

The Employee "Free Choice" Act: Turning Labor Relations On its Head



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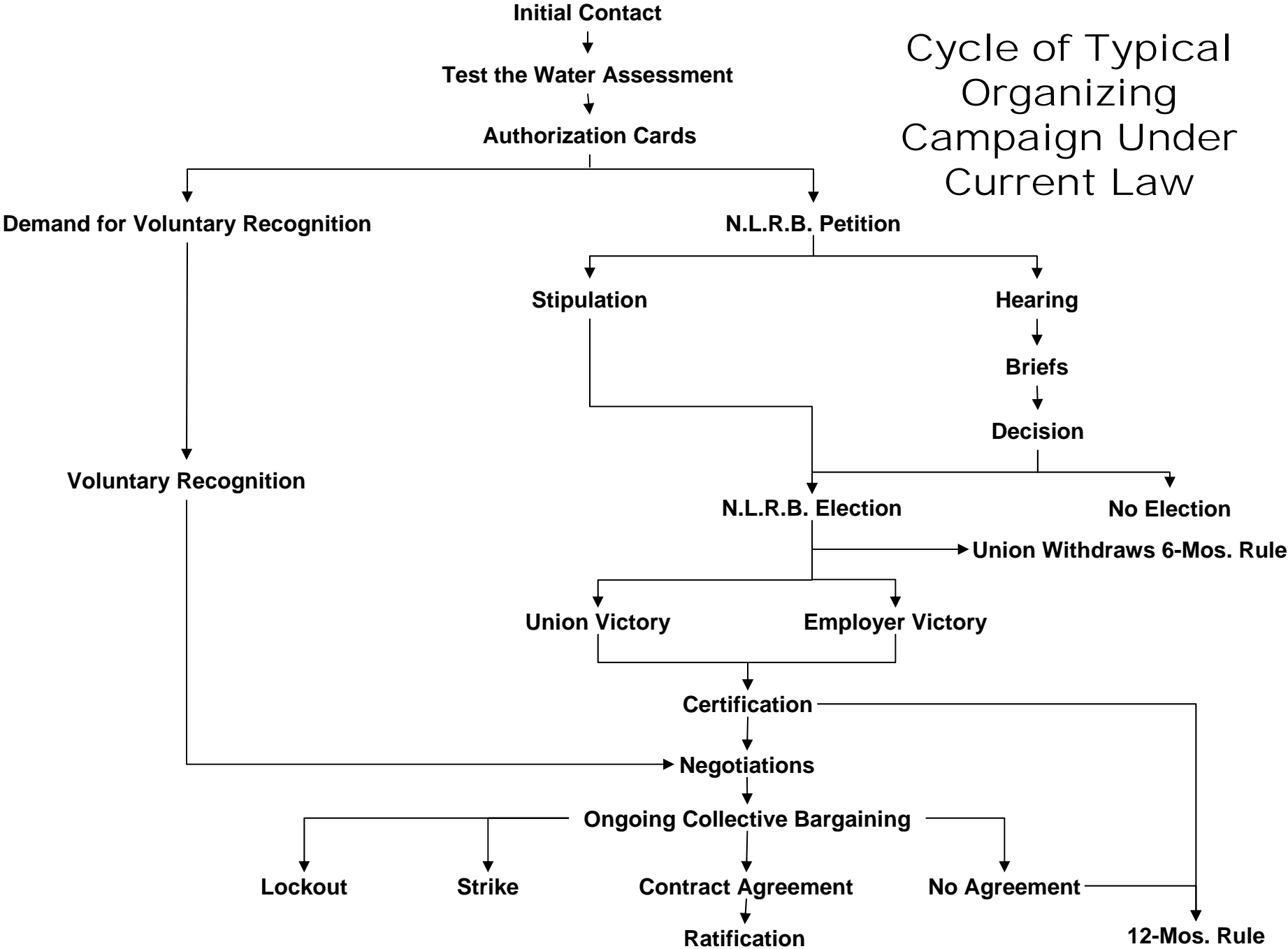
Agenda

- National Labor Relations Act: Current Law on Organizing
- The Employee Free Choice Act
- What Would Passage of EFCA Mean?
- What Can Employers Do Now?
- Questions and Answers

National Labor Relations Act

- Section 7 rights
- Unfair labor practices
- Collective bargaining obligations

Cycle of Typical Organizing Campaign Under Current Law



Important Points About the Current NLRA Process

- Employer has right to demand a secret ballot election
- Employer has right to bring legal challenges to bargaining unit before election occurs
- Employer has time to campaign
- Employees have opportunity to hear both sides of the story
- Employees' choices remain secret

The Employee "Free Choice" Act

(Wouldn't George Orwell
be proud?)



