

Don't Let Government Dictate Labor Contracts

By PETER J. HURTGEN and JOHN S. IRVING

In the face of our increasingly dire economic situation, with job losses accelerating and businesses struggling, unions are pushing for the most fundamental change to the nation's primary labor law in more than 60 years. The Employee Free Choice Act (EFCA), a bill that failed in the last Congress, was reintroduced on Tuesday.

EFCA, as most people now know, would replace the 70-year-old guarantee of secret ballots in union elections with unreliable "authorization cards," often signed by employees under the watchful eye of union representatives and based upon extravagant promises. The new penalties and injunctions imposed -- including substantial fines -- are designed to intimidate employers into remaining silent during union campaigns so employees will not receive full information to make an informed choice. Meanwhile, there are no new penalties for unions, despite the potential for coercion in the card-signing process.

These changes would no doubt greatly expand union membership beyond the current 8% in the private-sector workforce and, hardly coincidentally, boost union dues as well. We are not opposed to increased unionization of employees per se. What this bill does is destroy the fundamental premises of our labor law.

Less publicized and arguably even worse, the EFCA injects government into collective bargaining. If a union and an employer cannot agree to their first contract in 120 days, the government will appoint a panel of arbitrators who will.

Mandatory arbitration is devastatingly bad policy -- it throws a monkey wrench into the collective bargaining process. Nothing would more certainly make private bargaining a waste of time. Why make concessions at the bargaining table that would simply move the starting point for arbitration?

An arbitration panel's power to dictate terms is virtually limitless. Such panels could impose uncompetitive wage rates and unworkable work rules. Arbitrators could also impose mandatory union dues and discharge for failure to pay.

Arbitration panels are by definition a stranger to the work place. Yet real, private agreements are products of the needs, desires, capabilities and resources of the negotiating parties who are anything but.

Collective bargaining strikes a balance between the normal desires of management to keep costs down and retain flexibility, and the union's desire to deliver on promises made to employees. Current law provides that bargaining parties are not required to make concessions. Thus, resolving these differences takes time, since sometimes their goals are unrealistic.

But parties' goals and demands are tempered by other bargaining dynamics, such as the respective rights to strike and lockout, about which this bill is silent. Most often, the delays that do occur in reaching first agreements are due to these dynamics and the realities of collective bargaining -- not to unlawful "bad faith" by either party, for which prosecution and injunctions already are available.

Despite what union leaders would have us believe, the system of collective bargaining in place since 1935 is not broken. Nor is the mechanism for determining union representation: In fact, unions currently win well over 50% of certification elections. (In the first half of 2008, they won 67% of the time.)

There is simply no basis for depriving employees of free choice, and employers and unions of meaningful opportunities to shape their own private bargains without government interference. The proper role for government is to bring parties to the table for good-faith bargaining after employees have freely chosen union representation; it is not to dictate terms of employment.

Mr. Hurtgen was director of the Federal Mediation and Conciliation Service from 2002-2004 and chairman of the National Labor Relations Board from 2001-2002. Mr. Irving was general counsel of the National Labor Relations Board from 1975-1979.

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