

Why We Need the Employee Free Choice Act

THE PROBLEM: EMPLOYERS SILENCE WORKERS WHO ATTEMPT TO FORM UNIONS

Under the current labor law system, employers often use a combination of legal and illegal methods to silence employees who attempt to form unions and bargain for better wages and working conditions. When faced with organizing drives, 25 percent of employers **fire at least one pro-union worker**; 51 percent **threaten to close a worksite** if the union prevails; and, 91 percent force employees to attend one-on-one anti-union meetings with their supervisors.

In addition, **the system designed to protect workers is severely broken**. Laws and enforcement fail to sufficiently protect workers, offering penalties that are too weak to deter violations. For example, 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. **Many employers find the punishment for breaking the law a bargain** if firing a pro-union employee scares others from supporting the union. Further, if workers successfully form a union despite such tactics, the employer is allowed to repeatedly appeal the results, which can take years. Such delays weaken union support by inviting more opportunities for employee turnover, harassment, and firings by management.

THE IMPACT: ECONOMIC OPPORTUNITY STOLEN FROM AMERICA'S WORKING FAMILIES

Protecting the right to form unions is about maintaining the American middle class. It's no coincidence that as union membership numbers fall there are growing numbers of jobs with low pay, poor benefits, and little to no security. More than half of U.S. workers—60 million—say they would join a union right now if they could. Why? They know that coming together to bargain with employers over wages, benefits, and working conditions is the best path to getting ahead. **Workers who belong to unions earn 30 percent more than non-union workers, and are 63 percent more likely to have employer-provided health care**. Without labor law reform, economic opportunity for America's working families will continue to erode.

THE SOLUTION: LABOR LAW REFORM THAT GIVES WORKERS A FREE CHOICE AND A FAIR CHANCE

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**. The Employee Free Choice Act would level the playing field by **strengthening penalties** against offending employers; **requiring mediation and arbitration** to help employers and employees reach a first contract in a reasonable period of time; and, **permitting workers to form a union through "majority sign-up,"** a process in which workers present signed authorization cards as demonstration of their choice to belong to a union.

THE RESULTS: EMPLOYER/EMPLOYEE PARTNERSHIPS ARE WORKING AT TOP U.S. COMPANIES

The provisions of the Employee Free Choice Act mirror successful strategies already in use by industry-leading employers such as **Cingular Wireless and Kaiser Permanente**. These companies have replaced adversarial relationships pitting employers against workers' unions with **cooperative labor relations models** that include voluntary recognition of unions through majority sign-up and fair contracts. At Cingular, for example, over 17,000 employees chose to join the Communications Workers of America in less than a year when the company and union agreed to remain neutral during the organizing drive. The nation's top wireless carrier and Wall Street darling continues to boost profits and advance a positive labor relations model enabling its union employees to grow.

While many companies would lead us to believe that cutting jobs, slashing wages and benefits, employing temporary and cheap labor, and busting unions are necessary to remain profitable in the global economy, Cingular and others have found another way that works for their bottom lines, their employees, and their valued customers.

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 or retaliation was only \$2,667.
- Some executives refer to the paltry cost of breaking the law as a “hunting license.”

SOLUTION: STRENGTHEN PENALITIES

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 34 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.
