Myths About the Employee Free Choice Act

Despite the need for reform, critics of EFCA continue to misinform the public about the bill and hide the serious shortcomings of current labor law. In an attempt to set the record straight, following are myths and realities of the Employee Free Choice Act.

MYTH: *EFCA will prevent the use of secret-ballot elections.*

REALITY: EFCA does not strip workers of their right to choose a secret-ballot election to decide whether to select — or not to select — a union representative. EFCA simply gives workers the additional option of selecting a union representative by majority sign-up.

Under the National Labor Relations Act (NLRA), there are three ways for workers to form a union:

1) By secret-ballot: The National Labor Relations Board (NLRB) will conduct a secret-ballot election to select a bargaining representative if at least 30 percent of workers have signed a petition or authorization cards in favor of a union. If a majority of workers voting select a particular union, the NLRB will certify that union as the employees' bargaining representative. EFCA does not change this process.

2) By voluntary card-check recognition: An employer can voluntarily decide to recognize a union representative if a majority of employees have signed authorization cards in favor of the union. EFCA does not change this process.

3) By NLRB-ordered recognition: As a last resort, the NLRB can order an employer who has engaged in unfair labor practices (that make a fair election unlikely) to recognize a labor union if a majority of employees have signed authorization cards in favor of the union. EFCA does not change this process.

EFCA would simply add a fourth choice for workers seeking to form a union. The legislation would require the NLRB to certify a union representative if a majority — more than half — of workers sign authorization cards in favor of the union.

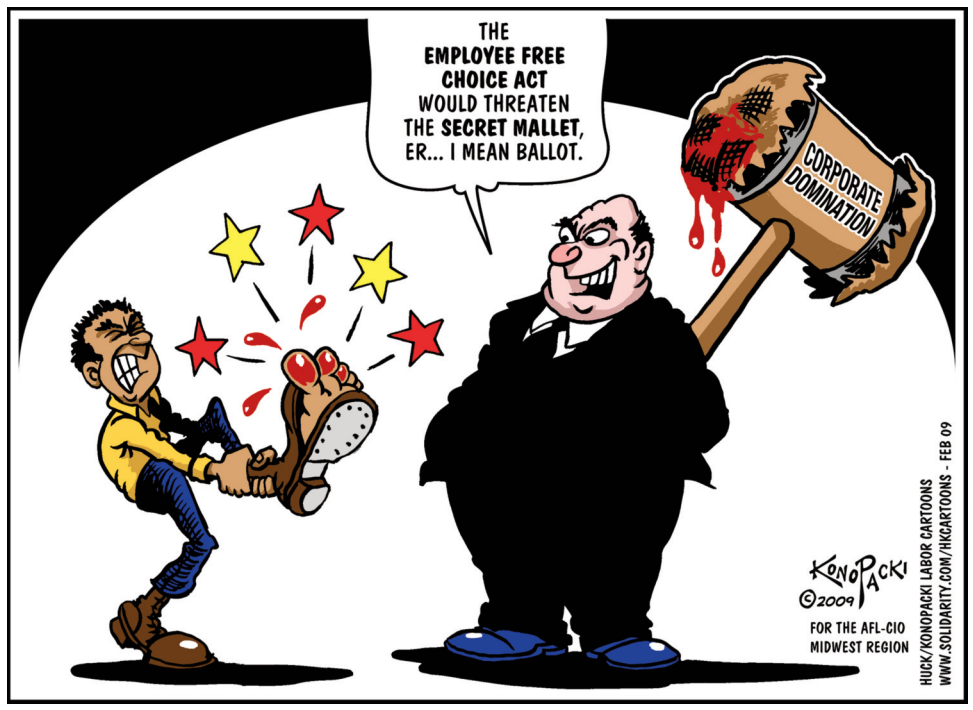
The majority sign-up, or "card-check," option would streamline the union selection process for workplaces that have a majority of workers who want to join a union. This is the same majority that would be voting in a secret-ballot election. Moreover, the majority sign-up process already exists, but only if the employer chooses to recognize it. EFCA would extend the right to select a union representative via the majority-sign up process to workers themselves.

MYTH: *Secret-ballot elections are the fairest way to select union representation.*

REALITY: Secret-ballot elections in the union context can leave employees vulnerable to virtually un-checked employer intimidation and coercion.

Under current law, once workers have petitioned the NLRB to hold a secret-ballot election, there is no set timetable for holding that election. Employers who are determined to prevent the formation of a union often use this period to threaten, discriminate against, demote, dock the pay of, and even fire pro-union employees. Studies have shown that one-quarter of private-sector union organization drives result in employee firings, and one out of every five workers who openly advocate for a union is fired. Unfortunately, current law includes weak remedies that fail to deter employers from engaging in these practices. At best, the NLRA will order the employer to stop its wrong-doing and reinstate an improperly fired employee and force the employer to pay back-pay, that is, unless the employee has found a job in the interim.

