2009 SENATE INDUSTRY, BUSINESS AND LABOR

SCR 4033

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 4033

Senate Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: March 30, 2009

Recorder Job Number: 11569

Committee Clerk Signature Era Lubelt

Minutes:

Chairman Klein: Open the hearing on 4033.

Duane Sands: In support of 4033. What the employee free choice act does is change the way employees organize. The way it is now thirty percent of employees signed cards and then there is an election that requires fifty percent plus one to organize. This change is that fifty percent plus one must sign a card. The cards have no expiration date so you can bank them. It eliminates the election process for organizations. It takes away the secret ballot because there are no elections there are no secret ballots. To give you some history this EFCA as we know it today in Washington passed the 110th congress in 2007. The bill was reintroduced three weeks ago. President Obama promised this bill would pass. We know that if this is passes, jobs will go overseas. More importantly the rights of people to vote privately will be eliminated. I would like to submit a letter signed by Governor Hoven and eight other senators in opposition to this bill. Elections have secret ballots; it's the way American's do things. I would like you to consider an amendment to the bill as it stands right now.

Chairman Klein: Often time's legislation is created because we have a problem. Do you want to explain why we're leaning in this direction?

Duane: There was about three hundred million dollars from organized labor put in towards the elections of the current President. This has been a subject of controversy and it has been getting a lot of press lately. Memberships for organized labor has been falling the last few years, this is seen as a pay back to organized labor to help grow the membership. They want to eliminate the secret ballot to increase memberships.

Chairman Klein: We're probably are going to hear from the people who are trying to organize that they are feeling bullied by their employer. How do I respond to that?

Duane: You need to talk to the employers and the people. In North Dakota most people oppose EFCA by seventy two to seventy five percent.

Discussion and questions continued on secret ballots.

Bonnie Staiger, Hon. AIA, State Director, NFIB: In support of 4033. Written testimony.

John Risch, ND Legislative Director for United Transportation Union: Written testimony in opposition to 4033.

Discussion followed about the secret ballot process, possibility of more jobs going overseas. It was also stated that no one is forced to join a union.

Suzette McCall: In opposition to 4033. Survived a vicious organized campaign. A union buster was hired to break up their union. They were forced to attend mandatory meetings against the unions. She continued to explain her feelings on the right to self organize and belong to a union.

Leroy Volk: Commented on the unions and he is in opposition to the bill.

Gene Schepp, Ivory Leathers Inc.: In opposition to the bill. They unionized their employees last year. He said that it increased employment and wages. It gives the employees a say in the work place. He also stated that the union has helped Ivory Leathers to be successful. He feels

that they ended up with a fair contract for both employer and employee. He is able to give his employees a pension and health plan through the union.

Kevin Murch: In opposition to the bill. Written testimony.

Don Morrison, ND People Org.: Written testimony. In opposition to the bill.

Nancy Guy: Written testimony. In opposition to the bill.

Ronald Huff, Brotherhood of Locomotive Engineers and Trainman: Written testimony. In opposition to the bill.

Chairman Klein: Closed the hearing.

Testimony received after the hearing:

Renee Pfenning, In opposition to the bill.

Dave Kemnitz, In opposition to the bill.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 4033

Senate Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: April 6, 2009

Recorder Job Number: 11737

Committee Clerk Signature Era Liebelt

Minutes:

Senator Andrist: I don't have any objections to this resolution. What I think this amendment does is take out all the contentious language. It takes out the words on line 7, "that facilitate coercion and." Line 8, remove "intimidation." It takes out the three, "where as", in lines 14 through 21. And it also takes out on the second page line 12, "the United State Department of Homeland Security." I can't see any reason to have them in the bill in the first place.

Chairman Klein: You were looking at removing 14 through 21.

Senator Andrist: Yes. I don't like the business of frustrating the two sides. I think people in the business side are pretty intimidating when they have unions working. I think there are people in the labor side that can be intimidating. I don't want to get into that kind of wresting match, who intimidates whom. I think it is not good legislation and that's why I would like the resolution to say what it does with this amendment.

Chairman Klein: Senator Andrist 14 through 16. Isn't that where three issues in the card check age, another the voting and arbitration sections. Did we want to remove that?

Senator Andrist: It's really not necessary. If you wouldn't mind I'd like to leave line 14 and 16 in there.

Chairman Klein: Okay, so we agree remove line 17 through 21?

Senator Andrist: Yes, change the 14 to 17.

Senator Andrist: Motion to move as amended.

Senator Wanzek: Seconded the motion.

Passed 7-0.

Senator Andrist: I think these kinds of resolutions are an exercise and in wasted time. I think it expresses the sense of the committee majority, we will find out.

Senator Potter: I agree with Senator Andrist completely. These are a waste of time and we will hear the opinion of the committee majority. On this particular one I am glad we are taking out Department of Homeland Security, because I thought we were accusing labor of being terrorists. This is an improvement in the resolution.

Senator Wanzek: I appreciate it too. While we all may have a different few on it, I think both labors and employers play an important role in our economy. Certainly no one is trying to antagonize and this makes it less divisive and more or less states are positions.

Senator Andrist: Made a motion to pass as amended.

Senator Wanzek: Seconded the motion.

Passed 4-3.

Senator Klein will carry the bill.

Adopted by the Industry, Business and Labor Committee

April 6, 2009

PROPOSED AMENDMENTS TO SENATE CONCURRENT RESOLUTION NO. 4033

Page 1, line 7, remove "that facilitates coercion and"

Page 1, line 8, remove "intimidation"

Page 1, remove lines 17 through 21

Page 2, line 12, remove "the United States Department of Homeland Security,"

Renumber accordingly

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Date: 4/6/09
Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 4033

Senate **Industry, Business and Labor** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken ☑ **Pass** ☐ **Do Not Pass** ☑ **Amended**

Motion Made By Senator Andrist Seconded By Senator Wanzek

Senator	Yes	No	Senator	Yes	No
Senator Jerry Klein - Chairman	✓		Senator Arthur H. Behm	✓	
Senator Terry Wanzek – V.Chair	✓		Senator Robert M. Horne	✓	
Senator John M. Andrist	✓		Senator Tracy Potter	✓	
Senator George Nodland	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

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Date: 4/6/09
Roll Call Vote #: 2

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 4033

Senate **Industry, Business and Labor** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☑ **Pass** ☐ **Do Not Pass** ☐ **Amended**

Motion Made By Senator Andrist Seconded By Senator Wanzek

Senator	Yes	No	Senator	Yes	No
Senator Jerry Klein - Chairman	✓		Senator Arthur H. Behm	\	✓
Senator Terry Wanzek – V.Chair	✓		Senator Robert M. Horne		✓
Senator John M. Andrist	✓		Senator Tracy Potter		✓
Senator George Nodland	✓				

Total (Yes) 4 No 3

Absent 0

Floor Assignment Senator Klein

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SCR 4033: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (4 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). SCR 4033 was placed on the Sixth order on the calendar.

Page 1, line 7, remove "that facilitates coercion and"

Page 1, line 8, remove "intimidation"

Page 1, remove lines 17 through 21

Page 2, line 12, remove "the United States Department of Homeland Security,"

Renumber accordingly

2009 HOUSE INDUSTRY, BUSINESS AND LABOR

SCR 4033

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 4033

House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: April 15, 2009

Recorder Job Number: 11871

Committee Clerk Signature Ellen LeTang

Chairman Keiser: Opened the hearing on SCR 4033 urging the North Dakota Congressional Delegation & the Congress of the US to support worker freedom by opposing the federal Employee Free Choice Act & any of the Act's related components.

Jeb Oehlke~North Dakota Chamber of Commerce. If this bill passes it will essentially remove the worker's right to vote on whether or not they want to unionize the business they work for. It does this by placing the decision in the hands of the individuals organizing the union. Once they collect authorization cards from more that ½ of the workers, those cards are sent to the National Labor Relations Board. The law state that the NLRB shall then not conduct an election, but shall certify the union as the legal bargaining representatives of those employees. This takes away the opportunity for almost ½ of the workers in any given business to any kind of input. We support the worker's right to choose if they care to be in the union and this resolution.

Representative Amerman: Now without the free choice act, would you take the committee through the steps how employees organize a union.

Oehlke: Authorization cards are collected from at least 30% of the employees in that business. The cards are sent to the NRLB where they certify that they are valid signatures. They will schedule and conduct a federally supervised election. It's a private ballot.

Representative Amerman: Isn't it true right now it doesn't have to be an election, the employer can choose to accept the cards?

Oehlke: Yes, the employer can choose to.

Representative Amerman: Do you know the language in the original resolution, was that drafted by the sponsors or the chamber?

Oehlke: I'm not sure who drafted the solution.

Representative Ruby: Are you aware of, where and how many times this type of process where it's possible to have this card check as an option?

Oehlke: I can't give you specifics. It's used very rarely.

Bonnie Staiger~Hon AIA. See testimony attachment A.

Representative Amerman: It says 70% of business that has 4 or less employees, isn't it true in the act if you have 4 employees and 30% won an election, you would have 1 ½ persons?

Staiger: There has to be an election anyway. The point is that the National Federation of Independent Business (NFIB) is the election has to be a private choice by the employee. Card checks is the issue.

Representative Amerman: I understand the card check, in the Employee Freedom Choice Act, 30 out of 100 employees won an election, will there be a secret election?

Staiger: Under current law that is correct.

Tom Balzer~North Dakota Motor Carriers Association. There are a couple other areas that contention in this piece of federal legislation. Our biggest one is that the original draft, there is a component in there that criminalized labor law. Right now it's a make whole part where you

missed someone inappropriately that you are required to make them whole. Issue is now that now we are going to criminalize it. You are going to have these small business owners who may not know the labor law; we are now going to prosecute them. That is a concern for our guys. We support the card check.

Representative Amerman: I understand those fighting against the Federal legislation, question is those of us as legislators, we try to represent everyone equally, do you think it's appropriate as a legislative body, pass this and send a message?

Balzer: I'll do my best to avoid that question. We strongly believe it's a Federal issue.

Chairman Keiser: Couldn't you make the argument that if you ask the employees to sign the card, in effect they are voting? So what is the problem, because signing the card is actually a public statement of position, pressure can be bought, where as in the privacy of the voting booth, is that the issue?

Balzer: That issue is now both current practice & under the EFCA, you get 30%, you go to the private ballot. Now you are adding another component to the election where you get 50% of the cards signed by the employees, that you automatically certify that union. The issue at hand is no real opportunity for open debate on the issue. The employer doesn't want to be unionized, he would have to sit and campaign 7 days a week. We would have the concern about intimidation tactics and misinformation used to get the cards signed. Businesses will spend a good part of their time fighting against the union. That's one of the issues we feel that it is a free for all and no control.

Sandy Clark~North Dakota Farm Bureau. Stand in support of SCR 4033. We believe our country was built on secret ballot and this will affect the Ag processing & manufacturing companies.

Chairman Keiser: Anyone here to testify in opposition of SCR 4033?

Dave Kemnitz~President of North Dakota AFL-CIO. See testimony & attachments B-F. Closes with comments on SCR 4033 with concerns on lines, 4, 6 & 7, 9-12, 13-15, and 16.

Vice Chairman Kasper: I don't disagree with a lot of what you said. On line 4, the right to a private secret ballot, to me that's the key to this issue. Can you explain to me if the EFCA passed, how would employees sign to ask authorization to be represented by the labor union?

Kemnitz: There are two people, Reece Ledger & Greg Burns, if you would allow them to answer that question.

Corey Kresse~Self. See testimony attachment G.

Suzette McCall~Register Nurse. See testimony attachment H.

Chairman Keiser: When you had 50% signed and then it was sent to the NRLB, was it the NRLB who conducted the election?

McCall: At the workplace.

Chairman Keiser: Did the employer require people to identify if they supported it or not. How did the employer discover?

McCall: They were on the job 24/7. They would approach you at the bedside. People were so frighten when the CEO would come up to them in the middle of the night. They had meetings and private letters. They knew pretty much who was voting how.

Chairman Keiser: They didn't ask.

McCall: Well they did, not many people filed complaints with the NLRB. So there wasn't a lot of charges filed against the employer but the people hadn't been intimidated, there would have been.

Chairman Keiser: For two months, your employer the hospital, had an aggressive campaign, what union were you going to affiliate with?

McCall: USCW.

Chairman Keiser: Did they also campaign during that 2 month period?

McCall: Yes.

Representative Schneider: Could the employer campaign for their purpose while you were working?

McCall: Yes they did.

Representative Schneider: The union could not?

McCall: Right, they were banished from the physical property.

Representative Schneider: So the chips were stacked against you.

McCall: Yes. The lively hood is above average and they are dependent on that. Their whole family's future is down the drain if they lost their job.

Representative Schneider: Were there any employees fired during that period.

McCall: Yes.

Chairman Keiser: You filed a grievance with the NLRB and it was upheld?

McCall: Yes it was.

Chairman Keiser: How many other grievances by employees were terminated or were contacted regarding the election directly were terminated?

McCall: The employee that was terminated just said "I'm done". If that's how they are going to treat me, I've worked for this outfit for 30 some years, I'm done and she refused to follow through with the grievance. There were several other charges filed and they did have to post a notice that they had broken the law.

Nancy Guy~Owner of UPS. See testimony J.

Representative Ruby: For a long time we have heard the term "living wage" and as an employer, I've always tried to find out what the definition of that is. Could you define the term?

Guy: In my mind a living wage is wage that you can support yourself or your family with. In Bismarck the average retail wage is about $11.50 an hour & we start our employees at about $12.00 an hour.

Representative Clark: In your business, do you have a pension plan where you contribute to the union?

Guy: We don't have a union in our store. We are not UPS; we are an independently owned franchise business.

Representative Ruby: I believe you can still participate in the benefits package and maybe someone can help you.

Representative Clark: In your research, did you find that if you do agree to contribute to a union pension plan that you will become liable for the deficit in you plan and should you ever choose to sell your business or go out of business, you have to make up that deficit. Are you aware that that will happen to you if you happen to do the union pension plan?

Guy: No, I haven't looked into it that closely.

John Risch~United Transportation Union. See testimony attachment K.

Representative Sukut: You said that one of your major objectives was to raise the pay. I was wondering the process involved in those kinds of negotiations? My concern is if you look at the financial or the potential of the business.

Risch: There are some rights at some point to see the financial information from the company. The contract fits the resources of the company. We all have the same objective and that we want to see the company succeed but by the same token, we want everyone to enjoy in the profit of the company. Often time the employer pays as little as they can get by.

Representative Clark: We heard all the bad thing that the employers do in opposing union organization. Unions aren't exactly exempt either to strong arm tactics & harassment. Would

you support this legislation if there was a penalty for union harassment of employees in order to get them to sign these cards?

Risch: Since the NRLB has been keeping track of union unfair labor practices in regard to elections, they found since 1935, between 42 to 52 cases. I'm not completely opposed to what you are saying, but it's the labor representatives who are not breaking the law in union organization campaigns.

Vice Chairman Kasper: Under the current law without the EFCA, are small businesses exempt from labor union organization; is there a cut off in the number of employees that can be required under the NLRB?

Risch: As long as you have two employees, you are entitled in concerted activity.

Vice Chairman Kasper: In the act, it talks about the arbitration at the ultimate end; do you know who would be on that arbitration board?

Risch: The NLRB will propagate rules & regulations as far as that goes. I suspect it would be the Federation Mediation Conciliation Service and there will be a process for picking the arbitrator. Keep in mind that the arbitration process will be a last resort. I don't see a lot of arbitrations.

Vice Chairman Kasper: It appears that the time line is shorter.

Risch: The way you said it is the same as how I said it. You have to have an effective date.

Chairman Keiser: We are going to adjourn the hearing and we will come back after the conference committee hearings. Closes the meeting on SCR 4033.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 4033

House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: April 15, 2009

Recorder Job Number: 11874

Committee Clerk Signature Ellen LeTang

Chairman Keiser: Continues the hearing on SCR 4033 urging the North Dakota Congressional Delegation & the Congress of the US to support worker freedom by opposing the federal Employee Free Choice Act & any of the Act's related components.

Any additional questions for John Risch?

Chairman Keiser: The new bill leads us down the path that eventually gets to binding arbitration. That raises 2 questions. Does that in effect, eliminate for the employer to pay the penalty for employees to go on strike for a longer period of time than in this bill and eventually resolve that dispute through that approach. Does that eliminate that process? Number 2, if you went to binding arbitration practice in the first contract, wouldn't it make sense if we have to use binding arbitration for the first contract, the subsequent contract would have a binding arbitration clause. So once in, you would be in effect be in?

Risch: First of all, the arbitration process is the safety valve. Most of the cases we want to settled. The reason that's in the bill to begin with is that 40% of the unions that are formed, never get their first contract. You are right and the second part of your question about binding arbitration following into the next agreement, I'm not saying it's impossible, I wouldn't foresee that. Binding arbitration members don't even get to vote on the final product. The

management will get the final say on the product. It's better for both sides to get together and negotiate a final product.

Representative Amerman: There could be a clause in the contract that says that's how it will be handled in the future if we can't come to an agreement. (inaudible)

Risch: Certainly both sides could agree what every form of arbitration.

Representative Ruby: The decertifying a union to disband within a company, if this act is passed on a Federal level, would this same card check be used for the decertification process?

Risch: I've never been involved in a decertification. You might ask Greg Burns about decertification.

Burns: The decertification question and the change in the EFCA requiring binding arbitration are actually linked. There is an election and a decertification bar. This was a way to block from dragging out negotiations to a point where the election bar is gone and the decertification will become the natural course event. Any individual can file for a decertification election.

Representative Ruby: I guess that would mean then for an existing union in a workplace, this wouldn't give them the same opportunity to decertify as the act is requesting for certify.

Burns: This act doesn't change the decertification.

Vice Chairman Kasper: I asked Dave Kemnitz earlier about under the EFCA, how the balloting goes.

Risch: Under the current process you had 30% or more of a bargaining unit sign cards authorizing the immediate exclusive bargaining representative, as the process goes into play for the certification of a union, if you get in fact more that 50% of the employees of the bargaining employee's unit decide authorizations, the employer could voluntarily recognize the union that decertified. Currently today there would be no election. If the EFCA passes and the

majority of cards ok'd by the NRLB as my exclusive bargaining representative for collective bargaining purposes, NRLB will draft some rules and regulations. But if the EFCA passes, the majority of those workers in the workforce, sign authorization cards, you will be certified without the final election.

Vice Chairman Kasper: I'm trying to get to the actual process when the employee signs the card and put it in the ballot box someplace.

Risch: No, he doesn't. When he signs a card today, there is generally someone in the workplace, the co-worker or somebody will pass them out. He will either give them back to this person or give them stamped envelopes. We keep it a secret best as possible.

Dave Kimnetz: On my hand out it's on page 10 talks about procedures and how they do that.

Risch: It has to be a majority.

Greg Burns~North Dakota Education Association. See testimony attachment. What we have here is a group of decent people who can't imagine what going on right now about union elections. We heard about 2 compelling stories today from victims of employer misconduct and I wish I could tell you that these are isolated incidences but they are not. They are only hearing the ones reported. Reads testimony.

Chairman Keiser: You mentioned meaningful finds and the current system as I understand it, if the NLRB rules against you; you pay for lost wages solely. The new act, you mentioned it criminalizes it. Does it also change the fines and how does it criminalize it?

Burns: I've seen specific dollar figures in the act. If can be up to $25,000 per incident, that's in addition to any back pay. I haven't seen any criminal.

Chairman Keiser: It's a civil and a criminal penalty.

Kevin Murch~Self. See testimony attachment.

Chairman Keiser: Closes hearing.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 4033

House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: April 15, 2009

Recorder Job Number: 11876

Committee Clerk Signature Ellen LeTang

Chairman Keiser: Continues the hearing on SCR 4033 urging the North Dakota Congressional Delegation & the Congress of the US to support worker freedom by opposing the federal Employee Free Choice Act & any of the Act's related components.

Kevin Murch: Continues to finish his testimony.

Representative Clark: You mentioned the activities that went on in Valley City in your testimony. Can you tell me why John Deere selected North Dakota for their operation?

Murch: Absolutely without question, corporations come to this state for one reason, our work ethics, second to none in the entire country.

Representative Clark: John Deere came to Mid American Field, we were not chosen, but I think they came to North Dakota because we are a right to work state and they were looking for a non-union operation.

Murch: Obviously, corporations are going to oppose their worker's wants and needs to organize because it takes away one fundamental thing, it takes away a little bit of control. That's in regards to wages & benefits. No one can convince me that workers form a union to bring harm to their employer. It's a matter to make things better to themselves.

Vice Chairman Kasper: I'm going to try to get another perspective on this resolution. On lines 6 & 7 and reads the lines. How would the card check procedure work under the EFCA?

Murch: Under the EFCA, if the employees sign authorization cards, if they choose to go to the 50% plus 1, they send in the cards in to the NRLB and the board certifies the fact that the simple majority want to unionize.

Vice Chairman Kasper: Every person I ask the question to skirts over the issue I'm trying to get to. What I'm trying to get to is who looks at the card when you sign it and who do you give it to when you cast your ballot?

Murch: First of all, card check is not a ballot of yes or no. You sign the petition that you want the union to represent or you don't sign it. The cards are the authorization.

Vice Chairman Kasper: If it were a secret ballot, where by 100 employees all have a card and there is a yes or no to unionize in privacy, you put it someplace where no one can identify who did what, now you have a secret ballot. What I thought I heard you say was names are going to be on a petition, so you are going to see which employees want to unionize. It identifies the one who says yes?

Murch: My understanding is that the rules promgating from this EFCA has to be decided from the NLRB.

Chairman Keiser: We've had a lot of testimony about how companies of people who would like to organize and schedule meetings off the premises of the company and some companies have sent out people to gather information of who is attending. This is problematic because the company is aware of who is active. Don't the same sort of phenomenon happen under this bill in that there will be some people in the company who will know who did and didn't sign? We are going to know and that is going to become information throughout the employees.

Murch: I will comment to personal knowledge. I've never seen anyone pressure someone into signing a card. I can understand now the concern of the unions using intimidations. I can tell that is not the case in my experience that I've seen. Strong arming is not very productive; it's a matter of personal choice.

Representative Schneider: Let's assume that there is intimidation on both sides; it would seem to me the level of intimidation would be substantially higher by the employer. Is that an accurate assumption?

Murch: Very accurate.

Representative Clark: Are you suggesting that unions don't resort to intimidations when they are trying to achieve their goals?

Murch: I can tell you from my personal experience, no.

Representative Clark: I would suggest that the union organizers are very careful to keep their hand clean in this suggestion. There are people out there that will do their dirty work, it's on both sides.

Murch: I would say that there will always going to be organizers, union supporters that conduct themselves in unethical ways. There are also companies that also conduct themselves in unethical ways, facts in the proof that statistics that is played out in Federal government.

Representative Ruby: You mentioned in Valley City with John Deere that they pay substandard wages; do they pay less than the average wage for Valley City?

Murch: I would say they pay on average in the industry, substandard. Valley City, they have no other manufacturing companies to compare with, so if you look at it from the perspective industry wise, they pay substandard.

Ron Huff~Representing the Locomotive Engineers of North Dakota. We stand in opposition; we feel this resolution is built on false premise. We feel that the EFCA will take away the secret ballot. As to Vice Chairman Kasper's question on how to keep that ballot secret or to a certain extent, there has not been any rule made because this EFCA is not a law. So they can't make the rule prior to being the law. That does create some confusion. We are a right to work state so they don't have to sign a card and they get along with the right to work. The right to work is a mute issue.

