



# Preserving Employer/Employee Relationships:

by Sean D. Shields

## Understanding the Implications of the Employee Free Choice Act of 2009

**A**s our nation's economic base has moved steadily away from its manufacturing and industrial heritage toward a more service-based engine, organized labor has witnessed a decline in their membership. In response, our nation's largest unions, like AFL-CIO and Change to Win Federation, are attempting to alter long-standing labor laws through the Employee Free Choice Act of 2009 (EFCA) to make it easier for unions to organize employees to unionize.

As employers who will be significantly impacted by the changes this bill would bring, it is imperative component manufacturers and suppliers understand the significance of EFCA.



According to the Bureau of Labor Statistics, almost 36 percent of American workers were represented by a union in 1947, today that figure is slightly more than 12 percent. Even this number is somewhat misleading, because if you discount the significant rise in the unionization of public-sector workers (36 percent), only 7 percent of private-sector workers belong to a union. Not surprisingly, unions have seen this decline as a threat to their long-term survival.

### The History of EFCA

Two years ago, then-President George W. Bush publicly promised he would veto a bill before Congress that would dramatically change the way in which unions are formed in this country. However, House Democrats, with their growing majority in the lower chamber, went ahead and passed the Employee Free Choice Act of 2007. The bill never came up for a vote in the Senate. Yet, the next year, House Democrats tried again and passed the Employee Free Choice Act of 2008. Again, it never came up for a vote in the Senate.

In 2009, the political landscape is significantly different. For one, with President Obama in the White House, there is no longer a threat of veto on EFCA. In fact, Obama has repeatedly promised in speeches that he will sign this legislation as soon as Congress can pass it. Second, Democrats have increased their majority standing in the U.S. House of Representatives, so approval of EFCA appears all but guaranteed there. Finally, with the defection of Senator Arlen Specter (D-PA) to the Democratic Party, and the likelihood of Al Franken becoming the next junior Senator of Minnesota, Democrats will have the 60 seats they require to stop debate on any bill (i.e., removing the threat of a filibuster) and force a vote on EFCA.

Since Democrats hold such a strong position, organized labor views this year as their best opportunity to get EFCA to become law. As employers who will be significantly impacted by the changes this bill would bring, it is imperative component manufacturers and suppliers understand the significance of EFCA and how to be effective in stopping its passage.

### Grassroots Action

Thanks to the passion and dedication of a few component manufacturers, SBC Legislative staff was able to organize a strong grassroots advocacy effort around EFCA. It began with Gary Weaver, President of Timber Tech in Cibolo, TX, who had a tremendous passion for this issue based on per-

## Talking Points: EFCA

### Industry Position

The structural building components industry opposes current efforts by organized labor to convince Congress to change national labor laws through the "Employee Free Choice Act of 2009."

OPPOSE: H.R. 1409 (Miller, D-CA) and S. 560 (Kennedy, D-MA) because it will undermine our nation's right to work laws, erode worker privacy, infringe on basic voting rights in our democracy, and provide an avenue for the federal government to control the wages and benefits of private companies.

### Eliminates Traditional Private Voting Process

- The "Employee Free Choice Act of 2009" (EFCA) would replace the current process of private ballot union representation elections with a system called "card check," which allows union organizers and their peers to publicly gather support for the creation of a union.
- The card check process increases the likelihood that employees will only hear one side of the story before deciding to sign the card instead of hearing each side of the argument to unionize.

### Eliminates Privacy in Decision Making

- This public process can also invite intimidation and threats in the workplace as well as harassment because an employee's decision for or against unionizing is public to everyone.
- When making the important decision to form a union, employees should be able to retain their right to privacy and freedom from undue and coercive influence, these have always been rights protected under our Constitution.

### Allows Government Control

- This bill would also impose an artificial timeline (90 days) for when the first labor contract must be reached upon union certification. If no contract is reached, a federal arbitrator could dictate the terms of the contract, including wages, benefits and work rules.
- In practice, this eliminates any incentive for collective bargaining for initial contracts because of the promise of binding government arbitration. Under this new system, unions are encouraged to make extreme demands and take hard line positions knowing the federal arbiter will likely split the difference between those demands and business' competitive interest position.

### Inclusive of Small Businesses

- As it is currently written, EFCA has no meaningful small businesses exemption. As a consequence, this measure has the potential to allow federal control of up to 4 million small businesses employing 39 million Americans. Government arbitrators, who may have no management experience, would effectively control these small businesses.
- It also empowers the federal government to impose contracts on newly organized companies. The government would set wages, benefits, work assignments, promotion procedures and any major changes to business operations.

Since almost every provision in the bill threatens to erode employer-employee relationships and take away vital business decisions from company management, even an amended version of EFCA would be bad for the structural building component industry.

If EFCA passes, organized labor will have a new, powerful tool to utilize to expand their membership: the "card check." It will also create a disincentive for newly organized employees to pursue good faith collective bargaining. Finally, it opens the door for the federal government to impose contractual mandates on a company, regardless of whether or not the company can afford it.



sonal experience. This passion turned into team action as the SBC Legislative Committee worked with Gary and TMAT President Jack Dermer to spread the word about the harmful impact EFCA would have on our industry's manufacturers.

"I was involved in a petition to unionize process as an employee in the industry back in 1973," said Gary Weaver. "I was impressed by how fair and democratic the process was. There was never any intimidation or unpleasantness on either side, and in the end we voted not to unionize." However, Gary was alarmed when he read about the provisions of EFCA and discovered that it would not only increase the likelihood and opportunity for union intimidation, it would also create a barrier to and threaten to allow the government to mandate benefits and wages to employers.

