

Employee Free Choice Act: Fight of a Lifetime?

Jane Slaughter

Labor Notes March 2009

Nobody wants to say it on the record, but the buzz is we won't get the Employee Free Choice Act in its current form. It's possible to admire labor's efforts for two million petition signatures for EFCA and still ask, if this is the fight of a lifetime, why aren't we acting like it? Could the energy unions channeled for Obama last fall be reawakened for creative actions in 2009?

President Obama says he's pro-EFCA but wants unions to "accommodate" the other side—despite labor's \$450 million and countless hours of volunteer work devoted to electing him.

Employers aren't interested in compromise, spending \$50 million just on anti-EFCA ads last fall in states where Senate seats were up for grabs, and vowing to spend tens of millions more.

In October Bank of America hosted a conference call for executives led by Bernie Marcus, a co-founder of Home Depot. Marcus lectured CEOs to give money to prevent EFCA and "the demise of a civilization."

A favorite argument against EFCA is that it would deny workers the right to vote on unionization. Union strategists point out that EFCA actually permits either "card check" or a secret ballot—workers would decide which they wanted. Under current law, only the employer can decide.

Another argument is that there's no precedent, in the private sector, for the right to arbitration of first contracts. And employers moan, like they did in the Depression, that too much unionization would wreck the reeling economy.

What Employee Free Choice Would Do

If a majority of workers in a workplace sign union authorization cards, validated by the NLRB, the company must recognize the union. If a majority of employees call for an election instead, the NLRB will hold one.

Penalties for companies breaking the law are increased.

- Up to \$20,000 per violation for willfully or repeatedly violating employees' rights during organizing drives or bargaining the first contract.
- Triple back pay for workers fired or discriminated against for pro-union activity during a drive.
- The NLRB must seek a federal court injunction when there is reason to believe a company has violated workers' rights during a drive, such as firing or threatening to fire union supporters. Precedent says an injunction would be issued immediately.

Companies may not drag out first-contract bargaining indefinitely. If the two sides cannot reach a contract within 90 days, either one may request mediation from federal mediators. If mediation doesn't work, they go to binding arbitration.

Supporters counter that union-won higher wages are exactly what the economy needs. After all, the debt-driven economy has utterly failed.

BALANCE OF POWER WINS

But in the end, the arguments don't matter. The bill that passes will reflect the balance of power between business and labor. If EFCA is gutted, or fails to pass at all, it will be because not enough Senators were convinced it was in their interests to vote the right way.

How have labor and other movements in the past persuaded reluctant politicians to vote our way? By creating enough turmoil in the streets that legislators know they'd better do something.

The civil rights movement, the anti-Vietnam war movement, the worker upheavals of the 1930s—all led Washington decision-makers to do things they didn't want to do.

It's possible to admire labor's efforts for two million petition signatures for EFCA and still ask, if this is the fight of a lifetime, why aren't we acting like it?

Could the energy unions channeled for Obama last fall be reawakened for creative actions in 2009? For a huge march on Washington, for civil disobedience at senators' offices, for informational picket lines outside the corporations bankrolling the bosses' campaign, like Home Depot?

Less than three years ago, immigrant workers—most of them not union members—pulled a one-day national strike, bringing more than a million workers, families, students, and supporters into the streets in the largest series of demonstrations our country has ever seen. They were fighting for survival. So is the union movement. This is not the time to be timid.