Vice Chairman Kasper: The way I read the proposed act, it has the potential to get rid of the right to work law in North Dakota, on page 2, in the area of line 5. It says it must occur, how does that work with North Dakota right to work law?

Huff: I will defer that question to Rhys Ledger.

Rhys Ledger~Teamster Local 120. The answer to that question is no difference. The fact is the certification of the unit is not required those employees to join the union under the right to work law. The section you cited is very similar to what they call the 10J Order and mirrors it.

Chairman Keiser: Let me interject, the right to work applies to the fact that you don't have to join the union, if it is there but you are obligated. Can you then apply for and receive a different package?

Ledger: That's my understanding that is what is currently. There is no option on the outside of the certification, currently.

Vice Chairman Kasper: A number of you have mentions a number of rules that need to be promulgated. Does the potential exist that the EFCA passes and now you follow the rules and have a union certified. Could not the rules say, once this occurs, you must now join the union.

Ledger: I think that might be an extreme option.

Vice Chairman Kasper: I'm not asking that it's extreme. Could it occur?

Ledger: Yes it could occur in extreme circumstances.

Representative Ruby: In this state, you still have the right not to be a member of the union but in a non-right to work state, they would be required. Is that right?

Ledger: It would require representation fees. That is correct.

Chairman Keiser: I understand that you are the expert on this act. Are there other areas that you can clarify the EFCA to the committee that they might not be understanding?

Ledger: Briefly explains two different campaigns. Bottom line, you have to know where people stand, the idea that the EFCA would betray some privacy, it really inaccurate. Explains UPS Freights campaign and that within 4 days, 92% joined the teamsters. If 73% didn't want unions that leave 27% that do and 27% is three times the existing unionizing rate in the private sector. Right not it's 9% and the chamber is helping to us make his case even with his skewed polling.

Representative Clark: DMI is owned by Otter Tail Power Company, isn't it conjecture on your part that if a union would have been installed in those shops, that the work place accidents wouldn't have happened?

Ledger: It would certainly reduce the chance but if you look at the statistics by OSHA, because of unions, safety is the utmost importance.

Chairman Keiser: Was OSHA ever in DMI?

Ledger: OSHA came in fined the company $5000. They appealed and received a 25% discount, so that worker's life was worth 3750. That is the ultimate living wage.

Risch: The EFCA doesn't amend section 14B of the National Labor's Act which is the right to work provision. So the idea of the NRLB that will free lance over to another section of the act, that wasn't part of the bill. I don't find it possible.

Chairman Keiser: Closes the hearing.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 4033

House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: April 17, 2009

Recorder Job Number: 11938

Committee Clerk Signature Ellen LeTang

Chairman Keiser: Continues the hearing on SCR 4033 urging the North Dakota Congressional Delegation & the Congress of the US to support worker freedom by opposing the federal Employee Free Choice Act & any of the Act's related components.

Vice Chairman Kasper: I played around with some amendments but I have decided not to introduce them.

Representative Schneider: I have an amendment to strike lines 9-12.

Representative Schneider: moves to strike lines 9-12.

Representative Boe: Second.

Chairman Keiser: If there was any two areas that need to be addressed, I certainly agree. Further discussion.

Representative Ruby: That is the reason I didn't like the amending, let's not beleaguer it any more than we have to, so I'm not supporting any amendment to it either way.

Representative Schneider: I don't like the idea of another conference committee either but we need to do the right thing. I like the way Vice Chairman Kasper wrote his amendments but they are not before us.

Representative Clark: Would it be appropriate to ask the bill sponsors to justify the source.

Chairman Keiser: We have the source. The way it reads that it applies all Americans and it doesn't limit it to the people surveyed in the state chamber survey. Does anyone know where those numbers came from?

Chairman Keiser: We will take the roll in removing 9-12 on SCR 4033.

Voting roll call was taken on SCR 4033 with 11 ayes, 1 nay, 1 absent. Amendment carries.

Chairman Keiser: What are the wishes of the committee?

Vice Chairman Kasper: Being we have already amended the bill, I would like to introduce the amendment that I have drafted. The amendment takes out of the current bill lines 4-17 and replaces line 4-17 with the amendment that you have before you. I took out the two areas that Representative Schneider didn't like, the 70% & 77% and rewrote some of the where as's.

Reads amendment Voting roll call was taken on SCR with 11 ayes, 1 nay, 1 absent. Amendment carries.

Vice Chairman Kasper: Moves to further amend HB 4033 amendment number 98342.0201.

Representative Nottestad: Second.

Vice Chairman Kasper: I don't think these amendments change the result & implication of the bill but it does provide language that is more accurate and less strident.

Chairman Keiser: I would like you to know did support originally Representative Schneider's motion and likely support this. I take resolutions seriously.

Representative Schneider: On the 4th "where as", the worker's right for a collective bargaining process, I don't know how that is true.

Vice Chairman Kasper: I have a meeting with some of the private businessmen and one of them was in DC on this type of resolution in Congress. What he informed me about the EFCA as it stands right now is that once there is a 50% plus 1 vote of the employees to unionize; you

now automatically have a union. There is no further discussion or debate. Currently the process is you must have a debate with employers and employees. The way the EFCA is written is it takes away the employee's continued right to be able to negotiate and discuss whether or not they want to unionize for 2 years. I think that is what the drafter's intent.

Chairman Keiser: Further discussion on the amendment.

Voting roll call was taken for further adoption SCR 4033 with 11 ayes, 1 nay, 1 absent.

Amendment 98342.0201 carried before us.

Representative Ruby: Moves a Do Pass as Amended.

Vice Chairman Kasper: Second.

Chairman Keiser: Further discussion on SCR 4033 for a Do Pass as further Amended?

Representative Amerman: I'm going to stick to the resolution before us. When I first seen the resolution, I was taken aback by the language. The amendment which made it better but I went up to Legislative Council to ask the person who drafted it, where the claims comes from? He wasn't there but Jennifer Clark talked to me. Here is some of the history on the resolution. The language comes from 2 organizations and they are anti-union. One is in Washington DC and the other Washington state. This was the suggested language from these organizations and it's almost verbatim. The other thing I want to point out is the powerful sponsors. I have a hunch that our local sponsors are not crazy about it. This resolution was drafted months ago and it sat up there with no sponsors on it. Finally someone was convinced and it was a delayed bill. Other reason I don't think that they are so crazy about it is the Senate Industry, Business and Labor committee, none of them were here to introduce it. I remember the supporters sitting in the audience didn't want to introduce it. Finally someone introduced it. I've struggled with a lot of deep issues and I depend on other committee member's questions & input, but today with this resolution you are in my realm. I do know a little about labor

history. I'm going to speak to you as a colleague and friend. The reason I think everyone is shying away from this is they don't want to be attached to and it shouldn't be before us. If you vote to support it, I hope you understand the act because when we are done here, you are going to have to explain to firefighters, teachers, public employees, people who work in oil & coal mines, manufacturing and these are employees that know the history of labor and the act. All I'm saying is if you support it, you are going to have to explain it to people who understand it. On the other side of that, if you vote against it, all you are saying is I'm not ready to take a stand. There is so much misinformation out there and it doesn't say that you support the EFCA, I'm just not ready to take a stance. This could take a year or two in Washington and everyone gets to walk away from it except the one voting on it. We will not get to walk away. Please understand the act.

Chairman Keiser: Further discussion?

Representative Ruby: I appreciate what Representative Amerman says but in many cases resolutions are about a concept. We are making a point and its here; it is something we've heard a lot of testimony and everyone understands. I'm going to go ahead and support the bill.

Vice Chairman Kasper: Representative Amerman, you always have insight that I value and I agree with a lot of what you said. Addressing the amended resolution now and it's been reworded; this focuses on the right to a secret ballot. What I asked in the testimony to members of labor and repeatedly asked as you recall, can you assure me that an employee when they vote, their ballot will be confidential and private so no one will know how they voted. I could not get that reassurance from anybody. As you recall, they talked around the issue about once it's taken but no one told me about the process. What I am told what the process would be is that employee's right to the secret ballot could be infringed on. That is what the crux of this resolution is now, to protect the integrity and right of everybody. That's why I

support it. If the EFCA changes and guarantees that right, clearly and specifically, then this resolution will not be needed. However, this is a statement of intent of this legislative body that we wish to protect the right of a secret ballot and I will always protect that right.

Representative Amerman: I could tell you were not getting the answer to the secret ballot but if you will allow me to give it a try. Explains his answer to the secret ballot question Vice Chairman Kasper has asked about repeatedly.

Vice Chairman Kasper: Talks with Representative Amerman about the secret vote.

Chairman Keiser: Further discussion.

Chairman Keiser: I share with Representative Amerman the sense of frustration. We have tried to give it as much time but the reality is when you vote on this you have to look at both sides. The difference in North Dakota is that this resolution has been turned in, has to have a hearing, vote and does have to go on the floor. I wished I have a yellow button that says proceed with caution and we don't have one. When I did have the hearing and I had Tyler (intern) call the bill sponsors and they said they didn't know about the meeting and no one showed to introduce the bill.

Vice Chairman Kasper: Based on what Representative Amerman said about card check, I can't verify that the EFCA will follow card check feature, but in fact that is the way the EFCA will be followed, looking at the resolution, I would consider another amendment before the final vote.

Chairman Keiser: Explains his interpretation of the secret vote.

Representative Schneider: With some the testimony, the idea of the secret ballot is somewhat a fallacy. They could predict the vote count to within a couple of percentage votes. That is the issue. There is no secret ball in this process. If you are going to vote for this

resolution, don't vote on the false pretense. (Inaudible) We openly let others represent us and a union is not much different. I don't see the harm.

Representative Ruby: I would disagree with Representative Schneider. Maybe there are cases where they can predict the vote, I don't think they necessarily know but have a good indication of about where they are going to be. When you get that simply majority, then the other really don't have any say. I think it does protect the employee's right to privacy on two levels, the ones that are the minority and the ones that necessarily want to have it know how they have voted. When you sidestep that process, I don't perceive that the union is going ever going to take it to a vote on the floor if they have that simple majority.

Representative Clark: Well you heard a lot of testimony which I felt was pure conjecture and there were opinions offered. You heard about the bad thing that employers do but you didn't hear about any bad things that unions do. When those cards come around there is pressure to sign those signatures. Unions know how to coerce people into getting their way. I'm going to support this and the employers have a right to decide whether they want a union also. I believe this takes it away. Senator McGovern just wrote an editorial piece in the Wall Street Journal not too long ago calling out very strongly against EFCA. He didn't believe this was a good act. This is where I stand.

Vice Chairman Kasper: I would like to share what I would like to amend out. The amendment we adopted, talk about protecting the secret ballot and whether it's needed or not, I think it strengthen we as a republic stand for. Being I can verify whether a card check is the way it is or not, if you look on page 1, lines 24 &25 and page 2, lines 1 & 2, (reads the section) it's makes the statement that expresses opposition to card check opposition legislation. I don't know if that statement is true or not. What I propose is a further amendment if we can get to that point is that we would amend out lines 24 & 25 on bottom of page 1 and lines 1 & 2 on

page 2. I don't think it takes away from the protection of the secret ballot but takes away another area that I can't verify if it's true or not.

Representative Amerman: Unless we take out the word oppose, you can amend the resolution, we don't get to amend the act. I applaud Vice Chairman Kasper for making this more viable. If you want to amend this, it's fine. Like I said earlier, if you vote against it, you better understand the act. Don't oppose it because nobody truly understands this act and if you don't understand it.

Vice Chairman Kasper: I do understand one thing about the EFCA, which in itself I oppose, 2 things. One, once 50% plus 1, there is automatically a union, I think that wrong. Two, EFCA imposes a penalty of up to $20,000 against the employer only for every violation for opposition to this act. No penalty on the employees or the labor union.

Voting roll call was taken on SCR 4033 for a Do Pass as Amended with 7 ayes, 5 nays, 1 absent and Vice Chairman Kasper is the carrier.

Testimony from Renee Pfenning who didn't testify before the committee.

Date: Apr. 17, 2009

Roll Call Vote # 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 4033

House House, Business & Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☐ Do Pass ☐ Do Not Pass ☒ As Amended

Motion Made By Schneider Seconded By Boe

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	✓		Representative Amerman	✓	
Vice Chairman Kasper	✓		Representative Boe	✓	
Representative Clark	✓		Representative Gruchalla	✓	
Representative N Johnson	✓		Representative Schneider	✓	
Representative Nottestad	✓		Representative Thorpe	✓	
Representative Ruby		✓			
Representative Sukut	✓				
Representative Vigesaa					

Total (Yes) 11 No 1

Absent 1

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

removes lines 9-12

98342.0201
Title.0300

Prepared by the Legislative Council staff for
Representative Kasper
April 15, 2009

4/17/09

PROPOSED AMENDMENTS TO ENGROSSED SENATE CONCURRENT RESOLUTION NO. 4033

Page 1, replace lines 4 through 17 with:

"**WHEREAS**, the right to a private secret ballot is fundamental to our representative republic and should not be infringed upon; and

WHEREAS, state and federal law requires elections for public office or public votes on initiatives and referenda be by private secret ballot; and

WHEREAS, passage of the federal Employee Free Choice Act could infringe upon the rights of individuals to have a private ballot election; and

WHEREAS, the federal Employee Free Choice Act's mandatory binding arbitration provisions would deny workers the right to participate in the collective bargaining process between employees and the union; and

WHEREAS, any effort to eliminate private elections jeopardizes the free speech rights of business and workers' individual rights; and"

Renumber accordingly

Date: Apr. 17-2009

Roll Call Vote # 2

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 4033

House House, Business & Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 98342.0201

Action Taken ☐ Do Pass ☐ Do Not Pass ☒ As Amended

Motion Made By Kasper Seconded By Nottestad

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Representative Amerman	X	
Vice Chairman Kasper	X		Representative Boe	X	
Representative Clark	X		Representative Gruchalla		X
Representative N Johnson	X		Representative Schneider	X	
Representative Nottestad	X		Representative Thorpe	X	
Representative Ruby	X				
Representative Sukut	X				
Representative Vigesaa					

Total (Yes) 11 No 1

Absent 1

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

98342.0201
further amend

Date: Apr. 17, 2009

Roll Call Vote # 3

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 4033

House House, Business & Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken ☒ Do Pass ☐ Do Not Pass ☒ As Amended

Motion Made By Ruby Seconded By Kasper

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	✓		Representative Amerman		✓
Vice Chairman Kasper	✓		Representative Boe		✓
Representative Clark	✓		Representative Gruchalla		✓
Representative N Johnson	✓		Representative Schneider		✓
Representative Nottestad	✓		Representative Thorpe		✓
Representative Ruby	✓				
Representative Sukut	✓				
Representative Vigesaa	—				

Total (Yes) 7 No 5

Absent 1

Floor Assignment Kasper.

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SCR 4033, as engrossed: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 5 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SCR 4033 was placed on the Sixth order on the calendar.

Page 1, replace lines 4 through 17 with:

"**WHEREAS**, the right to a private secret ballot is fundamental to our representative republic and should not be infringed upon; and

WHEREAS, state and federal law requires elections for public office or public votes on initiatives and referenda be by private secret ballot; and

WHEREAS, passage of the federal Employee Free Choice Act could infringe upon the rights of individuals to have a private ballot election; and

WHEREAS, the federal Employee Free Choice Act's mandatory binding arbitration provisions would deny workers the right to participate in the collective bargaining process between employees and the union; and

WHEREAS, any effort to eliminate private elections jeopardizes the free speech rights of business and workers' individual rights; and"

Renumber accordingly

2009 TESTIMONY

SCR 4033

ND AFL-CIO testimony opposing SCR 4033 offered to Senate IBL
March 30, 2009
By: David L. Kemnitz; President ND AFL-CIO
SCR 4033; **Opposes the Employee Free Choice Act now before Congress.**

The ND AFL-CIO supports the Employee Free Choice Act as introduced in Congress.

Millions of Americans want to form a union for a voice on the job, and for wages and benefits that can support a family. Working people routinely are denied the freedom to form a union if they want one.
Data from the AFL-CIO shows that employers interference in the employee's rights to form, join or assist a labor organization and to bargain collectively.
See Employer Interference By the Numbers; attached with this testimony.

Excerpts from the National Labor Relations Act state:

"It is declared to be the policy of the United States to .... Encourage the practice and procedure of collective bargaining and .... Protect the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection."

The Employee Free Choice Act represents an opportunity to change the National Labor Relations Act in a way that will restore its purpose, as set forth in the 1935 Act.

Introduced in the 111th. Congress; 1st. Session;
S. 560 amends the NLRA as described below:

1. Certification based on majority sign-up.
Requires that when a majority of employees signs authorizations designating the union as its bargaining representative, the union will be certified by the National Labor Relations Board (NLRB). Requires the Board to develop procedures for establishing the validity of signed authorizations.

2. Guarantees workers a first contract.
When an employer and a newly-formed union are unable to bargain a first contract within 90 days, either party may request mediation. If no agreement has been reached after 30 days of mediation, the dispute is referred to binding arbitration. All time limits can be extended by mutual agreement.

3. Stronger penalties for violations of the law during organizing campaigns and first contract negotiations.

A. Civil Penalties: Up to $20,000 per violation against companies who willfully or repeatedly violate employees' rights during an organizing campaign or first contract negotiations.

B. Treble Back Pay: Increases to three times back pay the amount a company is required to pay when an employee is fired during an organizing campaign or during first contract negotiations.

C. Injunctive Remedies: Requires the NLRB to seek a court injunction when a company fires or discriminates against employees or engages in conduct that significantly interferes with employee rights during an organizing campaign or first contract negotiations. This mandatory injunctive requirement is the same as is currently used against unions when secondary boycotts are alleged.

Included in this testimony:
A copy of the NLRB Procedures Guide for Union Elections, a sample petition and instructions are included as well. separate
A Letter dated March 26, 2009 addressed to the ND Legislative Assembly from William Lurye, Associate General Counsel, AFL-CIO. Pages 5,6&7
An explanation why the EFCA does not eliminate the Secret Ballot. Page 8
A white paper titled "Will it Lead to Coercion of Workers by Unions?" Page 9
A white paper titled "The Employee Free Choice Act and Small Business". Page 10
A "Statement from leading American economists". Page 11
National Survey Results on Public Opinion regarding the Employee Free Choice Act. Hart Research Associates; December 4 to 10, 2008. Pages 12,13&14
Employer Interference By The Numbers. Page 15
National Gallup Poll taken March 14 & 15, 2009 finding and stating that: "Majority Receptive to Law Making Union Organizing Easier". separate

In conclusion we ask the Senate IBL to review the documents and testimony given today opposing SCR 4033 as introduced.
And after reviewing this information we ask that the Senate IBL Committee recommend a DO NOT PASS to the ND Senate.

Sincerely;

David L. Kemnitz, President
ND AFL-CIO

American Federation of Labor and Congress of Industrial Organizations

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Washington, D.C. 20006
(202) 637-5000
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March 26, 2009

The Honorable Members of the North Dakota Legislative Assembly
State Capitol 600 East Boulevard
Bismarck, ND 58505-0360

Re: Senate Concurrent Resolution 4033 – Resolution Concerning the Employee Free Choice Act

Dear Legislator:

SCR 4033
P. 1
Lines 4, 5

I am aware that the referenced resolution has been introduced, which opposes passage of the Employee Free Choice Act by Congress. The resolution condemns the Employee Free Choice Act, claiming that the Employee Free Choice Act will replace secret ballot elections with majority sign up for unions. The Resolution further asserts that majority sign up will result in "coercion and intimidation" of employees. This resolution is based on incorrect assumptions. The Employee Free Choice Act does not ban secret ballot elections under the National Labor Relations Act ("NLRA"). Nor does the NLRA currently require secret ballot elections as the only means for choosing union representation. Moreover, there is an unseemly history of employer coercion of employees in union organizing election campaigns, which the Employee Free Choice Act will help remediate.

✓

Since it was enacted in 1935, the NLRA has allowed workers to form their union either through an election process or through a majority sign-up process.[1] The majority sign-up process provides that when a majority of workers have indicated support for representation by signing cards or petitions, the union can be recognized lawfully by the employer as the workers' bargaining representative. This process has been endorsed by Congress and the Supreme Court. For North Dakota or any other state to seek to mandate that workers should form unions only through an election process, overlooks the rights workers now enjoy under federal labor law.

[1] *See*, 29 U.S.C. §159(a) & (c)(1)(A).

5

Studies have shown that when NLRB-conducted elections occur to select a union representative, 25% of the employers illegally fire at least one worker for union activity during the organizing campaign. During the NLRB's 2007 fiscal year, over 29,000 workers received backpay for being unlawfully fired by employers. Over 50% of the employers threaten to close their plant if the employees vote for union representation, although only about 1% actually close the plant. And, over 90% of the employers mandate employees to attend one on one meetings or small group meetings with supervisors, where unlawful coercion often occurs. In comparison, there are virtually no acts of coercion by unions during campaigns where majority sign-up leads to union representation; certainly, the NLRB's decisions are relatively free of such findings.

The binding arbitration provisions of the Employee Free Choice Act do not deny worker participation. First, there is arbitration only if bargaining fails, even after a federal mediator assists the parties; if an employer bargains in good faith, agreement should be reached at the bargaining table. Secondly, there is no reason to believe that employees will not have participation in the formation of the contract through arbitration.

p. 1 lines 14-16

Nor are small businesses adversely affected by the Employee Free Choice Act, as suggested by the Concurrent Resolution. Most small businesses are already covered by the National Labor Relations Act. The Employee Free Choice Act does not change the scope of the NLRA. The NLRA and the Employee Free Choice Act apply to all employers who "engage in interstate commerce." Their employees already have the right to organize and collectively bargain. Thus, almost every private sector employer is covered by the NLRA, other than agriculture, domestic service, railroads and airlines, which are excluded from the NLRA altogether.

p. 1 lines 17-21

Small business owners have stated that they understand the Employee Free Choice Act will help create a stronger economy, with a better-trained workforce and a more economically stable customer base. Unions increase wages, which puts money in workers' pockets, which is spent in the local community, and usually at small businesses. Small business owners whose workers are represented by unions have noted that having a union makes employees more career-minded and invested in providing excellent service. These business owners also value the training and apprenticeship programs offered through their employees' unions, and know that this helps ensure that their business has superior employees who can contribute to the business's overall functioning.

p. 1 lines 17-21

The Employee Free Choice Act has widespread support in this country, contrary to the suggestions otherwise in the Concurrent Resolution. According to an independent Gallup poll released on March 17, 2009, 53 percent of respondents favored a new law that would "make it easier for labor unions to organize workers." Only 39 percent of respondents opposed such a law.

p. 1 lines 12-13

The Employee Free Choice Act is a critical component of a sustainable economic recovery because it will give workers the freedom to bargain with their employers for

better benefits and wages. It does not ban secret ballot elections; it merely gives the employees a free and uncoerced choice whether they wish to have an election or select the union through majority sign-up. It is a much-needed, common sense reform of the NLRA.

P. 2 lines 6-9

I am providing this information so that you are fully informed about the proposed resolution. The resolution is unnecessary, as the Employee Free Choice Act does not remove the right of workers to have a secret ballot election. The Act removes employer coercion from the process, and there is no evidence to support the notion that unions will intimidate workers in some way to sign up for the union.

Sincerely,

William Lurye
Associate General Counsel

The Employee Free Choice Act Does Not Eliminate the Secret Ballot Election Process for Choosing Union Representation

The Employee Free Choice Act is an amendment to the existing NLRA which makes no change to the current election process.

