



Florida Gulf Coast
Chapter

Employee Free Choice Act Toolkit

The ABC Florida Gulf Coast Chapter is providing this toolkit to prepare its members for a potentially significant change to labor relations in the Commercial Construction industry. This toolkit will give you a basic understanding of the threat the Employee Free Choice Act poses to your business, tools for opposing its passage, and basic practices to blunt its effect should it be enacted.

What is the Employee Free Choice Act?

As you are aware, the conduct of labor relations in the United States is governed by the National Labor Relations Act which has remained fundamentally unchanged since its passage 70 years ago. During those 70 years, employers and unions have developed well-defined standards regulating their interaction that protects *both* employees' right to unionize and an employer's rights to direct and manage his or her business.

The Employee Free Choice Act will fundamentally alter the balance struck by the National Labor Relations Act by putting Big Labor's thumb on the scale of justice. In its current operation, the National Labor Relations Act instructs the National Labor Relations Board to conduct a secret ballot election among employees after a union proves that at least 30% of those employees have submitted a signed card indicating they are interested in joining a union. This election is generally conducted 60 days after the union makes the required showing of interest which allows both the employer and the union to make its best case to the voting employees. The NLRB then monitors the secret ballot and each employee is permitted the opportunity to vote without any influence from either side and without fear that either side will learn of his or her vote and take retaliatory action.

It should come as no surprise that, in an era that provides employees unprecedented legal protections, unions are losing these secret ballot elections. In fact, just 12 percent of American workers are members of unions, the lowest percentage since the 1940s. This poses a serious problem for the leaders of Big Labor whose salaries are funded solely by union member dues.

Instead of developing new ideas to convince employees that they need union representation, Big Labor instead decided to cash in years of political fundraising and eliminate 70 years of labor relations history to tilt the system in its favor.

How does the Employee Free Choice Act change current law and how will it affect my business?

The EFCA will change labor relations in four key areas. It makes it easier for unions to gain representative status in a workplace, decreases freedom in bargaining after representation has been obtained, increases government intervention in employer-union dealings, and increases penalties for violating the intricate and complicated laws governing this process.

The specific changes are:

1. Secret Ballot Elections will be eliminated:

Obviously, this provision is the most fundamental change imposed by the EFCA. Under this proposed system, no secret-ballot will be required if a union can get at least 51% of the employees to sign union-interest cards. Big Labor's argument that this provision is merely a common-sense rule intended to save the time and expense of a secret ballot election is misleading at best.

Union signature cards are a terrible gauge of a workforce's interest in union representation. Employees sign interest cards for many reasons even when they don't want union representation. For example:

- An employee that does not want union representation might sign an interest card because of social pressure imposed when a co-worker friend asks the employee to sign.
- Employees also sign interest cards so belligerent union organizers will stop visiting his or her house or calling during dinner.
- An undecided employee may also sign an interest card based solely on the one-sided promises from a union organizer only to decide it is in his or her best interest to avoid unionization after hearing the employer's side of the story.

Under the current system, all the employees above have the opportunity to vote against union representation during the secret-ballot election conducted by the NLRB. The campaign period allows employees the opportunity to evaluate both choices equally and the privacy of the voting booth removes all social pressure from the decision making process.

If the Employee Free Choice Act becomes law, employees will no longer be protected by the voting booth and will be subject to severe coercion during union organizing campaigns!

2. Contract terms will be determined by arbitrators:

Once a union coerces 51% of your employees to sign interest cards, you will have 90 days to negotiate every term of employment for those employees. If you do not reach agreement in that 90-day period, *you will be forced to appear before a Federal Arbitrator who will then have sole discretion to determine every term of the collective bargaining agreement that will govern every aspect of your employees' working conditions and pay for two years.*

It is hard to imagine a situation under this framework where a contract could be reached during the 90-day period. The union will have no incentive to make any concessions in exchange for employer concessions, which is the normal practice of collective bargaining. In fact, this system encourages the union to make its demands as ridiculous as possible to force the bargaining process into arbitration. Oftentimes, arbitrators just split the baby when resolving disputes so as not to anger either party. Thus, the union will make its demands as ridiculous as possible to move the arbitrator's midpoint in its favor.