Employee “Free Choice” Act

- The stated purpose of the bill is to make it easier for unions to organize:

“A bill to amend the National Labor Relations Act to establish an efficient system to enable employees to form, join, or assist labor organizations, to provide for mandatory injunctions for unfair labor practices during organizing efforts, and for other purposes.”

Employee “Free Choice” Act

- “Card check” – Would eliminate employer right to insist on secret ballot elections
- NLRB would certify a union if the majority of employees in a bargaining unit signed union authorization cards

Employee “Free Choice” Act

- Would allow either party to require interest arbitration – contract terms would be imposed if no complete first contract within 120 days of bargaining commencement
- Would require NLRB to seek injunctions against employer unfair labor practices during organizing and first contract negotiations
- Would impose substantial penalties on employers – *but not unions* – for unfair labor practices
- Would still need a secret ballot election to *decertify* a union

Why Now?

- Unions represent only 7.5% of private sector employees nationwide – down from 30% in the 1950s
- Decreased interest in unions, due to:
 - Statutory protections at federal and state level
 - Manufacturing jobs moving off-shore
 - Shifts in job market: more mobile workforce, decline of “cradle-to-grave” employment, emphasis on greater education and technical skills; emphasis on individual merit and reward
 - Shifts in demographics: Younger employees have been less interested in unions; greater diversity in the workplace
- Unions failing to organize effectively: fewer employees want what the union is selling

Why Now (cont.)?

- 25% of Democratic Convention delegates were either union members or had household member
- Political clout far exceeding their membership

Top Union Leaders Say

- Unions “must all join together in a campaign like none we’ve ever run” to pass EFCA and “restore the power of working people.”
 - John Sweeney, President, AFL-CIO, Feb. 8, 2007
- “Unions spoke with a nearly unanimous voice: This is their No. 1, No. 2, and No. 3 priority in the next administration.”
 - Barry Broad, Teamster lobbyist, Nov. 16, 2008

Key Legislative Leaders Say

- House Speaker Nancy Pelosi:
 - EFCA is “the most important piece of labor reform in a generation.”
- Sen. Ted Kennedy:
 - “Strengthening the freedom to choose a union is key to strengthening the American middle class, and fixing our broken system should be a top priority of this Congress.”

And What Does Obama Say?

- “It’s time we had a president who honors organized labor, who’s walked on picket lines, who doesn’t choke on the word ‘union,’ who lets our unions do what they do best and organize our workers, and who will finally make the Employee Free Choice Act the law of the land.”
– Barack Obama, Labor Day Message 2008.

And What Does Obama Say?

- The Bush Administration has “packed the National Labor Relations Board with their cronies and their corporate buddies. Well, we’ve got news for them – it’s not the Department of Management, it’s the Department of *Labor*, and we’re going to take it back!”

– Barack Obama, AFSCME Convention, August 2008

Status of Bill

- Passed U.S. House of Representatives in March 2007:
Vote of 241-185
- Failed in the Senate in June 2007
- The EFCA will be a top legislative priority of the Obama Administration in 2009
- During campaign, Obama promised to pass it during first 100 days
- Uncertain how the economy will affect this pledge
- Labor Secretary still not determined – choice could be a signal

NY Representatives Who Have Co-Sponsored EFCA

- Anthony Weinder (D)
- Vito Fossella, Jr. (R)
- Eliot Engel (D)
- Nita Lowy (D)
- Michael McNulty (D)
- Nydia Velazquez (D)
- Tim Bishop (D)
- Peter King (R)
- Edolphus Towns (D)
- Carolyn Maloney (D)
- Jerrold Nadler (D)
- John McHugh (R)
- Maurice Hinchey (D)
- Louise Slaughter (D)
- Carolyn McCarthy (D)
- Charles Rangel (D)

NY Representatives Who Have Co-Sponsored EFCA

- John Hall (D)
 - Kristen Gillibrand (D)
 - Michael Arcuri (D)
 - Jose Serrano (D)
 - Gregory Meeks (D)
 - Joseph Crowley (D)
 - Gary Ackerman (D)
 - Yvette Clarke (D)
- Brian Higgins (D)

Will EFCA pass?

