

THE EMPLOYEE FREE CHOICE ACT Card Check Legislation White Paper

Overview

The 111th Congress is in session, and the Employee Free Choice Act (EFCA) - commonly referred to as "card-check" legislation - has been reintroduced. This legislation (H.R. 1409/S. 560) would have a profoundly negative impact on the produce industry. The United Fresh Produce Association (United Fresh) is strongly opposed to the goals and objectives of the EFCA and is spearheading a coordinated response against this legislation among its 1400 member companies, its allied industry partners, and the thousands of employees they represent.

Major Provisions of the Employee Free Choice Act

Elimination of Secret Ballot Elections

The Employee Free Choice Act (EFCA) would modify the National Labor Relations Act, signed by President Franklin Roosevelt in 1935 by eliminating federally-overseen secret ballot elections for establishing a union as collective bargaining representative.

As the alternative, petitions (sometimes referred to as a "card check") would be sought from employees without federal oversight. If a majority of petitions from covered workers were received in support of a union, it would be certified.

Interestingly, while the legislation has a specific section entitled "streamlining union certification," there is no concurrent streamlining of the process for decertifying a union.

Binding Arbitration

Once a union is certified, the process of negotiating an initial contract would be significantly changed. If the employer and union cannot come to agreement after an unusually abbreviated timeframe of 120 days, the matter would be referred to binding arbitration with a mandatory contract ultimately emerging. That contract would be in force for a minimum of two years.

Legislative Action on the Employee Free Choice Act

The EFCA has been introduced several times in the past in both the House and Senate. For the current 111th Congress, the House version (H.R. 1409) has 224 co-sponsors, while its Senate counterpart (S. 560) has 40 co-sponsors.

In the last Congress, the House bill (HR. 800) received [233 cosponsors](#) and it passed by a vote of [241-185](#). The Senate's version (S. 1041) received 46 co-sponsors. However, a Senate cloture motion failed by a vote of [51-48-1](#). Had the Congress been successful in passing the EFCA, President Bush stood as a final check against this legislation by virtue of a veto.

Looking ahead, the election gains by the Democrats in the Senate give EFCA the necessary votes for cloture (60) assuming no defections from party ranks. This forecast, coupled with President Barack Obama's past support for the legislation, make for a significantly different environment for passage of the EFCA in 2009.

What would enactment of the Employee Free Choice Act mean for employers?

Greater likelihood of successful union organizing

Historically, secret ballot elections under the NLRA have resulted in victories by the unions approximately 50% of the time. However, for those organizing efforts that have utilized a card-check system instead of secret ballot elections, the union success rate jumps to 80%. This estimate appears reasonable, as the

unions would not be pushing for a modification to the process without significant potential for gains in union organizing.

Therefore, the available information indicates the card-check appears to lower the bar for union organizing. As a result of that effort, employers who have been the targets of union organizing activity in the past, but whose employees did not approve a union via majority vote, would appear to be most vulnerable to the provisions of the EFCA.

Mandatory Imposition of an Initial Collective Bargaining Agreement

Additionally, those same employers face an additional hurdle with the EFCA. If the less-stringent card check provisions of EFCA are instituted, the employer no longer will be able to resist the unreasonable demands of unions during negotiations on the initial collective bargaining agreement. Once negotiations come to an impasse, the EFCA imposes an abbreviated time-frame for resolution that culminates with the binding ruling of an arbitrator. This contract, by law, must remain in effect for a minimum of two years.

Clearly, this binding arbitration provision is a potentially costly modification. Its inclusion in the process appears to incentivize unions not to negotiate directly with the employer, since they would no longer be the final decision-maker.

What is United Fresh's position, and actions, on this issue?

- United Fresh is opposed to the EFCA's modifications of the current system. The following is the United Fresh Government Relations Policy Statement on the Employee Free Choice Act:

"The elimination of union employees' right to federally-overseen, secret ballot elections for the purposes of union certification is a significant issue for the produce industry. The elimination of this right would erode employees' workplace security and upset the important balance between union leadership interests and employers. United Fresh will serve as the leading voice for the produce industry in opposing legislative or regulatory actions that seek to undermine this fundamental right."
- United Fresh has joined with other sectors of the American business community in an effort to educate members of Congress, the incoming Administration and the general public about the negative consequences of the EFCA. We are undertaking this effort as part of the [Coalition for a Democratic Workplace](#) which is the major business coalition opposing the provisions of the EFCA.
- United Fresh has created a petition for produce industry members to sign that will be delivered to Congressional offices and the White House outlining concerns and likely economic impact if the EFCA became law.

What can United Fresh members do themselves on this issue?

1. [Write to your Members of Congress using the United Fresh Grassroots Action Network](#)
2. Call your Members of Congress Directly

Talking Points for United Fresh members when talking with members of Congress and their staff:

- ✓ Federally-overseen secret ballot elections are essential to maintain the balance between employer and union leadership interests.
- ✓ Secret ballot elections are utilized to select a variety of public officials at the state, local and federal level, including the President and all Members of Congress. Therefore, why wouldn't they be appropriate in the workplace?
- ✓ The 74 year-old National Labor Relations Act established the current process and has lasted through many economic downturns. The current crisis should not be used as an excuse to throw out a stable, time-tested and fair process.