



Issue Fact Sheet

NMHC/NAA Joint Legislative Program • Suite 540 • 1850 M Street, NW • Washington, DC 20036 • (202) 974-2300 • Fax (202) 775-0112 • www.nmhc.org

THE EMPLOYEE FREE CHOICE ACT (EFCA)/“CARD CHECK” BILL

Background

Private sector union membership has decreased to single digits and unions have sought a Congressional fix that would boost their political influence and financial resources. Their proposed solution is the Employee Free Choice Act (EFCA), a measure which could limit the use of federally supervised secret ballot elections in union organizing campaigns. The bill could impose undue burdens on the collective bargaining process to the detriment of workers and businesses alike. Across industry sectors, small and large employers are extremely concerned about how the proposal could impact their strategic decision-making and economic viability.

Card Check

“Card check”, the EFCA’s most well-known provision, would limit secret ballots and require an employer to recognize a union when a majority of employees simply sign union authorization cards without a federally supervised election. Card check votes would be known to employers, employees and union organizers, rendering the process inherently vulnerable to coercion and fraud.

Mandatory Arbitration

The EFCA would allow binding arbitration in first time union-management negotiations just 120 days after a union’s card check victory and certification. Under the EFCA, an outside arbitrator—without a direct interest or expertise in the business—could decide binding contract terms covering key aspects of employment. Collective bargaining would begin within just 10 days of union certification and, if a first contract is not reached in 90 days, mediation rights would be triggered.

One-Sided Penalties

The National Labor Relations Act (NLRA), a federal statute that governs labor relations, was intended to offer remedial relief to encourage compliance with the law. Under current law, the National Labor Relations Board (NLRB), a federal agency that creates and enforces labor policy under the NLRA, may order an employer to reinstate a wrongly discharged employee with back pay, or even reimburse a union for certain expenses when an unfair labor practice has occurred. But the EFCA would go beyond the NLRA’s remedial purpose and allow penalties up to \$20,000 against employers for unfair labor practices during organizing campaigns and/or prior to a first contract without establishing penalties for unlawful acts by unions.

NMHC/NAA Position

NMHC/NAA strongly oppose the Employee Free Choice Act and urge Congress to reject the bill as an ill-conceived proposal that would disproportionately increase the political power of unions at considerable cost to employees and businesses during a sustained period of economic hardship and unemployment.

Current Status

The EFCA is a long-standing union priority but concerns about the proposed legislation among Democratic moderates, particularly in the Senate, as well as concerns about the recovering economy halted progress on the bill during the 111th Congress. During the last Congress, the House passed the EFCA (H.R. 800) on March 1, 2007 in a 241-185 vote with 233 co-sponsors. Senator Scott Brown’s (R-MA) win in a special election to fill the late Senator Ted Kennedy’s seat dealt a significant blow to the bill because supporters lost their chance for a 60-vote majority capable of overcoming a Republican-led filibuster. It is extremely unlikely that the bill will be considered during the 112th Congress because Republicans now control the House of Representatives and Democrats, who maintain a majority in the Senate, lack the 60 votes needed to approve the bill.

Meanwhile, the NLRB is considering several regulatory measures that could impact labor organizing rules to the advantage of unions, including rules that govern petitions for secret ballot elections following card check votes, and notification requirements for employers.

Key Committees

Senate Committee on Health, Education, Labor and Pensions
House Education and Labor Committee

Contact Information

Betsy Feigin Befus
Vice President of Employment Policy and Counsel
NMHC/NAA Joint Legislative Program
202/974-2339
bbefus@nmhc.org

Last Updated: January 2011