

# What is EFCA / "Card Check"?



## The Proposed Employee Free Choice Act and its Impact on Union Organizing

The so-called Employee Free Choice Act (EFCA), or the "Card Check" bill, would fundamentally tilt the playing field in favor of union organizing. All merit shop contractors should learn the ramifications of what this bill would do and should prepare to defend against a major union organizing assault if the bill becomes law.

The first section of the EFCA eliminates the right of employees to a secret ballot election on the subject of unions, favoring instead a mere check of authorization cards that unions would collect from employees and submit to the National Labor Relations Board. The card signing process would have none of the protections of secret ballot elections, and employees would be subject to peer pressure, threats and miscommunication throughout the card signing process. Employers might not have knowledge a card signing campaign is under way and could lose any opportunity to speak to their own workers about unionization.

Beyond the card check provisions, the EFCA also would require newly unionized employers to submit to compulsory arbitration of their first union contracts, in the absence of an agreement. This would mean that, for the first time in the history of the National Labor Relations Act (NLRA), every aspect of private businesses' wages and working conditions would be dictated by the federal government (through enforcement of the arbitration decision).

Finally, the proposed EFCA would impose new penalties against violators of the NLRA. Employers would be subjected to potentially crippling fines at the behest of union activists who have suffered no actual damage.

Enactment of the EFCA would radically depart from decades of settled labor law, and the negative impact on merit shop employers would be dramatic.

Employers would still have the right to communicate with their employees during union organizing, but employers that wait to start communicating until they hear union is actively organizing will likely be too late. The EFCA, if enacted, will place a premium on early warning about organizing activity, and employers will need to be prepared to start talking to their employees at the earliest opportunity whenever they hear of card signing activity, if not before.

There also will be a greater premium than ever placed on training managers/supervisors in the dos and don'ts of union organizing.

Front-line supervisors are most likely to be the first to hear of any card signing activity, and it will be important to make them aware of the need for a speedy response. At the same time, it will be more important than ever that such supervisors say the right things where unions are concerned, because of the big new penalties contemplated under the bill.

As of this writing, it is unclear whether the EFCA will pass in its current form or at all, or when Congress will consider the bill. Unions remain entitled to seek to organize any workplace without waiting for passage of new laws. It is important that employers understand the procedures involved, and communicate with their employees, as set forth above.



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