

Common Myths About The Employee Free Choice Act

The Employee Free Choice Act (EFCA), better known as “Card Check,” would restrict workers’ rights, do away with secret ballot elections in union certification campaigns, and transfer hundreds of millions of dollars in mandatory union dues from workers’ pockets into the hands of union executives. Card Check is a power grab by union management, which wants a free hand to pressure workers into union ranks without the protection of the secret ballot.

Card Check is not about lifting up workers, it’s about union executives enhancing their power by avoiding the time, expense, and potential risk of giving workers the chance to express their views in private at the ballot box.

Union executives make numerous claims about the virtues of Card Check, none of which measure up with the facts.

Myth #1: *The legislation would not require workers to organize using card check. If one-third of workers want to have an election, they could still have one. Card Check just gives workers another choice.*

Fact: **Union organizers, not workers, are the only ones who would get to choose — and the choice will always be against the secret ballot.**

- The only choice under Card Check would be made by union organizers, not workers. This is because of the language used in Section 2(a) of EFCA, which essentially prohibits secret ballot elections. It states that if authorization cards representing more than 50% of workers in a bargaining unit are presented to the National Labor Relations Board (NLRB), “the Board *shall not direct an election but shall certify the individual or labor organization as the representative.*”
- Thus, even if 30% of workers in a bargaining unit wanted an NLRB election (the requirement under law), once union organizers convinced a bare majority of their colleagues to sign cards, all workers would be prohibited from having a secret ballot election.
- Workers who wanted an election might not even have the chance to gather the needed support because they might never know an organizing campaign was underway. Under Card Check, union organizers don’t have to tell *all* workers they are forming a union, just those they think will sign authorization cards. And once the needed cards are signed, it’s game over.
- So while the legislation does not *explicitly* ban secret ballot elections, it has the same practical effect. Claiming that workers can still have an election if they want one is like saying you can still choose to exit an aircraft after it has taken off.

Myth #2: *The Employee Free Choice Act gives workers the ability to negotiate for better terms from their employers. It takes an important step towards strengthening America's middle class.*

Fact: States with the heaviest union presence are worse off than states with the least.

- States with the heaviest union presence are worse off than states with the least across a number of economic indicators — meaning that the people living in those states have fewer opportunities to succeed and move into the middle class.
- States with high union density have slower growth in GDP than the states with the lowest density; more than a full percentage point higher unemployment; significantly higher costs of living; higher taxes, and lower home ownership rates.
- Moreover, states with high union densities have seen slower population growth and a corresponding loss of congressional seats, meaning they have less of a voice in governing our national affairs.

Myth #3: *We need Card Check because when workers attempt to form a union, employers often respond with tactics of intimidation, harassment and retaliation.*

Fact: Unions win a large majority of elections under current law.

- Union executives have always complained about alleged employer coercion as a tactic in organizing campaigns, but facts speak louder than their rhetoric about intimidation. When unions seek a private ballot election from the NLRB, they win more than 55 percent of the time. There is simply no “crisis” that justifies taking away workers’ freedoms.
- What union executives *don't* like is having to take the time and expense of making their case to workers — and taking the risk that workers might turn them down if given a chance to express their views in private. Union executives want to stack the deck to ensure they *always* win — whether workers really want a union or not.
- If union executives are really concerned about harassment, it makes little sense to support an organizing procedure that would force workers to make their decision publicly.

Myth #4: *The NLRB process is too slow — it takes far too long to hold an election.*

Fact: The vast majority of union representation elections take place in less than 60 days.

- In FY 2006, 94.2% of all initial union representation elections were held within 56 days of the union filing a petition. During that same time, the median period for holding an election was just 39 days.

- Card check is not about holding elections in a timely fashion. Union executives just don't want to hold them at all.

Myth # 5: *When employers are penalized for illegal acts, the remedies for workers come far too late. It can be years before a union supporter who is fired receives back pay or reinstatement from the National Labor Relations Board (NLRB), which means that recourse to the Board is an empty threat.*

Fact: The NLRB provides quick remedies to legitimate Unfair Labor Practice charges against both employers and unions.

- Unfair Labor Practice charges are a serious judicial matter that deserve, and receive, a full and fair hearing. Even so, the NLRB provides rapid remedies to legitimate claims.
- 90% of unfair labor practice charges are resolved informally, and the median time for such resolution was just 59 days in 2006.
- In the few cases where informal resolution was not possible, the median time for opening hearings on a case in 2006 was just 84 days. Nearly 90% of hearings were closed within 30 days.
- In 2006, nearly 100% of the most serious unfair labor practice charges were resolved in less than 50 days.
- The process works. There is no "crisis" that justifies taking away workers' freedoms as Card Check would do.

Myth #6: *Binding arbitration for a first contract benefits everyone, because it is an incentive for management and labor to bargain productively. A similar requirement exists in several Canadian provinces, and has been successful in improving labor-management relations between companies and new unions.*

Fact: Binding arbitration prevents workers from having a choice about the terms and conditions of their own jobs.