- It does not amend, repeal or eliminate the NLRA election process, which is set forth in Section 9(c)(1)(A). This provision will continue unchanged.
- If the Employee Free Choice Act is enacted, a petition filed under Section 9(c)(1)(A), which meets the rules of that section, will still initiate an election process.
- According to the House Committee on Education and Labor Report on H.R. 800, "[t]his section does not eliminate the NLRB election process, which remains an option for employees as it is under current law." 2/16/07, pp. 25-26.

Currently, many workers try to avoid the election process because it is company-controlled, coercive and unfair.

The Employee Free Choice Act simply amends the NLRA representation system by modifying the already-existing majority sign-up process.

- It puts the choice of how to form a union in the hands of workers rather than their employer by changing the majority sign-up process to require companies to honor their employees' choice when employees decide to demonstrate their union support in this manner. Instead of their company controlling how workers organize, workers will have the choice of which path to use.

An election process has never been the only way workers can form their union under the NLRA.

- Section 9(a) of the current NLRA requires that an employer bargain with "representatives **designated or selected** for purposes of collective bargaining." It has never required that the representative be **elected**.

The NLRA has always maintained and regulated two paths to union representation: Both have been in existence 1935 and both have been endorsed by the NLRB, the Supreme Court and Congress:

- (a) election: Section 9(c)(1)(A) requires that a petition be filed which is supported by a significant number of workers in order for the NLRB to conduct an election; the employer cannot veto the election process; and
- (b) majority sign-up: widely used and also governed and regulated by the NLRB, it requires that: (1) a majority of employees sign authorization cards or petitions indicating their choice for union representation; and, (2) their employer **agree** to recognize the union based on the majority support.

The Employee Free Choice Act will allow workers – not companies – to choose how they form their union by removing the veto power companies now have with the majority sign-up process.

THE EMPLOYEE FREE CHOICE ACT
Will it Lead to Coercion of Workers by Unions?

Opponents of giving workers the freedom to choose a union through a simple process that recognizes the will of the majority allege it will open workers to coercion by unions.

But majority sign-up is not new or untested. It has been legal since the National Labor Relations Act was enacted in 1935, and millions of workers have formed unions by signing union authorization cards under a majority sign-up procedure. So what does the record show?

- A study by the HR Policy Association, a pro-business organization, identified just 113 cases since the inception of the National Labor Relations Act as involving fraud and coercion in connection with card collection. Upon review, however, **only 42** of those cases actually found misconduct in the signing of union authorization cards—since 1935. That's about one case every two years.

- In fact, it is employers that hold the power over workers—the power to hire and fire and to determine wages and promotions. That's the power that can lead to coercion.

- And it is corporations that have the record of intimidating workers. In 2007 alone, 29,559 workers received back pay from employers in cases alleging illegal firings and other violations of their federally protected rights, according to the National Labor Relations Board's annual reports. In 2006, a total of 26,824 workers received back pay; in 2005, the number was 31,358; in 2004, it was 30,784; and in 2003, it was 23,144.

- Further evidence can be found in the NLRB's database of complaints, which are issued against employers and unions upon a finding of cause by the NLRB's general counsel. These data do not separate out complaints of coercion related specifically to card signing or even to organizing and first contract campaigns, so these numbers include **all** NLRB complaints against unions or employers that could involve coercion against employees. From Oct. 1, 1999, to April 30, 2007, a total of 37,108 complaints were issued against employers. In that same period, 2,893 complaints were issued against unions—a ratio of 12.83 to 1.

- There is no evidence that the Employee Free Choice Act will generate union coercion, while there is ample evidence that companies routinely inflict endemic coercion on workers in the NLRB representation process.

The Employee Free Choice Act and Small Business

What You Need to Know

The Employee Free Choice Act Can Stimulate More Business for Small Businesses.

Small businesses stand to benefit from allowing all workers to freely organize and bargain for a better life. Unions increase wages, which puts money in workers' pockets, which is spent in the local community. For large businesses in particular, the less revenue that goes to wages, the less money circulating in the local economy where their workers live and work. Small businesses stand to benefit from the stimulative effect of workers generally improving their lives through collective bargaining.

When Small Businesses Are Organized, There Are Benefits to the Employer.

While employers often have a kneejerk reaction to unions, small businesses can reap benefits when their own workers organize. [Thousands] of small businesses have unions, particularly in the construction industry. Unions add value to these businesses. They ensure lower turnover and a skilled workforce. They improve worker productivity. They establish multiemployer health and pension funds that allow small businesses to provide a competitive benefit package to their employees that, on their own, would be difficult to provide. They establish top-notch apprenticeship and training programs that, again, on their own, small businesses would find difficult to provide.

The Employee Free Choice Act Does Not Change Existing Small Business Coverage.

Most small businesses are already covered by the National Labor Relations Act (NLRA). Their employees already have the right to organize and collectively bargain. The Employee Free Choice Act does not change the scope of the NLRA. The NLRA and the Employee Free Choice Act apply to all employers who "engage in interstate commerce." This is almost every private sector employer (outside of agriculture, domestic service, railroads, and airlines, which are excluded from the NLRA altogether).

Economic Policy Institute

PROMINENT ECONOMISTS SAY:

Passage of the Employee Free Choice Act is critical to rebuilding our economy and strengthening our democracy.

Statement from leading American economists

Although its collapse has dominated recent media coverage, the financial sector is not the only segment of the U.S. economy running into serious trouble. The institutions that govern the labor market have also failed, producing the unusual and unhealthy situation in which hourly compensation for American workers has stagnated even as their productivity soared.

Indeed, from 2000 to 2007, the income of the median working-age household fell by $2,000 – an unprecedented decline. In that time, virtually all of the nation's economic growth went to a small number of wealthy Americans. An important reason for the shift from broadly-shared prosperity to growing inequality is the erosion of workers' ability to form unions and bargain collectively.

A natural response of workers unable to improve their economic situation is to form unions to negotiate a fair share of the economy, and that desire is borne out by recent surveys. Millions of American workers – more than half of non-managers – have said they want a union at their work place. Yet only 7.5% of private sector workers are now represented by a union. And in all of 2007, fewer than 60,000 workers won union status through government-sanctioned elections. What explains this disconnect?

The problem is that the election process overseen by the National Labor Relations Board has become drawn out and acrimonious, with management campaigning fiercely to deter unionization, sometimes to the extent of violating labor laws. Union sympathizers are routinely threatened or even fired, and they have little effective recourse under the law. Even when workers overcome this pressure and vote for a union, they are unable to obtain contracts one-third of the time due to management resistance.

To remedy this situation, the Congress is considering the Employee Free Choice Act. This act would accomplish three things: It would give workers the choice of using majority sign-up— a simple, established procedure in which workers sign cards to indicate their support for a union – or staging an NLRB election; it triples damages for employers who fire union supporters or break other labor laws; and it creates a process to ensure that newly unionized employees have a fair shot at obtaining a first contract by calling for arbitration after 120 days of unsuccessful bargaining.

The Employee Free Choice Act will better reflect worker desires than the current "war over representation." The Act will also lower the level of acrimony and distrust that often accompanies union elections in our current system.

A rising tide lifts all boats only when labor and management bargain on relatively equal terms. In recent decades, most bargaining power has resided with management. The current recession will further weaken the ability of workers to bargain individually. More than ever, workers will need to act together.

The Employee Free Choice Act is not a panacea, but it would restore some balance to our labor markets. As economists, we believe this is a critically important step in rebuilding our economy and strengthening our democracy by enhancing the voice of working people in the workplace.

Henry J. Aaron
Brookings Institution

Katherine Abraham
University of Maryland

Philippe Aghion
Harvard University

Eileen Appelbaum
Rutgers University

Kenneth Arrow
Nobel Laureate in Economics
Stanford University

Dean Baker
Center for Economic Policy and Research

Jagdish Bhagwati
Columbia University

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Brookings Institution

Joseph Blasi
Rutgers University

Alan S. Blinder
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Duke University

Brad DeLong
University of Calif. - Berkeley

John DiNardo
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Richard Freeman
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University of Texas

Robert J. Gordon
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Lawrence Katz
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Robert Lawrence
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For more information, visit www.epi.org/laborpolicy.

Hart Research Associates

1724 Connecticut Avenue, N.W.
Washington, D.C. 20009
202-234-5570
202-232-8134 FAX

MEMORANDUM

TO: All Interested Parties

FROM: Hart Research Associates

DATE: January 8, 2009

RE: Public Opinion Regarding The Employee Free Choice Act, National Survey Results

From December 4 to 10, 2008, Hart Research Associates conducted a telephone survey among a representative national sample of 1,007 adults. The margin of error for this survey is ±3.2 percentage points among all adults, and larger among certain subgroups.

Findings

1 Americans want legislation that makes it easier for workers to bargain with their employers for better wages, benefits, and working conditions. Nearly four in five (78%) adults favor legislation that would make it easier for workers to bargain with their employers. This includes nearly half (46%) of Americans who strongly favor legislation to that end.

- Just 17% of adults oppose legislation making it easier for workers to bargain with their employers for better wages, benefits, and working conditions.
- A majority (69%) of Americans agree that it is very or fairly important to have strong laws that give employees the freedom to make their own choice about whether to form a union in their workplace. Half (50%) of Americans say this is very important.

2 Americans overwhelmingly support the Employee Free Choice Act. After hearing descriptions of its three main provisions (see question language below), 73% of adults favor the legislation. Thirty-seven percent (37%) of adults strongly favor the Employee Free Choice Act.

- Just one in five (21%) Americans opposes the Employee Free Choice Act.
- Support for the Employee Free Choice Act stretches across demographic and geographic lines.
  - ✓ Democrats (87%) and independents (69%) support the Employee Free Choice Act. Even among Republicans, nearly half support the legislation. Indeed, opposition to the Employee Free Choice Act is further confined to Republicans who identify as conservatives (36% support). Three-quarters (74%) of moderate/liberal Republicans favor passing the Employee Free Choice Act.

- ✓ Seven in 10 (69%) adults in Right to Work states also support the Employee Free Choice Act.

Support For The Employee Free Choice Act Among Key Groups
(after hearing messages from both sides of the debate)

	Total Favor %
All adults	72
Registered voters	72
Democrats	87
Independents	69
Republicans	48
Conservative Republicans	36
Non-conservative Republicans	74
Men	66
Women	78
Whites	69
African Americans	88
Hispanics	76
High school/less	77
Some college	76
College graduates	63
Northeast	81
South	67
Midwest	73
West	68
Right to Work states	69

3 The public supports each of the Employee Free Choice Act's three provisions, and support is strongest for majority sign-up.

- Three-quarters (75%) of adults favor allowing employees to have a union once a majority of employees in a workplace sign authorization cards indicating that they want to form a union, including 44% who strongly support the idea. Just 20% of adults oppose majority sign-up.
- Two-thirds (64%) of adults favor strengthening penalties for companies that illegally intimidate or fire employees who try to form a union, including half (49%) who strongly support penalties.
- Three in five (61%) adults favor binding arbitration in cases in which a company and a newly certified union cannot agree on a contract after three months. Thirteen percent (13%) of adults are not sure how they feel about this provision.

Support For Provisions Of The Employee Free Choice Act

	Total Favor %
Allows employees to have a union once a majority of employees in a workplace sign authorization cards indicating they want to form a union	75
Strengthens penalties for companies that illegally intimidate or fire employees who try to form a union	64
Establishes binding arbitration in cases where a company and a newly certified union cannot agree on a contract after three months of negotiating	61

4 Fewer than half of Americans know that employers generally oppose unions. Just 47% of adults know that when elections are held in a workplace to determine whether a union will represent employees, employers generally oppose the union and try to convince employees to vote no. Three in 10 (30%) Americans believe that employers generally take no position and let employees decide on their own and 21% are not sure.

FREE CHOICE ACT

EMPLOYER INTERFERENCE BY THE NUMBERS

(Private-sector employers)

1. Employers that illegally fire at least one worker for union activity during organizing campaigns:	**25%**
2. Chance that an active union supporter will be illegally fired for union activity during an organizing campaign:	**1 in 5**
3. Employers that hire consultants or union-busters to help them fight union organizing drives:	**75%**
4. Employers that force employees to attend one-on-one meetings against the union with their own supervisors:	**78%**
5. Employers that force employees to attend mandatory closed-door meetings against the union:	**92%**
6. Employers that threaten to call U.S. Citizenship and Immigration Services during organizing drives that include undocumented employees:	**52%**
7. Companies that threaten to close the plant if the union wins the election:	**51%**
8. Companies that actually close their plants after a successful union election:	**1%**
9. Workers in FY 2006 who received back pay in cases alleging employer violations of workers' rights under the National Labor Relations Act:	**26,824**
10. Percentage of cases in which employers do not agree to a contract after workers form a union under the NLRB process:	**44%**
11. Portion of public that says strong laws protecting workers' freedom to form unions—without employer interference—are important:	**77%**
12. Portion of public that disapproves of employer anti-union campaigns when workers try to form unions:	**67%**
13. Nonunion workers who say they want to have a union in their workplace:	**60 million**
14. Number and percentage of U.S. workers that belong to unions:	**15.7 million or 12.1%**

SOURCES: 1 and 3-8: Kate Bronfenbrenner, "Uneasy Terrain: The Impact of Capital Mobility on Workers, Wages and Union Organizing," September 6, 2000. A study of Chicago-area NLRB representation elections by University of Illinois-Chicago professors Chirag Mehta and Nik Theodore reported similar findings. Mehta and Theodore found that workers were fired illegally during 30 percent of organizing campaigns, employers force workers to attend one-on-one, anti-union meetings with supervisors during 91 percent of NLRB representation election campaigns, and employers hire consultants or union-busters to help them fight 82 percent of union organizing drives. See Mehta and Theodore, "Undermining the Right to Organize: Employer Behavior During Union Representation Campaigns," report for American Rights at Work, December 2005.

2. John Schmitt and Ben Zipperer, "Dropping the Ax: Illegal Firings During Union Election Campaigns," Center for Economic and Policy Research, January 2007, http://www.cepr.net/index.php?option=com_content&task=view&id=775&Itemid=8

9. National Labor Relations Board annual report, fiscal year 2006, Table 4.

10. John-Paul Ferguson, "The Eyes of the Needles: A Sequential Model of Union Organizing Drives, 1999-2004" (March 25, 2008), unpublished working paper.

11-12: Peter D. Hart Research Associates, survey for the AFL-CIO, December 2006.

13. AFL-CIO calculation based on Peter D. Hart Research Associates survey, December 2006.

14. U.S. Department of Labor, Bureau of Labor Statistics.

March 17, 2009

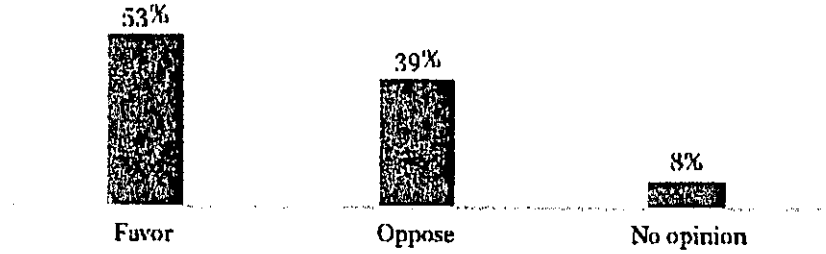
Majority Receptive to Law Making Union Organizing Easier

But most Americans not closely following news about union bill in Congress

by Lydia Saad

PRINCETON, NJ -- A new Gallup Poll finds just over half of Americans, 53%, favoring a new law that would make it easier for labor unions to organize workers; 39% oppose it. This is a key issue at stake with the Employee Free Choice Act now being considered in Congress.

Generally speaking, would you favor or oppose a new law that would make it easier for labor unions to organize workers?

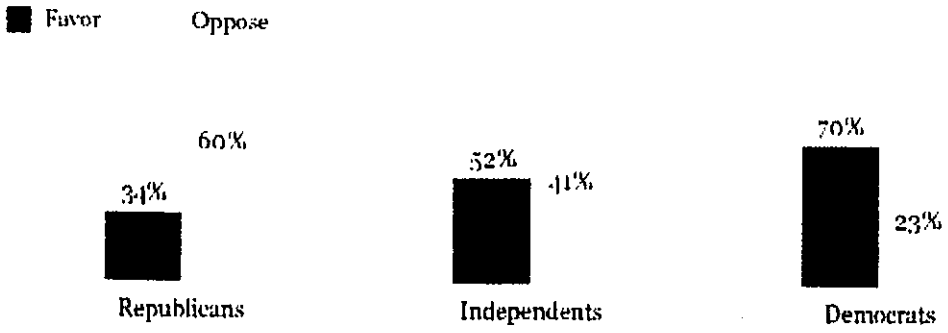


March 11-15, 2009

GALLUP POLL

The poll reveals sharply differing reactions to the issue within the general public according to political orientation. Most Democrats (70%) say they would favor a law that facilitates union organizing, while a majority of Republicans (60%) say they would oppose it. Independents lean in favor of such a law, 52% vs. 41%.

Opinion on a Law That Would Make It Easier for Labor Unions to Organize Workers, by Party ID



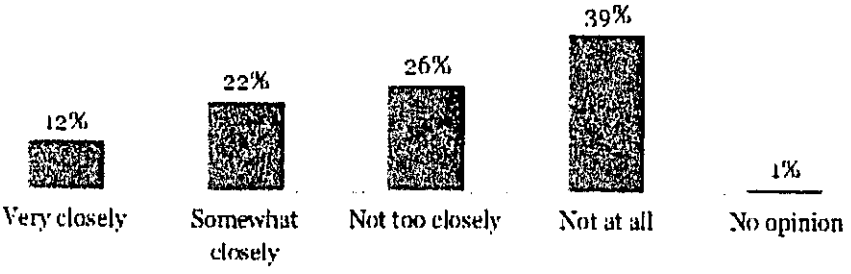
March 14-15, 2009

GALLUP POLL

As originally proposed, the 2009 Employee Free Choice Act (in its House and Senate versions) strengthens the "majority signature" or "card check" basis for union organizing by automatically unionizing any workplace in which a majority of workers have signed a union authorization card. The act would eliminate employers' ability to call for secret-ballot elections (although employees can still call for one), and would make changes to enforcement of labor protections and contract-settlement procedures. Thus far, the proposal has not been a prominent item in the mainstream national news; however, it has sparked fierce union-versus-business debate in Washington and appears headed toward a close vote in the U.S. Senate.

By their own admission, most Americans are not paying very close attention to the congressional debate on this issue. According to the March 14-15 survey, only 12% of U.S. adults say they are following news about the union-organizing bill "very closely" and another 22% say they are following it "somewhat closely." Nearly two-thirds of Americans say they are following it less closely than that (26%), or not at all (39%).

How closely have you been following news about a bill in Congress that would change the rules governing how unions can organize workers?



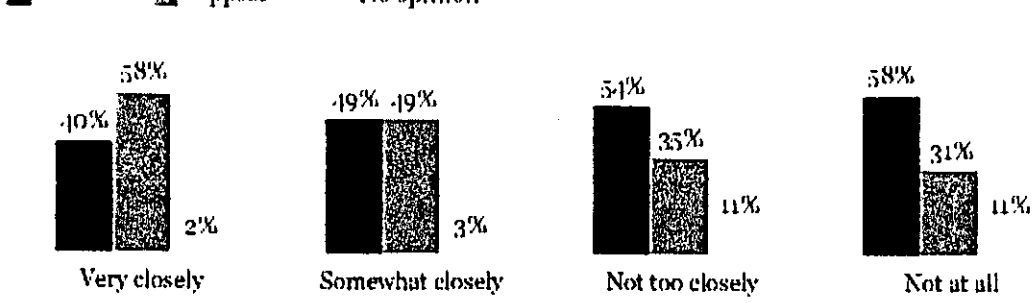
March 14-15, 2009

GALLUP POLL

Those most closely following news about the union-organizing bill are the most opposed to the general concept of a law making it easier for unions to organize: just 40% are in favor; 58% are opposed. The bill enjoys its highest support -- 58% -- among those not following the bill at all.

Opinion on a New Law Making It Easier for Unions to Organize Workers

By how closely respondents are following news about a bill that would change union-organizing rules



March 11-15, 2009

GALLUP POLL

Bottom Line

Previous Gallup polling has shown that Americans are fundamentally sympathetic to labor unions, and these underlying attitudes are no doubt reflected in their general support for legislation characterized as making it easier for workers to unionize. For example, Gallup's annual polling on workplace issues, conducted each August, has found consistently high approval of labor unions in recent years, including a 59% approval rating last summer. The current level of support for a new law facilitating more union membership -- 53% in favor -- is only slightly less favorable to unions.

The current findings could bode well for the pro-union side of the issue as it ramps up the public-information component of its lobbying efforts, particularly at a time when corporate America has serious image problems. Americans appear to be a sympathetic audience for a basic argument behind the law if it is described simply as making it easier for unions to organize.

At the same time, Americans have barely begun to pay attention to the issue. The 12% who are following it "very closely" is exceptionally low relative to public attention to other news issues Gallup has measured over the last two decades. And, while Americans are broadly supportive of labor unions, Gallup's August 2008 Workplace survey found only 35% in favor of unions having greater influence. In this context, with the arguments against card check yet to be fully aired and debated, it could be a troubling sign for unions that no more than 53% of Americans immediately support this fundamental aspect of the card-check bill.

The Employee Free Choice Act is a complex piece of legislation with numerous components, making it difficult to assess overall support for the bill among a population that is largely unaware of it. General

support for the idea of "making it easier for unions to organize" as measured in the current poll is telling, but not necessarily indicative of public reaction to the bill if and when the political debate spills over into news headlines. Future Gallup polling will explore public reaction to specific aspects of the bill's provisions, and will continue to monitor overall support for the concept of making it easier for workers to unionize.

Survey Methods

Results are based on telephone interviews with 1,024 national adults, aged 18 and older, conducted March 14-15, 2009, as part of Gallup Poll Daily tracking. For results based on the total sample of national adults, one can say with 95% confidence that the maximum margin of sampling error is ±3 percentage points.

Interviews are conducted with respondents on land-line telephones (for respondents with a land-line telephone) and cellular phones (for respondents who are cell-phone only).

In addition to sampling error, question wording and practical difficulties in conducting surveys can introduce error or bias into the findings of public opinion polls.

Procedures Guide

Our Mission is to Enforce the National Labor Relations Act

The National Labor Relations Board administers the National Labor Relations Act (NLRA) which oversees private sector labor relations, i.e., the relationship between employers, unions and employees, and the rights of employees to form, join or assist a labor organization and to bargain collectively through representatives of their own choosing or to refrain from such activities. The NLRB processes charges, involving allegations that an employer or union is violating the NLRA. The agency also processes petitions in which a union seeks to represent employees for collective- bargaining purposes or petitions in which employees no longer wish the union which currently represents them to continue to do so. This guide provides basic instructions about filing charges and petitions with the NLRB.

Filing A Charge

Jurisdiction

The first step in processing an alleged unfair labor practice is the filing of a charge, which may be against either an employer, union, or in some cases, both. Before the Board can process a charge, it must determine if it has jurisdiction. As a federal agency, the Board becomes involved only in those matters that have an impact on interstate commerce. Basically, this means that the employer must be deriving revenues in excess of certain standard levels set by the Board, and there must be more than a minimal amount of business derived from the flow of goods or services across state lines. Furthermore, because the Board does not have jurisdiction over public entities, with the exception of the Postal Service, it will process charges only involving private, non-agricultural enterprises (this includes non-profit businesses).

