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Employee Free Choice Act (EFCA): The Heritage Foundation 2009 Labor Boot Camp

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What Does the Employee Free Choice Act Do?

- The Employee Free Choice Act (EFCA) would alter the employee–employer relationship in three fundamental ways:
  1. It requires employers to recognize a union—without an election—once organizers collect cards from a majority of employees. The act states that once the union submits signatures from over 50 percent of the employees to the National Labor Relations Board, it must certify the union without an election;
  2. It imposes first-contract mediation and arbitration; and
  3. It dramatically increases the penalties for unfair labor practices committed by employers during an organizing drive.

Policy Objections

- **Effectively Eliminates Secret Ballot Organizing Elections**
  - EFCA replaces secret ballot elections—the method by which most workers join unions—with publicly signed union cards.
  - Under the EFCA, workers have no say in union organizing tactics: EFCA does not permit workers to sign cards that call for an election without also counting those signatures toward a card-check majority. Workers must decide whether or not to join a union publicly in front of union organizers.
- **Workers Hear Only One Side of the Story**
  - Organizers have a job to do: recruit new dues-paying members to their union. They are not paid to inform workers of the downsides of unionizing. Instead, they use sales tactics to make the strongest case they can for joining a union and ask workers to sign their cards immediately.
  - Many workers choose after a high-pressure, one-sided sales pitch without hearing from both sides.
- **Workers Face Harassment and Pressure**
  - Union organizers return again and again to the homes of workers who do not sign at first to pressure them to change their minds. With card check, "no" only means "not yet."
  - Workers who refuse to sign are subject to intimidation and threats because their choice does not remain private.
- **Public Cards Do Not Reflect Employee Preferences**
  - Union organizing manuals caution that union cards do not reflect employee sentiment.

This paper, in its entirety, can be found at:
www.heritage.org/Research/Labor/wm2210.cfm

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Unions know card check does not reveal employees wishes but support it so they can recruit more members.

- **Mandatory Arbitration Ends Collective Bargaining**
  - With collective bargaining both parties must be satisfied with the final result. No contract is signed unless the workers believe they have a fair deal and management believes the company will not go bankrupt.
  - With mandatory arbitration a government arbitrator writes the contract for newly organized companies, and there is no guarantee that either or workers or management can live with the final result.
  - Workers lose the right to vote on contract or to go on strike. Management loses the right to lockout workers. Both must accept the contract with no recourse if the result is unacceptable.
- **Bureaucratic Central Planning**
  - The arbitrator has little experience with the company or knowledge of its business practices, but dictates all wages and working conditions for two years.
  - The arbitrator is unaccountable for mistakes. The arbitrator is unaffected if he awards workers lower wages than they could have won else wise or bankrupts the company with an unaffordable contract.
  - Binding arbitration decisions can take over a year to hand down, leaving both the company and the workers in limbo waiting for the contract.
  - Binding arbitration has all the downsides of bureaucratic central planning without a coherent central plan.

Economic Consequences of EFCA

- **Less Investment and Jobs**
  - EFCA would enable unions to pressure and intimidate millions of workers into joining unions. Unionized companies cut investment spending by 15–25 percent and create far fewer jobs than nonunion companies.[1] Passing EFCA means fewer jobs and less economic growth.
  - Unionized companies are less flexible than nonunion companies because they must collectively bargain any changes to their labor contract. They are less able to innovate and respond to competition.
- **Unworkable Contracts**
  - Binding arbitration would impose bureaucratic contracts on companies and stifle firms with innovative business models.
  - Arbitrators with little business knowledge could easily bankrupt companies with unworkable contracts.
  - Uncertainty over future business costs would cause companies to reduce investment as they wait over a year for the arbitrator to hand down the final contract.

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1. Barry T. Hirsch, "What Do Unions Do for Economic Performance?" in James Bennett and Bruce Kaufman, eds., *What Do Unions Do? A Twenty-Year Perspective* (Edison, N.J.: Transaction Publishers, 2007), pp. 214–218; Hirsch, "Unionization and Economic Performance: Evidence on Productivity, Profits, Investment, and Growth," in Fazil Mihlar, ed., *Unions and Right-to-Work Laws* (Vancouver, B.C.: The Fraser Institute, 1997), pp. 35–70; S. Bronars, D. Deere, and J. Tracy, "The Effects of Unions on Firm Behavior: An Empirical Analysis Using Firm-Level Data," *Industrial Relations*, 1994, pp. 33, 426–451.

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