

# PREPARING FOR THE EFCA



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CLARK HILL

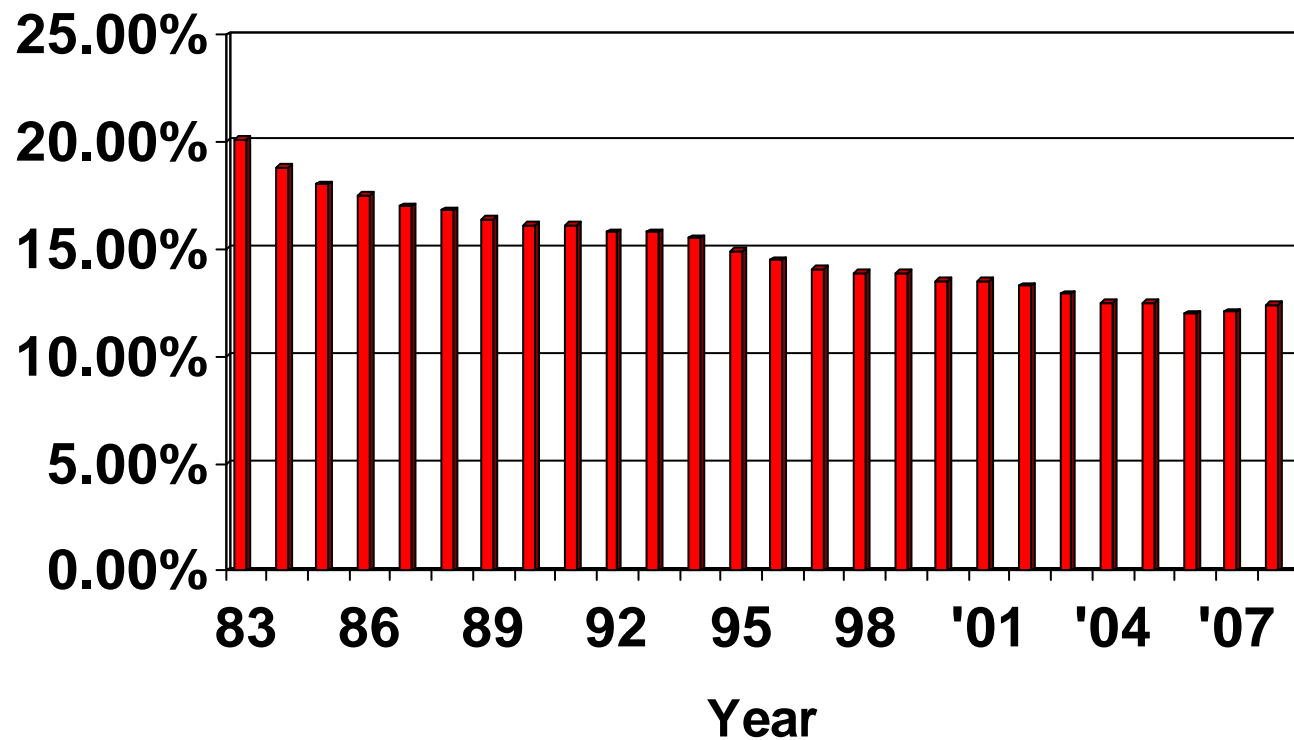
## The Audacity of Hope

**“The leaders of service workers unions broke ranks and chose to endorse me over [my opponent], support that proved critical to my campaign. It was a risky move on their part; had I lost, they might have paid a price in access, in support, in credibility. So I owe those unions. When their leaders call, I do my best to call them back right away.”**

