



Impact of EFCA in Right to Work States

Some falsely believe that the Employee Free Choice Act will have little or no effect in right to work states. Unfortunately, nothing could be further from the truth. In fact, EFCA will significantly enhance the ability of labor unions to organize in right to work states and other jurisdictions where employees are traditionally less receptive to unionization.

Right to work laws give employees the right to refrain from joining a union or paying union dues when a union is recognized in the workplace. However, they do not prevent unions from being organized in the first place. ***Passage of the card check provisions in EFCA will make organized labor's job easier in all workplaces.*** As soon as a union collects signed authorization cards from a majority of workers in a bargaining unit, the union is recognized, the employer is legally obligated to bargain with the union, and individual employees no longer can negotiate their own terms and conditions of employment with their employer. This process empowers unions in several ways. First and perhaps most obviously, it forces workers to make decisions about unionization in front of union organizers and opens up workers to intimidation by those organizers. In addition, card check campaigns frequently result in employees signing cards when they have only heard one side of the story, the uncorroborated claims of union organizers, without hearing management's perspective. In addition, because unions get the first crack at defining the scope of the bargaining unit, they can play games with the numbers – if they can't get a majority of the entire workforce, maybe they can get a majority of the employees on the manufacturing line, maybe a majority of the workers in the warehouse, maybe a majority of office and clerical workers, etc.

After a union successfully organizes part of the business, the camel's nose is under the tent. If the employer and union do not work out a contract in 90 days, the matter goes to mediation, and, 30 days later, to binding interest arbitration where a government arbitrator would set all of the terms of the union contract. In addition to wages and terms and conditions of employment (taking into account the arbitrator's idea of what an appropriate profit margin would be for the employer, etc), union contracts cover things like the extent to which the employer may outsource work and the application of the union contract to new business units. It is likely we would see arbitrators treading into not just mandatory subjects of bargaining, but permissive subjects as well, such as neutrality clauses for future organizing.

In addition, EFCA increases fines against employers for certain unfair labor practices and would adopt a "guilty until proven innocent" regime with respect to workers discharged during an organizing drive, making it significantly more difficult for an employer to discharge a worker, for legitimate reasons, during an organizing drive.

While it is true that even if a union were formed under EFCA's card check provisions, employees could opt out of paying dues in right to work states, management would still have to deal with more unions, government-imposed union contracts, and increased damages.