Statute of Limitations

Also critical in the initial filing stage is when the alleged violation occurred. Normally, by statute, only charges filed and served within six (6) months of the date of the event or conduct, which is the subject of the charge, will be processed by the NLRB.

Types of Charges

Section 8 of the Act sets forth the types of unfair labor practices that are prohibited. Typical charges against employers include threatening or discharging employees because of their union and/or protected, concerted activities, and refusing to bargain in good faith with recognized or certified unions. Charges against unions range from arbitrarily or discriminatorily failing to process an employee's grievance, to

picketing neutral employers or persons in an attempt to get them to cease doing business with the employer with which a union has a dispute. In deciding whether you should file a charge, you should contact the nearest NLRB Regional Office and ask to speak with the Information Officer on duty, who will first listen to what concerns you and then fully explain what is and what is not covered by the Act.

For more information on the procedures and what to expect when a charge is filed, see Unfair Labor Practice Cases

Charging Party's Responsibilities

If you find it necessary to file a charge, the Information Officer with whom you speak will assist you in filling out the appropriate charge form. Be prepared to supply at least the name, address (including ZIP code), and telephone number of the employer or union against which the charge is to be filed. If you file a charge with the Board, Section 102.14 of the Board's Rules and Regulations state that it is the responsibility of the individual, employer or union filing the charge to timely and properly serve a copy of the charge on the person, employer or union against whom such charge is made. After the charge is filed, you will be contacted by the Board agent assigned to your case to arrange for the submission of your supporting evidence. Your cooperation in the investigation of a charge is essential. Failure to provide your evidence in a timely manner may result in the dismissal of your charge.

Representation Petitions and NLRB Elections

Filing A Petition

If you want a union to represent you at your workplace or if you no longer wish the union that currently represents you to continue doing so, the filing of a petition with the NLRB will be the means by which either action can be initiated. You may file a petition by contacting one of the NLRB Offices. For more information on what to expect when a representation petition is filed, please see Representation Cases.

Types Of Petitions

The NLRB processes 6 types of petitions. The petitions most commonly filed are representation (RC) and decertification (RD) petitions. The RC petition is used when employees are seeking to be represented by a union and the RD is used when employees are seeking an election to vote an existing

union out. More information about the 4 other less frequently used petitions can best be obtained by contacting an Information Officer at one of the NLRB's field offices.

Evidence Needed with a Petition

Generally, in order to file a petition with the NLRB, the petition must be accompanied by evidence demonstrating that the petition has the support of at least 30% of your fellow employees. This support usually will be in the form of dated signatures from interested employees who indicate by individual cards or signature sheets that they are interested in being represented by a particular union for the purpose of collective bargaining, or ending a union's representational role by having an election to achieve either purpose.

Who May File A Petition?

Any union, employer or individual may file a petition to obtain an election conducted by the NLRB. Please note that the NLRB has jurisdiction over most private employers. Generally, a petition wherein a union or employees are seeking to have a union represent employees may be filed at any time. However, where a petition is filed because employees no longer wish an established union to represent them, there are a series of procedures that regulate the times when a petition may be filed. Most notably, a valid collective bargaining agreement covering the employees in question will bar the filing of a petition except for the period 60 to 90 days prior to its expiration. Other rules are in place for health care providers. Further information can be obtained through discussion with a NLRB agent. To determine if you are within the proper time for filing, review the Open Period Chart, a handy reference guide on determining the periods for filing a timely petition.

Petition [PDF]

The Election

The purpose of most petition filings is to have the NLRB conduct a government- sponsored election. The NLRB assigns a high priority to all election cases. Elections generally are held less then 50 days from the date a petition is filed.

Who Votes?

Eligibility to vote is determined by an employee's job duties and placement of the job in defined collective-bargaining units. In general a bargaining unit is a group of 2 or more employees of the same employer who share a "community of interest" in working conditions. A bargaining unit is most often defined through the use of job descriptions. For example, if an employer is a manufacturing facility, a group of employees sharing common interests might be defined as a unit of all production and maintenance employees. Depending on the circumstances, the same employer may or may not employ other, separate units of employees, such as drivers or clerical employees.

Who Doesn't Vote?

The NLRB normally excludes from voting eligibility all managers, supervisors and guards (although guards may be included in their own bargaining unit). Professional employees are excluded from units of non-professional employees unless professionals vote in a NLRB election to be included with non-professionals. Employees who have terminated their employment for legitimate considerations as of the day of the election are not eligible to vote.

Where Are Elections Held?

Most elections are held right at the work site where eligible employees perform their work. Some elections are conducted by balloting away from the work site, including by mail, where employees are dispersed over a wide geographic area, are assigned away from their normal workstations or under other circumstances. Polling places are set up by the NLRB agent(s) conducting the election. The main function of the NLRB agent is to assure that the election is conducted fairly and that each eligible employee is afforded the opportunity to freely vote a secret ballot. The actual count of the ballots normally is held at the site of the election in the presence of representatives and designated observers from each interested party.

Election details, for example the description of the bargaining unit, the voting eligibility of classes of employees, and the date and place of the election, usually are agreed to by the petitioning union and the employer involved with the assistance of the Board agent. When the parties cannot agree on such issues as the composition or scope of the bargaining unit, a "pre-election hearing" is conducted. Based upon the evidence introduced at the hearing, the Director of the NLRB Regional Office processing the election petition will issue a Decision deciding the election issues on which the parties could not agree.

Election Interference

Within 7 days of the election, any party may file objections concerning the conduct of the election asserting that the laboratory conditions necessary for holding a fair election were not met, thereby protesting the validity of the election results. Any party making such a claim is compelled to present its evidence in support thereof promptly to the local office of the NLRB, which will investigate the issues in an expeditious manner. An additional hearing may be conducted concerning these objections or any determinative challenges to the eligibility of an individual seeking to vote in the election.

Certification of Election Results

The final step in the processing of a petition through an election is for the NLRB to issue a formal certification of the union as the duly designated collective bargaining representative or a certification of the results of the election in the event the union does not receive the support of a majority of the unit employees. A Certification of Representative provides the union with the authority to represent the employee group and to negotiate a contract on the employees' behalf. Under such circumstances, an employer is compelled by law to bargain in good faith with the union selected as the employees' representative.

PLEASE REVIEW THE FOLLOWING IMPORTANT INFORMATION BEFORE FILLING OUT A PETITION FORM!

- Please call an Information Officer in the Regional Office nearest you for assistance in filing a petition. The Information Officer will be happy to answer your questions about the petition form or to draft the petition on your behalf.
- Check one of the boxes listed under Question 1 representing the purpose of the petition: RC-a union desires to be certified as the bargaining representative of employees; RM-an employer seeks an election because one or more individuals or unions have sought recognition as the bargaining representative, or based on a reasonable belief supported by objective considerations that the currently recognized union has lost its majority status; RD-employees seek to remove the currently recognized union as the bargaining representative; UD-employees desire an election to restrict the union's right to maintain a union shop clause; UC-a labor organization or an employer seeks clarification of the existing bargaining unit; or AC-a labor organization or an employer seeks an amendment of a certification issued in a prior Board case.
- Under Question 5, please carefully describe the bargaining unit involved in the petition, listing the job classifications included in the unit and the job classifications excluded from the unit.
- After completing the petition form, be sure to sign and date the petition and mail, fax or hand deliver the completed petition form to the appropriate Regional Office.
- The filing of a petition seeking certification or decertification of a union should be accompanied by a sufficient showing of interest to support such a petition—i.e., a showing that 30% or more of the employees in the bargaining unit seek to be represented by the union or seek to decertify the currently recognized union. If the original showing is not sent to the Region with the filing of the petition, a party must deliver the original showing of interest to the Region within **48 hours** after the filing of the petition, but in no event later than the last day on which a petition may be timely filed.
- Be sure to include telephone and fax numbers of the parties since this will be a significant aid to the processing of the petition.
- Be sure to include the name and address of any other labor organization or individuals known to have a representative interest in any of the employees in the unit described in Question 5 of the petition.
- A petition should be filed with the Regional Office where the bargaining unit exists. If the bargaining unit exists in two or more Regions, it can be filed in any of such Regions. An Information Officer will be happy to assist you in locating the appropriate Regional Office in which to file your petition.

INTERNET
FORM NLRB-502
(2-08)

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
PETITION

FORM EXEMPT UNDER 44 U.S.C.

DO NOT WRITE IN THIS SPACE	
Case No.	Date Filed

INSTRUCTIONS: Submit an original of this Petition to the NLRB Regional Office in the Region in which the employer concerned is located.

The Petitioner alleges that the following circumstances exist and requests that the NLRB proceed under its proper authority pursuant to Section 9 of the NLRA.

1. PURPOSE OF THIS PETITION (If box RC, RM, or RD is checked and a charge under Section 8(b)(7) of the Act has been filed involving the Employer named herein, the statement following the description of the type of petition shall not be deemed made.) (Check One)

- ☐ **RC-CERTIFICATION OF REPRESENTATIVE** - A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees.
- ☐ **RM-REPRESENTATION (EMPLOYER PETITION)** - One or more individuals or labor organizations have presented a claim to Petitioner to be recognized as the representative of employees of Petitioner.
- ☐ **RD-DECERTIFICATION (REMOVAL OF REPRESENTATIVE) - A substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative.**
- ☐ **UD-WITHDRAWAL OF UNION SHOP AUTHORITY (REMOVAL OF OBLIGATION TO PAY DUES)** - Thirty percent (30%) or more of employees in a bargaining unit covered by an agreement between their employer and a labor organization desire that such authority be rescinded.
- ☐ **UC-UNIT CLARIFICATION**- A labor organization is currently recognized by Employer, but Petitioner seeks clarification of placement of certain employees: (Check one) ☐ In unit not previously certified. ☐ In unit previously certified in Case No. _____
- ☐ **AC-AMENDMENT OF CERTIFICATION**- Petitioner seeks amendment of certification issued in Case No. _____ Attach statement describing the specific amendment sought.

2. Name of Employer	Employer Representative to contact	Tel. No.

3. Address(es) of Establishment(s) involved *(Street and number, city, State, ZIP code)*	Fax No.

4a. Type of Establishment (Factory, mine, wholesaler, etc.)	4b. Identify principal product or service	Cell No.
		e-Mail

5. Unit Involved *(In UC petition, describe* **present** *bargaining unit and attach description of proposed clarification.)*	6a. Number of Employees in Unit:
Included	Present
Excluded	Proposed *(By UC/AC)*
	6b. Is this petition supported by 30% or more of the employees in the unit? ☐ Yes ☐ No *Not applicable in RM, UC, and AC
(If you have checked box RC in 1 above, check and complete EITHER item 7a or 7b, whichever is applicable)	

7a. ☐ Request for recognition as Bargaining Representative was made on (Date) _____ and Employer declined recognition on or about (Date) _____ (If no reply received, so state).

7b. ☐ Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.

8. Name of Recognized or Certified Bargaining Agent *(If none, so state.)*		Affiliation	
Address	Tel. No.	Date of Recognition or Certification	
	Cell No.	Fax No.	e-Mail

9. Expiration Date of Current Contract, if any *(Month, Day, Year)*	10. If you have checked box UD in 1 above, show here the date of execution of agreement granting union shop *(Month, Day and Year)*
11a. Is there now a strike or picketing at the Employer's establishment(s) involved? Yes ☐ No ☐	11b. If so, approximately how many employees are participating?

11c. The Employer has been picketed by or on behalf of *(Insert Name)* _____, a labor organization, of *(Insert Address)* _____ Since *(Month, Day, Year)* _____

12. Organizations or individuals other than Petitioner (and other than those named in items 8 and 11c), which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in unit described in item 5 above. (If none, so state)

Name	Address	Tel. No.	Fax No.
		Cell No.	e-Mail

13. Full name of party filing petition (If labor organization, give full name, including local name and number)

14a. Address *(street and number, city, state, and ZIP code)*	14b. Tel. No. EXT	14c. Fax No.
	14d. Cell No.	14e. e-Mail

15. Full name of national or international labor organization of which Petitioner is an affiliate or constituent *(to be filled in when petition is filed by a labor organization)*

I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.

Name *(Print)*	Signature	Title *(if any)*

Address *(street and number, city, state, and ZIP code)*	Tel. No.	Fax No.
	Cell No.	eMail

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

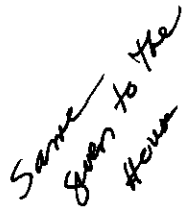
PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

P. 7

Testimony in Support

Of SCR 4033



Bonnie Staiger, Hon. AIA

State Director, NFIB

Chairman Klein and Members of the Senate Industry, Business & Labor Committee, my name is Bonnie Staiger, Hon. AIA and I'm here today as the North Dakota State Director of the National Federation of Independent Business (NFIB) in support of SCR 4033 which stands up for workers right to a secret ballot—and let's remember it is a right that the unions fought for years ago.

You have just heard many salient points about the importance of stopping the Employee Forced Choice Act (EFCA) on the national level. There are plenty of heavy-handed intimidation stories going around on both side of this issue. But let's be clear: employees have the right organize now with a private ballot which is the last refuge from intimidation from either side. If EFCA is not passed by Congress, employees will continue to have that same right.

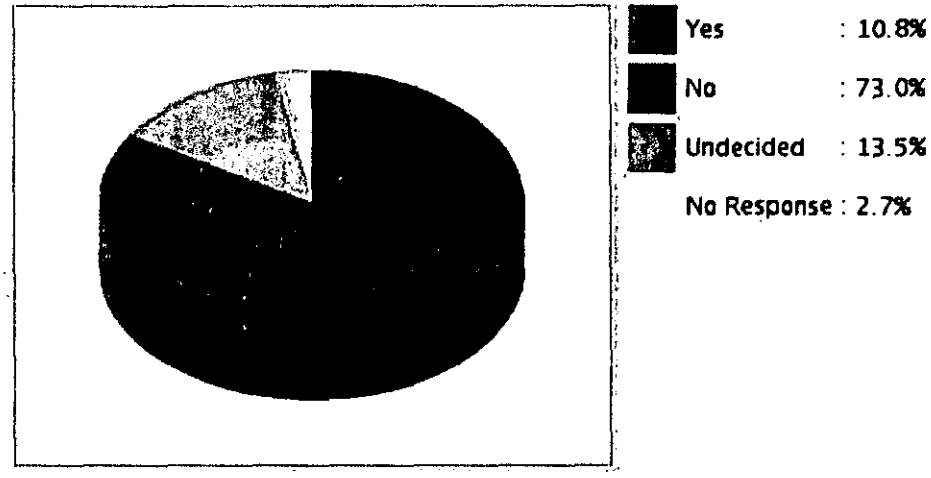
In a bit, you will no doubt hear opponents of this resolution talk about big business and CEOs not treating workers fairly while their pay, perks, and benefits skyrocket. I call your attention to line 17 of this bill and the part about union organizing campaigns targeting small businesses of 50 employees or less.

It is very important to point out that 89% of the businesses in the US have 9 employees or less. Actually 70% of businesses have 4 or less employees. The average NFIB member and small business owner doesn't think of him or herself as a CEO much less be able to take an astronomical salary out of the business. He or she is the one who not only works alongside her employees but also lies awake at night hoping there is enough money in the bank to meet payroll.

It will not matter that North Dakota is a right-to-work state, if the Employee Forced Choice Act passes those small business owners will have 120 days to sign a contract or have the feds step in and order wages and benefits.

Mr. Chairman and Members of the Committee, the members of NFIB in North Dakota would like you to know that (by a margin of 73%) they overwhelmingly oppose eliminating the secret ballot in union elections.

Question 3: Are you in favor of eliminating the secret ballot in union elections?



Last updated on 02/09/2009 at 13:27 CST

We urge you to give this resolution a solid DO PASS recommendation and ask you to help send the message of small and independent businesses in North Dakota to our Congressional delegation.

NFIB is the nation's leading small business association, with offices in Washington, D.C. and all 50 state capitals. Founded in 1943 as a nonprofit, nonpartisan organization, NFIB gives small and independent business owners a voice in shaping the public policy issues that affect their business. NFIB's powerful network of grassroots activists sends their views directly to state and federal lawmakers through our unique member-only ballot, thus playing a critical role in supporting America's free enterprise system. NFIB's mission is to promote and protect the right of our members to own, operate and grow their businesses. More information about NFIB is available online at www.NFIB.com/newsroom.

NFIB Talking Points
Card Check Update
March 16, 2009

On March 10th, key members in the House and Senate re-introduced the Employee Free Choice Act (EFCA or "Card Check"). Representative George Miller (D-CA), Chairman of the House Education and Labor Committee introduced H.R. 1409 with 222 of co-sponsors and Senators Ted Kennedy (D-MA), Chairman of the Senate Health, Education, Labor and Pensions Committee, and Tom Harkin (D-IA) introduced S. 560 with 39 co-sponsors. Both bills are identical to the legislation passed in the House and defeated in the Senate in the 110th Congress. The Senate is expected to act on the legislation first, and Big Labor is pushing hard to bring the bill up for a vote in the spring.

NFIB strongly opposes the wrongly-named Employee Free Choice Act.

The number of co-sponsors in the Senate – 39 – is critical. There are 18 Democrats and one Republican who co-sponsored the bill or voted for cloture (to limit debate) in the 110th, or ran for election on this issue in 2008 who are **not** co-sponsors this time. They are: Baucus and Tester (MT), Bayh (IN), Bennett and Udall (CO), Bingaman (NM), Conrad and Dorgan (ND), Feinstein (CA), Hagan (NC), Kohl (WI), Landrieu (LA), Lincoln and Pryor (AR), McCaskill (MO), Nelson (NE), Webb (VA), and Specter (R-PA). Senator Warner (VA) has not publicly stated his position but has said the bill needs a better balance of labor and business.

Should the Senate take action on the Card Check bill, 60 votes are needed to end debate and hold a final vote.

What are key industry leaders and prominent public figures saying about the Card Check bill?

"Since when is the secret ballot a basic tenet of democracy?" **Jimmy Hoffa, Teamsters President**

"I think the secret ballot's pretty important in the country...I'm against card check to make a perfectly flat statement." **Warren Buffet, Berkshire Hathaway CEO and advisor to President Obama**

"Instead of providing a voice for the unheard, EFCA risks silencing those who would speak...There are many documented cases where workers have been pressured, harassed, tricked and intimidated into signing cards that have led to mandatory payment of dues... Under EFCA, workers could lose the freedom to express their will in private, the right to make a decision without anyone peering over their shoulder, free from fear of reprisal." **George McGovern, former senator from South Dakota and the 1972 Democratic presidential candidate.**

"I will be voting against it again in the 111th. I think the secret ballot is so important — it's the cornerstone of our democracy." **Representative Dan Boren (D-OK)**

"The legislation is divisive and distracting," **Senator Blanche Lincoln (D-AK)**

"Virtually every component of our economy is suffering. While I am confident we will recover, I believe the road ahead will be long and difficult. Under these conditions, I have concluded that the Employee Free Choice Act would be too severe a shock to our economy at this time and would be counterproductive." **Representative Peter King (R-NY), who supported Card Check in the 110th Congress**

87 percent of Americans believe that "a private vote on a secret ballot is a fundamental right" (source: McLaughlin & Associates, 2007). Members of Congress and the president rely on the private ballot to win elections; why should unions expect to be treated any differently?

NFIB will continue to aggressively fight the EFCA in order to protect America's small businesses.

JOHN RISCH
North Dakota Legislative Director

united transportation union

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Testimony of John Risch
Before the Senate Industry Business and Labor Committee
In Opposition to SCR 4033
March 30, 2009

Mr. Chairman and members of the committee, my name is John Risch. I am the elected North Dakota legislative director of the United Transportation Union. The UTU is the largest rail labor union in North America. Our membership includes conductors, engineers, switchmen, trainmen, and yardmasters.

I welcome this opportunity to explain what the Employee Free Choice Act (EFCA) is really about, since most people have only heard the "disinformation" being broadcast by the opponents of this needed legislation.

The EFCA is long-overdue labor law reform. If passed, it would make it easier for workers to form unions and provide them with an opportunity to raise their wages. That is the crux of this debate. Our side is working to raise wages and the opponents want to keep wages low.

The EFCA consists of three parts, all improvements to the National Labor Relations Act (NLRA), that will make it easier for workers to organize and negotiate a first contract.

1. Certification based on majority sign-up.
Requires that when a majority of employees sign authorizations designating the union as its bargaining representative, the union will be certified by the National Labor Relations Board (NLRB). Requires the Board to develop procedures for establishing the validity of signed authorizations.

2. Guarantees workers a first contract.
When an employer and a newly-formed union are unable to bargain a first contract within 90 days, either party may request mediation. If no agreement has been reached after 30 days of mediation, the dispute is referred to binding arbitration. All time limits can be extended by mutual agreement.

3. Stronger penalties for violations of the law during organizing campaigns and first contract negotiations.

A. Civil Penalties: Up to $20,000 per violation against companies who willfully or repeatedly violate employees' rights during an organizing campaign or first contract negotiations.

B. Treble Back Pay: Increases to three times back pay the amount a company is required to pay when an employee is fired during an organizing campaign or during first contract negotiations.

C. Injunctive Remedies: Requires the NLRB to seek a court injunction when a company fires or discriminates against employees or engages in conduct that significantly interferes with employee rights during an organizing campaign or first contract negotiations. This mandatory injunctive requirement is the same as is currently used against unions when secondary boycotts are alleged.

These improvements to the NLRA will make it easier for workers to organize and negotiate a first contract. Something that is very difficult for workers to do now because of the retaliation they face in today's workplace when they try to organize.

According to NLRB statistics, in 1969 the number of workers who suffered illegal retaliation for exercising their federal labor law rights was just over 6,000. In 2007 29,559 workers received back pay because of illegal employer discrimination in violation of the National Labor Relations Act. That's one worker every 18 1/2 minutes. Imagine the public outcry if, instead of firing workers for union activity, that many workers were fired to maintain a women-free or minority-free workplace.

This employer lawlessness is encouraged by law firms that specialize in "Union Avoidance." It's an area of legal practice listed in law firm directories right alongside estate planning and divorces. Union avoidance is a multibillion industry devoted to making sure that workers are unsuccessful when they try to organize. Some of these firms are so confident of their campaign tactics to scare and frighten workers that they offer a money-back guarantee to the employer if their workplace doesn't remain union-free. More than 75% of employers hire a union-avoidance firm to aid them when their employees try to organize.

In 92% of worker campaigns, the employer requires workers to attend anti-union meetings. If a worker refuses to go or tries to leave, the employer can legally fire them. And if a worker tries to object to what is being said or even to asks a question, the employer can legally fire them.

Workers are commonly told that the union will bring violence to the workplace, that the employer will never agree to better wages or working conditions, and that choosing a union will result in layoffs or closure of the workplace. A current negative ad on TV claims "millions of jobs will be shipped overseas."

Employers often offer bribes to influence workers during the campaign. They may promise some employees better benefits, better assignments, a promotion or some other advantage.

A new study by the Center for Economic and Policy Research (CEPR) found that one in five pro-union activists is fired in organizing campaigns. When a worker who has openly supported the union is fired, fear is instantly injected into the workplace. Workers are afraid that the same thing will happen to them if they support the union.

This fear devastates the organizing campaign. And the fear persists because fired workers are rarely returned to their jobs as lengthy legal delays are common. Before the NLRB agent ever arrives at the workplace with the voting booth and cardboard ballot box, workers have been harassed, intimidated, spied on, threatened and fired.