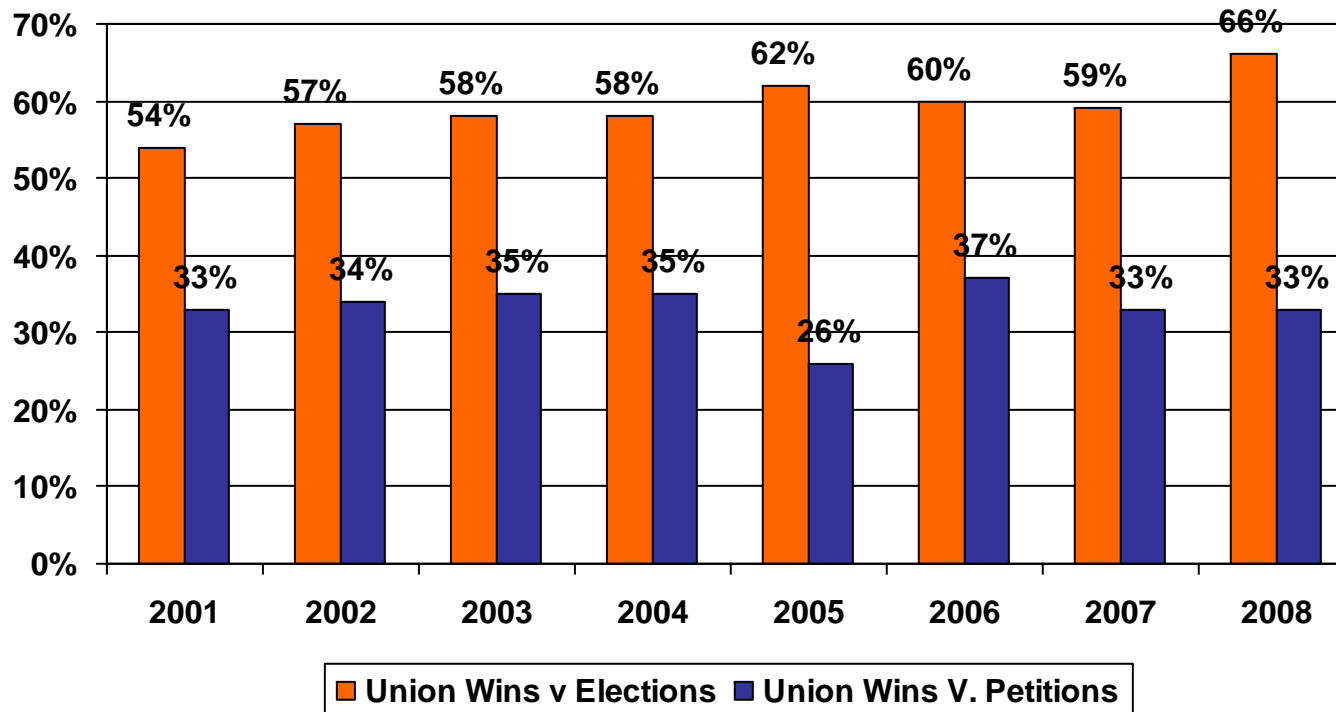
Source: The Audacity of Hope, by Barack Obama, p.118-119 Oct 1, 2006



## Percentage of Workforce Unionized



## Union's Fail to Win A Majority Of Petitions Filed



## Current Procedure

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- **Union must obtain authorization cards from 30% of the employees in the proposed bargaining unit.**
- **The union files a petition with the National Labor Relations Board**
- **The NLRB holds a pre-election hearing**
- **The parties campaign**
- **The NLRB holds a secret ballot election**
- **The parties file objections and the Board resolves the objections**
- **The Board certifies the union if it has won**

## EFCA Card Check Provision

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- **Unions can win recognition by obtaining authorization cards from 50% + 1 of your employees.**
  - **No notice to employer**
  - **Limits employer's ability to campaign**
  - **No secret ballot election**
  - **Allows unions to intimidate employees**
  - **Authorization cards are less reliable.**

## Mandatory Arbitration Of First Contracts

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- **If the parties cannot agree to a first contract within 120 days of the date bargaining begins, a government appointed arbitration panel can impose terms on the parties.**
  - **Contravenes the NLRA's fundamental principle**
  - **First contracts present special circumstances making arbitration inappropriate**
  - **May lengthen time to obtain the first contract**
  - **May force employers to close plant rather than accept a bad contract.**

## Turns the Act Into a Punitive Act

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- **Penalties for unfair labor practices committed while the union is organizing the employees or during the negotiations for the first contract**
  - **Triple damages for back pay awards**
  - **\$20,000 fine for each violation of the Act by the employer.**
  - **Makes it easier for the NLRB to obtain a 10(j) injunction**
  - **Aim is to prevent employer from campaigning**

## The EFCA Runs Into Problems

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- The EFCA has the support of 244 Representatives but has lost support from eight Democratic senators.
- Several alternative proposals have been offered;
  - Shorten time between the filing of a petition and the election (10 days)
  - Allow unions equal access to the employer's property
  - Make the penalty provisions of the Act apply to both the employer and union
- None of the alternatives have addressed the first contract mandatory arbitration provision

## What Can You Do

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- **Write your Senator and Representative to express your opposition to the Act**
- **Support the efforts of various industry groups that oppose the Act**
- **Conduct a union vulnerability audit**
- **Train your supervisors**
  - **TIPS**
  - **TOIL**
- **Review your policies and enforce them FAIRLY**
- **Educate your employees?**

## **Ensure Positive Employment Practices**

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- **Listen to employees.**
- **Respond to employees' concerns.**
- **Treat employees fairly.**
- **Enforce your rules.**

## Questions

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- **Note: This document is not intended to give legal advice. It is comprised of general information. Employees facing specific issues should seek the assistance of an attorney.**