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COMMENTARY

Employee 'Free Choice' Act: The Ultimate Union Bailout

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Get ready for passage of a law that will simultaneously deprive employees of the right to decide whether to join a union free of union coercion or intimidation and employers of the right to campaign against a union.

If the Employee Free Choice Act passes, unions will no longer be required to win a secret-ballot election before certification. They will only be required to secretly and without supervision collect authorization cards from a majority of employees. This dramatic change from current law is the ultimate union bailout.

Under the National Labor Relations Act, unions do not get to represent employees without a secret-ballot election. The process starts when a petition is filed by a union or worker. At least 30 percent of employees must have signed a petition or authorization card for an election to be held. Unions are certified as employee representatives only if a majority of employees voting in an election supervised by the National Labor Relations Board choose to be represented by a union. The EFCA changes all that.

Stripping employees of their right to a secret-ballot election is great for unions but terrible for employees. It

deprives employees of their right to vote in privacy. They vote behind a curtain, free from coercion or intimidation. Card-checks, however, enable unions to use peer pressure and other forms of coercion to intimidate employees into signing cards, even though they may not actually desire union representation. Even in the absence of misrepresentation and threats, the card check is unreliable because employees, like voters in any other context who are forced to publicly declare their preference, conform for fear of social stigma or retaliation.

Employees have the opportunity, between the petition and the election, to hear from their employers about reasons not to vote for the union, and employers are free to do so, so long as they do not threaten or make promises in exchange for votes. If there is no campaign, employees get to hear only one side of the story — the union's. How convenient for unions. Just think, for example, how much more successful Sen. John McCain might have been had Sen. Barack Obama been prevented from talking to the American people.

Unions justify gagging employers by arguing that they regularly intimidate and even fire pro-union employees. The truth is that most employers obey the law. The Center for Union Facts, in an analysis of the NLRB's Case

Activity Tracking System database for 2005, showed that only 2 percent of unionization campaigns result in an employee being illegally fired.

There is another problem with the EFCA; it forces government-mandated contracts on those employers who do not give in to union demands, requiring that if a first agreement cannot be reached through negotiation, the dispute is subject to binding arbitration. A government arbitrator would then impose a two-year contract specifying wages and working conditions.

The New Jersey experience shows that binding arbitration is a terrible idea, encouraging unions to take unreasonable positions during bargaining in the hope that they will win them in arbitration. In many cases, unions only pretend to bargain long enough to demand mediation and arbitration through the Public Employment Relations Commission.

What guidelines would the arbitrator use? If, for example, the United Auto Workers organized a plant, would the arbitrator impose the wages and benefits contained in UAW contracts? What about the uncompetitive work rules and production limits? Compulsory, binding arbitration assures only one thing, that the business subject to it will never be more profitable than the unionized company whose contract it is forced to adopt. Unlike a New Jersey municipality, a private business, unable to raise taxes, is forced to raise prices, resulting in lost customers, lost business, layoffs, and even bankruptcy.

One last thing; the Congressional Research Service of the Library of Congress has concluded that the EFCA may be bad for the economy and workers. Increasing the bargaining power of

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employees by eliminating secret-ballot elections in a competitive labor market could result in reduced output and lower unionized employment, according to the research service's 2007 report to Congress by Gerald Mayer, "Labor Union Recognition Procedures: Use of

Secret Ballots and Card Checks."

So who exactly profits from the EFCA? Unions, of course, because they stand to gain new members and millions of dollars in dues and initiation fees. Employees lose because the EFCA strips them of their rights and threatens their

job security. The American economy loses because the EFCA dramatically hikes the cost of doing business without creating the means of paying for that hike, and thus, ironically, creates only the promise of lowered employment and a deepened recession. ■