



# MONETARY & ECONOMIC REVIEW

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## “Employee Free Choice Act” Is a Very Bad Deal for American Workers

By MER Editors

Does a ballot cast in private—or a card signed in public—better reveal a worker’s true preference about whether to join a union? Obviously, a private vote is the answer. Nonetheless, organized labor has attached the disingenuous and misleading name of “Employee Free Choice Act” to H.R. 800, and made it their highest legislative priority for the incoming Congress.

Big Labor contributed millions of dollars to Barack Obama and other Democrat candidates in the 2008 election campaign. They expect passage of the Employee Free Choice Act (EFCA) as the big pay-off for their support in gaining control of the White House and both houses of Congress. Barack Obama has stated that he supports the passage of this legislation.

**(Editor’s Note:** An in-depth study by James Sherk and Paul Kersey for the Heritage Foundation reveals, among many other things, that this legislation, H.R. 800, is grossly misnamed. Their report, published by the Heritage Foundation on April 23, 2007, is entitled, “How the Employee Free Choice Act Takes Away Workers’ Rights.” Much of the data included here was published in their report. Opinions expressed herein are those of the Editors of IRN/USA Radio News. Readers are encouraged to read the full report by Sherk and Kersey at [www.heritage.org](http://www.heritage.org).)

In their extensively researched report, Sherk and Kersey state the essence of EFCA: “Recently, unions have switched the focus of their organizing operations from private balloting to publicly signed cards. These so-called “card-check” campaigns make it much easier for unions to organize workers, but most companies strongly resist the idea of denying their employees a vote. Unions now want the government to take away workers’ right to vote and certify unions after only a card-check campaign. The Employee Free Choice Act would do this and more.”

### **How Would It Work?**

First of all, EFCA would require the National Labor Relations Board to certify a union after a majority (one more than half) of a firm’s workers had signed union cards indicating their interest in unionization. This would put an end to almost all organizing elections, depriving workers of their right to vote on whether they actually wanted a union in their workplace.

Second, the EFCA would require companies and these newly certified unions to enter binding arbitration if they could not reach agreement on an initial contract after 90 days of negotiations. (One can imagine the “problems” that might arise to delay negotiations for 90 days.) Neither companies nor employees could appeal the arbitrator’s ruling, and the contract imposed would last for two years.

Third, H.R. 800 would dramatically increase the penalties for unfair labor practices committed by employers, *but not unions*, during an organizing drive.

Do you get the picture? EFCA is structured to deprive workers of their opportunity, in virtually all organizing drives, *to actually vote on unionization*. Under new EFCA rules, once the union had secured signed cards from a simple majority of workers (by one method or another), there would be no election. It would be a “done deal.”

Union activists claim the Act would protect workers’ freedom to freely choose to join a union. However, it doesn’t take a mental giant to recognize that the workers’ best defense against harassment and intimidation by

either a union or an employer is a secret-ballot election in which neither the union nor the company knows how any individual worker voted.

### **The Case Against Card-check**

America's labor laws are based on the principle that workers should have the freedom to decide whether to bargain collectively with their employers.

Under current law, union organizers can request an organizing election once 30 percent of a company's workers have signed cards indicating their interest in unionization. The National Labor Relations Board (NLRB) then orders that a secret-ballot election be held. These elections usually take place 39 days after the NLRB receives the cards. Once the NLRB certifies the union as the employees' exclusive representative, the employer and the union begin negotiating a collective bargaining agreement. Through a process of mutual give and take, the two sides reach an agreement over wages and working conditions.

For obvious reasons, unions find it much easier to sign up workers when workers' choices are made in public. A company may always request a private vote to confirm that its employees actually want to unionize, and companies usually insist on giving their workers the privacy of the voting booth and refuse to recognize unions without an election.

