

CLUW Fact Sheet: The Employee Free Choice Act and its Provisions

Background

The National Labor Relations Act, enacted in 1935 gave legal protection to workers seeking to form unions.

The law created the National Labor Relations Board to administer a democratic procedure for workers to decide on their own whether to be represented by a union.

- Workers would sign cards authorizing a union to represent them.
- The NLRB would verify the validity of the cards.
- If a majority of the employees at a workplace expressed their support, the NLRB would certify the union as their exclusive representative.
- If there were a legitimate question about whether the majority of workers wanted union representation, the NLRB would conduct an election where the employees would choose between the union and “no representative.”

Employers were expected to stay out of this process.

With the passage of the Taft-Hartley Act in 1947 the NLRA was amended to:

- Give employers effective veto power over their employees’ decisions to be represented by unions. **Even if 100% of the employees sign cards declaring that they want to be represented by a union, the employer can demand that the NLRB conduct an election.**
- It also gives employers the right to campaign against the union as long as they do not threaten employees with reprisals for their union activities or promise benefits in return for opposing the union.

The current system is broken:

- Dr. Kate Bronfenbrenner of Cornell University in a study in 2000 of 400 NLRB elections found:
 - 50% of the employers threatened to close plants
 - 32% of the employers fired workers who actively supported the union
 - 80% of employers hired expensive outside consultants to wage an anti-union campaign
 - 91% of employers required employees to attend anti-union meetings.
- According to American Rights at Work, during NLRB elections:
 - 46% of workers complained of pressure from management
 - Fewer than 4.6% of workers who signed a card with a union organizer reported that the presence of the organizer made them feel pressure to sign the card.
- The NLRB reports 29,559 instances of illegal firings and other employer violations in 2007.
- Almost 1/5 of union organizers or activists can expect to be fired in a union election campaign.

The Employee Free Choice Act will:

- Let employees decide how to express their choice to organize, either by balloting or by majority sign –up, meaning that if a majority of the employees sign union authorization cards, validated by the NLRB, a company must recognize the union.
- Strengthens penalties against companies that illegally coerce or intimidate employees in an effort to prevent them from forming a union.
- Brings in a neutral third party to settle a contract when a company and a newly certified union cannot agree on a contract after three months.

Majority sign up

- The Employee Free Choice Act does not amend, repeal or eliminate the NLRB election process. The NLRB election process remains an option for employees as it is under current law. The Employee Free Choice Act amends the NLRA by modifying the already existing majority sign-up process.
- It puts the choice of how to form a union in the hands of workers rather than their employer by changing the majority sign-up process to require companies to honor their employees' choice. Instead of their company controlling how workers organize, workers will have the choice of which path to use.

The Employee Free Choice Act will allow workers – not companies – to choose how they form their union

Penalties

- Currently when an employer illegally fires a worker for union activity, they are only obligated to pay backpay during the period the employee was out of work, plus interest. In 2006 the average backpay award was \$4,026.82.
- The Employee Free Choice Act will increase penalties for illegal and unfair labor practices.
 - It provides for 3 times the amount of backpay for illegally firing or discriminating against employees.
 - It also provides for civil fines of up to \$20,000 for violations of employees' statutory right to join a union.
 - It requires the NLRB to sue for injunctive relief for illegal firings, discrimination or violating the NLRA by interfering with employees' right to self-organization

First Contract Enforcement

- Even after workers successfully form a union, 44 percent of the time they are not able to get a contract
- With the Employee Free Choice Act:
 - When an employer and a new union are unable to negotiate a first contract within 90 days, either party can request mediation by the Federal Mediation and Conciliation Service.
 - If no agreement is reached after 30 days of mediation, there is binding arbitration.
 - Both timelines can be extended if the employer and the union agree.

In a 2006 Peter Hart survey 58% of workers indicated that they would join a union if they could.

Let's Put this Power Into Workers' Hands and Pass the Employee Free Choice Act.

Sources (not listed above)

Economic Policy Institute Issue Brief – The Employee Free Choice Act
AFL-CIO Turn Around America Employee Free Choice Act
Center for Economic Policy Research – Dropping the Ax: Illegal Firings During Union Election Campaigns