EFCA would toughen the penalties against employers who engage in these unfair labor practices. In addition to ordering an employer to stop the practices, the legislation would require employers to pay employees who are fired as a result of union organizing activity, during an organizing campaign or first contract drive, treble damages (i.e. back-pay, plus liquidated damages two times that amount). The bill would also impose civil fines of up to $20,000 per violation against employers who willfully or repeatedly violate workers' rights in forming a union.



MYTH: *Secret-ballot elections are the most democratic way to choose a union.*

REALITY: Though EFCA gives workers the choice to select a secret-ballot election or the majority sign-up process, these secret-ballot elections are nothing like our federal, state, or local candidate elections. The NLRB's election process, for example, stifles free speech and democratic debate by restricting the ability of unions and pro-union workers to communicate with employees, while allowing employers free access to workers every day.

Unlike other elections, where candidates are allowed equal access to voters during the campaign, current labor laws allow employers to bar unions from the workplace and refuse access to employee contact information until just days before the election. While strict limits apply to when and where pro-union employees can campaign to form a union, employers can require workers to attend anti-union meetings during work hours, one-on-one or in a group. Employers may also direct supervisors, who control pay and promotion, to deliver anti-union messages to workers and attach anti-union literature to paychecks. A recent survey found that employees who have gone through the NLRB election process are twice as likely to report employer coercion as those who participated in a majority sign-up process.

EFCA would give workers the option to choose a different, simpler, and fairer method of union selection — majority sign-up, which reflects a key tenet of Democracy — majority rule.

MYTH: *Majority sign-up is untested and will increase intimidation and harassment of workers by labor unions.*

REALITY: Majority sign-up has been well-tested for over 70 years. Further, under EFCA, worker intimidation and/or coercion by any party, including unions, will remain strictly prohibited.

Majority sign-up is nothing new. Workers have been forming unions through majority sign-up since 1935. The method for obtaining authorization cards is already established and used via the voluntary card check recognition and the secret-ballot election processes. Indeed, more workers form unions via card check than via secret-ballot elections. In 2004, approximately 375,000 workers joined AFL-CIO unions through majority sign-up, while approximately 73,000 workers used the NLRB election process. (AFL-CIO, "Over 70 Years of Experience with Majority Sign-up.")

While the critics of EFCA claim that, under the legislation, unions may intimidate workers, under current law, employers, employees, and unions are barred from engaging in unfair labor practices. Improperly obtained authorization cards are already invalid and cannot be counted towards majority sign-up. Moreover, in more than 70 years, there have been very few instances of fraud or misrepresentation in obtaining card signatures. Nevertheless, to ensure the integrity of the card check process, EFCA would require that the NLRB develop guidelines for selecting a bargaining representative via majority-sign up, including model language for authorization cards and procedures to verify the validity of authorization cards.

MYTH: *EFCA would require "public" union card signings.*

REALITY: EFCA would preserve current confidentiality requirements, which require the NLRB to keep authorization cards and the identity of signers confidential to protect workers from employer retaliation.

MYTH: *EFCA will "silence" employers.*

REALITY: Nothing in EFCA alters the rights of employers to speak out against a labor union.

Under the legislation, employers would still be free to campaign against a union, as long as they do not threaten or intimidate workers. EFCA only strengthens penalties for employers who engage in unfair labor practices.

MYTH: *EFCA's mediation/arbitration guidelines will force unwanted contracts on employers and employees.*

REALITY: EFCA does not force unwanted first contracts on parties acting in good faith; the legislation, however, would give parties an incentive to come to the bargaining table.

Under current law governing the first contract process, there is no effective penalty for refusing to bargain with newly certified union representatives. As a result, employers may "stonewall" the first contract and effectively block the benefits of a labor union. A recent study found that 34 percent of union election certifications do not result in a contract for workers.

To get parties to the table, EFCA provides a starting schedule and a framework for negotiations. The parties have 90 days to bargain on their own and may extend negotiations for as long as they need to. If the negotiations are unsuccessful, either party can seek help from a mediator with the Federal Mediation and Conciliation Service (FMCS), which enjoys an 86 percent success rate. If after 30 days mediation fails to result in a first contract, FMCS can refer the dispute to an arbitration panel, but the parties can still extend the period by mutual agreement or agree to return to the bargaining table. Only if the parties agree to arbitration and arbitration fails to result in a first contract will the arbitration panel impose contract terms on the issues the parties have not yet decided. Even then, the contract is only binding for two years and can be amended by written consent of the parties.

Did You Know?

34%

of workers lack a collective bargaining agreement one year after voting for union representation, due to weak labor law enabling employers to avoid bargaining with employees.