This means, that important business decisions about your employees, including promotion, pay, and benefits, will be made by a third-party you have never met and who does not know anything about your company!

3. Employees terminated for any reason during an organizing drive or during negotiations must be reinstated until the NLRB can review the terminations:

Under current law, an employee alleging that he or she was terminated in retaliation for participating in a union organizing campaign or in collective bargaining can file a complaint with the NLRB. The NLRB then schedules an evidentiary hearing and if the NLRB determines that the employee was terminated for an improper purpose, the employee is reinstated and given backpay for the period of time he or she missed.

Under the EFCA, any employee that files such a complaint with the NLRB will be entitled to *immediate reinstatement* and allowed to continue to work for the employer until the NLRB can conduct its evidentiary hearing. If the NLRB determines the employee was not terminated for an improper reason, only then may that employee be terminated. *This provision effectively prevents an employer from firing any employee for any reason during an organizing campaign or collective bargaining negotiations!*

4. Subjects employers to a \$20,000 penalty for any unfair labor practice:

Finally, the EFCA also increases the penalties for employers that commit an unfair labor practice. This provision is troubling because unfair labor practice charges are almost certain to increase significantly if these changes are implemented. Under the current system, employers have had 70 years to learn what does and does not constitute an unfair labor practice. However, the EFCA will impose such serious changes to that system, it will be very difficult for employers to know what practices are, in fact, prohibited thus unfair labor practice charges should increase. *This increased penalty is almost certainly intended to discourage employers from finding creative ways to oppose union organizing campaigns out of fear that these actions might be prohibited.*

Will the Employee Free Choice Act pass?

It depends. Generally, informed voters responding to public opinion polls are opposed to the EFCA. However, there are not very many voters informed about this bill. The EFCA's sponsors are intentionally keeping it well-below the radar so they can reap the fundraising and organizing gifts of Big Labor while avoiding the negative public attention that comes with supporting such a farce. As a point of reference, polls have shown that 89% of likely voters favor preserving workers' rights to secret ballot elections in union representation campaigns **and 78% of current union members are in favor of the same.**

Despite such widespread public opposition, the U.S. House of Representatives approved the EFCA on March 1, 2007, and sent the bill to the Senate for consideration. The bill died in the Senate because President Bush threatened to veto the matter and it was clear that the Senate did not have enough votes to override the veto. It is likely, however, that the 111th Congress will place the EFCA near the top of its to-do list when it convenes on January 6, 2009. Republican nominee for President John McCain is opposed to the EFCA while Democratic nominee Barack Obama has declared his support for the measure. It is not clear whether the bill will have enough votes in Congress to override a veto should that be needed. In the Florida Gulf Coast Region, Congresswoman Kathy Castor co-sponsored the EFCA and voted "yes" while Congresswoman Ginny Brown-Waite, Congressman Cliff Stearns, Congressman Gus Bilirakis, Congressman C.W. Bill Young, Congressman Adam Putnam, Congressman Vern Buchanan, and Congressman Connie Mack voted "no."

The best way to prevent this legislation from passing in 2009 is to raise its profile and make public issue of its serious flaws. Aside from the problems discussed above, among the central questions that must be raised when contacting your political representatives and discussing the issue with your employees must be: *If a secret-ballot election is pointless when 50% of employees sign interest cards, then why does the EFCA still require a secret ballot election when 50% of union members sign cards saying they no longer wish to have union representation?*

You read that question correctly. Among the largest improprieties perpetrated by this legislation is its failure to remove all secret ballot elections. If employees submit signed cards indicating that they no longer wish to send a portion of their wages to Big Labor, then Big Labor is entitled to the secret ballot election to determine its fate.