Jack Dermer, President of American Truss Systems in Houston, TX, shared Gary's concerns and with the help of our Legislative team, he contacted other SBCA Chapter Presidents in states where their Senators had not yet publicly expressed support or opposition to EFCA. An **SBC Legislative Action!** document summarizing the legislation and all the potential impacts it would have on component manufacturers was created, and both Jack and Gary called several peers and shared this information with them. (Go to [Support Docs](#) to view this document.)

"I was shocked that when I called several Chapter Presidents, they were either unaware of the bill, or did not know how bad it would be for our industry," said Jack. "Fortunately, through our calls we were able to educate our fellow manufacturers and convince them to act." In turn, several SBCA Chapter Presidents contacted their members and organized a significant letter-writing campaign. A template letter outlining the industry's concerns was written, which was printed on individual company letterhead and sent to Senators' offices in Washington, DC.

### Legislative Conference Action

To follow up on the grassroots campaign, component manufacturers from 17 states traveled to Washington, DC in May as part of the ninth annual SBC Legislative Conference. While there, they had the opportunity to discuss their concerns about EFCA face-to-face in their Congressional representatives' offices. These valuable meetings allowed conference participants,

including Gary and Jack, to get immediate feedback from their elected officials on where they stand on EFCA.

"This was my first time in Washington, DC as a participant in the legislative conference," said Weaver. "I found my meetings to be very valuable, and I appreciated how open my lawmakers were to hearing my concerns about EFCA. They made the effort to understand my point of view."

While it was not surprising that a majority of the Democrat members expressed support for EFCA and all the GOP members expressed opposition to the bill, what was surprising was the wide range of opinions on the odds the measure will be passed by Congress this year. At least five lawmakers expressed strong confidence EFCA would not even be brought up for a vote in either chamber of Congress this year. Several other lawmakers were less certain in their estimation, but seemed confident if the bill were to come up for a vote key aspects of the bill would be changed to be more moderate in approach.

At least two lawmakers, cosponsors of the bill, were confident the bill would be passed this summer. Yet, during one visit with a lawmaker, a legislative aide said with confidence that the bill had already come up for a vote in the Senate and had been defeated. Apparently, EFCA was amended onto another bill being considered in the Senate and the amendment failed on a 51-47 vote. In other words, EFCA appeared to be nine votes short of the 60 it needed to bypass a filibuster, at least as an amendment to an unrelated piece of legislation.

Piecing together these differing viewpoints, conference participants could conclude that the outcome of EFCA is anything but certain. Several prominent lawmakers, including Senator Specter, appear to be working with union interest groups to craft a compromise bill that may eliminate or soften some of the most potentially harmful aspects of the measure. Since almost every provision in the bill threatens to erode employer-employee relationships and take away vital business decisions from company management, even an amended version of EFCA would be bad for the structural building component industry.

Even Rep. Pete Hoekstra (R-MI), the SBC Legislative Conference keynote speaker, was unsure whether EFCA

would pass through Congress this year. He did caution those in the audience that regardless of how it looked at the moment, everything could change overnight if the right compromise was found. EFCA could be brought up for a vote swiftly if Congressional leaders knew they had the votes necessary to pass the bill. Hoekstra encouraged members of our industry to continue contacting their lawmakers and making them aware of our ongoing concerns about the legislation.

"The effort to pass this thing is far from over," added Dermer. "You can bet organized labor is not going to give up easily on a legislated membership drive. They're going to fight and lobby for increased union dues until the end. We have to be prepared to do the same."

### Why EFCA Is Bad for You

If EFCA passes, organized labor will have a new, powerful tool to utilize to expand their membership: the "card check." It will also create a disincentive for newly organized employees to pursue good faith collective bargaining. Finally, it opens the door for the federal government to impose contractual mandates on a company, regardless of whether or not the company can afford it. It therefore immediately threatens to erode the relationship between employers and employees and may cause the business to fail entirely.

### Card Check

Card check would replace the current process of private ballot union representation elections, and instead allow union organizers and their peers to publicly gather support for the creation of a union. This new system would allow employees to organize a labor union when a majority (51 percent) of employees in a bargaining unit signs authorization forms, or "cards," stating they wish to be represented by the union.

Since the National Labor Relations Act (NLRA) became law in 1935, the private ballot option has been available to employees wishing to form a union. However, this new law would turn this process into an open, public ballot subject to peer pressure. As a consequence, the card check process increases the likelihood that employees will only hear one side of the story before deciding to sign the card instead of hearing each side of the business argument. After all, union organizers are paid to recruit new members, not necessarily to educate workers on what is in the employee's and the business' best interest.

When making the important decision to form a union, just like voting for President, our democracy was built on an individual's right to privacy and freedom from undue and coercive influence.

### Government Control

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In practice, this provision would eliminate any incentives for collective bargaining for initial contracts because of the promise of binding government arbitration. Under this new system, unions are encouraged to make extreme demands and take hard line positions knowing the federal arbiter will likely split the difference between those demands and business' competitive interest position.

### Small Businesses Included

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### Doing Your Part

If you haven't already done so, contact your U.S. Senators and Representative and ask them to oppose EFCA. You can use the template letter found in [Support Docs](#), or call them directly and use the talking points found on page 2. While a lot has been done already to make lawmakers aware of our industry's concerns about EFCA, there is a lot more work to be done to ensure it does not become law. **SBC**

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