



# Understanding the EFCRA: What Manufacturers need to know

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# Today's Topics

- EFCA's three elements and how they depart from existing law
- The practical effects of card check selection and mandatory arbitration of contracts
- What will it take to stay union free in a Post-EFCA world?
- Legislative Update: Where are we now?

# What is EFCA?

## Employee Free Choice Act

Pending legislation that would amend the National Labor Relations Act (“NLRA”)

- Originally proposed in the House in February, 2007 (H.R. 800)
- Originally proposed in the Senate in March, 2007 (S. 1041)
- Re-introduced in Congress on March 10, 2009

# What is EFCA?

“The Employee Free Choice Act” (*as currently proposed*) will:

- 1) Fundamentally alter the way that employees select unions as their collective bargaining representatives (i.e. the “Representation Process”) and how unions organize those employees;
- 2) Radically change the collective bargaining process;
- 3) Change the way an employer’s unfair labor practices are remedied by the National Labor Relations Board (“NLRB”).

# What is EFCA?

## I. The Representation Process Now and under EFCA



# “Card Check” vs. Secret Ballot Election

# Current Representation Process

Since 1935, the National Labor Relations Act has allowed an employer to demand a secret ballot election:

- 30% minimum showing of interest;
- Employer allowed election regardless of strength of initial union interest in excess of 30%;
- Showing of interest leads to union petition for NLRB election in an appropriate unit.

# Current Representation Process

The procedural safeguards of an NLRB election:

- 42-day period from petition to election (generally);
  - Cooling off period
  - Campaigning, governed by Board law
- Secret ballot; polling place with laboratory conditions
- Majority wins; opportunities for challenges from losing party adjudicated by the Board.

# Current Representative Process

## Other Advantages of Elections:

- Election by a date certain allows for finality/ predictability

# Current Representation Process

From 1935 until now, the consensus has been that secret ballot elections are the best means of choosing (or rejecting) union representation:

“The Board itself has recognized and continues to do so . . . that secret elections are generally the most satisfactory – indeed, the preferred – method of ascertaining whether a union has majority support.”

- *NLRB v. Gissel Packing Co., Inc.*,  
395 U.S. 575, 602 (1969)



What's the impact of EFCA on the  
representation process?

# EFCA Amendments

“If the Board finds that a *majority* of the employees in a unit appropriate for bargaining has signed valid authorizations designating [a] labor organization . . . as their bargaining representative . . . *the Board shall not direct an election* but shall certify the . . . labor organization as [bargaining representative].”

# EFCA Amendments

In other words:

- EFCA allows workers to choose union representation based on a check of authorization cards (no employee or employer right to demand secret ballot election).
- No similar “card check” for decertification and no mechanism for withdrawal/revocation of authorization.

# An Authorization Card

## TEAMSTERS LOCAL NO. 63 Authorization for Representation Form

Authorization for Representation Form:  
to print, select **File -> Print** then click  
**Authorization for Representation**  
) the undersigned employee of

COMPANY \_\_\_\_\_

ADDRESS \_\_\_\_\_  
authorize Teamsters Local 63 to represent me in negotiations for  
better wages, hours, benefits and working conditions

NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_

CITY/STATE \_\_\_\_\_

HOME PHONE: \_\_\_\_\_

PRESENT WAGE RATE: \_\_\_\_\_

KIND OF WORK: \_\_\_\_\_

SHIFT: \_\_\_\_\_ Day \_\_\_\_\_ swing \_\_\_\_\_ graveyard \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

**This information is strictly confidential**  
All information is kept confidential by the Teamsters Union and the  
U.S. Government. All information shall be kept in absolute confidence  
by the union and the National Labor Relations Board.

**The National Labor Relations Act of 1947 reads as follows:**  
"Rights of Employees - Sec. 7. Employees shall have the right to self-organization to form, join,  
or assist labor organizations, to bargain collectively through representation of their own  
choosing, and to engage in other concerted activities for the purpose of collective bargaining or  
other mutual aid or protection..."

**UNFAIR LABOR PRACTICES - Sec. 8(a):** It shall be an unfair labor practice for an employer -  
"(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in  
Section 7;"  
"(2) to dominate or interfere with the formation or administration of any labor organization..."

**THE FEDERAL LAW UPHOLDS YOUR RIGHT TO ORGANIZE - PLEASE SIGN NOW!**

Print out and mail or fax to: 840 Oak Park Road., Covina, CA 91724 (626) 859-4034 Fax or  
379 W. Valley Blvd. Azusa, CA 92326 (909) 977-2452 Fax.