*But all that is set to change if EFCA is passed by Congress.* EFCA would replace the private ballot with publicly signed cards. If organizers collect cards from a simple majority of workers, *all workers must join the union without a vote.*

With guaranteed certification under card-check (just a simple majority of signatures needed) organizers would never need to call for an election. Workers would lose their right to a private vote as soon as union organizers collected cards from just one more than half the employees. What a deal for the union organizers—and what a tempting set-up for coercion and intimidation!

### **Other Reasons to Protect the Private Ballot**

A private ballot election ensures that workers can hear both sides, have time for reflection, and then vote their conscience without pressure or fear of retaliation. These safeguards disappear when workers must publicly sign a card. For obvious reasons, public card-check does not gauge accurately whether a majority of workers actually *want* to join a union.

A union has a direct financial stake in the outcome of an organizing drive. If the workers organize, the union will collect 1 to 2 percent of their wages in dues. These high stakes lead some organizers to cross the line and threaten workers who refuse to sign union cards.

In a card-check campaign, groups of organizers meet with individual workers at their homes or elsewhere, and the objective is to get a signed card. It is naive to think that organizers simply present the arguments pro and con, and then ask for a worker's support. Because the door is wide open to various kinds of manipulation, the employee's signature on an authorization card may not reflect an employee's free choice at all.

Understandably, union organizers tout the benefits unions bring members, but they avoid mention of the six-figure salaries that union bosses pay themselves from members' dues, the fact that hundreds of union officials have been convicted of racketeering in recent years, or the role that union demands have played in driving some companies into bankruptcy. Instead, union organizers make their canned pitch and ask workers to sign their cards immediately. If EFCA card-check organizing were allowed to become the norm, workers would never really have the opportunity to make informed decisions.

With card-checks, union organizers know who has and has not signed up to join the union, allowing them to re-contact and pressure reluctant workers who did not sign after the first sales pitch. Worse than that, some organizers go beyond pressure to outright harassment. The Sherk/Kersey report gives documented details of abuses that occur in the process of union organizing, even though they are illegal under current National Labor Relations Board regulations. They also point out through extensive documentation that many of the arguments that supporters of EFCA make for its passage are simply not supported by facts.

### **Unions Don't Want Elections in the Workplace**

Union organizing manuals have long cautioned organizers that a worker's signature on a union card does not mean that he or she wants to join a union or will vote for the union in the organizing election. The AFL-CIO's *1961 Guidebook for Union Organizers* states:

“NLRB pledge cards are at best a signifying of interest at a given moment. Sometimes they are signed to ‘get the union off my back’... Whatever the reason, there is no guarantee of anything in a signed NLRB pledge card except that it will count towards an NLRB election.”

It is these NLRB elections that union organizers don’t want. They regularly submit publicly signed authorization cards from a majority of a company’s workers only to see the workers reject the union in the privacy of the voting booth. In a study of organizing campaigns, the AFL-CIO admitted, “[I]t is not until the union obtains signatures from 75% or more of the unit that the union has more than a 50% likelihood of winning the election.”<sup>1</sup> Obviously, that can translate to a lot of pressure to get signatures.

It is difficult to argue for stripping workers of their right to a private vote. Therefore, in order to justify putting an end to organizing elections, unions argue that the elections take place “in an inherently and intensely coercive environment” and are stacked against workers who want to join a union.

However, facts show that employers rarely violate the law in organizing drives and that, if anything, NLRB election procedures favor unions: Unions actually win 61 percent of all organizing elections.<sup>2</sup> But Big Labor wants the other 39% as well; and they intend to use EFCA as their tool to vastly increase their power by organizing as many American workers as possible—by whatever means are available.

### **Union Bogeyman: Illegal Firings**

Union activists argue that Congress should replace organizing elections with card-checks because employers regularly fire union supporters during organizing election campaigns in order to intimidate the remaining workers. The Heritage report shows this claim is false. However, if it were true, card-checks would actually make it easier for companies to fire union supporters. If the practice of firing workers who want to unionize is widespread, then the government should not strip those workers of their privacy by informing employers of exactly who has elected to unionize. The fact is, the NLRB found substantiated evidence of illegal firings in just 2.7 percent of organizing election campaigns that took place in a particular year that was under question.<sup>3</sup>

Unions justify their claims of widespread illegal firings by using unreliable data from biased sources and by misrepresenting government statistics. Their claim that companies fire workers in one-quarter of organizing drives, for example, comes from a survey of union organizers that was conducted by a former union organizer.<sup>4</sup> Union organizers are not an impartial source, and actual government investigations reveal little evidence of the employer misconduct they allege.

