

# Is it Right for Employers and Employees?

*Severe Penalties for Employers*

*Government Arbitrators Impose Contracts*

*End Secret Ballots in Union Organizing Elections*

## Employee Free Choice Act (EFCA)

# IN THE NEWS!

Employee Free Choice Act



# MILWAUKEE JOURNAL SENTINEL

March 7, 2009

## Right to vote, privately, is fundamental

By James S. Haney

In November 2008, Americans went to the polls to elect the leader of the free world, along with members of Congress and the Wisconsin Legislature.



What if, on election day, voters arrived at polling places and were told that they could not cast a ballot privately? Or what if two or three "election organizers" visited folks at home with "ballots" and waited for the votes to be cast, watching to see how the ballots were filled out?

The reaction would be shock and disbelief. Free and open elections, with the opportunity of every adult citizen to cast a ballot in private, are the cornerstone of every democratically elected government on earth.

However, the ironically named Employee Free Choice Act, or EFCA, would deny American workers the opportunity to cast a ballot in an election to determine whether they want organized union representation in their workplace. This federal legislation would institute a card-check system for union recognition.

The bill passed the House of Representatives in the past and soon will be under consideration this session. President Barack Obama has indicated that he would sign it into law.

Since 1935, the law has stated that in order to organize a union, representatives must approach the workers and ask them to sign cards indicating that they want an election to be held. Once a simple majority of workers sign an authorization card, the National Labor Relations Board, a federal agency, holds an election allowing all the workers in that workplace to cast a ballot privately - just like in any election to fill government offices.

EFCA would short-circuit this by abolishing the private balloting process. Under this bill, union representatives would meet with workers and ask them to sign authorization cards. Once a simple majority of the workers sign cards, then the union would be automatically recognized and become the bargaining agent for all of the work force in the bargaining unit.

Federal appeals courts have opined on the issue of union elections, with the 4th Circuit saying "it would be difficult to imagine a more unreliable method of ascertaining the wishes of employees than a 'card check.' "The 2nd Circuit Court ruled" it is beyond dispute that the secret ballot election is a more accurate reflection of the employees' true desires than a check of authorization cards collected at the behest of a union organizer."

In a public opinion survey, American voters across the board rejected EFCA by a margin of 79% to 14%. Democrats reject it by a 78%-16% margin, Republicans by an 80%-13% split and independents by 80%-15%.

Not surprisingly on this issue, a voter is a voter, and regardless of their partisan political views, Americans hold the integrity of all elections, based on the ability to cast a ballot and to do so privately, as a cornerstone of a democratic system. No less a public figure than former U.S. senator and Democrat presidential candidate George McGovern, a strong advocate for organized labor over the years, weighed in against the Employee Free Choice Act.

But EFCA is not just about how union representation is chosen. It contains a significant binding arbitration component that could impose contracts on employers and workers.

EFCA addresses the timing and manner in which contract negotiations occur if a union is authorized under EFCA. After union recognition under EFCA, if negotiations are not completed within 90 days, then either party — union or management — may call in the Federal Mediation and Conciliation Service.

If mediation does not result in a contract within 30 days, then the contract is subject to binding arbitration by government arbitrators.

This approach to contract deliberations often discourages negotiations and usually ends up placing important matters of government fiscal policy in the hands of third-party arbitrators. It is difficult to imagine American businesses, subject to binding arbitration contracts, remaining competitive in the global marketplace.

Election 2008 has come and gone. We've elected a new president and a new Congress. American workers should have the same rights as their fellow citizens to cast a private ballot in the workplace on union representation.

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# M I L W A U K E E JOURNAL SENTINEL

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## Keeping the ballot secret does protect workers

*The Employee Free Choice Act could hurt more workers than it helps. Congress should kill this bill or insist on reasonable compromise.*

Let's get one thing straight: Unions have been good for Wisconsin workers. There are plenty of statistics that back up this claim, but we'll focus on one in particular: Union members last year had median weekly earnings of \$886, compared with \$691 for nonunion workers, according to the federal Bureau of Labor Statistics.

So more unionized workers would be even better, right? Sure, but not at the expense of worker rights and not too much at the expense of the companies that provide the paychecks.

We believe that the woefully misnamed Employee Free Choice Act could well hurt the very workers in Wisconsin that it professes to help.

The bill, which passed the House in 2007 but died in the Senate, would establish a card-check system. While advocates claim this isn't the case, this new system would effectively end the secret ballot and radically alter union organizing.

It would work this way: Organizers would circulate cards indicating a wish to unionize. Once they had obtained the signatures of a majority of a proposed bargaining unit, they could organize it. Current law says that once 30% of a bargaining unit signs cards, a federally supervised election can be held — with a secret ballot.

Congress, which is expected to take up the measure sometime this spring, should not throw out decades of adherence to the secret ballot. While card check may well lead to more unions, it also may well lead to more intimidation and coercion on the part of union organizers. Workers' intentions would no longer be private, which would open them to all manner of mischief from the overzealous, including the risk of forgery or fraud. The new system would limit management's ability to make its case, and because a campaign could be conducted secretly, it also might limit the ability of members of a bargaining unit to have a say in the process.

The bill is onerous in other ways. It imposes federally supervised arbitration on the process. After only 90 days, either side could ask for mediation — and federal arbitration after just 30 days more. The arbitrator could impose a first contract that would last two years. While arbitration has a place, it's odd that after just three months of talks, negotiators could be allowed to throw up their hands and declare an impasse. Contracts, particularly first contracts, can be complicated and dicey to reach. This element of the bill overreaches.

