

THE IMPACT OF THE EMPLOYEE 'FORCED' CHOICE ACT ON CURRENT LAW

OVERVIEW

This legislation radically overhauls our current labor law system by overturning longstanding principles of fairness and balance. EFCA directly threatens manufacturers' ability to create jobs and remain competitive.

PROVISIONS IN THE EFCA	CURRENT LAW	WHAT EFCA CHANGES	IMPACT
Effective elimination of secret ballot elections	<p>-Section 9(e) of the National Labor Relations Act (NLRA) allows the National Labor Relations Board (NLRB) to hold secret ballot elections when union organizers are able demonstrate a "showing of interest" from within a particular bargaining unit.</p> <p>-Union organizers are able to prove such "interest" when they are able to collect sign authorization cards from at least 30 percent of the employees within a particular bargaining unit.</p> <p>- Union representation elections are administered by the National Labor Relations Board (NLRB), which oversees the secret ballot voting process to ensure no one (employees, employers or unions) unfairly influences how individual employees vote.</p> <p>-Employees who no longer want a union to represent them are entitled to seek an election to determine if a majority of their coworkers wants to decertify the union. If over 30 percent of workers in a bargaining union sign a decertification petition, the NLRB will set a date for the secret ballot decertification election.</p>	<p>-Amends the National Labor Relations Act to add language that requires an employer and the NLRB to immediately recognize the results of a 'card check' campaign once union organizers collect signed authorization cards from 50 percent plus one of the bargaining unit and submits them to the NLRB.</p> <p>-Specifically states that the Board will certify a labor union as a bargaining representative if a majority of employees have signed authorization cards.</p> <p>-A secret ballot election can be held if 30 to 50 percent of the bargaining unit has signed cards but it is not required to be conducted.</p> <p>-The EFCA would prohibit private ballot elections if over 50 percent of the bargaining unit has signed authorization cards. The bill explicitly states that under these circumstances the NLRB would be unable to hold a secret ballot election.</p> <p>-The EFCA does not allow "card check" to be applied for the decertification process. Even if a majority of employees file a decertification petition with the NLRB that process must still be resolved by a secret ballot election.</p>	<p>-While secret ballot elections can be conducted with signed cards from between 30 percent and 50 percent of the bargaining unit, it is clear that unions will not voluntarily engage in secret ballot elections if only a simple majority of signed cards is required to form a union .</p> <p>-Card check schemes unnecessarily expose employees to coercion by union organizers and their peers. Courts and the NLRB agree that the secret ballot is the most reliable method for determining whether employees want a union.</p> <p>-The card check system does not allow employees to make well informed decisions regarding possible union membership</p> <p>-According to the NLRB, the average time for an election to be held is just 39 days and 94 percent of elections are held within 56 days.</p> <p>-EFCA makes it easier for union organizers to form a union but difficult for employees leave a union. This bill allows quick certification process of labor unions, yet requires a more thorough process for decertification.</p>
Imposition of binding arbitration on	<p>- After a union is certified, current law requires the union and the employer to bargain in good faith.</p>	<p>-After a union is certified by the NLRB, the union and employer must begin first contract negotiations within 10 days.</p>	<p>-Our labor law system never intended to allow individuals that are not familiar with particular workplaces from imposing the binding terms of the first labor contract.</p>

<p><i>(continued)</i> newly unionized private sector employers</p>	<ul style="list-style-type: none"> - NLRB may issue bargaining orders to both sides; and order back-pay for wronged employees if employers do not engage in negotiations in "good faith". -Today employers and unions must mutually agree to wages, benefits and other terms and conditions and the agreement is subject to approval by employees. -Under current law, both parties are free to negotiate and the NLRB can not compel either party to binding terms of labor contracts. -First labor contracts often include the terms that set: wages, benefits and work rules within a particular bargaining unit. 	<ul style="list-style-type: none"> -After 90 days, either party may notify the Federal Mediation and Conciliation Service (FMCS) and request mediation. -After 30 more days, a FMCS appointed arbitration panel will determine the final contract. -The Federal arbitration board's decision is binding upon both parties for a period of 2 years. 	<ul style="list-style-type: none"> -Binding interest arbitration fundamentally changes the dynamics of collective bargaining. By removing the incentives to negotiate labor unions and employers would see the negotiating process as way to better position their self serving interests for possible arbitration. -Mandatory, binding arbitration prohibits union employees from approving the terms of their union contract as the arbitrator imposes a binding contract without an employee vote. -Neither the employees nor the employer could appeal the decision. Thus, not only does the EFCA allow unions to eliminate an employees' access to a private ballot, it also eliminates their ability to vote for or against the contract terms of their employment. -Under binding arbitration, businesses would not be able to respond to competition or other changes in the business environment. This would be devastating for employers, employees and their families. There are no safeguards in EFCA to protect employees if the arbitrator's decision forces the company out of business.
<p>Increased employer penalties</p>	<ul style="list-style-type: none"> -Labor unions and employers are prohibited from engaging in coercive or threatening conduct before secret ballot elections. -Employers that illegally intimidate employees or otherwise attempt to prevent them from forming a labor union are subject to quickly reinstating employees with back pay. 	<ul style="list-style-type: none"> -Significantly increases penalties for unfair labor practices for employers (not unions) during an organizing drive or until a first contract is reached. - Changes the NLRA to allow for triple back pay and liabilities of up to \$20,000 if an employer is found to illegally intimidate employees or otherwise attempt to prevent them from forming a union. -Charges of unfair labor practices by employers would be given priority over all other cases considered by the NLRB. The Board would be required to seek injunctions requiring reinstatement of discharged workers even before a hearing is conducted on the merits. 	<ul style="list-style-type: none"> -Our current labor law system is based on principles of fairness. This system would become fundamentally skewed under the provisions that increase penalties unilaterally. -Increasing penalties against employers undermine the current principles inherent in the NLRA which seeks to promote balance among employees, employers and labor unions. -The EFCA does not apply any new penalties on labor unions, despite the need to further protect all employees from coercion under a card check scheme.