Workers who have been subjected to this kind of harassment believe their employer will retaliate against them if the union wins the election. Either the employer will continue a campaign of fear and intimidation after the election or the employer will figure out who voted for the union and retaliate. Or both.

Part of the reason employers feel free to violate the NLRA is there is little penalty for doing so, and whatever penalty imposed comes months and even years too late.

What happens if an employer is prosecuted for illegally threatening lay offs or closure if workers vote to form a union, illegally spies on workers, or illegally tells workers they cannot discuss unionizing?

After the case is investigated and evaluated, there is a hearing before an NLRB administrative law judge. The case is then appealed to the National Labor Relations Board and, if upheld, a federal court has to enforce it. Only then can the employer be required to take remedial action like posting a notice on a bulletin board saying that it will not violate the law again.

What happens if a worker is fired in retaliation for supporting the union? After the legal process has been concluded, the employer must pay the worker for lost wages, minus any money the employee earned in the meantime. If the worker finds a job elsewhere at the same rate of pay, the employer pays nothing. There are no compensatory or punitive damages. In 2003, the average backpay amount was $3,800 and most workers never returned to their jobs. A small price to pay to stay "union-free."

Opponents of the EFCA claim that secret ballot elections under the NLRA are just like a political election. They have focused on this bogus claim because in their polling they found this lie resonates with the public. The truth is NLRB elections and the elections you, as state senators, participate in have almost nothing in common.

If your elections were run like NLRB elections, only the incumbent office holder would have access to voter lists. The challenger might get a list just before the election. Only the incumbent would be able to talk to voters in person every single day. The challenger would have to remain outside the political district and try to meet voters by flagging them down as they passed by.

The incumbent could pull people off their jobs and make then attend one-sided campaign meetings whenever he wanted. The challenger could never make voters come to a meeting, anywhere or anyplace. The incumbent could fire voters who refused to attend mandatory meetings, if they tried to leave the meeting, or even if they objected to or questioned what was being said. And finally, the election would be conducted in the incumbent candidate's party offices, with voters escorted to the polls by the incumbent's staff.

My experience in the signing of "A" cards.

1) I'm contacted by interested workers.
2) I call a meeting.
3) Few show up.
4) I try various ways to get names and addresses.
5) I send out some "A" cards.
6) I keep everything confidential.

NLRB/NMB keeps everything confidential.

Because of the disinformation campaign being waged against the EFCA I suspect most of the minds in this room were made up before this hearing started. Some people are unfortunately viewing this as a partisan issue. It is not. It is long overdue labor law reform. Passage of the EFCA will help restore a workers right to form a union, if they so chose, and it will appropriately penalize those who violate that right.

I respectfully recommend a "DO NOT PASS" recommendation on SCR 4033.

I stand for questions

Senate Concurrent Resolution No. 4033

Monday March 30, 2009

Mr. Chairman, members of the committee, my name is Kevin Murch and I am a lifelong citizen of our great state of North Dakota and I stand before you today to speak in opposition to Senate Concurrent Resolution 4033, which is before you today for consideration. SCR 4033 is a resolution that is in opposition to the Employee Free Choice Act that would strengthen workers abilities to form unions. I am here to tell you my personal story of being involved with several union organizing campaigns and to dispel the outright lies that have been perpetuated by proponents of this resolution and opponents of the Employee Free Choice Act that includes the Chamber of Commerce and several corporations.

First, I would like to acknowledge that I was born in North Dakota and I believe that this is the greatest place in the country to live and raise a family. I say that with a confidence that might not be as strong, had it not been for the career I have which is secured by a collective bargaining agreement. Working for one of the largest manufacturer's in this state, Case-New Holland, my family and I am able to enjoy higher than average wages, a great health insurance plan and a secure pension plan, all of which is in a legal, binding contract. I have worked for non-union companies, all of which did not provide the level of economic security that I have been able to enjoy for the last 15 years at CNH. My employer has been unionized since 1974 and is still one of the largest economic contributors in this state.

The Employee Free Choice Act is nothing more than an *amendment* to the National Labor Relations Act that allows *employees* to decide whether they want to form a union by majority sign-up method or not and to strengthen workers rights when it comes to recognition and a timetable for completing contract negotiations. It also imposes penalties to employers for interfering, coercing and intimidating workers during their attempts to form a union. This bill levels the playing field for workers that have had their rights decimated by employers over the years. Our current system allows the *employers* to decide whether or not a union is recognized or whether an election is to take place. Let me reiterate that last point: *it's the employers that choose the methods for recognition, not the workers!* I have witnessed this first hand while being involved with an organizing drive with workers at Rugby Manufacturing in Rugby, ND. The National Labor Relations Act allows workers to file a petition of representation with the National Labor Relations Board, or NLRB, when 30% of workers seeking to form a union sign the petition. The employers decide whether or not to recognize the union or to dispute the level of support and start an election process that takes anywhere from 40 to 45 days, on average, to complete. It is during this time period that employers will engage in intimidation, coercion and inadvertent, sometimes direct, threats to its workforce. In Rugby, when the petition was filed with the NLRB, there was in excess of 70% support, signed on the petition. Because the employer would not recognize the union, *the employer invoked the election process in order to buy time to hire a law firm to coordinate an anti-union*

campaign to thwart its employees desire to form a union! The following 42 days involved captive audience meetings in which the employer would shut down production and have meetings showing anti-union films, speeches by corporate managers, coercive overtones made by the plant manager and his subordinate supervisors. The union organizers made a request to the plant manager to allow for equal time with the workforce to explain the union's positions at the same time the managers were meeting with its employees to explain their opposition to a union. This request went unanswered, so the organizers were left to leaflet employees coming into work and leaving work after their shifts. The playing field was far from equal. Quite the contrary, it heavily favored the employer, not the employees. I know all of this, first hand, because I was on the team to help with the organizing. Simply put, unions *do NOT exist in order to "bring down" a company. In fact, unionizing a company allows workers to have a say in their wages, benefits and working conditions. Period.*

I wish to bring to your attention some clarification that is so needed when considering SCR 4033. Starting at Line 6; *"WHEREAS, passage of the Employee Free Choice Act would replace a federally supervised private ballot election with a system that facilitates coercion and intimidation, known as "card check", whereby employees publicly sign cards to vote for unionization..."*

This statement is not true. The Employee Free Choice Act *DOES NOT* replace the private (secret) ballot process. That process is defined in the National Labor Relations Act and *IS NOT* changed. This statement, in and of itself, is designed

to confuse and coerce people into believing a falsehood. In an editorial piece in the business-leaning Wall Street Journal on March 20, 2009, the Journal acknowledged, "The bill doesn't remove the secret ballot option from the National Labor Relations Act...." Although the Journal continues on to erroneously say that the bill makes secret ballots a "dead letter" that still does not take away that the editorial board has acknowledged that the elimination of the secret ballot is not true.

Moving on to Line 19: *"WHEREAS, small businesses are more likely to be held captive at the will of union organizing efforts as small businesses have less resources available for the lengthy legal process of union recognition campaigns, and..."*

"Lengthy legal process of union recognition campaigns.." This refers to only employer-dominated situations that the employer chooses to embark on to fight against the wishes of its employees. Employers can choose to recognize the union or they can opt to choose the election process that draws out the recognition.

Line 22: *"WHEREAS, efforts to eliminate private elections are an attack on the free speech rights of businesses' and workers' individual rights...."*

The Employee Free Choice Act is an amendment to the National Labor Relations Act, giving workers' more rights than they have now. There is not one thing in

the Employee Free Choice Act that *"eliminates private elections"* and I would challenge anyone on this committee to point out that exact verbiage in the Act. You will find it impossible to find because it does not exist.

In closing, I would add that as a lifelong citizen of North Dakota, I cherish our way of life out here on the Great Plains. I also know that we, as workers and citizens, are the hardest working people in the country. It is time that we have the rights to choose how we can better our lives and to provide for a prosperous future for our children. One important step in that direction is to support a worker's right to form a union without fear of intimidation and coercion from their employers. With that in mind, I urge this committee to oppose the adoption of Senate Concurrent Resolution 4033.

Mr. Chairman, members of the Committee, thank you for your time today.

Respectfully,

Kevin L. Murch

West Fargo, ND

Senate Industry, Business and Labor Committee
SCR4033
Hearing Testimony, March 30, 2009
Don Morrison, NDPeople.Org

Mr. Chairman and members of the committee, my name is Don Morrison and I am the executive director of NDPeople.Org, a statewide organization that brings people together around bedrock North Dakota values of freedom, opportunity, respect, hard work, democracy, fairness, opportunity, and community.

I am here to testify in opposition to SCR4033. Let's start by looking at the "Whereas" statements. These statements are full of inaccuracies, half truths, and misleading claims. With just a casual glance at some of the "Whereas" statements, almost anyone would agree with the generality of the statements, such as on line 4 "the right to a private secret ballot when voting", on lines 12 and 13 about "protecting private ballots", and the democratic values part of the statement on line 22 that references "free speech" and "individual rights."

The problem is that each statement takes a commonly held belief and attaches it to a false claim or makes an insinuation to a false claim about the actual Employee Free Choice Act. For example, the statement about believing in private ballots apparently comes from a poll conducted by DH Research for the North Dakota Chamber of Commerce in December 2008. You should know the reality of that poll.

The poll is an example of what is commonly referred to as a push poll, leading respondents to a preferred opinion and then claiming the result as what people think. The Chamber's poll includes a statement about the Employee Free Choice Act that is misleading at best and that leads the respondent to an inaccurate opinion. Then, they ask the respondent if he or she agrees with the Act. The result is of course what the Chamber wants it to be.

Even more to the point about how misleading this poll is comes from the fact that before the respondent is led to the preferred opinion, the poll asked "How familiar are you the Employee Free Choice Act?" over 85% said they were not familiar. What a convenient group to mislead to your preferred position.

The legislature is held to a high standard of accountability and credibility. Using the results of a push poll is far below the standard that legislators themselves and North Dakotans expect from our Legislative Assembly.

NDPeople.Org supports the Employee Free Choice Act because it brings greater democracy to the workplace. Under the current law most of the coercion comes from the management side of the equation. According to the National Labor relations Board, 88.4% of the unfair labor practices from 1998 to 2007 were by the employer. Under current law, after the required number of cards is signed, the decision about having an election is made by the employer, not the worker. The Employee Free Choice Act fixes that and, therefore, will bring more choice and democracy to the workplace and protection to workers right to make their own choices about unions at their workplace.

I appreciate the opportunity to talk with you this morning. I urge you to recommend a "Do Not Pass" on SCR4033.

March 30, 2009

Same given to House

Good morning Mr. Chairman and members of the Committee:

My name is Nancy Guy and I live here in Bismarck. Thank you for the opportunity to address your committee today.

I'm here to talk to you about the Employee Free Choice Act from the viewpoint of a small business owner. I own The UPS Store here in Bismarck. We are an independently owned franchise, not affiliated with UPS. It is a retail business selling a number of services including packaging, shipping, printing/copying, document finishing, mailbox rentals and passport photos. We employ three full time and 1 part time employees. As an independent business owner, I pay my employees a living wage and provide BCBS major medical coverage, paid sick leave and paid vacation time.

I first became aware of the Employee Free Choice Act when I saw commercials on TV. The commercials issued dire warnings about the loss of secret ballots for prospective union members. Then I received an e-mail from our corporate franchisor and the International Franchise Association. I also received an e-mail from the Bismarck/Mandan Chamber of Commerce. The e-mails urged us franchise owners to oppose the Employee Free Choice Act because if it passed, union organizers would organize my employees and change the face of small business in America forever! Franchises would cease to exist! Wow! I could lose my business!

So I did some research. I found that the Employee Free Choice Act does nothing to change existing National Labor Relations Act laws as they apply to small business – it simply does not expand the scope of current law to encompass businesses that are not currently affected. These groups claim to speak for me but they do not! I am in agreement with business owners like Ruth Schepp from

West Fargo, who employs 6 union workers. Ruth was quoted in the Bismarck Tribune as saying she wants her employees to be a part of her company as it grows. She wants them to feel that they have a good job, a secure job. Good jobs support families; they support our community. She wants workers to be able to form a union and to have a choice in our economy. They deserve to have the fair chance to form a union without fear.

Through my research, I also learned that as an employer in a right to work state, no one or no union can force an employer to hire union employees. Likewise, no one or no union can force an employee to join a union. Again, the Employee Free Choice Act does nothing to change those employer and employee protections.

Finally, I searched for statistics that indicate labor unions are turning their organizational efforts towards small business and I can't find any to substantiate that claim. Can you explain the origin of that statement in this resolution to me?

Thank you for your consideration. I urge you to vote "do not pass" on this resolution.

Mr. Chairman and committee members, Good Morning. For the record by name is Ronald Huff, I am with the Brotherhood of Locomotive Engineers and Trainman. I am here to voice our opposition to Senate Concurrent Resolution #4033 for the following reason:

The 1st whereas statement: I agree with totally. I have read and re-read the House and Senate Bills and no where does this act infringe on our right that we have today. That is the right to a secret ballot.

The 2nd whereas: This act would not replace any of the election process that are in law today. Let us look at a system that facilitates coercion and intimidation.
The National Labor Relation Act is about 79 years old. In that time there has been 42 union organizing mis-conduct, that is 42 too many. On the other hand the employers did not do so good. In 1969 there were 6,000 cases, in 1990 20,000 cases and in 2007 30,000 cases of employer mis-conduct. In fact, in 2006 there were 26,824 people that received back pay in cases alleging employer violations of workers rights. So to me these numbers say: "That coercion and intimidation already exist in the work place. SCR4033- states that employees would have to sign cards in public. This is speculation because there has not been any procedural rules made on how, if passed the National Labor Relation Board would implement and control the elections.

The 3rd whereas, I think everyone should support a worker's right, to have s supervised secret vote. This Bill does nothing to change the right we currently have under the National Labor Relations Act of 1935. Again, it only takes 30% of the eligible voters to ask for a secret ballot, this act does not change the law.

I am confused by the 5th whereas; binding arbitration is not done between employees and the union. It is done between employees and employers.

Binding arbitration is when a arbitrator takes what has been offered by employers and employees then makes a ruling on the contract. Binding arbitration is used only if bargaining talks fail.

The 6th and 7th whereas, small businesses being held captive. Small businesses are not adversely affected by the Employee Free Choice Act. Most small businesses are already covered by the National Labor Relations Act. EFCA, does not change the NLRA and it applies to employers that engage in interstate commerce.

The 8th whereas: The EFCA would not adversely affect free speech. If someone tried to eliminate the private elections, then there would be an attack on free speech.

The 9th whereas: North Dakota is a Right to Work State. YES, ND is a Right to Work State and we have union jobs in the state now, things do not change with EFCA.

A right to work state does co-exist with union workers. They are not mutually exclusive of one another.

Respectively Submitted,

R.K. Huff B.L.E.T.

North Dakota Building and Construction Trades Council

Testimony in opposition to SCR 4033
Resolution opposing the Federal Employee Free Choice Act
Monday, March 30, 2009

Chairman Klein and members of the Senate Industry, Business and Labor Committee for the record, my name is Renee Pfenning and I am appearing hear today on behalf of the North Dakota Building and Construction Trades Council in opposition to Senate Concurrent Resolution 4033.

The Employee Free Choice Act does not eliminate the secret ballot as an option for workers when choosing to form a union as stated in lines 4 and 5 of the resolution.

- The election process as outlined in the National Labor Relations Act, (NLRA), Section 9(c)(1)(A), page 240, remains unchanged.
- A petition filed under Section 9(c)(1)(A), meeting the rules of that section, will still initiate an election. At least 30% of the employees interested in being represented by a particular union can file a petition for election.

Card check or majority sign-up has been in existence since the National Labor Relations Act, (NLRA), was enacted in 1935. If a majority of employees signed a card stating they wanted union representation, the National Labor Relations Board, (NLRB), would "certify" the union as their "exclusive representative". In instances where there was legitimate doubt as to whether the majority of the employees wanted union representation, the NLRB would conduct an election. The Taft-Hartley Act in 1947 amended the NLRA to give employers veto power over their employees' decision to form a union using the signed card process. Even if 100 percent of the employees' sign a card stating they want to form a union, the employer can demand an election.

The Employee Free Choice Act will give employees, not their employer, the choice on how they want to form a union by eliminating the veto power employers now have over the majority sign-up or card check process. The National Labor Relations Board shall adopt rules and procedures for determining the validity of signed union authorization cards.

The Employee Free Choice Act does not deny workers the right to participate in the collective bargaining process as stated on lines 15 and 16 of SCR 4033.

- Only if the collective bargaining process fails, and mediation and conciliation services by the Federal Mediation and Conciliation Service fails does the dispute go to an arbitration panel.

Contrary to the sentiments of SCR 4033 lines 19 and 20, union representation of employees of small businesses can be beneficial to the small business owner, particularly in the construction industry. Union apprenticeship and training programs provide the employer with a skilled workforce. Small businesses are able to provide a competitive benefit package through multiemployer health and pension funds.

The Employee Free Choice Act is not an assault on the free speech rights of businesses' and workers' individual rights as claimed on lines 22 and 23. The system in place today is more of an erosion of free speech through worker intimidation and economic coercion. Since the enactment in 1935 of the National Labor Relations Act, only 42 cases found fraud or coercion by unions in the submittal of union authorization cards. In contrast, according to the National Labor Relations Board's annual report, "in 2007 29,559 workers received back pay from employers in cases alleging illegal firings and other violations of their federally protected rights".

In closing, I respectfully ask that the Senate IBL Committee give SCR 4033 a DO NOT Pass recommendation.

Renee Pfenning
NDBCTC

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ND AFL-CIO testimony opposing SCR 4033 offered to House IBL
By: David L. Kemnitz; President- ND AFL-CIO -April, 2009

SCR 4033; Opposes the Employee Free Choice Act now before Congress.
The ND AFL-CIO supports the Employee Free Choice Act as introduced in Congress.

Millions of Americans want to form a union for a voice on the job, and for wages and benefits that can support a family. Working people routinely are denied the freedom to form a union if they want one. Data from the AFL-CIO shows that employers interference in the employee's rights to form, join or assist a labor organization and to bargain collectively.

Excerpts from the National Labor Relations Act state:
"It is declared to be the policy of the United States to .... Encourage the practice and procedure of collective bargaining and .... Protect the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection."
The Employee Free Choice Act represents an opportunity to change the National Labor Relations Act in a way that will restore its purpose, as set forth in 1935 Act. S. 560 amends the NLRA as described below:

1. Certification based on majority sign-up. Requires that when a majority of employees signs authorizations designating the union as its bargaining representative, the union will be certified by the National Labor Relations Board (NLRB). Requires the Board to develop procedures for establishing the validity of signed authorizations.

2. Guarantees workers a first contract. When an employer and a newly-formed union are unable to bargain a first contract within 90 days, either party may request mediation. If no agreement has been reached after 30 days of mediation, the dispute is referred to binding arbitration. All time limits can be extended by mutual agreement.

3. Stronger penalties for violations of the law during organizing campaigns and first contract negotiations.

A. Civil Penalties: Up to $20,000 per violation against companies who willfully or repeatedly violate employees' rights during an organizing campaign or first contract negotiations.
B. Treble Back Pay: Increases to three times back pay the amount a company is required to pay when an employee is fired during an organizing campaign or during first contract negotiations.
C. Injunctive Remedies: Requires the NLRB to seek a court injunction when a company fires or discriminates against employees or engages in conduct that significantly interferes with employee rights during an organizing campaign or first contract negotiations. This mandatory injunctive requirement is the same as is currently used against unions when secondary boycotts are alleged.

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34-01-14. Right to work not to be abridged by membership or nonmembership in labor union. The right of persons to work may not be denied or abridged on account of membership or nonmembership in any labor union or labor organization, and all contracts in negation or abrogation of such rights are hereby declared to be invalid, void, and unenforceable.

Source: S.L. 1947, ch. 243, § 1; R.M. June 29, 1948, S.L. 1949, p. 512; R.C. 1943, 1957 Supp., § 34-0114.

Cross-References.

Public policy of state, see §§ 34-08-02, 34-09-01.

Rights of employees under Labor-Management Relations Act, see § 34-12-02.

Dues "Check Off" Prohibited.

This section prohibits an "agency shop" and the dues "check off" of a nonunion member as a condition of employment or continued employment. Ficek v. International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local No. 647 (1974) 219 NW 2d 860.

Federal Preemption — Jurisdiction of State Courts.

The North Dakota courts, rather than solely the National Labor Relations Board, are tribunals with jurisdiction to enforce the state's prohibition against an "agency shop" clause and a dues "check off" provision for nonunion employees in an executed collective bargaining agreement. Ficek v. International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local No. 647 (1974) 219 NW 2d 860.

Labor agreement provision that hiring for job vacancies was to be conducted through union registration facilities and referral systems when the referral systems are not in violation of federal law, although not expressly stated to be nondiscriminatory, was not on its face discriminatory against employees by making union membership a condition of employment; absence such a discriminatory condition, section 14(b) of the Taft-Hartley Act does not apply and state court does not have jurisdiction over complaint that such labor agreement violates the state's right-to-work law enacted pursuant to section 14(b). Associated General Contractors of North Dakota v. Otter Tail Power Co. (1979) 611 F 2d 684.

State courts do not have jurisdiction under state right-to-work laws over complaints in the hiring procedure provisions contained in a labor contract where the contract provisions do not require union membership as a condition of employment so as to be within section 14(b) of the Taft-Hartley Act. Associated General Contractors of North Dakota v. Otter Tail Power Co. (1978) 457 FSupp 1207 aff'd (1979) 611 F 2d 684.

State court would not have jurisdiction of action alleging that agreement between power companies and various labor unions requiring that contractors performing construction work on power plant use union registration facilities and referral systems in filling job vacancies discriminated against employees on account of their status as members or nonmembers of a labor union in violation of this section since the agreement was silent on the question of discrimination and the court would not infer discrimination; absent discrimination, section 14(b) of the Taft-Hartley Act did not apply and neither the state court, nor the federal district court to which the action was removed because of diversity of citizenship, had jurisdiction. Associated General Contractors of North Dakota v. Otter Tail Power Co. (1978) 457 FSupp 1207 aff'd (1979) 611 F 2d 684.

Hiring Practices — Union Referrals.

Labor agreement provision that hiring for job vacancies was to be conducted through union registration facilities and referral systems when the referral systems are not in violation of federal law, although not expressly stated to be nondiscriminatory, was not on its face discriminatory against employees by making union membership a condition of employment; absence such discriminatory condition, section 14(b) of the Taft-Hartley Act does not apply and state court does not have jurisdiction over complaint that such labor agreement violates the state's right-to-work law enacted pursuant to section 14(b). Associated General Contractors of North Dakota v. Otter Tail Power Co. (1979) 611 F 2d 684.

Public Policy.

Public policy of the state as established by the constitution and statutes is to protect an employee in his right to work free from any interference, restraint, or coercion by either the employer or a labor organization. Ficek v. International Brotherhood of Boilermakers,

http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:s560is.txt.pdf

111TH CONGRESS

1ST SESSION **S. 560**

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.

SEC. 2. STREAMLINING UNION CERTIFICATION.