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## EFCA effectively represents the end of the NLRB secret ballot election:

- What Union would choose to petition the Board for an election?
- Even now, most Unions will not file an election petition unless they have at least a 50% - 60% showing of interest



## II. Collective Bargaining: Now and Under the EFCA

# Current NLRA

- Requirement of “good faith bargaining” in reaching first contract.
- No requirement to agree to any union proposal.
- First contracts typically take a long time to negotiate
  - “Starting from scratch.”

# EFCA Amendments

- Parties must begin bargaining within 10 days of Union's request
- Mandatory FMCS mediation efforts if no agreement after 90 days of bargaining
- Contract to be decided by arbitrator if no contract after 30 days of mediation.

# EFCA Amendments

## SOME UNANSWERED QUESTIONS POSED BY EFCA'S BARGAINING PROVISIONS:

- If the parties have to arbitrate, on what basis will the arbitrator base his decision?
  - Is a public sector analogue appropriate?
  - Is the private sector transparent enough?

# EFCA Amendments

## SOME UNANSWERED QUESTIONS POSED BY EFCA'S BARGAINING PROVISIONS:

- Does the potential for binding arbitration necessarily incentivize agreements? Does it incentivize agreement more? More than traditional economic weapons?

# EFCA Amendments

## SOME UNANSWERED QUESTIONS POSED BY EFCA'S BARGAINING PROVISIONS:

- What does this mean for *second contracts*?
  - No arbitration requirement
  - “Postponing Armageddon”
  
- Unintended Consequences are a certainty under EFCA



### III. NLRA Remedies: Now and Under the EFCA

# Current NLRA

- Penalties for discrimination based on union activities generally include notice posting for 60 days, reinstatement, and backpay'
  - A “make whole” remedy

# EFCA Amendments

- Authorizes tougher actions/penalties against employers that commit unfair labor practices (ULPs) during an *organizing campaign* or during *first contract bargaining*.
- Liquidated damages of two times any backpay awarded – *in addition to any back pay due*.
- Civil penalty up to a maximum \$20,000 for each violation where the employer has “willfully or repeatedly” committed ULPs.

# Employer Realities, if EFCA Passes in its Current Form

So what's the big deal for non-union employers?

# Employer Realities, if EFCA Passes in its Current Form

The end of the NLRB secret ballot election

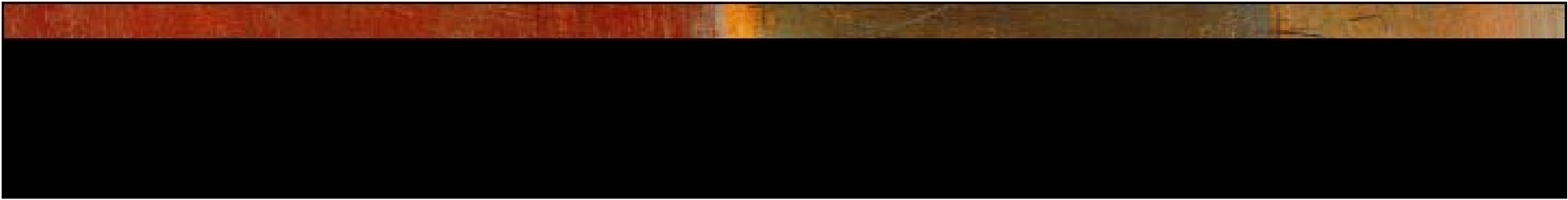
- Loss of opportunity for debate on issue of unionization culminating in secret ballot election (i.e., no “campaigns”).
- Card check process subject to abuse.
- No reciprocal right to decertify by card check.