The bill also would strengthen penalties for companies that break the law - which makes sense if management chicanery is what has been holding back unions. But we urge Congress to be reasonable. All unfair labor practices — by employers and unions — should be subject to severe penalties.

Yes, management has some inherent advantages. Its language can be threatening — warning of closure, a plant move or job losses if contracts are signed. Employees can be compelled to attend sessions in which companies make their cases, while union meetings are voluntary. Coercion can occur and be difficult to prove, because companies either have on staff or can bring in expert help to combat union organizing. Peer pressure from union members can be coercive, too, but doesn't rank with the threat of job losses — whether the threat is credible or not.

But the solution isn't taking away workers' rights to choose by secret ballot. That is attacking the solution, not the problem. Unions actually are winning more elections lately. In 2008, unions won 67.4% of federally supervised elections, according to statistics compiled by the Bureau of National Affairs Inc., a specialized publishing firm. That compares with a 60.9% win rate in 2007.

Overall, the BLS reports, union membership rose more last year than at any time in the past quarter-century. And contrary to some union claims, initial elections are held relatively quickly after a petition is filed. In an October report, the National Labor Relations Board said that 95% of all initial elections were conducted within 56 days.

Public-sector union membership remains high, but not so for the private sector, where only 7.6% of the work force is unionized. That's far below the high-water mark of 36% in the 1950s. But is this because companies are unfairly hampering organization? Or is it because the megatrends that are affecting the entire U.S. economy also are affecting unions? The expansion of free trade across borders and the trend toward globalized companies - even small manufacturers often have overseas operations — make it possible for companies to move jobs easily to lower-cost regions.

We don't like this trend. We understand that it is hollowing out some of our industries. But it's reality. And stacking the deck for organized labor likely would have the unintended consequence of pushing even more companies offshore, particularly in this troubled economic time.

Unions are losing ground for a variety of reasons. Some younger workers likely don't see the payoff from union dues when unions often can't keep their promises. Consider the plight of the United Auto Workers at General Motors. Others may not like the idea of burdensome work rules that can be seen as stifling individual effort. And over the years, federal law has grown more expansive in its protections of worker rights.

Unions remain an important part of the work force landscape; their pressure on management has secured important gains for workers. But union organizers have many tools at their disposal already, and recent statistics, particularly among public-sector unions, indicate they are using them to good advantage. The answer, then, is not a leg up for big labor — which spent millions of dollars to help elect President Barack Obama.

The answer is strengthening penalties for misbehavior while preserving the central tenet of the secret ballot, which protects employees from both the boss and the union boss. Workers have the right to organize a union; they also have the right to be free from a union. Card check unfairly tips the scales at an inopportune moment.



# Leading Newspapers Oppose EFCA

## Where do the Nation's Papers Stand on Card Check?



Across the country, over 60 newspapers have editorialized against the Employee Free Choice Act. Most editorials note that "EFCA would effectively strip workers of their right to a private and secret ballot in voting for the formation of a union." Below is a partial listing of these newspapers:

Janesville Gazette  
Milwaukee Journal Sentinel  
Wisconsin State Journal  
Minneapolis Star-Tribune  
Chicago Daily Herald  
Chicago Sun Times  
Chicago Tribune  
Investor's Business Daily  
The Washington Post  
The Wall Street Journal  
And many, many more

## WISCONSIN STATE JOURNAL

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### Protect workers' secret ballots

*A Wisconsin State Journal editorial*

When the Rev. Al Sharpton and former Democratic presidential candidate George McGovern are on the same side as Republican strategist Karl Rove and the U.S. Chamber of Commerce, the issue must cut across the political spectrum to reach a fundamental American value.

So it is with a proposal to take away the right to a secret ballot in union-organizing elections.

The proposal is wrong.

Sharpton, McGovern, Rove and the Chamber of Commerce are right to oppose it.

Yet the proposal, perversely named the Employee Free Choice Act, remains one of congressional Democrats' highest priorities for this year. It even picked up momentum this week when President Barack Obama repeated his support.

It's time for the public to tell Capitol Hill, "No! Americans demand the freedom of choice that prevails in the secret ballot."

Union leaders are promoting the legislation as a reform of labor laws that they claim discriminate against union organizing.

Some reform is justified. The current law creates delays that can give employers an edge in defeating union elections. In addition, penalties for labor law violations are too light.

But the proposed "reform" is more like "deform."

Especially offensive is the provision on the secret ballot.

Currently, workers wanting to organize a union can trigger an election by getting at least 30 percent of their co-workers to sign documents called authorization cards.

The National Labor Relations Board then orders an election by secret ballot, where the workers decide whether to join a union.

If more than 50 percent of workers sign the authorization cards, the employer can decide whether to recognize the union or request the election. Most employers request the election.

Under the Democratic-backed proposal, union organizers would still distribute authorization cards. But if a majority sign the cards, the union would be certified without an election.

Therefore, electing whether to join a union would depend on signing cards in public. The opportunities for intimidation are obvious.

Would you want your boss and a union official looking over your shoulder as you decided whether to join a union?

In fact, the U.S. Supreme Court, in a 1969 case, declared that elections by publicly signed cards are "inherently unreliable."

Removing the secret ballot is so anti-democratic that such Democrats as Sharpton and McGovern have spoken out against it.

However, all the Democrats in Wisconsin's congressional delegation are co-sponsors of the bill.

All of them are wrong. Voters should tell them so.