



THE EMPLOYEE FREE CHOICE ACT - REBIRTH OF THE LABOR MOVEMENT BY FORCED UNIONIZATION AND FORCED CONTRACTS?

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What if a labor union could demand that you negotiate a contract with them based on secret solicitation of “authorization cards” without any chance for you to communicate with your employees about union claims and without a secret ballot National Labor Relations Board (“NLRB”) vote by your employees? And, if you can’t agree on contract terms in 4 months, what if the union could have a government arbitrator impose a contract on you, once again without your consent and without an employee vote? Does this sound like Orwell’s 1984? Maybe so, but this scenario will be routine in the U.S.A. under HR 800, the so-called “Employee Free Choice Act” (pretty Orwellian title too), which was passed with the votes of all but two Democratic Congresspersons last term and is supported by all Democratic Senators.

In March of 2007, the U.S. House of Representatives passed the Employee Free Choice Act (HR 800). The bill became stalled in the Senate after President Bush threatened a veto, and it was never brought to the floor. According to Senator Amy Klobuchar (D-Minnesota), one of the bill’s sponsors, the Democratic Majority realized the bill would not make it through the Senate, and decided to table it for later consideration, and thus keep the issue alive

until after the 2008 election. Senator Obama has said that signing the bill would be one of his first acts if elected President. Senator McCain strongly opposes the EFCA and not one Republican Congressperson or Senator voted for the EFCA. The bill is being pushed more strongly than any labor initiative in the past 25 years, and would represent the most radical change ever to the Depression-era National Labor Relations Act. It would also likely result in automatic union organizing in a wide range of industries.

In essence, the bill (despite its name) does away with secret ballot elections in the workplace. Rather than have an election to see if the employees want to be represented by a union, the union would instead only have to show that a majority of the employees had signed an “authorization card,” which indicates an interest in the union. Currently, authorization cards are most commonly used to request an election, rather than force recognition of the union. Signatures on cards are obtained “by hook or by crook,” based on various methods of persuasion, misrepresentation and intimidation, with union organizers looking over employees’ shoulders. Once a card is signed by an employee, that employee cannot change his or her mind and request



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the card back. Under current law, authorization cards are kept confidential by the NLRB, and are almost impossible for an employer (or employee) to challenge unless there is evidence of forgery. The EFCA has raised fears by employers that employees will be misled or coerced into signing the cards, with no real way of remedying or challenging the authenticity of the card. Unions and labor advocates have countered that the current election system is broken, and that employers exert too much influence over their employees' votes (employers in the past 25 years have generally won a majority of union elections), although the election campaign rules have been essentially unchanged for 75 years. Unions, in fact, are simply failing to prevail with employees in the marketplace for their "services" as representatives.

A second major component of the so-called Free Choice Act is a limit on the duration of negotiations once a union is recognized. Under current law, the only legal requirement in the bargaining process is that the parties engage in good-faith bargaining. Neither is required to agree to any particular term. There is no requirement that a contract ever be reached. The "Free Choice Act" would put a 120-day limit (including 30 days with a mediator) on bargaining, after which the matter would automatically be referred to "interest arbitration." This third major change to the law would have a government arbitrator impose terms of a collective bargaining agreement on the parties after a hearing. Neither party could

challenge the arbitrator's ruling, and the contract would last for two years. Once again, labor advocates claim that this is necessary because employers have delayed negotiations under current law, in order, they say, to avoid ever reaching an agreement. Employers and their advocates are understandably nervous about government-appointed arbitrators telling them how to run their businesses and imposing labor costs for which they are not responsible.

Regardless of one's view of the merits of the Free Choice Act, there is no question among union or management representatives that, if passed, it would result in *much* higher unionization levels, as well as union penetration into industries where unions have not traditionally been active. (It is important to note that the Act may possibly be unconstitutional, and would almost certainly be challenged in court, but the outcome is not certain.) Many owners, managers and Human Resource Professionals in recent years have assumed that unions were a thing of the past. The labor movement is calling our bluff with the EFCA. Whether your employees are represented by a union or you operate a merit shop and are union free, the Employee Free Choice Act will undercut your authority and may potentially impose unions you (and your employees) don't want and contract economics you can't afford.

If you have thought "politics" is something you could avoid as a businessperson, the EFCA may force you to think again.



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Question your Congressional and Senate candidates about where they stand on this issue and act accordingly. For more information, contact Attorney Alec J. Beck, or any other Seaton, Beck & Peters, P.A.

attorney, at (952) 896-1700. We are happy to offer a free initial courtesy telephone discussion on this issue or any other labor and employment law issue.