

# Labor Law Bulletin

## The Employee Free Choice Act— Changing Union Organizing As We Know It

Congress is contemplating the first significant revision to the National Labor Relations Act in over 70 years. Dubbed the Employee Free Choice Act (“EFCA”), this proposed legislation threatens to curtail two fundamental rights of American employees and employers: (i) the right to accept or reject union representation through a secret ballot election and (ii) the right to freely negotiate a collective bargaining agreement. Unions are counting on EFCA to invigorate union organizing efforts nationwide, which have been languishing for decades.

The EFCA effectively eliminates the right to a secret ballot election. Union recognition would be based on a card majority, meaning that the National Labor Relations Board (“NLRB”) would certify a union’s status as the employee representative if a majority (50 percent plus one) of employees in the bargaining unit sign authorization cards.

The pending legislation has immediate impact. Not only will unions become more aggressive in future organizing but unions are collecting

authorization cards right now in the hope that cards signed today may be used to support a demand for card-check recognition should the EFCA become law in 2009. It is much more difficult for an employee to refuse a face-to-face request to sign an authorization card than to vote his true choice in a secret ballot election. Further, the authorization card process

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effectively deprives employer and employee of an information exchange where employees can be apprised of the disadvantages of union representation.

The EFCA also undermines the current collective bargaining process. Under the EFCA, employers would be required to begin bargaining within 10 days of a union’s request. If a contract is not reached after 120 days of negotiation and

mediation, then a government-appointed arbitrator will step in and write a two-year binding contract for the parties. This process essentially denies the parties’ long-established right to negotiate their own labor agreement and places everyone’s fate in the hands of a third party who is unfamiliar with the business and economic conditions affecting the parties involved.

In addition to card-check recognition and the risk of a government-imposed contract, the EFCA increases penalties for employers who commit unfair labor practices. For instance, an employer who unlawfully discharges an employee during an organizing campaign, or in the period between the union’s certification and approval of a first contract, would be liable for triple backpay. Other unfair labor practices during this period could bring fines up to \$20,000 for each willful or repetitive violation.

Congress is expected to resume consideration of the legislation after the fall presidential and congressional elections. One of the EFCA’s

co-sponsors is Senator Barack Obama, who has promised he will sign it if elected president.

The EFCA is one component of organized labor's push to increase its ranks through aggressive organizing. Vedder Price will be monitoring this significant legislative initiative and can assist you now to prepare for it.

If you have questions about this proposed legislation, please contact J. Kevin Hennessy (312-609-7868), Kenneth F. Sparks (312-609-7877), Mark L. Stolzenburg (312-609-7512), or any other Vedder Price attorney with whom you have worked. ■

## VEDDERPRICE<sup>®</sup>

222 NORTH LASALLE STREET  
CHICAGO, ILLINOIS 60601  
312-609-7500 FAX: 312-609-5005

1633 BROADWAY, 47th FLOOR  
NEW YORK, NEW YORK 10019  
212-407-7700 FAX: 212-407-7799

875 15th STREET NW, SUITE 725  
WASHINGTON, D.C. 20005  
202-312-3320 FAX: 202-312-3322

[www.vedderprice.com](http://www.vedderprice.com)

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Questions or comments concerning the bulletin or its contents may be directed to the firm's Labor Practice Leader, Bruce R. Alper (312-609-7890), or the Managing Shareholder of the firm's New York office, Neal I. Korval (212-407-7780) or, in Washington, D.C., Theresa M. Peyton (202-312-3360).