

Franchising and the Real Threat of the Employee Free Choice Act

By David French

Reading the AFL-CIO's Stewart Acuff's glib assurances that small businesses will not be harmed by the passage of the Employee Free Choice Act, I was reminded of the old parable of the scorpion and the frog.

Needing a lift across a rain swollen river, the scorpion asks the frog for a ride. The frog at first is wary of the scorpion and its deadly stinger. "How do I know that you won't kill me?" the frog asks. The scorpion's swift reply, "If I try to kill you, then I would die too, for you see I cannot swim!" It probably won't ruin the ending to say that they both die crossing the river because the scorpion kills the frog. It was the scorpion's nature.

Unions exist to organize workers. It is their nature; and just like Willie Sutton robbed banks because that's where the money was, unions will organize franchised businesses because that's where the jobs are. The US automotive sector is roughly 3 million mostly unionized workers, while franchising is 21 million mostly non-unionized workers. Traditional manufacturing has been on the long decline in the US, while service sector jobs have been increasing at a steady clip. Even an amateur economist can see that these trend lines are moving in the wrong direction for unions if their business model relies on organizing only the traditional, large employers. By the way, it is also worth remembering that a manufacturer can respond to economic pressures such as unionization by relocating, perhaps abroad. Most franchised small businesses, however, are locally based and cannot relocate to China or Mexico if labor costs become uneconomic. Often, the only option will be to close their doors for good.

If passed by Congress, the misnamed Employee Free Choice Act would mandate union recognition in workplaces if a simple majority of employees signs authorization cards. Often an employer will not even know a campaign is underway in their store until after the union has gotten a sufficient number of signatures. The bill also contains a dramatic change in the way union contracts will be negotiated so that most initial labor contracts will be imposed on workers and employers by a government bureaucrat.

Unions want Congress to enact the Employee Free Choice Act because they want to ensure that the employer is rendered speechless in any organizing campaign. While large employers may have sophisticated human resources departments and labor counsel on retainer, most small businesses will be ill-equipped to deal with the realities of this kind of drive-thru unionization.

Here is a quick list of some of the other key reasons why the International Franchise Association views the Employee Free Choice Act as such a dangerous piece of legislation:

(1) "Card check" is such an efficient process that unions can easily expand the number of targets beyond the traditional large employers. More employers can be organized, and the costs of each organizing effort will be much lower for the unions.

(2) Ease of organizing will also fatten union coffers, and a large portion of this new revenue can be reinvested in new organizing. It is the basic life cycle of the union movement: more money equals more organizing which equals more money.

(3) The AFL-CIO is only one actor in this drama. Other unions are committed to organizing foodservice sector employees or lodging industry workers, and I doubt Mr. Acuff speaks for the Service Employee International Union (SEIU) or others in assuring us that small businesses will be off limits. In fact, lost in the much of the union rhetoric about this bill is the fact that the unions are actually competing with each other for workers. In some cases, this struggle has become almost open warfare as the expansionist unions have targeted some of the more staid unions, and they intend to use card check to steal market share.

(4) A related issue is the public relations value of organizing well-known national brands. Unions target big name national brands because they generate media attention. Unions appreciate the value of free media as much as any business.

(5) Finally, many franchised small businesses compete directly with unionized firms, particularly in sectors like construction. Since the franchised businesses are not encumbered with union work rules and wage rates, they are often the more nimble competitor. Unions will deploy card check to try to level the playing field in these sectors.

Ultimately, this is not a debate about whether or not unions should exist or whether or not workers should have the right to bargain collectively. These public policy debates were settled long ago. The Employee Free Choice Act is a brazen attack on the concept of fairness in labor law, and both workers and small business owners will see many of their most important rights violated if unions succeed.

For more information on the bill or to get involved in the campaign to stop it, please visit our [franchise business toolkit](#).

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