

Protecting Hospital Employees' Confidential Decision to Unionize

Employee Free Choice Act

Issue *The Employee Free Choice Act* (EFCA) seeks to overturn a long-standing policy, established more than 70 years ago in the *National Labor Relations Act* (NLRA) that guarantees employees the right to determine whether they wish to be represented by a particular union through a federally-supervised secret ballot election. This bill, with a misleading title, would enable union organizers to represent employees by presenting a majority of union authorization cards to the employer – also referred to as the “card-check” process – and would force negotiating parties into binding arbitration.

While EFCA passed the House in March 2007 by a wide margin (241-185), the Senate companion bill failed to garner enough support to pass. Still, the bill’s language can be added as an amendment to other legislation before the Senate.

View The AHA and ASHHRA oppose EFCA because it would jeopardize hospital employees’ right to confidentiality in unionization elections. The legislation undermines the bedrock principle of free and fair elections where ballots are cast in private and not in the shadow of outside influences and pressure. Under current law, the National Labor Relations Board protects the interests of both the employer and the employee by ensuring that both sides have an opportunity to make their case, and that those employees are able to express their decision in private. The legislation would do away with that safeguard.

EFCA would amend the NLRA by requiring employers to recognize a labor union solely through the card check process, thus permitting unions to avoid elections where employees make decisions free from interference. Under the card check approach, union authorization cards are signed in the presence of an interested party, for example, a union organizer or a pro-union co-worker. The cards are then presented as representing the true intent of the workers.

The hardworking men and women in our nation’s hospitals are entitled to choice, and the AHA and ASHHRA have long supported the compassionate work of the caregivers who work in our hospitals and are committed to providing them every protection afforded to them, including confidentiality in their decision to unionize. We believe EFCA strips away existing safeguards assured under federal law and leaves workers unprotected from outside influence and pressure.

Equally troubling, EFCA also would effectively send any bargaining disputes to binding arbitration after 120 days. With binding arbitration, workers lose their say. The bill would not permit workers to terminate arbitration. Workers cannot vote down a contract and send the union back to the negotiation table under binding arbitration, and they cannot reject an arbitrator’s ruling. EFCA places few, if any, restrictions on the arbitrator’s authority to set initial contract terms and conditions. As such, the arbitrator is free to impose on the parties’ initial contract terms that the arbitrator determines are appropriate instead of being limited to choosing between the employer and the union’s respective final bargaining proposals.

EFCA’s mandatory interest arbitration provisions cover a broad range of collective bargaining topics, such as employees’ initial wage rates and any built-in pay increases; selection of employee benefit plans, including plan design, employee deductibles and contribution levels; and employer participation in a multi-employer union pension plan, which could trigger employer withdrawal liability if the employer later sought to leave the plan. Under the proposed legislation, once an arbitrator is called in, his or her word on these issues is final.