If the Employee Free Choice Act passes, what do I do?

Because Florida is a "right-to-work" state (meaning employees are not required to join the union to work in a unionized workplace), most commercial contractors have avoided many interactions with a union organizing campaign. If the EFCA becomes law, that will certainly change because Big Labor will have minimal expense in unionizing workforces and increasing the number of members paying dues into its coffers.

The passage of the EFCA will require you to take proactive steps to prevent a union card-signing campaign before it begins. If you wait until an organizing campaign is discovered, it will likely be too late to prevent 50% of your employees from signing an interest card because most campaigns begin quietly.

If the EFCA passes, you should take four steps to protect yourself from organization:

1. Give your employees a voice.

Studies of successful union organizing campaigns have shown that the most common reason employees approve union representation is a feeling that their employer does not value their opinions. You can counteract this motivation by taking several simple steps to offer your employees the voice a union will promise them. For example:

- Opinion Surveys;

Regularly asking your employees for input on the direction of the company or the strengths and weaknesses of management, and then *implementing some of their suggestions* will make it difficult for a union to convince your employees that an outside voice is needed to reform your company's business practices.

- Open Door Policies;

Many employers have open door policies but few actually abide by their terms. If you foster an environment where your employees honestly believe they have direct access to management to discuss any concerns, the employees are less susceptible to union promises and *more likely to give you early notice of any organizing campaigns*.

- Job Security and Discipline;

If you administer your discipline policies evenly and fairly, and give employees some opportunity to speak in their own defense, they won't feel compelled to ask a union to speak on their behalf.

- Golden Rule of Managing.

The Golden Rule of Managing is similar to the golden rule you learned from your parents. However, there is at least one added caveat that frequently irks employees and drives them towards organizers: Never rely on "because I am the boss and I say so" as a justification for a management decision. If nothing else, your employees want to know why they are being asked to do something and might join a union just to hear your reasons.

2. Educate your employees.

Union organizing campaigns are run in a fashion similar to student council campaigns. Union organizers, like your classmates that sought positions on the student council, will promise potential union members anything, including free ice cream at lunch, to convince them to sign an interest card.

You and your managers have a constitutional right to speak out against any potential organizing campaign and, given the danger posed by the card check system of the EFCA, you should probably begin informing your employees about those issues long before they ever meet a union organizer.

For example, you should inform your employees about:

- Current Company practices achieved without unionization;
- Growth prospects within Company on a career basis;
- Personal negative union experiences;
- Soliciting individuals to not sign cards;
- No guarantee of improvements in pay or even of maintaining existing levels of pay or benefits through collective bargaining;
- Even marginal increase in pay could work as a reduction after union dues are withdrawn;
- The union can force members to strike and it is legal for the employer to replace employees on strike; and
- Union representation prevents the employer from communicating directly with employees or singling out talented or hard working employees for individual advancement.

3. Review your union and solicitation policies.

Finally, you should also review your employment policies that inform your employees about union membership. This policy cannot prohibit union membership but is a good vehicle to express the information discussed in section 2 above and also to express your intention to remain union free.

It is also vital for you to update your non-solicitation policies to ensure that you can prevent union organizers from distributing union information on your worksite, on your bulletin boards, or through your email system. Non-solicitation policies must apply to all solicitations (i.e. it must treat an employee's sale of Girl Scout cookies the same way it treats union solicitations) and must be enforced evenhandedly to legally bar union solicitation on your worksite.

4. Train your managers.

Your front-line managers, such as your site superintendents, are your main defense for union organizing campaigns. Thus, it is vital to teach them how to communicate with employees and how to enforce your discipline and non-solicitation policies. Your managers should also be trained to report any sign of a union organizing campaign quickly so you can make an active response to prevent unionization before it is too late.

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