

A Guide to the EFCA

The current version of the proposed legislation known as the Employee Free Choice Act makes a number of significant changes to existing law:

Secret Ballot Elections

Under current law, if an employer does not voluntarily accept a union's demand for recognition as the chosen representative of a majority of its employees, unions can petition to represent employees through a secret ballot election conducted by the National Labor Relations Board. The new law would eliminate the secret ballot procedure so that, if a majority of employees in an appropriate unit sign a petition indicating they want to be represented by an individual or a labor organization, "the Board shall **not direct an election but shall certify** the individual or labor organization as the representative"

Secret ballot elections would still be required for other purposes such as determining employees' wishes in decertification elections where employees vote whether or not to keep the union as their representative. The proposed legislation characterizes these provisions as "Streamlining Union Certification."

Initial Collective Bargaining Agreements

At present, if a union is certified as the employees' representative, the employer is obligated to meet with the union and to bargain with it in good faith in an effort to reach agreement on the terms of a collective bargaining agreement. The law does not require either side to make concessions which are not in its best interests and there is no set time within which agreement on a first contract must be reached.

Under EFCA, the parties would have 90 days to negotiate a new contract. If no agreement is reached within that time, either party can ask the Federal Mediation and Conciliation Service to assist the parties. If no agreement is reached during this 30-day mediation and conciliation period, the dispute must be referred to an arbitration panel which "shall render a decision settling the dispute and such decision shall be binding upon the parties for a period of 2 years, unless amended during such period by written consent of the parties."

The statute is silent as to the who would sit on such an arbitration panel or what rules and procedures the panel would apply in deciding exactly what terms will be included in the agreement to be imposed on the parties. The bill describes these changes as "Facilitating Initial Collective Bargaining Agreements."

Increased Employer Penalties

The third major change to existing law involves significantly increased penalties for employer violations which occur during the time employees are seeking union representation and up until the first collective bargaining agreement is settled. During this time the EFCA would provide for court-ordered injunctive relief to remedy employer violations, as well as increased penalties of three times lost wages in the case of termination, and civil penalties not to exceed \$20,000 for each violation. The bill describes these changes as "Strengthening Enforcement."

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