

The Employee Free Choice Act Will Guarantee Employee Free Choice Through Democratic Majority Sign-Up Procedures

The Employee Free Choice Act (S. 842, H.R. 1696) provides for certification of a union if the National Labor Relations Board (NLRB) finds a majority of employees has signed authorizations designating the union as the collective bargaining representative. This procedure is known commonly as card-check.

The Employee Free Choice Act was introduced as bipartisan legislation in the 109th Congress on April 19.

A majority sign-up procedure is an effective and democratic way to determine the wishes of employees.

Under these procedures, employees express their desire to form a union by signing authorizations. When the NLRB finds a majority of the employees has signed authorizations, the employer is required to recognize and bargain with the employees' union.

The NLRB election process is undemocratic.

NLRB elections are unlike any other kind of elections because of the inherent coercive power management holds over employees—the power to deprive employees of their livelihoods. The process enables management to wage lengthy and bitter anti-union campaigns, during which workers who support the union are routinely subjected to harassment, intimidation, threats and firings. One-sided NLRB election rules allow employers to campaign against the union in the workplace whenever and where ever they choose and to force workers to listen to an endless stream of anti-union speeches and other propaganda, while denying unions access to the workplace or even a list of names of the employees who will vote in the election. By avoiding these inherently coercive and anti-democratic campaigns, majority sign-up procedures enable employees to make their own uncoerced decisions on whether or not to form a union.

The NLRB election process is broken.

The NLRB election process is easily manipulated by employers to create delays of months and even years, during which employees become frustrated and lose confidence in the effectiveness of both the union and the NLRB.¹ Weak remedies for illegal conduct mean employers can fire or threaten workers with virtual impunity. Despite workplace surveys finding that 42 million nonunion employees would like to have union representation at work, these workers remain unrepresented, largely because the NLRB election procedures have become a parody of democracy.²

Legal obstacles tilt the playing field so steeply against freedom of association that the United States is in violation of international human rights standards for workers.³

—KENNETH ROTH, EXECUTIVE DIRECTOR HUMAN RIGHTS WATCH

States have adopted majority sign-up as a procedure that works. Increasingly, states are turning to procedures for majority sign-up through authorizations as an effective way to guarantee workers' choice. In 2001, New York's Gov. George Pataki (R) signed legislation that allows private employees not covered by the National Labor Relations Act (NLRA) to form unions through an authorization process; New York has provided such procedures for its public-sector workers since 1999. Legislation also was passed in New York authorizing the governor to negotiate tribal gaming compacts that include this process for union recognition. California, Illinois and New Mexico have enacted legislation providing for majority sign-up through authorization procedures for their public-sector workforces. Massachusetts has included such a procedure in legislation regulating charter schools since 2000.

It has always been legal under the NLRA for employees to demonstrate their majority support for a union through signed authorizations rather than through NLRB elections. For decades after the NLRA was enacted in 1935, employers presented with evidence of majority support for a union were required to respect the wishes of their employees by recognizing and bargaining with the union. In the early days of the act, the NLRB ordered elections only when the union seeking certification was unable to show majority support through authorizations or other evidence. Over the years, however, the NLRA's union-recognition procedures—originally intended to protect *employee* choice—have been turned upside down. Under current law, employers can still recognize and bargain with a union on the basis of signed authorizations, but only if the *employer* chooses. Even when 100 percent of employees have signed authorizations, the employer can refuse to respect their choice. It can instead insist on an NLRB election process, enabling management to intimidate employees and pressure them to abandon their support for the union through a coercive anti-worker campaign. The Employee Free Choice Act will restore the procedure originally provided for under the NLRA by eliminating the ability of employers to demand elections when a majority of employees has already expressed the choice by signing written authorizations.

Majority sign-up procedures promote healthy relationships between employers and employees. Hostility in the workplace generated by inherently bitter and divisive NLRB election campaigns hurts employers, employees and the general public. Majority sign-up through authorization procedures significantly shortens the campaign process, greatly minimizing tensions. In a recent survey of employers that have recognized unions based on signed authorizations, employers reported the procedure resulted in improved relations with the union, enabling management and employees to work cooperatively towards mutual goals.⁴

Majority sign-up procedures benefit society as a whole. Majority sign-up procedures protect employees' freedom to form unions better than the NLRB election process. Union workers earn 28 percent more than nonunion workers, are 62 percent more likely to have medical insurance through their jobs and are four-and-a-half times as likely to have guaranteed pensions.⁵ The freedom to form unions has been shown to benefit society as a whole in the form of reduced inequality, higher wages and purchasing power for union members and nonmembers alike, a reduced gender gap, greater access to health care, greater access to pensions, lower poverty rates and higher voter participation.

This fact sheet has been prepared by the AFL-CIO. For more information regarding the Employee Free Choice Act, please contact Byron Charlton at 202-637-5290.

¹John Logan, "Consultants, Lawyers, and the 'Union Free' Movement in the USA Since the 1970s," *Industrial Relations Journal*, v. 33 (August 2002), p. 197.

²Richard Freeman and Joel Rogers, "A Proposal to American Labor," *The Nation* (June 24, 2002); Freeman and Rogers, *What Workers Want*. Ithaca, N.Y.: Cornell University Press (1999).

³Kenneth Roth, "Workers' Rights in the United States," Industrial Relations Research Association, 2001, *Perspectives on Work*, v. 5, no. 1, pp. 19–20.

⁴Adrienne Eaton and Jill Kriesky, "No More Stacked Deck: Evaluating the Case Against Card-Check Union Recognition," Industrial Relations Research Association, 2003, *Perspectives on Work*, v. 7, no.1, pp. 19–21.

⁵U.S. Department of Labor, Bureau of Labor Statistics; Lawrence Mishel and Matthew Walters, "How Unions Help All Workers," Economic Policy Institute Briefing Paper, August 2003.