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Communicating With Your Legislators on “Card Check”

What You Might Hear from Supporters of the Employee Free Choice Act (EFCA)

Supporters of EFCA claim: Secret ballot elections take too long.

Facts: According to the National Labor Relations Board, the average time for an election to be held is just **39 days** and 94 percent of elections are held within 56 days.

Supporters of EFCA claim: Employees may still choose a secret ballot election under the Employee Free Choice Act.

Facts: EFCA clearly states (emphasis for clarity): “If the Board finds that a majority of the employees in a unit appropriate for bargaining has signed valid authorizations designating the individual or labor organization specified in the petition as their bargaining representative and that no other individual or labor organization is currently certified or recognized as the exclusive representative of any of the employees in the unit, *the Board shall not direct an election but shall certify the individual or labor organization as the representative described in subsection (a).*”

This legislation clearly and simply states: “the Board shall not direct an election.”

Rhetoric from EFCA’s supporters claiming employees can still chose an election ignores the reality of union organizing campaigns. Professionally trained and compensated organizers collect and control the signed authorization cards. There is no incentive for these organizers to inform workers of the ability to organize via the secret ballot or practical method for employees to force the organizers to request an election. The reality is that once a majority has signed the cards, there will be no secret ballot election, and the union is recognized by the National Labor Relations Board. Major national newspapers—including the *USA Today*, *Wall Street Journal*, *Boston Globe* and *Washington Post*—have seen through Big Labor’s rhetoric and concluded that EFCA would effectively eliminate the secret ballot election process in union organizing drives.

Supporters of EFCA claim: Many leading employers have embraced card check agreements and allowed their employees to organize via card check.

Facts: While individual companies may have card check agreements in place, that does not mean they support mandating card check, as is required by EFCA. Employers may have business reasons for agreeing to card check, not the least of which is avoiding or ending a “corporate campaign.” During a corporate campaign, unions use a wide range of aggressive tactics to pressure employers into card check and other agreements. These tactics include negative publicity campaigns aimed at discrediting the company, litigation, political pressure, and requests that regulatory agencies investigate the company. Richard Trumka, Secretary-Treasurer of the AFL-CIO described them as follows: “Corporate campaigns swarm the target employer from every angle, great and small, with an eye toward inflicting upon the employer the death of a thousand cuts....”

Supporters of EFCA claim: Our state is a Right to Work state, so the EFCA will have little impact to your business.

Facts: Being a Right to Work (RTW) state does not protect employees and jobs from EFCA. EFCA would still require card check recognition and mandatory arbitration in every state. The only impact state RTW laws will have is on individual employees' right to abstain from fully participating in their union as a condition of employment. Employees and employers in a RTW state will still be subject to the conditions of the collective bargaining agreement. These agreements place restrictions on the ability of employers to determine the number of employees necessary for work assignments or the outsourcing of various operations.

Supporters of EFCA claim: Card check procedures are the most effective way to determine the wishes of a majority of employees.

Facts: Federal courts have repeatedly ruled that secret ballot elections are the preferred method of ascertaining whether a union has the support of a majority of employees. The U.S Supreme Court recognized that the “card-check” is “admittedly inferior to the election process” (*NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969)).

Finally, the AFL-CIO and affiliated unions have historically supported the secret ballot for union decertification. In a brief before the NLRB, the unions stated: “the secret ballot election system provides the surest means of avoiding decisions which are the result of group pressures and not individual decisions...less formal means of registering majority support...are not sufficiently reliable indicia of employees' desires on the question of union representation to serve as a basis for requiring union recognition.”¹

Supporters of EFCA claim: Employers illegally fire employees in 25 to 30% of all organizing drives.

Facts: Those who falsely claim employers illegally fire a large number of employees during organizing drives cite two studies—one by Cornell professor Kate Bronfenbrenner and another commissioned by the pro-union group American Rights at Work. These reports are primarily based on surveys of anecdotal reports from union organizers only – and largely ignore the hard data published by National Labor Relations Board.

EFCA supporters use these misleading “reports” to justify their claim that eliminating the secret ballots is somehow a needed “remedy” for employer misconduct. This so-called “remedy” would subject employees to coercion and intimidation from professionally-trained union organizers, co-workers, and employers. These reports are nothing more than Big Labor's attempt to rationalize forcing an inferior and coercive system upon employees in order to make it easier for unions to organize at the expense of worker privacy.

¹ *Chelsea Industries and Levitz Furniture Co. of the Pacific, Inc.*, Nos. 7-CA-36846, 7-CA-37016 and 20-CA-26596 (NLRB) at 13 (May 18, 1998).