- A forced contract under binding arbitration may leave everyone worse off, because both sides could be stuck with a result they don't like. In addition, workers would be prohibited from voting on the terms of their new employment contract for a full two years. The binding arbitration provisions of Card Check would eliminate choice for workers.
- There are usually legitimate reasons why unions and employers take time to reach an agreement, and forcing an arbitrary time frame on negotiations is no incentive for either side to "bargain productively." In fact, if either side feels they are at a disadvantage in

negotiations, they have every incentive to simply “run out the clock” and wait for a more favorable outcome from the arbitration board.

- As the AFL-CIO states on its own web site, the real incentive for employers and unions to negotiate is not binding arbitration, but the threat of a strike. “The desire of both sides to avoid costly strikes is what fuels properly balanced collective bargaining.” (Julis Getman, AFL-CIO Web site, 11/28/07)
- As the Supreme Court recognized in 1970, negotiations can be difficult, and it was never intended under the National Labor Relations Act (NLRA) for the government to step in and mandate conditions of employment under a union contract. In the words of the Court:

“But it was recognized from the beginning that agreement might in some cases be impossible, and it was never intended that the Government would in such cases step in, become a party to the negotiations and impose its own views of a desirable settlement.”

Myth #7: *When workers win the right to organize, employers resort to delay in entering into a contract for months or even years after the union is certified.*

Fact: Unions have tools available under current law to expedite contract negotiations — they just don’t want to use them.

- Unions have lawful recourses to prevent delays in reaching a contract, including filing an Unfair Labor Practice charge with the NLRB. Under the law, employers must bargain in good faith or they can be fined and ordered back to the bargaining table.
- Unions can also strike the employer. This may be expensive, and may even cause workers to second guess the decision to unionize, but the fact that union executives don’t want to exercise *their* rights is no justification for taking away the rights of workers.
- Moreover, the forced arbitration provisions of Card Check could take, at a minimum, several months, and potentially even years to result in a contract. There is nothing in the legislation that sets a time limit for binding arbitration to reach a contract.

Myth #8: *“Elections” may sound like the most democratic approach, but the NLRB process is nothing like any democratic elections in our society — presidential elections, for example — because one side has all the power. The employer controls the voters’ paychecks and livelihood, has unlimited access to speak against the union in the workplace while restricting pro-union speech and has the freedom to intimidate and coerce the voters. The other side, the union, is not allowed to access voters in the one place where they congregate: the workplace.*

Fact: Unions have numerous special privileges and advantages during NLRB elections.

- NLRB elections *aren't* like other elections in our country. Nor were they ever intended to be. In fact, the law gives significant advantages to unions during the election process — advantages that would be a national scandal if they were allowed in political campaigns.
 - The union controls the timing of filing the petition for an election, and can choose the most advantageous opportunity. No candidate running for office has the luxury of essentially picking the date they want voters to go to the polls.
 - The union can largely determine the size of the electorate, in this case the bargaining unit. This is taking the concept of gerrymandering to an extreme.
 - The union, but not the employer, is allowed to visit the workers at home to make their case. This is like allowing only certain presidential candidates to visit Iowa and New Hampshire.
 - The union, but not the employer, is allowed to promise workers a host of benefits if they vote for the union — even if the union knows these are promises they cannot keep.

Myth #9: *Workers in NLRB elections were twice as likely to report that their employer coerced them to oppose the union than workers in card checks.*

Fact: **Card Check would increase coercion of workers.**

- One should be skeptical of the data in “Myth 9” based on the small sample size (430) used in the survey from which it is generated and other questionable qualifiers. However, to the extent that the conclusion has any factual basis, there is a simple explanation. Under current law, employers stay out of most card check campaigns because unions usually force employers to accept “neutrality agreements” under which only the union is permitted to talk to workers.
- Card check legislation does not require employers to observe neutrality agreements, and there would no longer be any incentive for them to do so. Thus, Card Check would likely cause *more* employer involvement in union organizing campaigns. And by ensuring that workers have to make their preference known publicly, Card Check could increase coercion by union organizers.

Myth #10: *Majority sign-up is a tested idea. It's been around since the beginning of the National Labor Relations Act.*

Fact: **Secret ballots have been around since the beginning of the Republic — and the Supreme Court, the NLRB and even unions have said it's the procedure most likely to determine what workers really want.**

- In a 2001 case (Levitz Furniture), the United Food and Commercial Workers Union and the AFL-CIO argued that “Board [NLRB] elections are the preferred means of establishing whether a union has the support of a majority of workers in a bargaining unit.”
- The Supreme Court stated in a 1969 case (Gissel Packing Co.) that the secret ballot was the “most satisfactory — indeed the preferred — method of ascertaining whether a union has majority support.”
- Union executives frequently complain about the “Bush dominated NLRB,” but in 1967, when a Democrat was president, the NLRB wrote: “It would be difficult to imagine a more unreliable method of ascertaining the real wishes of employees than ‘card check,’ unless it were an employer’s request for an open show of hands.”

Myth #11: *Academic studies show that workers who organize under majority sign-up feel less pressure from co-workers to support the union than workers who organize under the NLRB election process.*

Fact: **The issue is not whether co-workers discuss forming a union, it’s whether workers can make their final decision in private.**

- Discussions between workers about forming a union are protected activities under the law, and workers should be free to discuss the issue. However, workers should not have to publicly reveal their final decision to co-workers, employers or unions, as would happen under Card Check.

