

EFCA

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any incentive to compromise. Instead, the incentive is to put forward the most extreme proposals possible and hope that the arbitrator would give you most of what you want. The collective bargaining model that has worked for 70 years would be completely undermined.

In addition to employers losing in this scheme, workers lose, too. Under current law, workers often get the chance to vote on their contracts – and they sometimes reject the deal. But when government bureaucrats are dictating the contracts, melding together widely divergent positions taken by labor and management, it doesn't matter what the workers want – the Employee Free Choice Act would deny them a chance to vote.

Supporters of Card Check claim that binding arbitration is needed because employers sometimes refuse to bargain in good faith. In most negotiations, however, a contract is reached. It may not always happen as quickly as unions would like, but it is critical to get these contracts right, because they set the template for all the contracts that follow. This takes time.

Moreover, federal law recognizes that there are situations in which an agreement simply isn't possible. While the law makes clear that a contract is the desired outcome, it never intended for it to be a guaranteed outcome. And federal law never contemplated a situation in which government arbitrators, who may know nothing about a business, would be given the authority to step in, take over negotiations between two private parties, and dictate wages, benefits and work rules.

Partners Notes

Saul Ewing Adds To Employment Practice

Dan S. Brandenburg and Joanne G. Jacobson, partner and special counsel, respectively, have joined Saul Ewing's Labor, Employment and Employee Benefits Practice Group. Both attorneys will operate out of the Firm's Washington, D.C. office.

Prior to joining Saul Ewing, Mr. Brandenburg was managing shareholder of Sanders Schnabel & Brandenburg. He has more than 30 years of experience in numerous aspects of employee benefits matters, including retirement plans, health and welfare plans and executive compensation (including stock-based plans and plans for tax-exempt organizations).

Ms. Jacobson has nearly 20 years of experience advising private and non-profit employers on employee benefit plans and executive compensation. She counsels clients on tax-qualified retirement plans, including pension plans, profit sharing plans, 401(k) plans and ESOPs; as well as nonqualified deferred compensation and equity compensation programs. She has a niche sub-practice working with tax-exempt employers on their plans.

The final provision of the bill imposes substantial new penalties – but only on employers. Also, the law requires that employer misconduct be investigated by the federal government first – effectively turning the National Labor Relations Board into a one-sided enforcement agency that only goes after employers.

The effect of this provision is that many employers, particularly small businesses, would be too scared of penalties to say anything to their workers about the impact of unionizing. Workers would be denied equal information, and employers would have their

free speech rights chilled.

Clearly, there are numerous problems with the Employee Free Choice Act. Nevertheless, unions claim that the bill is essential to “restoring the middle class.” In reality, though, states with the largest number of union members are worse off than those with the fewest across a number of measures. States with the most union members have higher rates of unemployment, slower rates of job growth, slower economic growth, a higher cost of living, higher tax burdens, lower rates of homeownership and less entrepreneurial activity. Card Check isn't a ticket to the middle class. It's a

ticket to economic stagnation.

So who should worry about Card Check? Workers who value the protection of a private ballot. Workers who want a say over their contract. Small business owners who don't want to see their businesses taken over by aggressive union organizers. And everyone who realizes that in today's tough times, the last thing we need is productivity-killing work rules imposed on wide swathes of our economy.

Congress has taken up the Card Check bill. Unions are pressuring them to pass it. Your elected officials need to hear from you, too.

Please email the author at gspencer@uschamber.com with questions about this article.

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