(a) IN GENERAL.—Section 9(c) of the National Labor Relations Act (29 U.S.C. 159(c)) is amended by adding at the end the following:

"(6) Notwithstanding any other provision of this section, whenever a petition shall have been filed by an employee or group of employees or any individual or labor organization acting in their behalf alleging that a majority of employees in a unit appropriate for the purposes of collective bargaining wish to be represented by an individual or labor organization for such purposes, the Board shall investigate the petition. If the Board finds that a majority of the employees in a unit appropriate for bargaining has signed valid authorizations designating the individual or labor organization specified in the petition as their bargaining representative and that no other individual or labor organization is currently certified or recognized as the exclusive representative of any of the employees in the unit, the Board shall not direct an election but shall certify the individual or labor organization as the representative described in subsection (a).

http://nlrb.gov/

http://www.nlrb.gov/nlrb/legal/manuals/rules/act.pdf

NATIONAL LABOR RELATIONS ACT

Also cited NLRA or the Act; 29 U.S.C. §§ 151–169
[Title 29, Chapter 7, Subchapter II, United States Code]

FINDINGS AND POLICIES

Section 1. [§ 151.] The denial by some employers of the right of employees to organize and the refusal by some employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

Experience has further demonstrated that certain practices by some labor organizations, their officers, and members have the intent or the necessary effect of burdening or obstructing commerce by preventing the free flow of goods in such commerce through strikes and other forms of industrial unrest or through concerted activities which impair the interest of the public in the free flow of such commerce. The elimination of such practices is a necessary condition to the assurance of the rights herein guaranteed

It is declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

In Support of the Employee Free Choice Act

These are excerpts from letters by religious leaders of various faiths about the importance of the Employee Free Choice Act and why its passage should matter to people of faith. Read the complete letters on our website: www.iwj.org.

Listen to the "Still Small Voice"

By Rabbi Robert Marx

When the prophet Elijah was forced to flee from the powerful anger of Ahab and Jezebel, he took refuge in a wilderness cave. Persecuted and desperate, he needed to find comfort in his God. There was a mighty wind. There was an earthquake. There was a fire. But God was in none of these. Finally, there was a "still small voice" and in that voice Elijah found his God. The still small voice is never easy to hear. And it often reaches us at surprising moments and through those who are neither powerful nor articulate.

It is not always easy to translate the very sanctity of labor into terms that have meaning in our times, times in which the market place seems to have been elevated above all other holy altars. The Employee Free Choice Act presents an opportunity to give concrete meaning to the often frustrated dream of a just society. To be sure, the Act is controversial precisely because it provides an effective and concrete way for workers to organize. And it opens a path toward transformational change. Adoption of the Employee Free Choice Act gives working people the strength and the opportunity to emerge from the despair that so often encumbers their lives.

Six days you shall labor and do all your work, but the seventh day is a Sabbath of the Lord Your God; in it you shall not do any work...therefore the Lord blessed the Sabbath day and made it holy.

Exodus: 20:9-11

Oppressing Workers is an Affront to God

By Rev. Dr. Frank Raines

Too often, corporations and their CEOs treat workers unfairly. They cut back on health care and raises while CEO salaries are going higher and higher. These same CEO's have contracts that guarantee them stock options, extra life insurance benefits and other "perks" all spelled out in writing. But these companies trample on workers rights when they try to organize a union.

Working people are really struggling to make ends meet. By empowering workers, the Employee Free Choice Act will enable more people to earn better wages and improve working conditions that will allow them to lift up their families. Our economy is in turmoil and the best economic stimulus is a living wage job with affordable health care and a secure retirement.

Our faith compels us to aid workers in their struggle for justice. Oppression of workers is an insult to our dignity and an affront to God. We know that God hears and answers the cries of the oppressed; however, we too must stand up for workers fundamental rights.

He who oppresses the poor to increase his wealth and he who gives gifts to the rich – both come to poverty.

Proverbs 22:16

Defend the Dignity of Working Men & Women – Pass the Employee Free Choice Act

By Bishop Gabino Zavala

As a Roman Catholic community of faith, we affirm the dignity and freedom of all persons. We are particularly moved when the dignity of working men and women is threatened. The right of workers to freely associate and form unions without fear of intimidation or retaliation is consistent with the democratic principles that sustain our society and ensure the quality of life for its citizens.

As a people of faith, we are committed to the health of our nation, its economy, and to the working men and women who provide us with indispensible goods and vitally necessary services. We therefore make this appeal to the conscience of every member of the United States Congress to vote in favor of the Employee Free Choice Act, to ensure the democratic right of workers to form unions, to secure the health of our economy and our society by promoting and defending the dignity of every worker.

The freedom to join trade unions and the effective action of unions...are meant to deliver work from the mere condition of a 'commodity' and to guarantee its dignity.

Pope John Paul II, Centesimus Annus, 1992

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There is Power in Union

By Rev. Aaron McEntyre

Before becoming a Unitarian Universalist Minister, I worked as a union organizer, educator and advocate. I have come to believe deeply in "union," not just as it manifests itself as an organized group of workers. The word "union" best describes what happens when groups of individuals come together in a spirit of mutual support, respect and love. In this sense, the concept of union is one of the most beautiful and spiritual words in my vocabulary.

People often assume that workers form unions primarily to fight for higher wages or better health insurance. My experience as a union organizer showed me something quite different. In almost every case, workers were prepared to risk everything: job, house, security, healthcare. They knew they were likely to get disciplined or fired for supporting the union, but they kept on anyway. They didn't risk everything for a 50 cent raise. Ultimately, the driving force behind any successful organizing campaign I have ever been part of is the need to be treated with respect and dignity, the need to have a voice in one's own working life. That is something people are willing to risk everything for.

The General Assembly of Unitarian Universalist Congregations passed a resolution in support of worker justice in 1997. It asked congregations and individuals to work for "reform of labor legislation and employment standards to provide greater protection of workers, including the right to organize and bargain collectively...." The Employee Free Choice Act provides these needed reforms, and would level the playing field for workers and employers and help rebuild America's middle class.

What Does the Gospel of Jesus Require?

By Rev. Dr. William Jarvis Johnson

What is my responsibility to those who are the least in society? Those who take seriously the Christian faith and the teachings of Jesus must give sustained and careful consideration to this question.

After all, did Jesus not say that what we do to the least among us, we have done to him? As a Christian, I simply cannot ignore the plight of the working poor in America; I cannot ignore the struggle of those who are paid wages that do not allow them to lead decent lives marked by dignity and value for their humanity; and I cannot be silent about the fact that there are those who work, but are not paid for the work they have do. My understanding of the gospel of Jesus compels me to respond to these issues in bold and unwavering ways. This is why I believe we must support the Employee Free Choice Act.

And the King shall answer... Verily I say unto you, In as much as ye have done it unto one of the least of these my brethren, ye have done it unto me.

Matthew 25:40

Stand Out Firmly For Justice

By Imam Mahdi Bray and Hussam Ayloush

A central theme of the text of the Qur'an and the injunctions of Prophet Muhammad (Peace be Unto Him) in the Hadith is the concept of justice (in Arabic, 'Adl). For Muslims, justice is an integral and indispensable part of all human relationships, including those within the workplace, and between employers and workers. This concept of justice means fairness, balance, and reciprocal respect for the dignity and rights of owners, managers, and employees. One of these rights is the right of free association for the protection of the dignity and economic well-being of working people.

Prophet Muhammad (Peace be Unto Him) enjoined owners, in the spirit of fairness and justice, to "pay the worker while the sweat is still on his brow." The major premise of the Employee Free Choice Act is to safeguard the right of working people to receive that timely pay, as well as the other rights and benefits that have come from the struggle of organized labor to represent the interest of the workers in the United States.

O you who believe! Stand out firmly for justice, as witnesses to Allah, even as against yourselves, or your parents, or your kin, and whether it be (against) rich or poor....

Holy Qur'an: 4:135

What Is The FMCS Institute For Conflict Management?

"With the help of respected academicians, labor leaders, management leaders, and arbitrators, we customize centralized classroom training in mediation, arbitration, workplace violence prevention, negotiations, and organizational development. Customers' particular requirements receive special attention."

The FMCS Institute for Conflict Management provides centralized classroom training in mediation, arbitration, workplace violence prevention, negotiations, and organizational development. Courses are offered away from the worksite to foster a receptive and safe learning environment. By offering curricula in a variety of work-related subjects, customers' particular requirements receive special attention. We work with respected academicians, labor leaders, management leaders, and arbitrators in providing the latest in conflict management theories and practice. Our courses draw participants from both labor and management in many industries. We will design courses specifically to meet your needs.

What Does the Institute Teach?

Institute courses include training in:

- Basic Mediation
- Advanced Multi-Party Mediation
- Labor Relations Processes and Partnerships
- Collective Bargaining
- Dispute Resolution
- Labor Arbitraton
- Arbitration Advocacy
- Workplace Violence Prevention
- Techniques for Coping with Workplace Grief
- Facilitation Skills
- Advanced Communication and Leadership
- Organizational Development, Assessment and Communication
- Cultural Diversity

If your organization is looking for ways to improve its customer relations, better manage conflict, develop core values that put people first, and improve personnel procedures, call on the Institute to help you design a program that suits your needs.

Why FMCS?

"With a history of more than a half century of providing mediation and facilitation services, FMCS has more collective experience in dispute resolution than any other agency of government."

Where Are the Courses Offered?

Courses are offered at locations throughout the country and can be customized to meet special needs. For the convenience of our customers, we can make arrangements with a quality hotel or conference center and give courses at a location of your choosing. Our focus is to provide a comfortable and safe teaching environment, where openness and experimentation are encouraged. Our objective is for you to return to your work environment with real skills acquired from veteran practitioners.

How Much Does It Cost to Register For A Course?

Pricing for courses is affordable, and both group and multiple course discounts are available. Many courses are approved for CLE credit for attorneys.

For more information about the Institute, course offerings this year, locations and dates, log onto our Web site at www.FMCS.gov or call 202-606-3627.

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mission

The primary responsibility of the Federal Mediation and Conciliation Service is to promote sound and stable labor relations through a variety of mediation and conflict resolution services. We mediate collective bargaining negotiations, provide other forms of alternative dispute [illegible] tion services outside of the collective bargaining context, provide training courses to impr[illegible] workplace relationship, and refer arbitrators for settlement of contract application disputes. FMCS mediators are widely dispersed throughout the country. For more information about the Service, its locations and programs, please visit our Web site at www.FMCS.gov

"[illegible] mediators have an absolute commitment to confidentiality in collective bargaining mediation. Mediators offer their experience and specialized knowledge and can assist the parties by crystallizing issues, exploring alternatives, and maintaining open lines of communication."

What Is Collective Bargaining Mediation?

Collective bargaining mediation is a voluntary process occurring when a third party neutral assists the two sides in reaching a collective bargaining agreement.

Who Can Receive FMCS Services?

FMCS services are available to all companies and the unions that represent their workforces. Federal, state and municipal agencies, and the unions representing their employees are also eligible for our services.

What Can A Mediator Add?

A mediator can improve the bargaining process in a number of ways:

- **Clarifying and crystallizing issues and differences:** Mediators help the parties understand the interests that drive bargaining positions; they can focus on solutions.
- **Generating options for problem-solving:** Mediators help the parties focus on the interests that are the root cause of a particular problem.
- **Exploring alternatives:** Mediators facilitate discussion of the long and short term effects of proposed solutions and what might occur if no agreement is reached, leading to the parties' shared understanding.
- **Keeping talks moving:** Mediators strengthen the parties' focus and keep lines of communication open by engaging in shuttle diplomacy, information-sharing where appropriate, and rephrasing proposals so that both sides fully comprehend the issues.
- **Making suggestions:** Mediators may offer procedural or substantive recommendations.
- **Establishing realistic expectations:** Mediators offer experience and specialized knowledge.

Why Should A Mediator Be Trusted?

Federal mediators have an absolute commitment to confidentiality in collective bargaining mediation. Confidentiality of the process has been upheld in the courts, and mediators will not testify at any proceeding regarding any issue discussed during the mediation process.

When Does A Mediator Become Involved?

A mediator is involved from the time FMCS receives a notification from either party that a contract will expire. The mediator will call you after receipt of this notice and will offer his or her assistance immediately. The mediator will be as active as the parties desire. If desired, the mediator can provide pre-negotiation training for bargaining teams.

Mediation and Technology:

FMCS offers a unique process called TAGS (Technology Assisted Group Solutions), which allows the parties to use the latest technological innovations to brainstorm and generate ideas anonymously. The TAGS system helps participants to engage more openly and honestly, to share knowledge and opinions constructively and to think more creatively. It is designed to minimize the impact of geographic separation, but is equally helpful during face-to-face meetings. We have found TAGS to be an effective tool during collective bargaining negotiations and we encourage its use. Ask your local mediator about TAGS.

why FMCS?

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What Is Grievance Mediation?

"...diator can help settle grievances before they reach the costly stage of arbitration. We can guide the parties to a mutually acceptable settlement of the grievance and work toward improving settlement techniques."

Many collective bargaining agreements include procedures for handling employee grievances, with arbitration as the final resort. FMCS grievance mediation provides parties with a mediator to settle a grievance before it reaches the more costly stage of arbitration. The FMCS mediator guides the parties to a mutually acceptable settlement of the grievance and works with them to improve their settlement techniques. The mediator has no authority to compel resolution, and, if the parties cannot settle the matter, they may proceed to arbitration or other processes as provided in their collective bargaining agreement.

FMCS mediates grievances on a case-by-case basis, or as part of a comprehensive approach to regularly manage and resolve conflicts in the workplace. Grievance mediation is particularly useful in workplace environments where grievances tend to linger and are not resolved expeditiously.

What Are The Benefits Of Grievance Mediation?

- Free of charge when it is provided in a collective bargaining context.
- Expedites grievance processing and eliminates complaint backlog.
- Allows individual grievants, unions and management representatives to air, and potentially settle, their differences utilizing a neutral third party.
- Identifies common workplace problems and provides an opportunity to resolve them on a broader scale.
- Guides the parties toward self-resolution of grievances, helping to improve their communication and overall relationship.
- Evaluates the strengths and weaknesses of the grievance prior to arbitration.
- Permits the parties to return to established grievance-arbitration mechanisms if a settlement is not secured.

What Are The Basic Guidelines For Grievance Mediation?

- The parties agree to mediate the dispute.
- The grievant is entitled to attend the mediation.
- The parties must waive any time limits while the mediation step is utilized.
- The process is informal, and the rules of evidence do not apply.
- No stenographic record or tape recordings of the meetings are made.
- The mediator's notes are confidential and are destroyed at the end of the mediation.
- The parties agree that the mediator will not be called to testify at any other proceeding.

Why FMCS?

"With a history of more than a half century of providing mediation and facilitation services, FMCS has more collective experience in dispute resolution than any other agency of government."

How Do I Request Grievance Mediation?

Any labor organization or management representative involved in a grievance can request grievance mediation services. Contact your local FMCS regional office and the staff will guide you through the process. FMCS mediators work out of more than 70 field offices around the United States, and the address of the field office closest to you can be found on our Web site at www.FMCS.gov

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What Is Alternative Dispute Resolution?

diator can serve as an effective intervention in employment disputes ranging from harassment to discrimination."

Alternative dispute resolution (ADR) involves a variety of joint problem-solving approaches designed to avoid formal and expensive litigation. The process is much like mediation, using a neutral third party to help disputants find mutually acceptable solutions to problems arising in the workplace. ADR is widely used in society, from family disputes to neighborhood, environmental, intergovernmental, legal, public policy and workplace disputes. ADR has become the preferred choice in working toward settlement. The Federal Mediation and Conciliation Service (FMCS) has more collective experience in dispute resolution than any other government agency and can offer its services within and beyond the workplace. Federal mediators can serve as an effective intervention in employment disputes ranging from harassment to discrimination.

What kind of Employment-Mediation Services Are Available?

FMCS can help your organization design and develop a dispute resolution system to enhance both the workplace and labor-management relations. Our services include:

- **Workplace Disputes:** FMCS mediators are available to assist parties in resolving workplace-related disputes, such as Equal Employment Opportunity (EEO) claims.
- **Systems Design:** FMCS can design appropriate methods and strategies to establish or improve conflict resolution within an organization.
- **Training:** FMCS offers training programs to educate organizational staff and leaders in mediation and facilitation skills.

Generally, we begin with a site visit, where we diagnose the problems specific to your organization. We study how issues and problems are currently resolved in the organization and develop options for improvement. In each case, mediators apply expertise that has made FMCS the leading mediation service provider.

What Does This Service Cost?

Typically, we conduct a free initial consultation. During that consultation process, we assess your needs and design a program that meets your specific requirements. Thereafter, services are billed at a rate of $100 per hour. This fee covers our preparation time, travel, salaries, benefits and agency overhead costs. For more information, visit our Web site at www.FMCS.gov, where you can e-mail the Director of the ADR program.

Why FMCS?

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Conflict Resolution for Government

"...er conflict resolution services to government agencies to help disputants resolve their problems through mediation."

Alternative dispute resolution involves joint problem-solving approaches designed to avoid formal and expensive litigation. The process is much like mediation, using a neutral third party to help disputants find mutually acceptable solutions to problems arising in the workplace.

Which Conflict Resolution Services Are Available To Government Entities?

The Federal Mediation and Conciliation Service (FMCS) offers conflict resolution services to government agencies to help disputants resolve their problems. These services include:

- **Employment disputes:** Under governmental inter-agency agreements, we offer employment mediation services to settle EEO and other workplace complaints raised in the public or federal sector.
- **Mediation:** Mediators are available to mediate any kind of workplace dispute in the public or federal sectors.
- **Regulatory Negotiations and Public Policy Dialog:** This process joins government regulators with affected citizenry to draft proposed regulations by consensus and to engage in public policy dialogue that resolves any issues in dispute.
- **Disputes Systems Design:** We design appropriate methods and strategies to establish or improve conflict resolution within government.
- **Relationship Development and Training:** We offer training programs to educate government employees in mediation and facilitation skills, and provide mentoring for mediator-trainees in other agencies.

Why FMCS?

With a history of more than a half century of providing mediation and facilitation services, FMCS has more collective experience in dispute resolution than any other agency of government."

Who Can Use These Services?

Any branch of federal, state and local government can use these services to resolve workplace disputes, design systems that resolve disputes more efficiently, obtain training on collaborative approaches to problem-solving, or utilize mediation for regulatory negotiations. In recent years, our client base has included these U.S. government departments and agencies:

- Department of Transportation
- Department of Agriculture
- Department of Education
- Farm Credit Administration
- Department of Housing and Urban Development
- Department of the Interior
- Immigration and Naturalization Service
- Equal Employment Opportunity Commission
- Federal Bureau of Investigation
- Administrative Court Services
- United States Postal Service

What Do These Services Cost?

In every case, we have an initial consultation that is free of charge. During that consultation process, we assess a customer's needs and design a program that meets a customer's specific requirements. Thereafter, services are billed at a rate of no more than $100 per hour. This fee covers our preparation time, travel, salaries, benefits and agency overhead costs. For more information, visit our Web site at www.FMCS.gov, where you can directly e-mail the Director of the ADR program, or call 202-606-5325.

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mission

The primary responsibility of the Federal Mediation and Conciliation Service is to promote sound and stable labor relations through a variety of mediation and conflict resolution services. We mediate collective bargaining negotiations, provide other forms of alternative dispute resolution services outside of the collective bargaining context, provide training courses to improve workplace relationship, and refer arbitrators for settlement of contract application disputes. FMCS mediators are widely dispersed throughout the country. For more information about the Service, its locations and its programs, please visit our Web site at www.FMCS.gov

What Is Relationship Development And Training?

The Federal Mediation and Conciliation Service (FMCS) mission is to provide assistance and training to help labor and management break down traditional barriers and build better working relationships. Management and labor representatives recognize that new approaches are needed to deal cooperatively with mutual problems, and our mediators deliver training programs that help management and labor improve their relationships, develop problem-solving techniques, and cultivate collaborative approaches to bargaining.

"...approaches are needed to deal with mutual problems. Our mediators deliver training programs that help management and labor improve their relationships, develop problem-solving techniques, and cultivate collaborative approaches to bargaining."

What Training Programs Are Available?

FMCS provides many types of training programs, but our first step is to assess your needs. Mediators guide the parties through an assessment of the labor-management relationship and identify areas needing improvement. Once we determine your training needs, we custom-design programs that suit those needs. Federal mediators serve as trainers and will work together with you to evaluate your requirements and develop a program most appropriate for you.

Some of our typically-requested training programs include contract administration, labor-management partnerships, and alternative bargaining processes.

- **Contract Administration Training:** Contract application requires transformation from contract language to practice and requires the willingness of front-line managers and union representatives to work together in applying the contract's terms equally and equitably. Improving the labor-management relationship at this core level allows for greater cooperation at higher levels. This training program addresses:

  - o Relationship-building
  - o Definition of leadership roles
  - o Interpersonal and communication skills
  - o Parties' responsibilities in contract administration
  - o Grievance procedures
  - o Disposition of unresolved grievances

- **Labor-Management Partnership Training:** We have custom-designed several training programs that assist labor and management in developing and enhancing committees and partnerships to collaborate on workplace problems and solutions. Here, too, the needs of the parties are assessed by a mediator before designing a training program. These programs include training modules that develop parties' interpersonal skills, including:

  - o Effective planning
  - o Group problem solving
  - o Brainstorming
  - o Effective communication with each other and constituents
  - o Understanding group dynamics
  - o Facilitation skills
  - o Building blocks for effective, useful, cooperative, and productive committees

What Training Programs Are Available?

- **Alternative Bargaining Processes:** Interest-based problem-solving is an alternative to traditional negotiations. In traditional negotiations, the parties stake out positions instead of revealing the sources of their concerns. Rather than negotiating from hard and fast positions on issues, interest-based problem-solving focuses on the interests that are the root cause of a particular problem. The process encourages the use of objective standards to find a solution. Participants learn how to replace their traditional bargaining style with collaborative approaches to problem-solving. Interest-based problem-solving techniques are useful in negotiating collective bargaining agreements, in resolving grievances or other work-related disputes, and in labor-management committee meetings.

  Interest-based problem-solving requires intensive training before the parties can effectively utilize this technique in their organizations. Training modules include:

  - o Active listening
  - o Interest-based communication
  - o Brainstorming
  - o Consensus decision-making

How Do You Schedule A Training Program?

Because our training programs are designed to meet your specific needs, please contact your local FMCS office for more information, or log onto our Web site at www.FMCS.gov.

Why FMCS?

"With a history of more than a half century of providing mediation and facilitation services, FMCS has more collective experience in dispute resolution than any other agency of government."

FMCS

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FMCS Services

FMCS provides a wide range of mediation services. All are designed to assist labor and management in resolving conflict when it arises or preventing it from happening:

Collective Bargaining Mediation: Our primary function is mediating collective bargaining contract negotiations in the private and public sectors.

Grievance Mediation: Mediation of grievances arising during the life of a collective bargaining agreement.

Relationship Development and Training: Education and training for the labor and management communities in building collaborative and successful working relationships.

Employment Mediation And Dispute Systems Design: Assisting unionized companies, and federal, state, and local governments in resolving employment issues, such as EEO disputes, and in designing conflict resolution systems to handle such matters.

Arbitration: Providing arbitrators to hear grievances and render a binding decision on grievances arising out of a collective bargaining agreement.

Grants: Providing monetary grants to labor-management committees seeking to improve their relationship.

International Training and Exchange: Providing training, education and technical assistance in labor-management relationships to friendly foreign governments.

FMCS Institute: Providing classroom training in conflict resolution skills, collective bargaining, mediation, facilitation, group dynamics, and arbitration.

Youth Violence Prevention Initiative: Teaching students, staff and parents in target communities to manage conflict arising in our schools.

