

# WebMemo



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## Labor Union Snap Elections Deprive Employees of Informed Choice

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As public support for the misnamed Employee Free Choice Act (EFCA) fades,<sup>1</sup> three companies (Starbucks, Costco, and Whole Foods Market) have proposed replacing card check—the means by which employees indicate their support for union representation—with expedited elections: Workers would vote on whether to organize within a few days of unions filing for representation with the National Labor Relations Board (NLRB).<sup>2</sup> Days later, EFCA suffered another blow when Senator Arlen Specter (R-PA) announced that he is in favor of retaining the secret ballot but might support these expedited or “snap” elections.

Snap elections would allow EFCA supporters to claim they preserve the secret ballot—the loss of which is EFCA's most controversial component. Secret ballot elections exist to protect voters' right to make an informed, private choice free of intimidation and pressure and with the time to sort out misinformation from facts. Snap elections preserve the secret ballot in name only, because they compromise the election process: While the direct process of casting a vote in snap elections still occurs in private, with only a few days to hear both sides of the issue, employees are deprived of the ability to make an informed choice when they vote.

With regard to their ability to make an independent, informed choice on union organization, snap elections are no better than card check.

**Workers Hear Only the Union's Story.** In order to hold an NLRB-conducted election, a prospective union must file a petition showing it has the support

of 30 percent or more of workers in the company. Frequently, a union's petition for certification is an employer's first notice that employees have even begun an organizing drive. Before employers receive this notice, union organizers have as much time as they want to persuade—and potentially misinform—workers.

Unions may legally use any number of misleading and outright dishonest tactics to win worker support. Some union organizers rely on aggressive sales tactics such as “SPIN selling” to sell workers on the benefits of unionizing.<sup>3</sup> SPIN stands for Situation, Problem, Implication, and Need payoff—the four emotional states through which organizers lead employees in order to secure a signed union-authorization card. The SPIN technique, like other high-pressure sales tactics, emotionally manipulates workers.

Unions also train organizers to deflect questions about the potential downsides to unionization.<sup>4</sup> Organizers do not inform workers about strike histories, union corruption, or dues increases.

When an election takes place only days after the company learns of the organizing campaign, workers largely have only union information. Therefore,

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the fact that the ballot-casting is secret does not do enough to protect workers' rights. Employees must have the opportunity to hear from management, too, not just from the union. Only then does a secret ballot serve its full intended purpose.

**Organizing Campaigns Favor Unions.** The current election process already provides unions with tremendous advantages during a campaign. Indeed, according to the NLRB, in 2007 unions won 59.9 percent of representation elections. The law gives unions a free hand while severely restricting what employers may tell their employees. For instance:

- *No warning of layoffs.* Companies are legally prohibited from informing workers that, due to resulting costs and regulations, a union victory might force them to close the plant, outsource jobs, or take other actions that would harm workers. Labor organizers are free to warn workers about what *they* believe will happen if the workers do not unionize.
- *No promises of benefits.* An employer may not promise to raise wages, improve benefits, or otherwise improve working conditions in exchange for workers choosing not to unionize. Unions may promise large wage increases or job security if they win, even if those promises are not kept.
- *No grievance solicitation.* Employers are generally not allowed to ask their workers what concerns they have with the company. Unions are free to ask workers what they do not like about their jobs and are free to promise to fix these issues through collective bargaining.
- *No asking about union support.* An employer may not ask whether an employee supports the union, a restriction that covers, for example, asking whether a worker has attended a union meet-

ing, signed a union card, or seen any other workers do so. Union organizers may ask workers how they plan to vote and focus their efforts on persuading workers who do not want to join.

- *No equal access to workers.* The law allows employees who support unionizing to campaign for the union at the workplace when they are not on the clock. The law also requires companies to let union organizers freely recruit workers during non-work hours, unless the company has a general policy against soliciting on its premises. Unions may even campaign at workers' *homes*. Employers may only communicate with employees during work hours.
- *No control of election timing.* Unions decide when the vote will take place, so the election does not occur until organizers believe their support has peaked. If a majority of workers oppose the union, the organizers simply postpone the election.

**Employees Deserve to Hear Both Sides.** The only thing that can balance these advantages and let workers hear the full story is time. Time is precisely what snap elections remove from the union organizing process. Employers learn of the organizing drive once the union organizers file for an election and then have only a few days to present the downsides of organizing, about which union organizers have kept silent.

Employers explain that unions often do not achieve their promised wage increases but always take 1–2 percent of the employees' wages in dues. Employers point out patterns of union corruption, strike histories, and clauses in union constitutions that levy stiff fines against workers who stray from union rules.

1. Rasmussen Reports, "Toplines—Unions II" (national survey of 1,000 adults), March 13–14, 2009, at [http://www.rasmussenreports.com/public\\_content/business/econ\\_survey\\_toplines/march\\_2009/toplines\\_unions\\_ii\\_march\\_13\\_14\\_2009](http://www.rasmussenreports.com/public_content/business/econ_survey_toplines/march_2009/toplines_unions_ii_march_13_14_2009) (March 30, 2009).
2. Lisa Lerer and Manu Raju, "Prospects Dim for Labor Bill," *Politico*, March 26, 2009, at <http://www.politico.com/news/stories/0309/20505.html> (March 30, 2009).
3. James Sherk and Ryan O'Donnell, "EFCA: High-Pressure Spin Selling and Creative Organizing for Labor Unions," Heritage Foundation *WebMemo* No. 2335, March 11, 2009, at <http://www.heritage.org/Research/Labor/wm2335.cfm>.
4. Jen Jason, "Strengthening America's Middle Class Through the Employee Free Choice Act," testimony before the Subcommittee on Health, Employment, Labor, and Pensions, U.S. House of Representatives, February 8, 2007, at <http://edlabor.house.gov/testimony/020807JenniferJasontestimony.pdf> (March 30, 2009).

Traditional election campaigns ensure that employees learn both the pros and cons of joining a union and can make an informed, reflected choice. Organizing campaigns present employees with a great deal of information, terms, and ideas with which they might not be familiar. It is reasonable to expect that employees need more than a week to shift through the rhetoric, especially if they have been hearing only one side for months. Few voters would be comfortable making their choice for President in only seven days.

Furthermore, as former union organizer Rian Wathen notes, “There is nothing in the law that says the union organizer must tell the truth. . . . The government’s position is basically that it’s okay [for organizers] to lie to employees because employees have 42 days to figure out [the truth].”<sup>5</sup>

Employees also need time to discuss the consequences of organizing not only with union organizers and management but with one another as well. If Congress agrees to snap elections, workers will

not have 42 days to unravel lies and misinformation and discuss union organizing with each other. They will have a week.

**Protecting Employees.** Although some of the ideas proposed by Senator Specter and the business community should be seriously considered by lawmakers, substituting snap elections for card check recognition is not one of them. Any process that fails to protect an employee’s right to make an informed, private choice about joining a union in an environment free of intimidation, pressure, or misinformation is unacceptable. Merely preserving the secret ballot is not enough. Employees need the opportunity to hear from both management and the union organizers—and the time to discuss the issues with their co-workers and personally reflect *before* entering the voting booth.

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5. Rian Wathen, “Consequences of the Employee Free Choice Act: Union and Management Perspectives,” speech at The Heritage Foundation, Washington, D.C., February 23, 2009, at <http://www.heritage.org/press/events/ev022309b.cfm>.