

## **EMPLOYEE FREE CHOICE ACT**

**Issue:** The Employee Free Choice Act (EFCA) would amend Sections 8 and 9 of the National Labor Relations Act (NLRA) by adding language that requires an employer, and the National Labor Relations Board (NLRB), to immediately recognize the results of a card-check campaign. It also specifically states that the Board will certify the union as a bargaining representative if a majority of employees have signed authorization cards. Following union certification or recognition, collective bargaining negotiations must begin within 10 days. If a collective bargaining agreement has not been reached after 90 days, either party may request mediation from the Federal Mediation and Conciliation Service (FMCS). If the FMCS cannot bring about an agreement within 30 days of the request, the negotiations will be referred to a Federal arbitration board. The Federal arbitration board's decision will be binding upon both parties for two years.

**Background:** ECFA was introduced in the 110<sup>th</sup> Congress and again in the 111<sup>th</sup> Congress (H.R. 1409 and S. 560). Under this bill, employees effectively lose their right to private ballot elections. Retention of the current federally-supervised private ballot process is critical to protecting working families from coercion or intimidation from union representatives, employers, or both. The bill's harmful "binding arbitration" language would allow a federal arbitrator to unilaterally establish wages, health benefits, hours, etc. for small businesses if the employer and union don't reach agreement within 90 days of a union being established. Under this system, the workers' votes are made public to the employer, union organizers and co-workers.

**Status:** ECFA was introduced in the House as H.R. 1409 and in the Senate as S. 560. President Obama has expressed support for this bill as it now stands. Senator Arlen Specter (D-PA), who recently changed parties after 30 years as a Republican, has indicated he does not support the bill as it is currently drafted. Senator Tom Harkin (D-IA), a strong proponent of EFCA, recently said he would bring the bill to a vote in June if a compromise is not reached soon. Several compromises being floated around:

- **Quickie Elections** – this compromise would impose a limited timeframe to complete a secret ballot union recognition election. A short time table would virtually eliminate an employer's ability to provide employees with adequate information about the union, respond to the union's comments or unionization generally. Professional union organizers would be allowed to "campaign" for months while providing employees with limited- if any- time to hear from their employer about potential downsides to unionization.
- **Mail-in Authorization Cards** – In some circumstances, the NLRB currently uses mail-in ballots in place of secret ballot elections held on the employer's premises.

The NLRB career staff has mentioned several problems with the mail-in ballots, including the “potential interference by any party in a mail ballot situation.”

- **“Last Best Offer” Arbitration** – Binding arbitration still gives a government bureaucrat the ability to impose a labor contract, whether it is wages, hours, work rules, pension, etc., on American entrepreneurs. In addition, in choosing which offer is the most reasonable, the arbitrators will look to other unionized employers in the industry. For example, if you are an auto maker, your offer will be compared to Ford, GM, and Chrysler contracts rather than nonunion competitors.

**IHA Position:** IHA does NOT support the Employee Free Choice Act. There is no substitute for the right of a secret ballot election, and no current alternative recognizes that right.