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Binding Arbitration for Unions Endangers Competitiveness and Innovation

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While it is widely known that the Employee Free Choice Act (EFCA, H.R. 800) would strip workers of their right to vote in private on joining a union, the bill contains an equally harmful provision that has attracted much less attention. EFCA would allow unions to send negotiations on their first contract with an employer to binding arbitration after 90 days. This would give government officials unprecedented power to set wages and employment conditions throughout the economy and would reduce business innovation and competitiveness. Congress should not force binding arbitration on unions and employers.

Binding Arbitration Rarely Used. Under the Employee Free Choice Act, if negotiations on an initial contract (the first after a union is recognized) take too long, both workers and management would have to accept the decision of an arbitrator on their wages and working conditions. This is known as interest arbitration.

Binding arbitration has proved very useful for settling disputes that might arise when there is a contract in place, but outside of government there has been little interest in using third-party binding arbitration to settle the terms of collective bargaining agreements when negotiations break down. Some airlines have used this method in the past, but otherwise workers and employers in the private sector have made little use of interest arbitration.

Government Wage Setting. In interest arbitration, government officials create binding contracts based on their own opinions of what is prudent and fair, as opposed to having employers and unions work out those contracts on their own. The government would simply impose wage and employment conditions on workers and companies. Government officials, even after sitting through arbitration proceedings, do not have the same understanding of either a company or its workers as do the company's officers and its employees. An overly generous award can have far-reaching effects and could eventually backfire on those same workers it was intended to benefit—even those who manage to avoid being laid off.

This procedure has a poor record in Michigan, where it has been used for 40 years to resolve labor disputes involving police officers and firefighters. The process has proved to be cumbersome, with drawn-out arbitrations leading to large back pay awards for workers who are forced to wait for months or years to receive pay increases.

Impedes Competitiveness and Innovation. As damaging as an ill-advised arbitrator's decision might be for a local government, there are several reasons to believe that the risk might be even greater in the private sector:

- Unlike the typical state interest arbitration scheme, this law would apply only to the initial negotiations after a union is recognized. This

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means that the arbitrator could not look to prior collective bargaining agreements for guidance.

- A conscientious arbitrator is more likely to base his or her decision on the practices of comparable companies, but this has drawbacks. A company with its own distinctive business model could be forced to adopt the practices of its competitors, but using a workforce that was structured for its original, unique approach. Likewise, employees may be obligated to adopt work practices with which they are not familiar. Either way, the company and its employees would find that a competitive advantage is suddenly turned into a disadvantage.
- If the arbitration process turns out to be a slow one, as it often is in Michigan, business owners would be forced to prepare for retroactive back pay awards while they wait for overdue decisions. This ties up funds that cannot be used to invest in new equipment or to lure new workers, because back pay awards go exclusively to the existing workforce.
- Unlike a local government, a business cannot raise taxes or turn to a higher level of government for assistance if an arbitrator's decision goes against it. Competition in the free market means that if an arbitrator miscalculates and raises wages too high, companies cannot raise their prices to compensate for the decision without the risk of losing customers. These factors only increase the chances that an ill-advised arbitrator's ruling will lead to financial difficulty and layoffs.

Conclusion. Interest arbitration is rarely used in the private sector, for good reason. Where it is used in the government sector, it works poorly, with long delays. If the government requires companies to enter binding arbitration, it would lead to government wage-setting for hundreds of companies, forcing businesses into contracts that leave them less competitive and less able to innovate. Congress should think twice before forcing workers and companies into binding arbitration for purposes that they seldom use it for voluntarily.

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