Myth #12: *It is illegal for anyone to coerce employees to sign a union authorization card. Any person who breaks the law will be subject to penalties under Card Check. The issue is not that unions coerce workers, that is already prohibited by Taft-Hartley.*

Fact: **Coercion by union organizers occurs now, and card check legislation would do nothing to assist workers in preventing it.**

- Testimony from former union organizers indicates that coercion by unions is a widespread practice. For example, as a one-time organizer for UNITE HERE testified in February 2007: “in jurisdictions in which ‘card check’ was actually legislated, organizers tended to be even more willing to harass, lie and use fear tactics to intimidate workers into signing cards.”
- In 2006, more than 5,200 Unfair Labor Practice charges were filed against unions for “illegal restraint and coercion of employees.”
- Card Check legislation would do nothing to assist workers in preventing union coercion. Under Section 4 of EFCA, a new list of Unfair Labor Practice charges that can be filed against *employers* is added to the NLRB’s cases that must be “given priority over all other

cases except cases of like character[.]” Despite Card Check advocates’ claims that they support workers, charges by employees against union coercion (under Section 8(b)(1)(A)) are left off the priority list, meaning that such complaints will receive secondary treatment.

Myth #13: *Signing a card under the Employee Free Choice Act is no different from card signings under current law. The union authorization card under the Employee Free Choice Act is treated no differently than a petition for election or a card under a majority sign-up agreement.*

Fact: Signing a card under Card Check legislation exposes workers to far more grave consequences than signing any card under current law.

- Under current law, signing a card asking for a union election does not commit a worker to forming a union or paying union dues. It only indicates an interest in discussing the issue and holding a secret ballot election. This is a tremendous difference.
- Even signing a card under the card check procedure established in current law does not carry the same grave consequences as it would under the legislation. For example, it does not commit a worker to surrendering their ability to vote on a union contract, as could happen under Card Check’s binding arbitration provisions.

Myth #14: *In a study of a more than 60-year period, the Human Resources Policy Association listed 113 NLRB cases which they claimed involved union deception and/or coercion in obtaining authorization card signatures. Careful examination of those cases, however, reveals that union misconduct was found in only 42 of those 113 claimed cases.*

Fact: Testimony from union organizers indicates extensive union coercion in card check campaigns.

- Testimony from former union organizers indicates that coercion by unions is a widespread practice. And while not all cases were related to organizing, more than 5,200 Unfair Labor Practice charges were filed against unions for “illegal restraint and coercion of employees” during 2006. And the NLRB reported that union misconduct resulted in nearly 3,400 workers receiving back pay in 2006.
- Regarding the 42 cases, the Board of the NLRB acts when appeals are filed. Most cases are decided prior to reaching the level of the Board, so it is not surprising that the number of deception or coercion cases decided by the Board would be low. This figure also does not take into account cases that were settled informally. Moreover, workers may be less likely to seek redress from the NLRB for union violations because of a lack of support from unions or employers when they do so.

Myth #15: *In 2005 alone, over 30,000 workers received back pay from employers that illegally fired or otherwise discriminated against them for their union activities.*

Fact: Both employers and unions have been ordered to provide back pay for a variety of causes.

- In 2006, unions themselves were ordered to pay more than 10 percent of all back pay awards and were forced to compensate 3,400 workers for illegal union activity.
- Back pay is awarded in many settings that have nothing to do with union organizing and nothing to do with workers being fired. Back pay is awarded in a number of different situations, including delays in returning to work after a labor dispute and failure to rehire workers after a business is sold to a new owner.

Myth #16: *In organizing campaigns, 25 percent of employers fire at least one worker who supports the union.*

Fact: The “data” used to generate this figure is suspect at best.

- This nearly decade-old statistic is based on an unscientific “survey” mailed to union organizers themselves, hardly an unbiased source. The widespread firing of workers during union organizing campaigns alleged by card check proponents is simply not substantiated by actual data from the NLRB.
- For example, in 2006, the NLRB ordered 2,926 workers reinstated (although not all the cases were initiated in 2006 and there is no way of knowing how many of these workers were fired during organizing campaigns). To put this number in perspective, more than 150,000 workers were eligible to vote in NLRB elections during 2006, and thousands more were involved in other organizing campaigns that did not culminate in an NLRB election.

Myth #17: *The card-check procedure is good for both employers and unions, since it promotes healthy relationships between employers and employees. Eliminating contentious elections from the certification process produces a better long-term relationship between union and employer.*

Fact: The issue is not what is good for union bosses and employers, but what is good for workers.

- The National Labor Relations Act is, at heart, about protecting the rights of workers. This is made clear in Section 7, which protects the right of workers to join, or not to join, a union.
 - “Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective

bargaining or other mutual aid or protection, **and shall also have the right to refrain from any or all such activities** except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3) [section 158(a)(3) of this title].”

- Neither unions nor employers should put their own convenience above a worker’s right to choose freely in a secret ballot election.