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The Employee Free Choice Act: Solutions to a Flawed Labor Law

A growing, bipartisan coalition of policymakers supports the Employee Free Choice Act, proposed legislation that would ensure that workers have a free choice and a fair chance to form a union and bargain with their employees for higher wages, benefits, and better working conditions. This fact sheet examines how the core provisions of the bill address weaknesses in current U.S. labor law and its enforcement by the National Labor Relations Board (NLRB).

PROBLEM: EMPLOYER LAWLESSNESS

Under the National Labor Relations Act (NLRA), an employer found guilty of illegally firing an employee for union activity must only give backpay to that employee—minus whatever he or she earned in the interim. And when employers violate the law by issuing threats of closings or interrogating employees, they are only required to post a notice telling workers that they will not break the law. **Many employers find the punishment for illegal activity a bargain**, if firing a pro-union employee scares others from supporting the union.

- Every 23 minutes in America, an employer fires or retaliates against a worker for their union activity.
- In 2005, the average amount employers paid to victims of illegal firing was only $2,667.
- Some executives refer to the paltry cost of breaking the law as a "hunting license."

SOLUTION: STRENGTHEN PENALITES

The Employee Free Choice Act would increase monetary penalties against employers who illegally fire or retaliate against pro-union workers during an organizing campaign or an effort to obtain a first contract.

- Employers would have to **pay victims three times the amount of backpay** owed to them.
- Employers would be **fined up to $20,000 for illegal acts** committed during organizing or first contract negotiations.

Smithfield: A case for stronger penalties

When pork processing company Smithfield was faced with a union election in 1997 in North Carolina, it threatened to close the plant and spied on, interrogated, and physically assaulted its employees. The NLRB only ordered Smithfield to read, post, and mail a note to employees saying they will not break the law. In 2006, the NLRB offered a new remedy for the misbehavior—a new election.

PROBLEM: EMPLOYERS DENY WORKERS FREE CHOICE

Employers often **manipulate the system to silence employees** who attempt to form unions. According to unionbusting consultants used by 82 percent of employers faced with organizing drives, "the greatest achievement is not having [an NLRB election] at all." To achieve this goal:

- 25 percent of employers illegally fire pro-union workers;
- 51 percent illegally coerce workers into opposing unions with bribery and favoritism; and
- 91 percent force employees to attend one-on-one anti-union meetings with their supervisors.

SOLUTION: UNION RECOGNITION THROUGH MAJORITY SIGN-UP

The Employee Free Choice Act would **require an employer to recognize its employees' union through "majority sign-up,"** a process in which workers present signed authorization cards to demonstrate their choice to belong to a union. Majority sign-up provides a viable alternative for workers who typically experience obstacles in the corrupted NLRB 'election' process.

Cingular Wireless: A case for majority sign-up

At Cingular Wireless, over 17,000 employees chose to join a union in less than a year when the company and union agreed to remain neutral and allow workers to indicate their choice through majority sign-up. Said Executive VP of Human Resources Rick Bradley, "We believe that employees should have a choice…Making choice available to them results, in part, in employees who are engaged in the business and who have a passion for customers."

PROBLEM: EMPLOYERS USE LENGTHY APPEALS TO GAME THE SYSTEM

Employers know that if they fire a worker during an organizing effort, it will likely be **years before they are ordered to reinstate that worker—long after the damage is done**.

- In 2005, the median time between the filing of an unfair labor practice charge and a ruling by the NLRB was 659 days.
- The NLRB has the power to issue injunctions to swiftly and temporarily reinstate a fired worker or remedy other violations, but rarely uses it. Between June 2001 and December 2005, the Bush-appointed NLRB only used this authority 70 times, a 74 percent decline compared to the years of the Clinton Administration and a 61 percent decline compared to the G.H. Bush Administration.

SOLUTION: SWIFT JUSTICE FOR WORKERS

The Employee Free Choice Act would **require the NLRB to seek injunctive relief** when it has reasonable cause to believe an employer significantly violated its employees' rights through termination, discrimination, threats, or other illegal acts during an organizing campaign or first contract effort.

Dynasteel: A case for injunctive relief
In 2001, Dynasteel fired two employees at its Mississippi plant who were active in the union organizing effort. The NLRB promptly issued a complaint against the company, and at that point, it could have pursued an injunction to reinstate the workers. Instead, the agency let the case proceed through the normal legal channels, and in late 2005, the Board ordered the company to reinstate the two workers—more than four years after they were fired, and long after the company had successfully dampened the workers' organizing efforts.

PROBLEM: EMPLOYERS AVOID CONTRACT NEGOTIATIONS

The intent of the NLRA is to facilitate reaching a first contract that determine wages, hours, and employment conditions. Yet **anti-union employers often drag workers through lengthy negotiations** by delaying bargaining sessions, withholding relevant information, and putting forth bogus proposals. Even though these tactics are illegal, the law provides no effective deterrents to prevent "surface bargaining." In the event the NLRB proves an employer engaged in surface bargaining, it can only order the employer to return to negotiations, where typically the cycle repeats itself.

- In 32 percent of organizing campaigns, workers lack a collective bargaining agreement more than a year after demonstrating majority support for union representation.

SOLUTION: MEDIATION AND ARBITRATION TO END CONTRACT DELAYS

Under the Employee Free Choice Act, **employers or employees can request mediation** by the Federal Mediation and Conciliation Service if they are unable to negotiate a first contract after 90 days of bargaining. If the parties are unable to reach an agreement after 30 days of mediation, the dispute is referred to binding arbitration, guaranteeing that workers will achieve a first contract within a reasonable period of time.

Champion Homes: A case for mediation and arbitration
Workers at Champion Homes in California formed a union in 2000. After months of failed negotiations, the union filed charges with the NLRB. In January 2003, an administrative law judge ordered the company to bargain in good faith. The company has filed appeal after appeal to avoid contract negotiations, and as of 2007, the workers are still without a union contract.

For more information and citations, visit **www.americanrightsatwork.org**.

AMERICAN RIGHTS AT WORK is a leading labor policy and advocacy organization. Our mission is to fight for a fair and just society where every worker's fundamental right to belong to a union is guaranteed and promoted.