

PERTINENT FACTS AND INFORMATION EMPLOYEE FREE CHOICE ACT

The principal arguments in favor of EFCA are: (a) employers violate NLRB election rules, (b) it takes the NLRB too long to hold an election, (c) the NLRB is ineffective in enforcement, and (d) the combination of (a) - (c) adversely affects the union's ability to win.

The facts under the current NLRB secret ballot election process are as follows:

- ◆ In FY 2007 unions won 59.9% of elections where unions were petitioning to represent employees ("RC cases"). In FY 2006 the percentage was 60.9, and in FY 2005 it was 61.1%. By way of comparison over the years, unions won 61.8% of RC elections in FY 1965; 50.1% in FY 1990; 50.9% in FY 1995; and 52% in FY 2000.¹
- ◆ If an employer violates NLRB election rules, the union can file "objections" to the election with the NLRB to challenge the company's conduct. The NLRB has the authority to order a new election or to order union recognition and collective bargaining depending on the seriousness of the employer's misconduct.
 - * In FY 2007 unions filed objections in 4.7% of RC cases; 5.8% in FY 2006; 5.6% in FY 2005; 4.9% in FY 2004; and 4.6% in FY 2003. In 1965 unions filed objections in 15% of the elections. Objections were filed in 10.5% of RC cases in FY 1990; 5.2% of RC cases in FY 1995; and 4.5% of RC cases in FY 2000.²
 - * When the NLRB conducted a hearing on post-election objections, the median time for decision was 72 days. When no hearing was conducted, the median was 28 days.³
 - * Over the last 5 years Administrative Law Judges and the NLRB have found that employers engaged in objectionable election conduct in RC cases in less than 1% of the elections conducted.⁴ From 1965-1969 the number was around 3.5%, and between 1990 and 2000 ranged around 1.5%.⁵
- ◆ Over the last 5 years the median time period for holding an election has been approximately 40 days from the date the union filed its petition for election with the NLRB.
- ◆ The Supreme Court has held that authorization cards are "admittedly inferior to the election process."⁶ The NLRB says card signing campaigns bring "pressure" and "misrepresentation" while elections, "assure greater regularity, fairness and certainty" in the outcome.⁷
- ◆ The AFL-CIO has written: "NLRB pledge cards are at best a signifying of interest at a given moment. Sometimes they are signed to 'get the union off my back' . . . Whatever the reason, there is no guarantee of anything in a signed NLRB pledge card except that it will count towards an NLRB election."⁸

¹ Annual Reports of the National Labor Relations Board (1965-2007).

² Annual Reports of the National Labor Relations Board (1965 - 2007).

³ Memorandum GC 09-03, Summary of Operations (Fiscal Year 2008).

⁴ Annual Reports of the National Labor Relations Board (2003 - 2007).

⁵ Annual Reports of the National Labor Relations Board (1965 - 2007).

⁶ *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 602-03 (1969).

⁷ *Dana Corp.*, 351 NLRB No. 28 (2007).

⁸ AFL-CIO Guidebook for Union organizers (1961).

