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Binding Arbitration Could Force Workers into Underfunded Pensions

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The misnamed Employee Free Choice Act (EFCA, H.R. 800) is organized labor's top legislative priority. The portion of the bill that ends union organizing elections has received the most attention and criticism. No less dangerous, however, is a binding arbitration provision that would empower government officials to set workers' wages and working conditions. Binding arbitration could also force workers into multiemployer union pension plans, many of which are severely underfunded and cannot pay promised benefits. This would improve union finances but threaten the retirement security of millions of American workers. Congress should not endanger workers' retirement security by allowing government arbitrators to force workers into financially unstable or insolvent plans.

Government Sets Working Conditions. The Employee Free Choice Act replaces the government supervised organizing election process with publicly signed cards. This no-vote unionizing has attracted much criticism. Another section of the act has received far less scrutiny but would also do immense harm to workers.

The bill requires that, after 90 days of bargaining on the first contract between a newly certified union and an employer, either party may request mediation by the Federal Mediation and Conciliation Service (FMCS). Thirty days later, if the parties are still unable to settle on a contract or agree to extend negotiations, the FMCS would send the dispute into binding arbitration.[1]

The government arbitrator would impose a two-year contract specifying wages and working conditions. The employer could not appeal the arbitrators' decision, and workers could not vote to ratify the contract or have the opportunity to strike if they disliked it. Both sides would have no choice but to accept the arbitrators' ruling.

Forcing Workers into Union Pension Plans. In addition to impeding businesses' competitiveness and innovation,[2] binding arbitration would encourage labor unions to take unreasonable positions during the initial bargaining in the hope that they would win them in arbitration. In particular, unions could ask the arbitrator to force employees to join a multiemployer union pension plan.

The act provides arbitrators with virtually no guidance on how they should craft their rulings. Binding arbitration is rarely used in the private sector, and arbitrators would probably look to existing collective bargaining agreements in other companies for guidance. Many of those contracts provide pensions through multiemployer plans, which currently cover almost 10 million workers and retirees.[3] If the EFCA becomes law, the arbitrators would probably force many workers in newly organized companies to join these pension plans.

Multiemployer Pensions Severely Underfunded. Non-union workers and their employers

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have refrained from joining union pension plans because they have been mismanaged and severely underfunded. Less than one in 30 multiemployer pensions has enough assets to pay promised retiree benefits. The average plan has the resources to cover only 64 percent of what it owes to its participants.[4] Binding arbitration could force workers into these plans, just as they are rapidly becoming insolvent.

Once a multiemployer pension becomes insolvent and cannot pay promised benefits, the federal Pension Benefit Guarantee Corporation (PBGC) steps in to ensure that retirees receive *something*. The PBGC guarantees only a small portion of what workers actually earned. For example, a worker with 30 years on the job and an insolvent union pension would receive only $12,870 a year, no matter what he had actually earned.[5] Workers forced into multiemployer pensions that need PBGC assistance would lose most of their promised retirement benefits.

Stuck in an Underfunded Union Pension. The law allows some employers to join a multiemployer union pension for up to six years without assuming the financial responsibility for the plan's financial shortfalls.[6] However, this "free look" is unavailable to many workers. Construction workers and workers in large firms cannot leave multiemployer pensions without paying prohibitively large "withdrawal liabilities."[7] In practice, these workers would remain stuck in an underfunded pension plan once an arbitrator forced them into it.

Hurts Workers, Benefits Unions. Workers with secure retirements who are forced into underfunded union pension plans would suffer, even if the plan does not become insolvent. Employer contributions that should have gone toward providing for their retirement would instead go toward shoring up the union plans' finances and paying benefits to existing union retirees.

For that reason, unions strongly support binding arbitration. Each new worker forced into an underfunded pension brings new money into the plan and delays insolvency. That allows union retirees to collect higher pensions for longer before being forced to accept the cut-rate benefits that the PBGC guarantees.

This is not fair to workers outside a multiemployer plan who have not chosen to join one. They did not vote for the union leaders who mismanaged the plan, nor did they demand the unreasonable benefits that contributed to the plans' insolvency. Their retirement security should not be jeopardized to pay for unions' past mistakes. Congress should not force workers into a binding arbitration process that would put their retirements at risk.

Conclusion. Congress should reject the idea of forcing workers into binding arbitration because it would put millions of Americans' retirement security at risk. Unaccountable government arbitrators could force newly organized workers into severely underfunded multiemployer pension plans. Employers' retirement contributions would shore up union finances, rather than provide for their workers' retirements. It is understandable that unions support binding arbitration, but Congress should not give into their demands.

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1. H.R. 800, The Employee Free Choice Act of 2007, Section 3.
2. See Paul Kersey and James Sherk, "Interest Arbitration: Risky for Unions and Employers," Heritage Foundation WebMemo No. 1378, March 1, 2007; Paul Kersey and James Sherk, "Binding Arbitration: A Bad Deal for Workers," Heritage Foundation *WebMemo* No. 1383, March 5, 2007; and Paul Kersey and James Sherk, "Binding Arbitration for Unions Endangers Competitiveness and Innovation," Heritage Foundation *WebMemo* No. 1384, March 5, 2007. Related research is available at *www.heritage.org/research/labor/cardcheck.cfm*.
3. Pension Benefit Guaranty Corporation, Pension Insurance Data Book 2005, Spring 2006, Table M-5: Total Insured Participants, at *www.pbgc.gov/docs/2005databook.pdf*.
4. *Ibid*., Tables M-9 and M-13.
5. *Ibid*., Table M-15.
6. The Segal Group, Inc., "In Depth: Multiemployer Pension Plan Withdrawal Liability: An Overview," November 2002, p. 6, at *www.segalco.com/publications/indepths/nov02withdrawalliability.pdf*.
7. *Ibid*. Any firm that makes more than 2 percent of a multiemployer pension plan's total contributions may not utilize the "free look" provision.