Card Check with supermajority: Unlikely
- Mail Ballot: Possible. Still unacceptable.
- If card check or mail ballot, box for election request.
- “Quickie” elections (5-20 days): More likely. Already done in Canada.

Potential Compromises

Expedited Process and Severe Damages

- Highly likely.
- Focus has centered on card check and arbitration. Many observers believe expedited procedures and severe damages are inevitable.

Potential Compromises

Mandatory Arbitration in Bargaining

- Possible, but unlikely, in current form
- Probable in some form
- Potential modifications
 - Extended Time Period—arbitration after 6 months or 1 year, not 120 days
 - “Baseball Arbitration”--Arbitrators must choose one party’s offer
 - Mandatory mediation, but not arbitration

BUTZEL LONG
ATTORNEYS AND COUNSELORS

CONSEQUENCES OF EFCA COMPROMISE



CONSEQUENCES FOR EMPLOYERS

- Very very easy for unions to organize
 - Supermajority
 - Mail ballot
 - “Quickie elections”
- Legal challenges likely post-election
- If union wins, get stuck with an unpredictable contract

CONSEQUENCES FOR EMPLOYEES

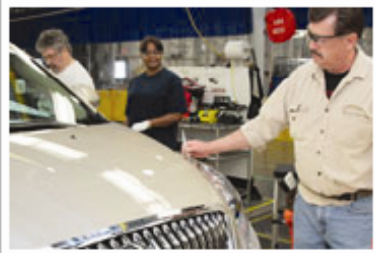
- No secret ballot vote; thus, union/peer pressure
- Cannot change your mind
- Nominal input on negotiations
- No vote on contract
- Contract “drafted” by government agent, with whom employees have no contact
- Could come out worse than before union
- Cannot get rid of the union

WHAT EMPLOYERS SHOULD DO NOW

- Lobby; work with your associations/organizations
- Training training training (management/supervision)
- Positive climate and union avoidance training
- Employee opinion surveys
- Wage and benefit surveys
- Update handbooks and policies—e.g., solicitation/distribution, non-employee property access, bulleting boards, off-duty access, union free.
- Prepare an emergency counter-organizing plan.
- Evaluate unit issues—e.g., voter eligibility
- Educate potential voters



photo courtesy: GM Lansing Operations



Unions think workers don't deserve a secret ballot. We do.



Take Action
Contact Your Rep



Grassroots Meetings



Employer Toolkit

The secret ballot is central to democracy. So why do unions want to take it away?

The Employee Free Choice Act (EFCA), commonly known as "card check," represents the most sweeping proposed change in labor law since passage of the Taft-Hartley Act in 1947. It will dramatically change the union organizing process — and, in turn, has the potential to disrupt operations at both union and non-union manufacturing operations alike.

In these tough economic times, it's imperative that all employees of a company work together toward common goals. Card check threatens the ability to do so by imposing conditions that will undermine positive, collaborative relationships between employees and their employers, and also potentially pit employees against each other.

To learn more and help fight "Card Check" click on any of the following:

[Watch a Video:](#) featuring MMA President and CEO Chuck Hadden about "Card Check."

[Attend a grassroots meeting](#) for employers in your area.

[Contact your congressional representatives.](#)

[Make a contribution](#) to fight "Card Check."

Questions? Please contact Chuck Hadden, MMA president and CEO, at 517-487-8541 or mma_executiveoffice@mma-net.org.

BUTZEL LONG
ATTORNEYS AND COUNSELORS

Thank You!

QUESTIONS????????????

