

Employee free choice act



Seneyda Soler Professor Lilly Topics in Labor Laws April 1, 2013 The Employee Free Choice Act has been a hot topic within the past few years. It has been pushed through congress several times, with hopes to change the way unions get organized. Within the next few pages, this paper will describe what a union is and how it is started, what the Employee Free Choice Act entails, how it will change our system, and the arguments for and against passing this bill. The EFCA is a system that will protect employee rights and break the bad habit of unfair union elections that our legal system has allowed throughout the years.

A union is an organized group of workers who band together for mutual aid and protection, collective bargaining, and safe working conditions. There are several steps to follow when starting a union. The first step in starting a union would be to gather a small committee of employees that are enthusiastic about the idea of starting a union. While starting this committee it is crucial that you keep the process on the down low; the longer it takes for management to find out, the least amount of time they have to try and sabotage your attempt.

Next, you must choose whether you want to be affiliated with a large international union, or start an independent union. Independent unions are protected the same by labor laws just as if it were a largely known international union. When making this decision, it is important to muster up information and get ideas on how to properly organize and what resources are best to use. After a union is chosen, you must determine the bargaining unit. Determining a bargaining unit is basically stating who will and who will

not be able to join the union. Once a bargaining unit is decided, it is determined by the National Labor Relations Bureau.

During this process employees must sign union authorization cards. An authorization card is a system used to show that the employee who signs it wants to be represented by the union during negotiations about wages, benefits, and working conditions. In order for the card to be validated, it must be signed and dated. These cards are confidential and will not be seen by the employer. At least one third of the employees in the bargaining unit must sign the authorization cards to be granted an election for the certification of the union by the NLRB.

A formal letter is then written to management to inform them of your request to have the union recognized. After the submission of the authorization cards, the NLRB will schedule a hearing to determine the bargaining unit. If the bargaining unit is made final, the NLRB will schedule to hold a secret ballot election. A secret ballot is an election held to ratify the number of employees who vote " yes" to have a union represent them during contract negotiations. Once the union is recognized, the employer must engage in contract negotiations regarding wages, benefits, and working conditions.

Although it may sound simple and easy to start a union, there are many bumps and blocks throughout this process, usually because the employer is not willing to cooperate and refuses to recognize the union. A reform, called the Employee Free Choice Act, was created to ease the process and reduce blockage created by uncooperative employers. The EFCA, is a reform that helps protect employee rights to band together in a union and bargain

collectively with their employer during contract negotiations. The act is meant to restore and maintain a balance within the union election process.

It gives employees the choice to organize a union through a majority sign-up process, and eliminate the intimidation factor imposed on employees when entering a secret ballot. This system is simple. We raise penalties when the law is violated and when two parties cannot come to an agreement within the set time period both sides agreed on, mediation and arbitration options are introduced. Over the years, it has shown that corporations are not the only problem with law violations, but that our legal system has made it a habit to allow unfair elections.

Recent studies show that more than ninety percent of employees are “legally forced” to attend anti-union meetings, such as private conversations between employee and supervisor. If the act is passed, there would be three major provisions that would change the system now to the way it already was. First, the bill would remove the right of the employer to call for a second ballot when more than half of the employees have already shown support for the union through authorization card signatures.

This is supported through section 9(c) of the National Labor Relations Act, which states that once a union is recognized by the NLRB, " the board shall not direct an election but shall certify the individual or labor organization as the representative... ". Without the act, this right makes it difficult for unions to proceed with their election process because calling for a second ballot would prolong the course of the unions movement towards being recognized as the official union representative. Second, the bill would require both parties, union and employer, to attain a collective agreement within 90 days.

If the agreement is not reached, the two parties may contact the Federal Mediation and Conciliation Service for assistance in mediation for the dispute. (web. thomas. loc. gov.). Mediation is when two parties cannot come to a collective agreement and a neutral third party is used to assist the process, by which, eventually reaching a mutual agreement. If mediation fails and an agreement is not reached within 30 days, the union and employer would be obligated to enter binding arbitration to settle the dispute. (web. thomas. loc. gov.).

Through arbitration, a single third- party makes reviews and settles the dispute with a final decision. The arbitrators decision is official and cannot be appealed for a period of two years, unless, both parties amend it through a written consent letter. Third, the bill would increase penalties on employers who impose discriminatory actions towards employees associated with union involvement. Section 8 of the National Labor Relations Act states: (i) discharged or otherwise discriminated against an employee in violation of subsection (a)(3) of section 8; ii) threatened to discharge... in violation of subsection (a)(1) of section 8; (iii) engaged in any other unfair labor practice within the meaning of subsection (a)(1) that significantly interferes with, restrains, or coerces employees in the exercise of the rights guaranteed in section 7;. (web. thomas. loc. gov.). Without this section put in place, employers are finding loop holes where they could fire an employer for a minor cause, when in reality they are actually trying to fire the " ring leader".

According to section 8(a)(3) of the National Labor Relations Act, any employer who discriminates against an employee is in violation of subsection (a)(3) of section 8. During the period in which the employee is seeking

representation, and the period after being recognized until the first collective bargaining contract was entered; the employee may receive back pay for that time period and may receive double that amount as liquidation damages. (web. thomas. loc. gov.). The argument against using authorization cards versus a secret ballot is an ongoing debate.

Those who prefer the sign-up process believe that the current process through a secret ballot is not secret. Employers use "one-on-one" meetings to intimidate and eliminate their support for unionization. These meetings are usually governed by a direct supervisor; an individual with the most authority over an employee's job. During a meeting, the supervisor pays close attention and takes note of their employee reactions, making it easy for the employer to determine and track employee support for the union, therefore, making the secret ballot not secret anymore.

Critics who oppose the sign-up process say that a secret ballot is the most preferred and suitable way of establishing the correct number of majority support. Card check elections may lead to coercion amongst union organizers and the system would not protect the privacy of the employee's decision. Another argument states that an employee will sign an authorization card not because their intentions are to vote for the union, but to elude from offending their fellow co-worker who asked them to sign-up. Sometimes it may be to simply brush the person off so the employee is not bothered by them anymore.

Many believe a secret ballot may be the most accurate way of determining an employee's admiration, rather than a collection of cards with signatures that could possibly be forged. Passing the Employee Free Choice Act may be

the best approach to protect the rights of the employees. It is a way to provide checks and balance between supervisors and employee during a union sign up process. It will remove the intimidation factor and give a sense of ease for workers knowing that they can express their views without being harrassed by an employer. The EFCA will provide better protection and break our legal systems cycle of unfair union elections.