

Impact to Franchising from Legislation to Enhance Union Organizing Fact Sheet: The Employee Free Choice Act

Experts agree this proposal is the most dramatic change in labor policy in decades. If enacted, it would be a tipping point for the future of the American workplace in favor of “Big Labor.” This bill ends worker rights to privacy. It would eliminate the secret ballot election process which was designed to ensure fairness and protect employees *and* employers during union organizing campaigns.

BACKGROUND: From Supervised Elections to Expedited Collective Bargaining

Today, just over seven percent of the private-sector workforce is unionized. That's down from twenty percent as recently as the 1980s. To end the decline of union membership, DC-based union bosses are pushing Congress hard to enact the Employee Free Choice Act (EFCA) which would install a scheme known as a “card-check” procedure to organize employees.

Card-check organizing requires¹ employers to recognize a collective bargaining unit when a simple majority of employees sign cards supporting unionization. Using card-check, signatures would be gathered in public by union organizers. Workers who sign – or refused to sign – cards would be exposed and vulnerable to threats and intimidation from union leaders, management, or both because their votes are not kept private.

END OF FEDERALLY-SUPERVISED UNION ORGANIZING ELECTIONS

Current National Labor Relations Board (NLRB) regulations say that if thirty percent of employees present a petition or union cards to the employer, a secret ballot election may be requested and all employees vote to determine whether or not to unionize. The process is supervised by the NLRB with votes cast in private. Generally, unions only present cards when they have received signatures from seventy-five percent of the bargaining unit. Furthermore, in the first six months of 2008, the NLRB reports unions winning 66.8 percent of representation elections.

NEW COMPULSORY ARBITRATION RULES

The Employee Free Choice Act also imposes unprecedented binding arbitration requirements on employers once a union is recognized. The employer would have 120 days to agree to a contract. If no agreement is reached, a government arbiter will set

¹ While elections are still technically permitted when cards have been signed by at least 30% of workers and less than 50%, it is difficult to see how elections will occur in practice under this legislation. Union organizers will control the card collection process, and it is doubtful that they will stop short of achieving at least 50% of all employees before submitting the cards for approval. The bill language reads (*italics are added for emphasis*): “Whenever a petition shall have been filed by an employee or group of employees or any individual or labor organization acting in their behalf alleging that a majority of employees in a unit appropriate for the purposes of collective bargaining wish to be represented by an individual or labor organization for such purposes, the Board shall investigate the petition. 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).”

the terms of the contract. Employers will have no real standing. Instead, a government worker will come into the business and decide wages, benefits and work rules. There is no process of appeal for either employers or employees on the terms of the final contract for two years.

IMPACT ON FRANCHISED BUSINESSES

Big Labor is demanding card-check legislation from Congress to quickly boost sagging membership, and Congress is responding in their favor. Franchised and service sector businesses are targets for intensive organizing efforts because these sectors have strong employment growth and very low union representation. A “bargaining unit” is not defined in the legislation, and there is no requirement that workers who sign union cards must be full time. Even a single store in a franchised system could be determined to be a “collective bargaining unit.”

Some franchised businesses are particularly vulnerable due to the nature of their workforce (part-time, labor intensive, etc.). Unions would like to utilize the card-check process to efficiently target these workers. Unions define the size of the bargaining unit and will select the employee groups (e.g. pizza delivery drivers in Pensacola, Florida) that are most likely to return a majority of signed cards.

Large employers are not the only targets of union activities. In fact, recent NLRB statistics show that the majority of union elections are in small or very small units. For the fiscal year ending September 30, 2005, the NLRB conducted 2,649 union representation elections. More than 20 percent involved bargaining units of fewer than 10 employees. A full 70 percent of these elections involved bargaining units of fewer than 50 employees.

DIRECT QUOTES

“D. Taylor, who heads the Culinary Workers Union’s Local 226 in Las Vegas, has put chain operators on notice that their days of successfully resisting collective bargaining may be dwindling.” -*Nation’s Restaurant News, August 15, 2005*

Targets “include...**health care, food production, and retail sales — industries where outsourcing and computerizing work are not lucrative options.**” -*Greg Robertson, Hunton and Williams Employment Law Update, Fall 2005*

OUTLOOK – THE FIGHT BEGINS TODAY

The outcome of the 2008 elections has put organized labor on the doorstep of a major victory on the Employee Free Choice Act. We expect the House of Representatives to act on this legislation as early as January and the Senate could take up the bill shortly afterwards. Only the unified and determined opposition of small business owners and workers will keep this major threat to worker privacy rights from becoming law in 2009.