For more information about each of these programs, please refer to other brochures or log onto our Web site at www.FMCS.gov.

Hi. MY NAME IS COREY KRESSE. I'VE LIVED IN NORTH DAKOTA MY WHOLE LIFE. MY WIFE AND SIX KIDS LIVE IN HUNTER. I USED TO WORK FOR DMI INDUSTRIES MAKING WIND TURBINES SO THAT OUR COUNTRY COULD HAVE CLEAN, AMERICAN-MADE ENERGY. I HAD ONE OF THOSE GREEN JOBS THAT ARE SUPPOSED TO BE OUR FUTURE.

I LOVED MY JOB AND BEING ABLE TO SHOW MY KIDS THE WIND TURBINES I MADE.

AS A WELDER, MY WORK IS DANGEROUS. AT DMI, IT WAS REALLY DANGEROUS AND THE COMPANY DIDN'T DO MUCH TO MAKE IT BETTER. ALTHOUGH WE WORKED WITH TOXIC METAL COATINGS, I WAS GIVEN A CRACKED WELDING HOOD WITH AN AIR FILTER THAT WAS

CHANGED ONLY ONCE IN TWO YEARS. THE VENTILATION SYSTEM NEVER SEEMED TO WORK THE WAY IT WAS SUPPOSED TO. IT GOT SO BAD THAT I USED TO WORRY ABOUT GOING HOME TO MY KIDS EVERYDAY COVERED IN TOXIC METAL DUST.

EVERYTIME WE ASKED DMI TO DO SOMETHING, THEY PUT US OFF EVERY TIME. FINALLY, MY CO-WORKERS AND I DECIDED TO TALK TO TEAMSTERS LOCAL 120 ABOUT FORMING A UNION. TO % OF US SIGNED UNION CARDS SO WE COULD GET BETTER SAFETY AND NEGOTIATE FOR BETTER PAY AND BENEFITS.

WHEN DMI HEARD WHAT WE WERE DOING, THEY HIRED WAL-MART'S UNION BUSTERS. FOR TWO MONTHS, WE WERE FORCED TO SIT THROUGH HOURS OF CAPTIVE AUDIENCE MEETINGS ABOUT HOW BAD UNIONS WERE. EVERYDAY, THE UNION BUSTERS THREATENED AND HARASSED US. I ENDED UP BEING FIRED THE DAY BEFORE THE UNION ELECTION.

IF WE HAD THE EMPLOYEE FREE CHOICE ACT, WE COULD HAVE HAD OUR UNION WITHOUT ALL THE GRIEF. NOT ONLY WOULD I STILL BE WORKING AT DMI, BUT DMI WOULD HAVE BEEN A SAFER PLACE FOR EVERYONE. WITH A TEAMSTERS LOCAL 120 CONTRACT, I BELIEVE WE COULD HAVE SAVED THE LIFE OF A DMI WORKER THAT WAS CRUSHED TO DEATH BY A STEEL PLATE AFTER THE UNION [redacted] ELECTION.

THE TRUTH IS THAT WORKERS DO NOT HAVE A FREE CHOICE TO FORM A UNION ANYMORE. SOMETIMES, THE CONSEQUENCES ARE TRAGIC. THAT IS WHY WE NEED THE EMPLOYEE FREE CHOICE ACT. AMERICAN WORKERS SHOULD BE ABLE TO CHOOSE FOR OURSELVES IF WE WANT TO FORM A UNION AND HOW WE WANT TO DO IT.

THANK YOU.

H

Thank you Mr. Chairman and members of the House for opportunity to testify in opposition to SCR 4033.
Senate concurrent resolution 4033.
40-33

My name is Suzette McCall, and I have been a Registered Nurse for 26 years. Short staffing, long hours, no breaks and concern about patient case led me and my fellow nurses to attempt to organize a union several years ago.

We survived a vicious organizing campaign, and I am hear to tell you that the secret ballot ~~your~~ the resolution refers to is anything but. In fact it's not like any democratic election held anywhere else in our society. In union elections corporations have all the power – They control information workers can receive, and routinely poison the process by intimidating and harassing, ~~coercing~~, and even firing people. No employee has free choice after being brow beaten. T/O the 2 month anti union campaign the employer was able to pinpoint who was voting for the union & who was NOT. And there goes the secret ballot as we know it.

We knew the National Labor relations Act guaranteed us the right to organize a union. What the law specifically says is " employees ~~shall~~ have the right to form, join, or assist labor organizations to bargain collectively through representatives of their own choosing, and to engage in other concerted

activities for the purpose of collective bargaining, and shall have the right to refrain from all such activities."

During the campaign over 50% of eligible nurses signed cards to form a union. We asked for voluntarily recognition and the Employer refused. We moved on to a so-called secret ballot. It was two months before the election was scheduled.

During those two months, they hired an out of state union buster, whose main philosophy was to divide and conquer. The employer spread lies, rumors, and threatened nurses with loss of their jobs. They also threatened that once we negotiated a contract we would have less then we had at the time. Nurses were promised promotions if they agreed to vote No.

We were forced to attend closed-door mandatory meetings where we subjected to more threats, intimidation and harassment.

I myself was suspended, went through a bogus grievance procedure, and after years of excellent performance evaluations received a sub standard evaluation. Additionally I was moved to a less desirable position.

~~Throughout the two month anti union campaign the Employer was able to pinpoint who was voting for the union, and who was not. And there goes the secret ballot, as we understand it.~~

~~My life changed, because everyone could see the intimidation and~~ harassment I was subjected ~~to every working hour~~. My co-workers did not want to be seen with me, for fear they would be the targets of the same kind of harassment.

There were many nurses that were practically paralyzed with fear that they would lose their jobs. It not only impacted these nurses professionally, but their home life was affected, because their very livelihood was threatened.

Sadly, we lost the election by a very small margin. This was obviously the outcome the union buster and management wanted, and spent significant money to achieve.

~~To this day I am proud that I stood up for~~ my coworkers, ~~my patients, and myself.~~

Charges were filed against the Employer, and my evaluation was corrected, I was paid back for the illegal 3-day suspension, and my personnel record was cleared.

The position I previously held was eliminated.

To this day I am proud that I stood up for my coworkers, my pts. and myself

I continue to promote the fundamental human right of workers to organize. I will continue my commitment to fight for the need and the right of nurses to have a strong voice in patient health care. I am committed to assisting nurses in their struggle for a voice at work. I believe that nurses as an organized whole can preserve the profession of caring, both for our patients and ourselves.

I urge you to vote no on this anti worker resolution. Passage of the Employee Free Choice Act will ensure that no worker will be subjected to harassment or retribution for exercising his or her fundamental, legal right for a voice at work.

K

JOHN RISCH
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Testimony of John Risch
Before the House Industry Business and Labor Committee
In Opposition to SCR 4033
April 14, 2009

Mr. Chairman and members of the committee, my name is John Risch. I am the elected North Dakota legislative director of the United Transportation Union. The UTU is the largest rail labor union in North America. Our membership includes conductors, engineers, switchmen, trainmen, and yardmasters.

I welcome this opportunity to explain what the Employee Free Choice Act (EFCA) is really about, since most people have only heard the "disinformation" being broadcast by the opponents of this needed legislation.

The EFCA is long-overdue labor law reform. If passed, it would make it easier for workers to form unions and provide them with an opportunity to raise their wages. That is the crux of this debate. Our side is working to raise wages and the opponents want to keep wages low.

The EFCA consists of three parts, all improvements to the National Labor Relations Act (NLRA), that will make it easier for workers to organize and negotiate a first contract.

1. <u>Certification based on majority sign-up</u>.
Requires that when a majority of employees sign authorizations designating the union as its bargaining representative, the union will be certified by the National Labor Relations Board (NLRB). Requires the Board to develop procedures for establishing the validity of signed authorizations.

2. <u>Guarantee of a first contract</u>.
When an employer and a newly-formed union are unable to bargain a first contract within 90 days, either party may request mediation. If no agreement has been reached after 30 days of mediation, the dispute is referred to binding arbitration. All time limits can be extended by mutual agreement.

3. <u>Stronger penalties for violations of the law during organizing campaigns and first contract negotiations</u>.

A. <u>Civil Penalties</u>: Up to $20,000 per violation against a company that willfully or repeatedly violates employees' rights during an organizing campaign or first contract negotiations.

B. Treble Back Pay: Increases to three times back pay the amount a company is required to pay when an employee is fired during an organizing campaign or during first contract negotiations.

C. Injunctive Remedies: Requires the NLRB to seek a court injunction when a company fires or discriminates against employees or engages in conduct that significantly interferes with employee rights during an organizing campaign or first contract negotiations. This mandatory injunctive requirement is the same as is currently used against unions when secondary boycotts are alleged.

These improvements to the NLRA will make it easier for workers to organize and negotiate a first contract–something that is very difficult for workers to do now because of the retaliation they routinely face in the workplace when they try to organize.

According to NLRB statistics, in 1969 the number of workers who suffered illegal retaliation for exercising their federal labor law rights was just over 6,000. In 2007 29,559 workers received back pay because of illegal employer discrimination in violation of the National Labor Relations Act. That's one worker every 18-1/2 minutes. Imagine the public outcry if, instead of firing workers for union activity, that many workers were discriminated against to maintain a women-free or minority-free workplace.

This employer lawlessness is encouraged by law firms that specialize in "Union Avoidance." It's an area of legal practice listed in law firm directories right alongside estate planning and divorces. Union avoidance is a multi-billion-dollar industry devoted to making sure that workers are unsuccessful when they try to organize. Some of these firms are so confident of their campaign tactics to scare and frighten workers that they offer a money-back guarantee to the employer if their workplace doesn't remain union-free.

In union avoidance campaigns, employers require workers to attend anti-union meetings. If a worker refuses to go or tries to leave, the employer can legally fire them. And if a worker tries to object to what is being said or even asks a question, the employer can legally fire them.

Workers are commonly told that the union will bring violence to the workplace, that the employer will never agree to better wages or working conditions, and that choosing a union will result in layoffs or closure of the workplace. Current negative ads on TV and full-page Chamber newspaper ads claim "millions of jobs will be shipped overseas."

Employers often offer bribes to influence workers during the campaign. They may promise some employees better benefits, better assignments, a promotion or some other advantage.

An effective union avoidance tactic is to fire one or more pro-union activists. When a worker who has openly supported the union is fired, fear is instantly injected into the workplace. Workers are afraid that the same thing will happen to them if they support the union.

This fear devastates the organizing campaign. And the fear persists because fired workers are rarely returned to their jobs as lengthy legal delays are common. Before the NLRB agent ever arrives at the workplace with the voting booth and cardboard ballot box, workers have been harassed, intimidated, spied on, threatened and fired.

Workers who have been subjected to this kind of harassment believe their employer will retaliate against them if the union wins the election. Either the employer will continue a campaign of fear and intimidation after the election or the employer will figure out who voted for the union and retaliate. Or both.

Part of the reason employers feel free to violate the NLRA is there is little penalty for doing so, and whatever penalty imposed comes months and even years too late.

What happens if an employer is prosecuted for illegally threatening lay offs or closure if workers vote to form a union, illegally spies on workers, or illegally tells workers they cannot discuss unionizing?

After the case is investigated and evaluated, there is a hearing before an NLRB administrative law judge. The case is then appealed to the National Labor Relations Board and, if upheld, a federal court has to enforce it. Only then can the employer be required to take remedial action like posting a notice on a bulletin board saying that it will not violate the law again.

What happens if a worker is fired in retaliation for supporting the union? After the legal process has been concluded, the employer must pay the worker for lost wages, minus any money the employee earned in the meantime. If the worker finds a job elsewhere at the same rate of pay, the employer pays nothing. There are no compensatory or punitive damages. In 2003, the average backpay amount was $3,800 and most workers never returned to their jobs. A small price for an employer to pay to stay "union-free."

Opponents of the EFCA claim that secret ballot elections under the NLRA are just like a political election. They have focused on this bogus claim because in their polling they found this lie resonates with the public. The truth is, NLRB elections and the elections that you, as state senators, participate in have almost nothing in common.

If your elections were run like NLRB elections, only the incumbent office holder would have access to voter lists. The challenger <u>might</u> get a list just before the election. Only the incumbent would be able to talk to voters in person every

single day. The challenger would have to remain outside the political district and try to meet voters by flagging them down as they passed by.

The incumbent could pull people off their jobs and make them attend one-sided campaign meetings whenever he wanted. The challenger could never make voters come to a meeting, anywhere or anyplace. The incumbent could fire voters if they refused to attend mandatory meetings, if they tried to leave the meeting, or even if they objected to or questioned what was being said. And finally, the election would be conducted in the incumbent candidate's party offices, with voters escorted to the polls by the incumbent's staff.

My personal experience in the signing of "A" cards:

1) I'm contacted by interested workers.
2) I call a meeting.
3) Few show up.
4) I try various ways to get names and addresses.
5) I send out some "A" cards.
6) I keep everything confidential.

NLRB/NMB keeps everything confidential.

Because of the disinformation campaign being waged against the EFCA, I suspect most of the minds in this room were made up before this hearing started. Unfortunately, some people are viewing this as a partisan issue. It is not. It is long overdue labor law reform.

Passage of the EFCA will help restore workers' rights to form a union, if they so choose, and it will appropriately penalize those who violate that right.

I respectfully recommend a "DO NOT PASS" recommendation on SCR 4033.

I stand for questions.

Chamber of Commerce Survey Results – What They Don't Want You to Know!

The recent survey numbers released by the North Dakota Chamber of Commerce regarding North Dakotans' attitudes about the Employee Free Choice Act (EFCA) can best be summed up by Mark Twain when he said there are three kinds of lies, "lies, damn lies and statistics". In the case of the Chamber Survey, conducted by DH Research of Odney Advertising, their use of statistics fits this quote to a T.

Survey Design:

At first glance, the survey looks credible. The researcher provides apparent transparency and plenty of data.

YET: The methodology is suspect due to the research company's haphazard reporting of basic survey information. If the researcher is unable to convey simple research and reporting components correctly, how can the reader/public policy maker trust the end results. They can't. Two things 'pop out' to anyone who follows or conducts surveys:

- **Implication of Precision** – Survey results reporting numbers to the hundredths of a percent (xx.xx%) suggests precision where precision is not possible. Polling is not a precise science and to imply such is dishonest.

- **Margin of Error (MoE)** – The number is correct for a sample of 400, but the reporting of the MoE is incorrect. On page 1, it is listed as + 4.90%. It should be listed as +4.90 %pts (percentage points). There is a big difference of ±4.90% and ±4.9%pts. For example, if a poll number had a support level of 31%, by using 4.9%, the range would be 29.5% to 32.5%. Using 4.9%pts, the rounded range would be 26% to 36%. A big difference.

The above points may seem trivial, but they are not. If the researcher does not understand how to report MoE and uses precision where precision should not be used, it indicates that the researcher does not understand Survey 101 basics. If they don't know the basics, the rest of the research should be suspect.

Measurement Error:

Measurement error/bias in a survey is a result of a researcher not measuring what they intend to measure. This is an error commonly seen in question wording, question order, and response options.

- **Measurement Error** – The 'brief description' provided in the poll only provides management's view of the EFCA. It is only half the story. By only providing this information to the respondents, the following questions are full of measurement error. It should be noted that this is **NOT** a push poll, and in fact, is a common technique to test a message. What it is **NOT** is an objective survey to measure the attitudes of North Dakotans on EFCA.

- **Respondent Bias/Social Desirability** – The final three questions regarding EFCA, not withstanding the setting of the brief description', is only measuring half the options, and then using loaded words to elicit a particular response. In simple terms, the series of questions presented is like asking respondents if they think that Mom, Apple Pie and Baseball best defines America. Who could be against that? But what about Dad, Cherry Pie and NASCAR racing?

Balanced information is a must in a survey to eliminate the potential to introduce error and bias. This survey fails in this effort.

Analysis Error:

With the introduction of error in the survey – intended or unintended – combined with an apparent lack of understanding of survey reporting basics, it does not take a huge leap of faith to deduce that the analysis of the data collected is also flawed. Two examples come to mind:

- **Misleading Analysis** – The Survey reports that those who are very/somewhat familiar with the EFCA oppose the measure 61 to 31 percent. But here is what the survey does not tell you. The MoE for this question is a whopping ±13 percentage points (This is the MoE with a sample size of 58 and a confidence rating of 95%.). Using this data, the results could just as well be 48 to 44 percent against EFCA. And this is after the pro-management statement prior to testing the support level of EFCA. In the end, the numbers are not as precise as the survey would lead you to believe.

- **Incorrect Analysis** – The Survey reports that the findings 'suggest' that after first hearing about the legislation, the public will be more likely to oppose than support EFCA, and that opposition will grow as they become informed. Again, never mind that the survey did not measure 'informed', since only management's information is provided in the survey, but even with their own questions, the data does not support their claim.

    - Very/Somewhat Familiar: 61% oppose; MoE ±13%pts; Range 74 to 48% in opposition
    - Not at all Familiar: 47% oppose; MoE ±5%pts; Range 52 to 42% in opposition

    The data clearly shows that those who were not familiar with EFCA, who then get a pro-management statement, are not as strong in opposition as those who were familiar with EFCA prior to the statement. Their analysis is wrong.

- **Questions with Regards to Agreement with Statement** – There are a lot of ways to cut this data, but one comes popping out as going counter to conventional wisdom. The researcher mentions that strong Republicans are less likely to agree with the statement that secret ballots are the best way to protect the rights of individual workers. Based on what we are measuring, this analysis indicates that strong Republicans, therefore, are more in favor of EFCA. That is startling and goes against conventional wisdom. Based on past research, we know that strong Republicans tend to be against unions in general. But you would not know that from this survey.

Conclusion:

This survey is flawed from the very beginning. Lack of understanding of survey basics, which leads to the introduction of measurement error, which then leads to faulty analysis, makes this survey not worth the paper it is printed on. The Chamber should ask for a refund! The survey is comparing apples to nothing; and that being the case, survey respondents will naturally choose apples over nothing. But that is not a true measure of support, just a measure of support of apples. Public policy should not be decided on incorrect data.

The analysis of this report is sponsored by John Risch of the United Transportation Union and was written by Dean Mitchell of DFM Research in Saint Paul, MN (651-330-9510). Dean, in addition to his 18 years of political experience, has completed course work in survey techniques and statistics as part of his Master in Public Policy (MPP) degree from the University of Minnesota's Humphrey Institute of Public Affairs.

TESTIMONY **SENATE CONCURRENT RESOLUTION No. 4033** **4/15/09**

House Industry, Business and Labor Committee

Greg Burns, Executive Director, North Dakota Education Association

Chairman Keiser, members of the Committee I come before you today on behalf of the North Dakota Education Association to urge you to vote "do not pass" on SCR 4033. The Employee Free Choice Act represents the first opportunity in decades to even the playing field for the working men and woman of America and the gigantic corporations that spend millions of dollars to fight employees' efforts to be represented by a union.

First I would like to point out the NDEA disagrees with all of the assertions put forth in the "whereas" portions of the resolution. I will not comment individually on these items other than to state that we disagree with each of those assertions as they apply to the Employee Free Choice Act.

But the main point of the Employee Free Choice Act is that this is a golden opportunity to reverse years of oppression, intimidation and illegal acts by employers that have become far too frequent when employees seek union representation. In 25% of all attempts at unionization, at least one worker is fired wrongfully for union activity. In 75% of the attempts at unionization the employer hires union-busting consultants or attorneys in those attempts to unionize. The reason these activities are successful is that it usually takes two years to get the case adjudicated and the employee reinstated. The second reason is that the fines for such misconduct are so miniscule that employers would rather pay the fines than pay their employees a union wage.

I have had first-hand experience in this. A number of years ago another union that I worked for attempted to organize a daycare/early childhood learning center. This center was funded primarily by private funds so the campaign took place under the auspices of the National Labor Relations Board. During the effort to obtain the requisite number of authorization cards the employer fired the lead teacher organizer. The NLRB process for adjudicating the matter took about 18 months and the employer was found guilty of illegal conduct in the firing and for several other violations, including coercing the employees. The employee elected not to return to the workplace. All of the authorization cards that were signed were null and void because they had expired. These cards are normally good for six months and that can be extended to a year when the NLRB finds certain violations by the employer. But NLRB procedures normally last longer than a year and employers know that. Naturally, the workforce changes and the momentum for unionization withers under such circumstances. Even if someone knows they

will be exonerated if wrongfully terminated, few people are willing to expose themselves to that prospect. The only way to discourage such behavior is to have meaningful fines, which this Act proposes.

Finally, many opponents of the Employee Free Choice Act have said that its passage will spell doom for small businesses. First of all, most unions don't attempt to organize small businesses, but I can tell you from personal experience there is nothing to fear if that does occur. The NDEA employs sixteen people, thirteen of whom are unionized. The remaining three are management and are thus excluded from the union. We are a small business in terms of employment and we are members of the North Dakota Chamber of Commerce. As the manager of this union I can tell you I wouldn't want to manage in a non-union workplace. A union contract provides for a more orderly workplace and a more consistent and dignified process for dispute resolution. Employees who feel respected by management are more productive employees.

We fail to see any negative consequences to the passage of the Employees Free Choice Act.

The NDEA urges you to vote "do not pass" on SCR 4033.

Senate Concurrent Resolution 4033

Testimony to House IBL Committee, Wednesday April 15, 2009

Mr. Chairman, members of the Committee. My name is Kevin Murch and I am a lifelong citizen of North Dakota. I stand before you this morning in opposition to Senate Concurrent Resolution 4033 that would recommend our Congressional delegation to vote against the Employee Free Choice Act. Recently, there has been a tremendous amount of false advertising by the Chamber of Commerce and corporate front groups about the Employee Free Choice Act taking away workers right to a secret ballot vote when deciding how to form a union. This is simply not true! As legislators, it is your responsibility to represent the interests of the citizens of North Dakota and to be informed on the issues that you vote on. As a voting citizen of this state, I ask each and every one of you to READ the 8 page Employee Free Choice Act. There is NO WHERE in the amendment that states that a secret ballot election option is ELIMINATED for workers! The Chamber of Commerce and the corporate front groups is BLATANTLY LYING to you and our citizens by running advertisements in the media claiming the secret ballot will be eliminated. Far too many times, we hear that our state legislature is tilted to only one side of many issues, of course, based on party lines. This is an opportunity for you to prove to the citizens of North Dakota that you will not accept the pressure put on by the Chamber and corporations to mislead the general public on the Employee Free Choice Act. This amendment to the National Labor Relations Act gives employees the FREEDOM TO

CHOOSE how they want to form a union, either through a majority sign-up method or a secret ballot election. The bottom line is this: right now, the CORPORATIONS decide whether or not employees have a secret ballot election. Let me repeat that; CORPORATIONS DECIDE how workers should form their unions! Employees should have the unequivocal right to choose how they form their unions, not the corporations.

In 2007, workers at Rugby Manufacturing in Rugby, ND, chose to form a union to collectively bargain a contract with management. Initially, SEVENTY-EIGHT PERCENT of workers signed an authorization petition for representation by the International Association of Machinists. The National Labor Relations Board VERIFIED that the workers signing the petition were current employees and asked if the company would recognize the union. The company would not and set the stage for a 42 day campaign of anti-union, closed door meetings with employees. The union went so far as to send a request via certified mail to the company plant manager to ask for equal time with employees the same time the company was propagating their anti-union spin. The union's request went unanswered. The company hired a lawyer to represent them, but did not want its employees to be represented by a union. That is a double standard, to say the least. The workers prevailed, barely, after the coercion the company employed.