# Employer Realities, if EFCA Passes in its Current Form

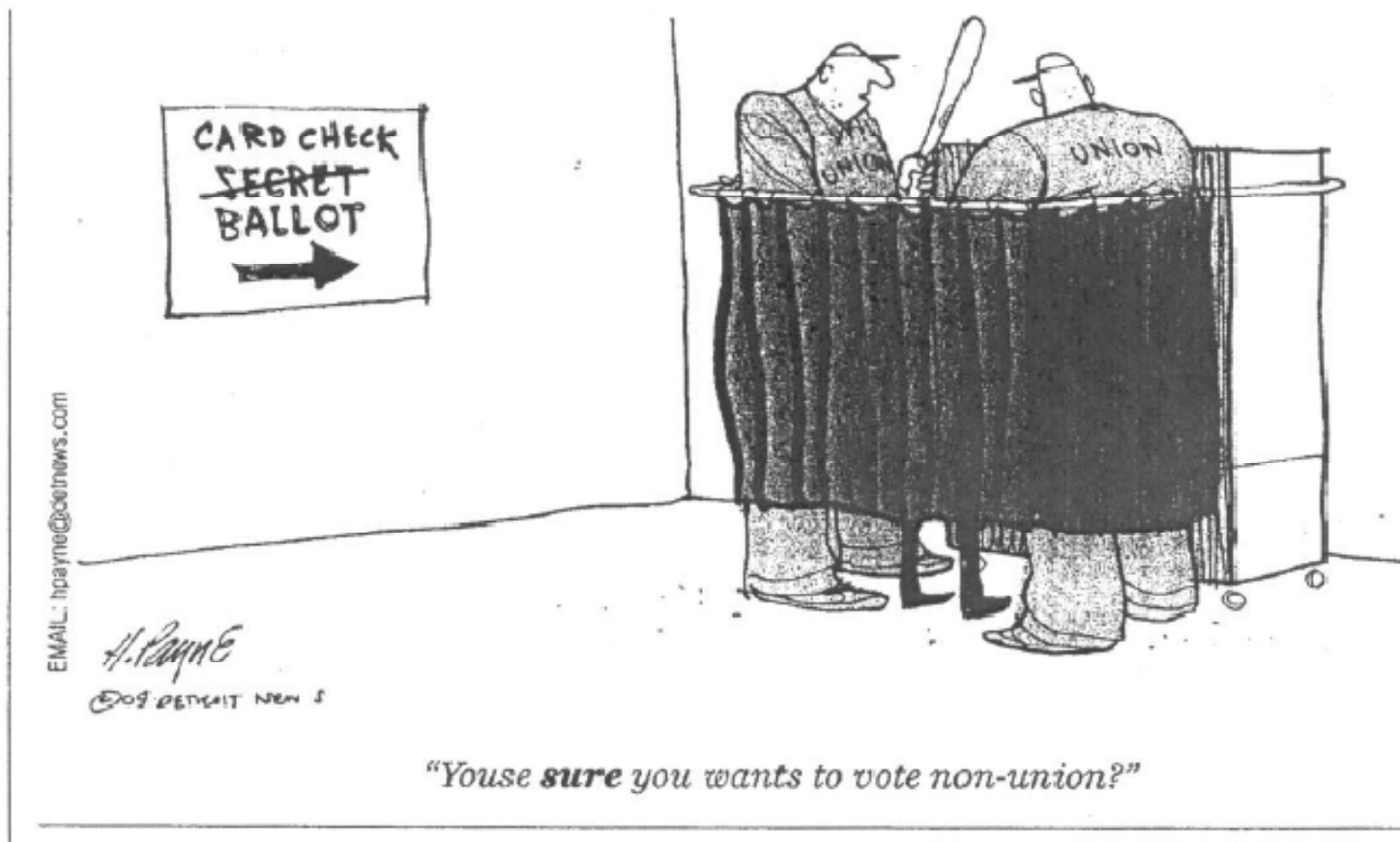
- Third party arbitrator sets wages, benefits and terms of employment.
  - *Risk of employer loss of flexibility/ability to compete.*
  - Disconnect from accountability of long-term goals/success.
  - Arbitrator left to reconcile incompatible situation
  - Destroys current risk/reward bargaining balance
  - *Concerns about transparency/reliability of comparative data.*

