

Date: January 9, 2009

Re: The Employer Free Choice Act (“EFCA”)

What it is:

Proposed federal legislation that is intended to make two fundamental changes:

- First, to permit an authorization “card check” to substitute for the secret ballot election currently used to determine whether workers want to be represented by a union.
- Second, to force the quick settlement of a first collective bargaining agreement through strict time deadlines and mandatory arbitration.

A third change effectuated by the EFCA would be the imposition of significant monetary penalties on employers found to have committed unfair labor practices during either the card drive or the bargaining of the first collective bargaining agreement.

The Card Check

If a union obtains majority support (at least 50% + 1) from employees through card signing, the NLRB will not conduct an election, and the employer will be required to recognize the union as the representative of its employees.

The First Contract

The EFCA requires the employer to begin bargaining with the union to reach a first contract within **10 days** of the union’s request to bargain. The union and the employer have **90 days** to reach settle the contract.

If the contract is not settled after 90 days, then the parties have another **30 days** to mediate their differences. If mediation is unsuccessful, then the parties’ contract will be determined though binding arbitration.

The Monetary Penalties

Employers found to have committed specified unfair labor practices during the card drive, or during the negotiation of the first collective bargaining agreement, will be liable for back pay, liquidated damages and penalties of \$20,000 per violation.



75 Milford Drive, Suite 110, Hudson, Ohio 44236

How passage of the EFCA could affect your business:

The proposed law is meant to reverse the decline of union membership. Healthcare employers will experience a significant upturn in efforts to unionize their workers if EFCA is enacted. Once a union becomes the recognized representative of a bargaining unit, the only way to remove the union will remain as it is today: a secret ballot election.

Unions are adept at conducting authorization card drives. Under the current system, the card drive is the “easy part” for the union to achieve recognition. With the right circumstances, an organizer could obtain the necessary quantity of signed cards within a couple hours by simply appearing at a facility parking lot during the morning and afternoon shift changes.

Union representatives also have the upper hand for bargaining a first contract. They have pre-printed materials ready to go that are derived from countless other contracts bargained for over the years. They also tend to be knowledgeable about the law and procedures for bargaining because – unlike most healthcare employers – this is what they do for a living.

Unions tend to make “big promises” to workers in order to gain their support. While the union might not be successful in delivering all of the promised wish list, it will try very hard to increase wages and benefits as much as possible. For some unions, this means creating maximum pressure through tactics that include work stoppages, mass leafleting, and complaints to regulatory authorities and interference with governmental approvals.

Unions will use the EFCA’s monetary penalties like a club to further their objectives. Due to their greater experience, unions are familiar with the words and actions that can trigger an Unfair Labor Practice charge. Employers who are not schooled in this area can easily and unintentionally become the subject of a labor board investigation. Even if the employer is ultimately vindicated, it will not escape without incurring expense.

The information contained in this Bulletin is not, nor is it intended to be, legal advice. You should consult an attorney for individual advice regarding your own situation.