### **Other Claims by Unions**

- Labor activists claim that employers regularly attempt to intimidate workers by threatening to shut down or move plants if workers unionize, and they argue that card-checks would curtail this intimidation. Such threats are already illegal and are grounds for setting aside an election. Abolishing secret ballot elections does not address the problem of employers making empty threats to their workers. Companies can deliver illegal threats just as effectively whether employees vote in private or sign up for a union in public, and union activists know this.
- Unions also allege that, in addition to illegally threatening and firing workers, employers use legal maneuvers to delay holding organizing elections. Sherk and Kersey’s research shows those claims are false: The typical organizing election takes place 39 days after union organizers file an election petition. Over 94 percent of organizing elections take place within eight weeks after organizers have filed a petition.

Eight weeks is not an unreasonable delay for a decision that demands consideration by workers and that could affect them for years. Congress should not strip workers of their right to a private vote because labor activists think eight weeks is too long to wait for an organizing election.

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<sup>1</sup> AFL-CIO, *AFL-CIO Organizing Survey*

<sup>2</sup> National Labor Relations Board, *Seventieth Annual Report of the National Labor Relations Board*, Table 13.

<sup>3</sup> Justin Wilson, “Union Math, Union Myths,” Center for Union Facts, June 2007, at [www.unionfacts.com/downloads/UnionMathUnionMyths.pdf](http://www.unionfacts.com/downloads/UnionMathUnionMyths.pdf).

<sup>4</sup> Kate Bronfenbrenner, “Uneasy Terrain: The Impact of Capital Mobility on Workers, Wages and Union Organizing,” September 6, 2000, at <http://digitalcommons.ilr.cornell.edu/reports/3>.

- Unions claim that employers have an unfair advantage during organizing election campaigns because unions and employers do not have equal access to workers. This argument is also misleading, according to Sherk/Kersey research. The law balances the rights of unions and employers during organizing elections to ensure that workers can hear from both sides. In fact, the government requires companies to provide union organizers with a complete and accurate list of all employees' names and addresses within seven days of the NLRB's order to conduct an election. Union organizers are free to contact employees at home or by phone to make their case, but employers may not do so. EFCA would actually make it more difficult for unions to contact workers to make their case. If organizers did not file for an election, employers would have no obligation to provide them with the list of employee names and addresses. Without that list, organizers would have less access to workers to argue in favor of joining a union.
- Union activists argue that most American workers actually want to join a union. They cite polling data indicating that 53 percent of non-union workers, or 57 million workers, would like to belong to a union.<sup>5</sup> However, those numbers are highly suspect. The Sherk/Kersey research showed that the AFL-CIO commissioned the poll, and Peter Hart, a Democrat pollster, conducted it. The poll itself remains unpublished, and the AFL-CIO has not revealed the questions or polling methodologies used. Publicly published polls conducted by nonpartisan pollsters show the opposite: Relatively few non-union workers want general representation. Zogby polling shows that, by a margin of more than 3 to 1, non-union workers do not want to belong to a labor union.<sup>6</sup>

### **Workers Disagree with Union Claims**

Union activists claim they speak for American workers, but workers disagree. Zogby polling shows that 71 percent of union members believe that the current private-ballot process is fair, versus only 13 percent who disagree. Furthermore, union members do not want to lose their right to a private vote; 78 percent of union members favor keeping the current system over replacing it with one that provides less privacy.<sup>7</sup>

The vast majority of Americans side with union members—not with union bosses. Fully 89 percent of Americans believe workers should have the freedom to keep their views on organizing private.<sup>8</sup>

