



The Employee Free Choice Act: “CARD CHECK 101”

LEGISLATIVE PROVISIONS: Guaranteed Union Organizing

Replaces National Labor Relations Board supervised private ballot election with a “Card Check” certification process where with only a majority (50 percent + 1) of signed union authorization cards a collective bargaining unit is formed. Neither the employer nor the employees opposed to the union can demand a private, National Labor Relations Board-supervised “private-ballot” union representation election.

Enables union organizers and fellow employees to pressure employees into signing union cards which are then used in lieu of private, National Labor Relations Board -supervised “secret ballot” elections.

Allows union to control timing and process of certification: (1) union controls scope and size of bargaining unit (still must be an appropriate unit for bargaining); (2) union controls authorization cards (union holds cards until it gains a majority) and makes it difficult for employees to revoke cards from the union; (3) union certified before employer can respond (i.e., designed to eliminate employer “free speech” educational campaign among employees.)

Compulsory, Binding First Contract Interest Arbitration

After 90 days of collective bargaining, contract negotiations are forced into mediation and soon thereafter to binding arbitration. The measure authorizes an outside federally-appointed arbitrator to impose wages, benefits, hours of work, and other terms and conditions of employment binding for two years on the employer and employees regardless of whether parties are at collective bargaining impasse or whether the employer failed to bargain in good faith.

A Federally-appointed arbitrator would be free to impose what the arbitrator believes the parties would have or should have agreed to, imposing the arbitrator's judgment for that of the parties. The union would be able to threaten the employer with a potential arbitration award in an effort to force the employer to capitulate during bargaining.

An arbitrator may impose binding contractual terms which would render an employer uncompetitive (such as increased wage rates, expanded health insurance coverage, increased pension and retirement benefits, unworkable leave policies, work rules, scheduling requirements, etc.).

All bargaining pressure is on the employer. The union has little to lose. The union is guaranteed a first contract and, if the arbitrator's decision is unsatisfactory, the union has “plausible deniability” with employees. Currently, when unions are unable to deliver on campaign promises, employees may be dissatisfied and reject the contract or even vote to decertify the union. Under EFCA, the union can blame the arbitrator and employer. Employees lose their right to approve or “ratify” the first contract, which would be imposed and legally-binding for two years.

New Anti-Employer Sanctions

- Liquidated damages equal to double back-pay (i.e., triple back pay)
- Civil penalties (\$20,000 per violation) for employer campaign conduct
- Priority National Labor Relations Board investigations of employer conduct under mandatory injunction provisions, possibly resulting in mandatory reinstatement during investigation and hearing

CONCLUSION

Congress nearly passed Card Check in 2007 and is poised to consider it again in early 2009. Card Check amounts to the most radical changes to labor laws in 60 years. It would strip workers and businesses of critical rights and protections, divide workplaces forcing intermediaries into the employee/manager relationship and forever change the dynamics of the retail workplace. Passage of this legislation would have a devastating effect on the retail industry, our employees and our customers.