

## Employee Free Choice Act: The Time is Now



America's labor law is broken. CWA has engaged in a campaign for the past 17 years that aims to fix it. After lots of hard work by our members, allies, and friends in Congress, an amazing opportunity exists right now to put in place a new law that set us on the right track—namely, the Employee Free Choice Act.

The Employee Free Choice Act is legislation that will restore fairness in labor law that today overwhelmingly favors employers.

### **CWA Legislative Fact Sheet**

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*Highlights include:*

- Majority sign-up, or card check elections, so that if a majority of workers in a bargaining unit sign cards or a petition indicating that they want union representation, the National Labor Relations Board will require that the union be recognized. This will reduce employer threats and intimidation, harassment and firings and other employer tactics that too often are a part of every union election today.
- First contract mediation and arbitration, to stop employers from dragging out contract talks after workers have voted for union representation.
- Stronger penalties for violations, so employers who continue to violate the law pay a real price.

If passed, the Employee Free Choice Act would allow the United States to join the 70+ other democracies in the world which have established a fair process for workers to join unions.

### **HISTORICAL PERSPECTIVE**

In 1935, the National Labor Relations Act (NLRA) established the right of workers to organize and act collectively—and it opened the door to major unionization drives.

Congress however, hasn't passed major labor law legislation since 1947, when it approved The Taft-Hartley Act, a measure that authorized a whole series of employer rights to deter union organization. This, coupled with court decisions since the early 1940s that equated employer free speech with the right of management to run blatant anti-union campaigns, have led to 70 years of increasing union busting.

In a study of 400 union representation elections, Dr. Kate Bronfenbrenner of Cornell University found that 80 percent of employers who face worker organizing efforts hire consultants to assist them in conducting anti-union campaigns. Fifty (50) percent of employers threaten to close a business site when faced with the possibility of a union representation election. Thirty-two (32) percent of employers fire workers who actively support a union. Ninety-one (91) percent of employers compel workers to attend captive audience meetings and hear anti-union propaganda. Fifty-eight (58) percent of employers show their workers anti-union videos. Seventy-seven (77) percent distribute anti-union propaganda.

In 21<sup>st</sup>-century America, joining a union has become more of a risk than a right.

## **JUNE 2009—A MAJOR HISTORICAL MOMENT**

Private sector unionization is under 8%. Increasingly, our industries are less unionized and this has a direct and negative impact on our contract, our benefits, and our retirement plans. Employers will always use the lower wages, benefits and working conditions of their non-union counterparts as a rationale to cut our hard-won gains that took years to achieve.

We believe in raising the bottom rather than bringing down what little remains of the middle class. CWA-ers need the Act as much as non-union workers if we are going to be able to defend our contracts now and in the future. And in this global economy, American workers need as many rights as their European counterparts, such as the right to a union enjoyed by T-Mobile workers in Germany.

The Employee Free Choice Act was introduced on March 10, 2009. The Senate version of this bill is **S. 560** sponsored by Senator Edward (Ted) Kennedy (D-MA). The House version is **H.R. 1409** introduced by Congressman George Miller (D-CA). A final version of the bill is expected to be introduced shortly. We are hopeful that it will preserve

the integrity of the original bill and move quickly through the Senate. We need 60 votes in the Senate to achieve cloture which is necessary to end the debate and allow a vote on the Employee Free Choice Act. Getting to 60 is challenging, but if we're successful, the vote on the actual bill needs a simple majority and we believe we're poised to win that vote. Members of The House of Representatives are much more supportive of the Act, so we are not anticipating a major battle.

Your work lobbying during the 2009 CWA Convention comes at a perfect time to underscore the messages CWA wants to convey to Members of Congress:

*Any labor reform legislation must ensure that:*

1. Workers have a free choice and a fair path to choose to form a union, free from intimidation
2. Real penalties exist for employers who break the law
3. Workers and employers can reach a first contract in a reasonable period of time

Things to Remember:

**Majority sign-up works:** The prime example within CWA involves its negotiated agreement with AT&T Mobility under which any new hires get to choose a union through majority sign-up—resulting in more than 25,000 additional CWA members over the last several years!

**Workers still have the right to a secret ballot:** Contrary to claims made by opponents of the Employee Free Choice Act, the legislation does not abolish the “secret ballot” or the right to a representation election. Under the bill, workers are entitled to choose whether they want to utilize representation elections or majority sign-up to decide whether to join a union. Under current law, the employer makes this decision. Workers need to have the freedom to make this decision so that they don't have to face over six NLRB elections just to form a union, as the Comcast workers did when they tried to join CWA.

**First contract mediation and arbitration are essential:** The bill mandates first contract mediation and arbitration—because even when workers overcome the obstacles to forming a union, management can deny them the benefits of collective bargaining by refusing to agree to a contract. Of the bargaining units that the NLRB certifies, just 38 percent are able to bargain a contract after one year. Only 56 percent are able to bargain a contract after two years. To address this

problem, the bill stipulates that if no agreement on a first contract has been reached after 90 days of bargaining, then either the workers or the employer can request the intervention of the Federal Mediation and Conciliation Service (FMCS). If the FMCS is unable to bring the parties to an agreement after 30 days of mediation, the dispute may be referred to binding arbitration and the results of the arbitration will be binding on the parties for two years. The Dayton Daily News would be enjoying a first contract after 22 years of struggle if this provision were law!

**Penalties must be strengthened:** The Employee Free Choice Act establishes stronger penalties when workers are attempting to organize or obtain a first contract. The bill mandates an award of three times the amount of back pay for illegal discrimination that occurs during efforts to organize or when workers are seeking a first contract.

The legislation provides for penalties up to \$20,000 per violation against employers found to have willfully or repeatedly violated workers' rights during an organizing campaign or pursuit of a first contract.

The bill also requires the National Labor Relations Board (NLRB) to seek a federal court injunction against an employer when there is reasonable cause to believe that an employer has discharged workers or discriminated against them or engaged in conduct that interferes significantly with workers' rights in an organizing campaign or when bargaining a first contract. Under current law, workers do not have access to mandatory injunctive relief against employers. Workers can ask the NLRB to seek a court order to stop illegal conduct by an employer but these requests are rarely granted. A court order putting fired union supporters back to work and preventing management from firing union sympathizers would be an effective way to stop management from using intimidation to stifle union organizing efforts. Workers like Sara Steffens, a reporter with the Contra Costa Times, who was fired for organizing a union, would be more protected, have greater recourse, and a clearer path to justice.

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