In addition, a large majority of workers also oppose any effort to replace organizing elections with publicly signed cards. A recent McLaughlin poll indicates that 79 percent of Americans oppose card-check legislation that would end private-ballot elections.<sup>9</sup> About 66 percent of *union members* agree and think that companies should never be allowed to skip private-ballot elections before they recognize a union.<sup>10</sup>

### **The Real Goal: Improve Union Finances and Increase Union Power**

Unions know that private ballots best reveal workers' desires and that card-check organizing would not address what they claim are shortcomings of private elections. Yet they still favor card-checks over private ballots. Why? Because their real objective is to reverse the labor movement's long-term decline. Unions are harder to sell to workers today than they were in the manufacturing economy of two generations ago. Today's jobs require unique skills and talents that do not lend themselves to "one size fits all" union representation. Most workers in the modern economy do not feel that union membership provides benefits worth the 1 to 2 percent of their salary that they would have to forfeit in union dues.

<sup>5</sup> AFL-CIO, *The Silent War*, p. 14.

<sup>6</sup> These data come from a Zogby International poll of 803 employed Americans, conducted August 22-25, 2006, for the Public Service Research Foundation with a margin of error of plus or minus 3.5 percent. Fully 74 percent of non-union workers say they would not "personally like to be a member of a labor union," while 20 percent would. See full poll results released by the Public Service Research Foundation at [www.psr.org/info/NationwideAttitudesTowardUnions2006.pdf](http://www.psr.org/info/NationwideAttitudesTowardUnions2006.pdf).

<sup>7</sup> These data come from a Zogby International poll of 703 union members, conducted in June 2004 for the Mackinac Center for Public Policy with a margin of error of plus or minus 3.8 percent. See Joseph Lehman, "Union Members' Attitudes Towards Their Unions' Performance," Mackinac Center for Public Policy, Policy Brief S2004-05, September 1, 2004, at [www.mackinac.org/archives/2004/s2004-05.pdf](http://www.mackinac.org/archives/2004/s2004-05.pdf).

<sup>8</sup> Data from a poll of 1,000 likely general election voters, conducted for the Coalition for a Democratic Workplace during January 28-31, 2007, with a margin of error of plus or minus 3.1 percent. See McLaughlin & Associates, "American Want to Protect a Worker's Right to a Federally Supervised Private Ballot Election When Deciding Whether to Organize a Union."

<sup>9</sup> Ibid.

<sup>10</sup> Lehman, "Union Members' Attitudes Towards Their Unions' Performance."

Union membership has fallen steadily since the 1950s. U.S. Department of Labor statistics show that today, just 12 percent of workers belong to unions—less than at any point since Franklin D. Roosevelt’s Administration. Obviously, fewer union members means less money and less political power for the unions.

Unions want to reverse that trend, and they know that card-check allows them to organize workplaces without workers’ majority support. Unions want the Employee Free Choice Act because it would make it easier to recruit dues-paying members, not because it would somehow defend workers’ right to choose freely to unionize.

### **Conclusion**

This is a radical piece of legislation. Like its disingenuous name, the arguments being made by Big Labor to convince American workers that EFCA is a needed and helpful change are equally disingenuous, even deceitful.

Instead of passing this bad legislation, Congress should:

1. Protect workers’ privacy during organizing drives and guarantee every worker the right to vote in a private-ballot election;
2. Ensure that workers hear from both sides during an organizing drive and have time to reflect on their choice so they can make an informed decision; and
3. Protect the right of workers and employers to bargain collectively without having government officials unilaterally impose employment contracts on them through binding arbitration.

The Employee Free Choice Act does not do what its sponsors claim it would do. It strips workers of their rights and their privacy, takes away their ability to bargain with their employers, exposes them to abuse and intimidation, and drags us toward the most oppressive government control over the American workforce in the history of our nation.

**Action:** Contact your representative in Congress and urge them to reject this dangerous piece of legislation.