# Union Avoidance in the post-EFCA World:

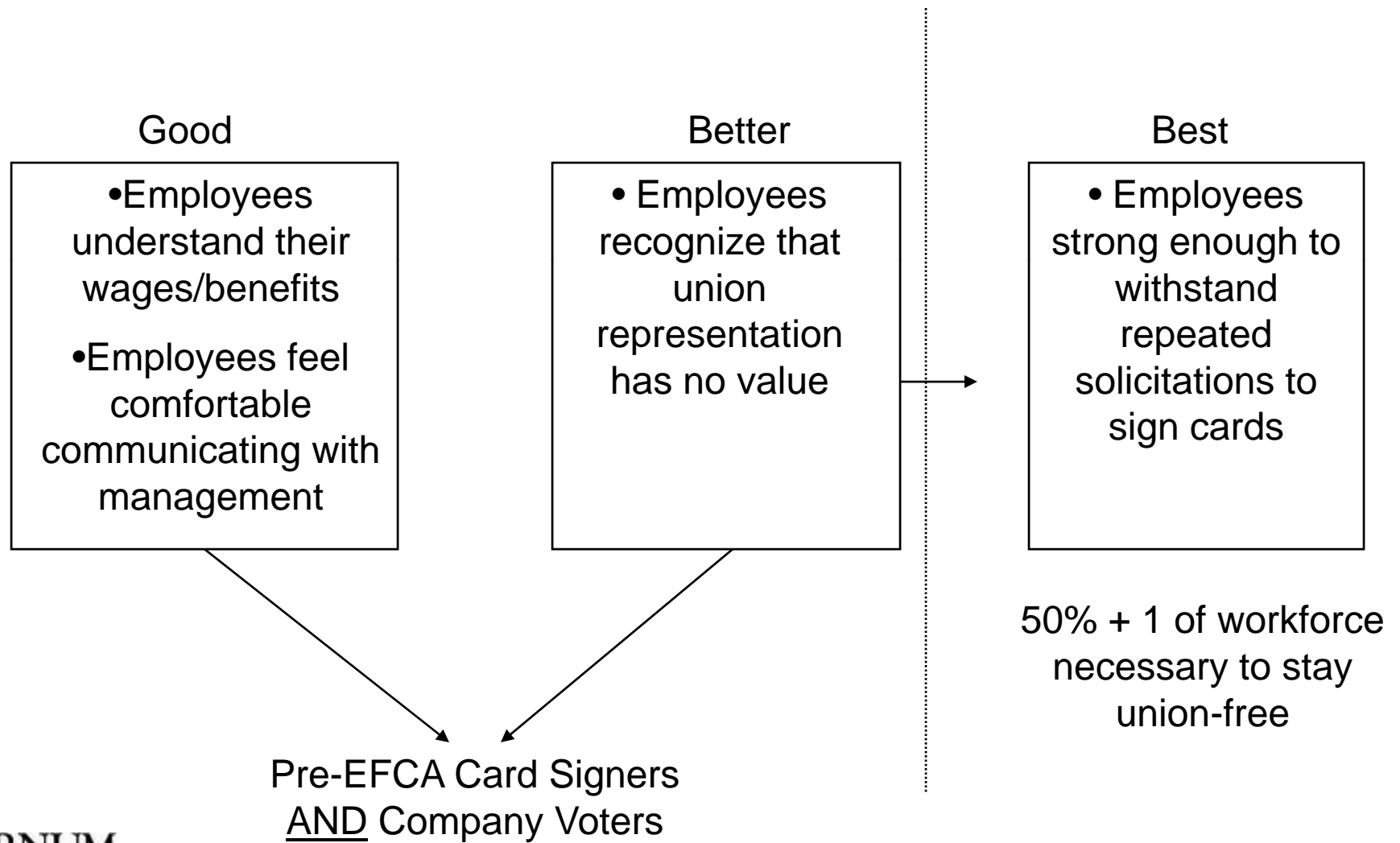
Now more than ever, Employer leadership needs to earn its union-free status every day.



**Bottom Line:** Because union organizing is about to get easier, Employers must work harder to maintain union-free status.



# The Post-EFCA Employee Relations Paradigm for Non-Union Employers



# Legislative Update

- Where does EFCA currently stand?

# Current Status

- In 2007, House passed 241-185 (13 Republicans joining majority); Senate has 46 co-sponsors.
- Obama co-sponsored legislation and has repeatedly promised to sign it into law.

# Current Status (cont'd.)

Barack Obama (during the campaign):

- “We will pass the Employee Free Choice Act. It’s not a question of if, it’s a matter of when. We may have to wait for the next president to sign it, but we will get this thing done.”

# Current Status

- 60 votes needed to avoid filibuster in the Senate (i.e., invoke “cloture”)
- All Senate Republicans oppose EFCA and cloture

## As of Today . . . .

- 8 Democratic Senators have expressed opposition to, or concerns about, EFCA in its current form
- Sen. Specter still opposes current EFCA despite party switch
- White House silent?

# Current Status

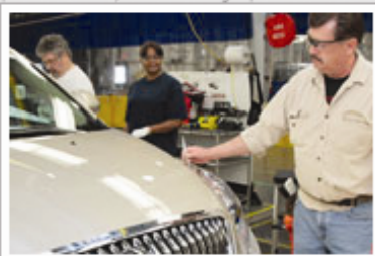
- Per 5/20/09 Daily Labor Report, Sen. Harkin to bring EFCA to a vote “within the next month.”
- Compromise or wait until 2010?

# Potential Compromise Measures:

- “Quickie Election” (14 days? 3 weeks?) instead of card check majority
- Arbitration provisions targeted
  - Constitutional issues
- Remedy provisions = low hanging fruit for compromise



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 (EFC), 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](mailto:mma_executiveoffice@mma-net.org).



Any Questions?

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