- Expect some version to pass – Labor's top priority
 - Immediate focus on economy, but:
 - No funding needed to enact EFCA
 - View EFCA as key to economic turnaround
- U.S. Chamber of Commerce launching counter-offensive, but unions already out front
- Senate has more Democrats than last year; Arlen Specter (R-PA) supports EFCA

Will EFCA Pass (cont.)?

- Alternate/compromise versions
 - Retain secret ballot, but have very short time to election/decide issues of voting eligibility after petition filed
 - Allow union access to workplaces
 - Increase penalties for violations of NLRA

What Would Passage of EFCA
Mean?



More Coercion of Employees

- In 2006, more than 5,200 ULP charges were filed against unions for “illegal restraint and coercion of employees”
- The card check process would make already prevalent union coercion even worse
- Under the EFCA, employees will have to *publicly* make their choice, opening them up to even more intimidation and coercion by the union and union supporters

Union Coercion (cont.)

- Union misrepresentations – and outright lies
- Incentives to engage in coercion, intimidation, misrepresentation:
 - Cards would be the beginning, middle, and end of the process
 - No new standards under EFCA for contents, conduct, etc.
 - Cards would not be private
- No practical way to get a signed card back
- Will employers be able to challenge cards?

Secret Ballot Elections Could Be Eliminated Entirely

EFCA states that if more than 50% of workers sign authorization cards, “the Board ***shall not direct an election***”

- Even though union organizers (not workers) could choose to have a secret ballot election, they probably never would

More ULP Charges Against Employers

- The EFCA creates a new list of ULP charges – filed against employers – that are added to the list of NLRB cases which must be “given priority over all other cases”
- No additional ULP charges against unions are added to that list

New Penalties for ULPs

- If ULP during organizing or between certification and first contract: back pay + 2x as liquidated damages (*i.e.*, triple damages)
- If willful or repeated, civil penalties of up to \$20,000 per ULP

Binding Arbitration of First Contracts

- The employer and the newly-certified union must meet within as little as 10 days to begin bargaining
- If no CBA within 90 days, either party can call FMCS to mediate
- If no CBA within 30 days of mediation request, referred to arbitrator to be provided by FMCS
- No appeal of arbitrator's ruling, and the contract would last for two years
- No right of employees to vote on contract
- “Industry standards?”

Implications of EFCA for Employers

- Unions may be gathering cards at your workplace **now** – waiting to present them as soon as EFCA becomes law
 - Do you know whether there is card signing going on in your workplace?
 - Do your employees know how you feel about unions?
 - Do they know the other side of the union story?

Implications for Employers (cont.)

- Anticipate a flurry of organizing activity unseen in decades
 - Organizing will be relatively easy, cheap, unchallenged
- Employers will want to implement a fundamental change in mindset
 - A union could be certified before an employer even knows there is organizing
 - Employers may need to be in constant “union organizing mode”
 - One disgruntled employee can become very dangerous

What Can You Do Now?

- Educate executives and managers
- Identify true NLRA “supervisors”
- Educate/train supervisors regularly
 - Supervisory skills
 - Basic facts about unions, impact of unionization on employer, employer’s position on unions, the unionization process, reasons for employee interest in unions, NLRA “do’s and don’ts,” and signs of potential organizing
- Hold supervisors accountable for attending and complying with training
- Address “problem supervisors”
 - Shape up or ship out

What Can You Do Now (cont.)?

- Educate employees
 - Periodic communication to employees re: facts about unions and unionization, organization's views on unions, what they have now, the EFCA, significance of union cards, etc. – beginning in orientation
- Develop an organizing “tool kit”
 - Solicitation/distribution policy
 - Bulletin board policy
 - Camera and recording policy
 - Electronic communication policy
 - Statement on Unions
 - Video and other materials on unions and union cards
 - “Don't sign the cards” letter
 - Identify most respected/effective spokespeople

What Can You Do Now (cont.)?

- Protect lists of employee names, addresses, and phone numbers
- Create harassment complaint mechanism
- Conduct an employee survey
- Conduct a union vulnerability audit
- Treat employees competitively and fairly – wages, benefits, working conditions, interactions with supervisors and co-workers
- Treat employees with respect – no harassment, no discrimination, no favoritism, formal employee input/involvement, listen to employees, encourage exchange of ideas/suggestions, open door policy, monthly or more frequent communication meetings, progressive discipline, employee recognition, etc.