Workers organize for a reason. They want to secure their wages, benefits and working conditions in a legal contract. There is nothing wrong with workers wanting to better themselves and negotiate higher wages and benefits. If workers make a better living, they are more inclined to stay in our state, spend more money and generate more economic activity by spending more of their earnings and that is good for North Dakota.

I am proud to live in this state and intend to stay here for some time. We have good people here and a way of life that makes the rest of our country envious of our compassion for our friends, family and neighbors. We tend to look after one another when times are tough, help out where we can. Let's not turn our backs on our friends, families and neighbors when they decide its time to come together and form a union to make a better living for all. With that, I ask you as a fellow citizen, to oppose the passage of Senate Concurrent Resolution 4033.

I would be glad to answer any questions you may have of me at this time.

Kevin L. Murch

Kevin Murch

II

111TH CONGRESS
1ST SESSION

S. 560

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.

IN THE SENATE OF THE UNITED STATES

MARCH 10, 2009

Mr. REID (for Mr. KENNEDY (for himself, Mr. HARKIN, Mr. DODD, Ms. MIKULSKI, Mrs. MURRAY, Mr. REED, Mr. SANDERS, Mr. BROWN, Mr. CASEY, Mr. MERKLEY, Mr. BYRD, Mr. INOUYE, Mr. LEAHY, Mr. LEVIN, Mr. KERRY, Mr. ROCKEFELLER, Mr. REID, Mr. LIEBERMAN, Mr. AKAKA, Mrs. BOXER, Mr. FEINGOLD, Mr. WYDEN, Mr. DURBIN, Mr. JOHNSON, Mr. SCHUMER, Mr. NELSON of Florida, Mr. CARPER, Ms. STABENOW, Ms. CANTWELL, Mr. LAUTENBERG, Mr. MENENDEZ, Mr. CARDIN, Ms. KLOBUCHAR, Mr. WHITEHOUSE, Mr. UDALL of New Mexico, Mrs. SHAHEEN, Mr. BEGICH, Mr. BURRIS, Mr. KAUFMAN, and Mrs. GILLIBRAND)) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Employee Free Choice Act of 2009".

SEC. 2. STREAMLINING UNION CERTIFICATION.

(a) IN GENERAL.—Section 9(c) of the National Labor Relations Act (29 U.S.C. 159(c)) is amended by adding at the end the following:

"(6) Notwithstanding any other provision of this section, whenever a petition shall have been filed by an employee or group of employees or any individual or labor organization acting in their behalf alleging that a majority of employees in a unit appropriate for the purposes of collective bargaining wish to be represented by an individual or labor organization for such purposes, the Board shall investigate the petition. If the Board finds that a majority of the employees in a unit appropriate for bargaining has signed valid authorizations designating the individual or labor organization specified in the petition as their bargaining representative and that no other individual or labor organization is currently certified or recognized as the exclusive representative of any of the employees in the unit, the Board shall not direct an election but shall certify the individual or labor organization as the representative described in subsection (a).

"(7) The Board shall develop guidelines and procedures for the designation by employees of a bargaining

representative in the manner described in paragraph (6). Such guidelines and procedures shall include—

"(A) model collective bargaining authorization language that may be used for purposes of making the designations described in paragraph (6); and

"(B) procedures to be used by the Board to establish the validity of signed authorizations designating bargaining representatives.".

(b) CONFORMING AMENDMENTS.—

(1) NATIONAL LABOR RELATIONS BOARD.—Section 3(b) of the National Labor Relations Act (29 U.S.C. 153(b)) is amended, in the second sentence—

(A) by striking "and to" and inserting "to"; and

(B) by striking "and certify the results thereof," and inserting ", and to issue certifications as provided for in that section,".

(2) UNFAIR LABOR PRACTICES.—Section 8(b) of the National Labor Relations Act (29 U.S.C. 158(b)) is amended—

(A) in paragraph (7)(B) by striking ", or" and inserting "or a petition has been filed under section 9(c)(6), or"; and

(B) in paragraph (7)(C) by striking "when such a petition has been filed" and inserting

"when such a petition other than a petition under section 9(c)(6) has been filed".

SEC. 3. FACILITATING INITIAL COLLECTIVE BARGAINING AGREEMENTS.

Section 8 of the National Labor Relations Act (29 U.S.C. 158) is amended by adding at the end the following:

"(h) Whenever collective bargaining is for the purpose of establishing an initial agreement following certification or recognition, the provisions of subsection (d) shall be modified as follows:

"(1) Not later than 10 days after receiving a written request for collective bargaining from an individual or labor organization that has been newly organized or certified as a representative as defined in section 9(a), or within such further period as the parties agree upon, the parties shall meet and commence to bargain collectively and shall make every reasonable effort to conclude and sign a collective bargaining agreement.

"(2) If after the expiration of the 90-day period beginning on the date on which bargaining is commenced, or such additional period as the parties may agree upon, the parties have failed to reach an agreement, either party may notify the Federal Me-

diation and Conciliation Service of the existence of a dispute and request mediation. Whenever such a request is received, it shall be the duty of the Service promptly to put itself in communication with the parties and to use its best efforts, by mediation and conciliation, to bring them to agreement.

"(3) If after the expiration of the 30-day period beginning on the date on which the request for mediation is made under paragraph (2), or such additional period as the parties may agree upon, the Service is not able to bring the parties to agreement by conciliation, the Service shall refer the dispute to an arbitration board established in accordance with such regulations as may be prescribed by the Service. The arbitration panel shall render a decision settling the dispute and such decision shall be binding upon the parties for a period of 2 years, unless amended during such period by written consent of the parties.".

SEC. 4. STRENGTHENING ENFORCEMENT.

(a) INJUNCTIONS AGAINST UNFAIR LABOR PRACTICES DURING ORGANIZING DRIVES.—

(1) IN GENERAL.—Section 10(l) of the National Labor Relations Act (29 U.S.C. 160(l)) is amended—

(A) in the second sentence, by striking "If, after such" and inserting the following:

"(2) If, after such"; and

(B) by striking the first sentence and inserting the following:

"(1) Whenever it is charged—

"(A) that any employer—

"(i) discharged or otherwise discriminated against an employee in violation of subsection (a)(3) of section 8;

"(ii) threatened to discharge or to otherwise discriminate against an employee in violation of subsection (a)(1) of section 8; or

"(iii) engaged in any other unfair labor practice within the meaning of subsection (a)(1) that significantly interferes with, restrains, or coerces employees in the exercise of the rights guaranteed in section 7;

while employees of that employer were seeking representation by a labor organization or during the period after a labor organization was recognized as a representative defined in section 9(a) until the first collective bargaining contract is entered into between the employer and the representative; or

"(B) that any person has engaged in an unfair labor practice within the meaning of subparagraph (A), (B), or (C) of section 8(b)(4), section 8(e), or section 8(b)(7);

the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred.".

(2) CONFORMING AMENDMENT.—Section 10(m) of the National Labor Relations Act (29 U.S.C. 160(m)) is amended by inserting "under circumstances not subject to section 10(l)" after "section 8".

(b) REMEDIES FOR VIOLATIONS.—

(1) BACKPAY.—Section 10(c) of the National Labor Relations Act (29 U.S.C. 160(c)) is amended by striking "*And provided further,*" and inserting "*Provided further,* That if the Board finds that an employer has discriminated against an employee in violation of subsection (a)(3) of section 8 while employees of the employer were seeking representation by a labor organization, or during the period after a labor organization was recognized as a representative defined in subsection (a) of section 9 until the first collective bargaining contract was entered into

between the employer and the representative, the Board in such order shall award the employee back pay and, in addition, 2 times that amount as liquidated damages: *Provided further,*".

(2) CIVIL PENALTIES.—Section 12 of the National Labor Relations Act (29 U.S.C. 162) is amended—

(A) by striking "Any" and inserting "(a) Any"; and

(B) by adding at the end the following:

"(b) Any employer who willfully or repeatedly commits any unfair labor practice within the meaning of subsections (a)(1) or (a)(3) of section 8 while employees of the employer are seeking representation by a labor organization or during the period after a labor organization has been recognized as a representative defined in subsection (a) of section 9 until the first collective bargaining contract is entered into between the employer and the representative shall, in addition to any make-whole remedy ordered, be subject to a civil penalty of not to exceed $20,000 for each violation. In determining the amount of any penalty under this section, the Board shall consider the gravity of the unfair labor practice and the impact of the unfair labor practice on the charging party, on other

persons seeking to exercise rights guaranteed by this Act, or on the public interest.".

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North Dakota Building and Construction Trades Council

Testimony in opposition to SCR 4033
Resolution opposing the Federal Employee Free Choice Act
April 15, 2009

Chairman Keiser and members of the House Industry, Business and Labor Committee for the record, my name is Renee Pfenning and I am appearing hear today on behalf of the North Dakota Building and Construction Trades Council in opposition to Senate Concurrent Resolution 4033.

The Employee Free Choice Act does not eliminate the secret ballot as an option for workers when choosing to form a union as stated in lines 4 and 5 of the resolution.

- The election process as outlined in the National Labor Relations Act, (NLRA), Section 9(c)(1)(A), page 240, remains unchanged.
- A petition filed under Section 9(c)(1)(A), meeting the rules of that section, will still initiate an election. At least 30% of the employees interested in being represented by a particular union can file a petition for election.

The Employee Free Choice Act will give employees, not their employer, the choice on how they want to form a union by eliminating the veto power employers now have over the majority sign-up or card check process. The National Labor Relations Board shall adopt rules and procedures for determining the validity of signed union authorization cards.

Card check or majority sign-up has been in existence since the National Labor Relations Act, (NLRA), was enacted in 1935. If a majority of employees signed a card stating they wanted union representation, the National Labor Relations Board, (NLRB), would "certify" the union as their "exclusive representative". In instances where there was legitimate doubt as to whether the majority of the employees wanted union representation, the NLRB would conduct an election. The Taft-Hartley Act in 1947 amended the NLRA to give employers veto power over their employees' decision to form a union using majority sign-up. Even if 100 percent of the employees' sign a card stating they want to form a union, the employer can demand an election.

Since the enactment in 1935 of the National Labor Relations Act, only 42 cases found fraud or coercion by unions in the submittal of union authorization cards. In contrast,

according to the National Labor Relations Board's annual report, "in 2007, 29,559 workers received back pay from employers in cases alleging illegal firings and other violations of their federally protected rights".

Opponents of the Employee Free Choice Act claim passage of the act will force businesses to sign a contract after 120 days, or have the feds step in and order wages and benefits. If a business is bargaining in good faith, an agreement at the bargaining table should be reached. The Employee Free Choice Act outlines the timeline for reaching a first contract as follows;

- The employer and the union have 90 days to negotiate a first contract. After 90 days, either party can request mediation by the Federal Mediation and Conciliation Service, (FMCS).
- If an agreement isn't reached after 30 days of mediation, the mediation service refers the dispute to an arbitration board.
- Timelines for bargaining and mediation can be extended if the employer and union mutually agree to extend them.

Claims that small businesses will be adversely affected by passage of the Employee Free Choice act are unfounded. Most small businesses already fall under the scope of the National Labor Relations Act, (NLRA). Employers that "engage in interstate commerce" fall under the purview of the NLRA, the Employee Free Choice Act does not change that.

Small businesses can benefit from unionization of their employees, particularly in the construction industry. Union apprenticeship and training programs provide the employer with a skilled workforce. Small businesses are able to provide a competitive benefit package for their employees through multiemployer health and pension funds established by the Union.

In closing, I respectfully ask that the Senate IBL Committee give SCR 4033 a DO NOT Pass recommendation.

Renee Pfenning
NDBCTC

NATIONAL LABOR RELATIONS ACT

Also cited NLRA or the Act; 29 U.S.C. §§ 151–169

[Title 29, Chapter 7, Subchapter II, United States Code]

FINDINGS AND POLICIES

Section 1. [§ 151.] The denial by some employers of the right of employees to organize and the refusal by some employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

Experience has further demonstrated that certain practices by some labor organizations, their officers, and members have the intent or the necessary effect of burdening or obstructing commerce by preventing the free flow of goods in such commerce through strikes and other forms of industrial unrest or through concerted activities which impair the interest of the public in the free flow of such commerce. The elimination of such practices is a necessary condition to the assurance of the rights herein guaranteed

It is declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred

by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

DEFINITIONS

Sec. 2. [§ 152.] When used in this Act [subchapter]—

(1) The term "person" includes one or more individuals, labor organizations, partnerships, associations, corporations, legal representatives, trustees, trustees in cases under title 11 of the United States Code [under title 11], or receivers.

(2) The term "employer" includes any person acting as an agent of an employer, directly or indirectly, but shall not include the United States or any wholly owned Government corporation, or any Federal Reserve Bank, or any State or political subdivision thereof, or any person subject to the Railway Labor Act [45 U.S.C. § 151 et seq.], as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

[Pub. L. 93–360, § 1(a), July 26, 1974, 88 Stat. 395, deleted the phrase "or any corporation or association operating a hospital, if no part of the net earnings inures to the benefit of any private shareholder or individual" from the definition of "employer."]

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act [this subchapter] explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse, or any individual having the status of an independent contractor, or any individual employed as a supervisor, or any individual employed by an employer subject to the Railway Labor Act [45 U.S.C. § 151 et seq.], as amended from time to time, or by any other person who is not an employer as herein defined.

(4) The term "representatives" includes any individual or labor organization.

(5) The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(6) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

(7) The term "affecting commerce" means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

(8) The term "unfair labor practice" means any unfair labor practice listed in section 8 [section 158 of this title].

(9) The term "labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(10) The term "National Labor Relations Board" means the National Labor Relations Board provided for in section 3 of this Act [section 153 of this title].

(11) The term "supervisor" means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

(12) The term "professional employee" means—

(a) any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes; or

(b) any employee, who (i) has completed the courses of specialized intellectual instruction and study described in clause (iv) of paragraph (a), and (ii) is performing related work under the supervision of a profess-

sional person to qualify himself to become a professional employee as defined in paragraph (a).

(13) In determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

(14) The term "health care institution" shall include any hospital, convalescent hospital, health maintenance organization, health clinic, nursing home, extended care facility, or other institution devoted to the care of sick, infirm, or aged person.

[Pub. L. 93–360, § 1(b), July 26, 1974, 88 Stat. 395, added par. (14).]

NATIONAL LABOR RELATIONS BOARD

Sec. 3. [§ 153.] (a) [Creation, composition, appointment, and tenure; Chairman; removal of members] The National Labor Relations Board (hereinafter called the "Board") created by this Act [subchapter] prior to its amendment by the Labor Management Relations Act, 1947 [29 U.S.C. § 141 et seq.], is continued as an agency of the United States, except that the Board shall consist of five instead of three members, appointed by the President by and with the advice and consent of the Senate. Of the two additional members so provided for, one shall be appointed for a term of five years and the other for a term of two years. Their successors, and the successors of the other members, shall be appointed for terms of five years each, excepting that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate one member to serve as Chairman of the Board. Any member of the Board may be removed by the President, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause.

(b) [Delegation of powers to members and regional directors; review and stay of actions of regional directors; quorum; seal] The Board is authorized to delegate to any group of three or more members any or all of the powers which it may itself exercise. The Board is also authorized to delegate to its regional directors its powers under section 9 [section 159 of this title] to determine the unit appropriate for the purpose of collective bargaining, to investigate and provide for hearings, and determine whether a question of representation exists, and to direct an election or take a secret ballot under subsection (c) or (e) of section 9 [section 159 of this title] and certify the results thereof, except that upon the filling of a request therefor with the Board by any interested person, the Board may review any action of a regional director delegated to him under this paragraph, but such a review shall not, unless specifically ordered by the Board, operate as a stay of any action taken by the regional director. A vacancy in the Board shall not impair the right of the remaining members

to exercise all of the powers of the Board, and three members of the Board shall, at all times, constitute a quorum of the Board, except that two members shall constitute a quorum of any group designated pursuant to the first sentence hereof. The Board shall have an official seal which shall be judicially noticed.

(c) [Annual reports to Congress and the President] The Board shall at the close of each fiscal year make a report in writing to Congress and to the President summarizing significant case activities and operations for that fiscal year.

(d) [General Counsel; appointment and tenure; powers and duties; vacancy] There shall be a General Counsel of the Board who shall be appointed by the President, by and with the advice and consent of the Senate, for a term of four years. The General Counsel of the Board shall exercise general supervision over all attorneys employed by the Board (other than administrative law judges and legal assistants to Board members) and over the officers and employees in the regional offices. He shall have final authority, on behalf of the Board, in respect of the investigation of charges and issuance of complaints under section 10 [section 160 of this title], and in respect of the prosecution of such complaints before the Board, and shall have such other duties as the Board may prescribe or as may be provided by law. In case of vacancy in the office of the General Counsel the President is authorized to designate the officer or employee who shall act as General Counsel during such vacancy, but no person or persons so designated shall so act (1) for more than forty days when the Congress is in session unless a nomination to fill such vacancy shall have been submitted to the Senate, or (2) after the adjournment sine die of the session of the Senate in which such nomination was submitted.

[The title "administrative law judge" was adopted in 5 U.S.C. § 3105.]

Sec. 4. [§ 154. Eligibility for reappointment; officers and employees; payment of expenses] (a) Each member of the Board and the General Counsel of the Board shall be eligible for reappointment, and shall not engage in any other business, vocation, or employment. The Board shall appoint an executive secretary, and such attorneys, examiners, and regional directors, and such other employees as it may from time to time find necessary for the proper performance of its duties. The Board may not employ any attorneys for the purpose of reviewing transcripts of hearings or preparing drafts of opinions except that any attorney employed for assignment as a legal assistant to any Board member may for such Board member review such transcripts and prepare such drafts. No administrative law judge's report shall be reviewed, either before or after its publication, by any person other than a member of the Board or his legal assistant, and no administrative law judge shall advise or consult with the Board with respect to exceptions taken to his findings, rulings, or recommen-

dations. The Board may establish or utilize such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed. Attorneys appointed under this section may, at the direction of the Board, appear for and represent the Board in any case in court. Nothing in this Act [subchapter] shall be construed to authorize the Board to appoint individuals for the purpose of conciliation or mediation, or for economic analysis.

[The title "administrative law judge" was adopted in 5 U.S.C. § 3105.]

(b) All of the expenses of the Board, including all necessary traveling and subsistence expenses outside the District of Columbia incurred by the members or employees of the Board under its orders, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Board or by any individual it designates for that purpose.

Sec. 5. [§ 155. Principal office, conducting inquiries throughout country; participation in decisions or inquiries conducted by member] The principal office of the Board shall be in the District of Columbia, but it may meet and exercise any or all of its powers at any other place. The Board may, by one or more of its members or by such agents or agencies as it may designate, prosecute any inquiry necessary to its functions in any part of the United States. A member who participates in such an inquiry shall not be disqualified from subsequently participating in a decision of the Board in the same case.

Sec. 6. [§ 156. Rules and regulations] The Board shall have authority from time to time to make, amend, and rescind, in the manner prescribed by the Administrative Procedure Act [by subchapter II of chapter 5 of title 5], such rules and regulations as may be necessary to carry out the provisions of this Act [subchapter].

RIGHTS OF EMPLOYEES

Sec. 7. [§ 157.] Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3) [section 158(a)(3) of this title].

UNFAIR LABOR PRACTICES

Sec. 8. [§ 158.] (a) [Unfair labor practices by employer] It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7 [section 157 of this title];

(2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided*, That subject to rules and regulations made and published by the Board pursuant to section 6 [section 156 of this title], an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay;

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this Act [subchapter], or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in section 8(a) of this Act [in this subsection] as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 9(a) [section 159(a) of this title], in the appropriate collective-bargaining unit covered by such agreement when made, and (ii) unless following an election held as provided in section 9(e) [section 159(e) of this title] within one year preceding the effective date of such agreement, the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement: *Provided further*, That no employer shall justify any discrimination against an employee for nonmembership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

(4) to discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act [subchapter];

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a) [section 159(a) of this title].

(b) [Unfair labor practices by labor organization] It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7 [section 157 of this title]: *Provided*, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership

therein; or (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances;

(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3) [of subsection (a)(3) of this section] or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

(3) to refuse to bargain collectively with an employer, provided it is the representative of his employees subject to the provisions of section 9(a) [section 159(a) of this title];

(4)(i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is—

(A) forcing or requiring any employer or self-employed person to join any labor or employer organization or to enter into any agreement which is prohibited by section 8(e) [subsection (e) of this section];

(B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9 [section 159 of this title]: *Provided*, That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing;

(C) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 9 [section 159 of this title];

(D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work:

Provided, That nothing contained in this subsection (b) [this subsection] shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under this Act [subchapter]: *Provided further*, That for the purposes of this paragraph (4) only, nothing contained in such paragraph shall be construed to prohibit publicity, other than picketing, for the purpose of truthfully advising the public, including consumers and members of a labor organization, that a product or products are produced by an employer with whom the labor organization has a primary dispute and are distributed by another employer, as long as such publicity does not have an effect of inducing any individual employed by any person other than the primary employer in the course of his employment to refuse to pick up, deliver, or transport any goods, or not to perform any services, at the establishment of the employer engaged in such distribution;

(5) to require of employees covered by an agreement authorized under subsection (a)(3) [of this section] the payment, as a condition precedent to becoming a member of such organization, of a fee in an amount which the Board finds excessive or discriminatory under all the circumstances. In making such a finding, the Board shall consider, among other relevant factors, the practices and customs of labor organizations in the particular industry, and the wages currently paid to the employees affected;

(6) to cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed; and

(7) to picket or cause to be picketed, or threaten to picket or cause to be picketed, any employer where an object thereof is forcing or requiring an employer to recognize or bargain with a labor organization as the representative of his employees, or forcing or requiring the employees of an employer to accept or select such labor organization as their collective-bargaining representative, unless such labor organization is currently certified as the representative of such employees:

(A) where the employer has lawfully recognized in accordance with this Act [subchapter] any other labor organization and a question concerning representation may not appropriately be raised under section 9(c) of this Act [section 159(c) of this title],

(B) where within the preceding twelve months a valid election under section 9(c) of this Act [section 159(c) of this title] has been conducted, or

(C) where such picketing has been conducted without a petition under section 9(c) [section 159(c) of this title] being filed within a reasonable period of time not to exceed thirty days from the commencement of

such picketing: *Provided*, That when such a petition has been filed the Board shall forthwith, without regard to the provisions of section 9(c)(1) [section 159(c)(1) of this title] or the absence of a showing of a substantial interest on the part of the labor organization, direct an election in such unit as the Board finds to be appropriate and shall certify the results thereof: *Provided further*, That nothing in this subparagraph (C) shall be construed to prohibit any picketing or other publicity for the purpose of truthfully advising the public (including consumers) that an employer does not employ members of, or have a contract with, a labor organization, unless an effect of such picketing is to induce any individual employed by any other person in the course of his employment, not to pick up, deliver or transport any goods or not to perform any services.

Nothing in this paragraph (7) shall be construed to permit any act which would otherwise be an unfair labor practice under this section 8(b) [this subsection].

(c) [Expression of views without threat of reprisal or force or promise of benefit] The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act [subchapter], if such expression contains no threat of reprisal or force or promise of benefit.

(d) [Obligation to bargain collectively] For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession: *Provided*, That where there is in effect a collective-bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification—

(1) serves a written notice upon the other party to the contract of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification;

(2) offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications;

(3) notifies the Federal Mediation and Conciliation Service within thirty days after such notice of the existence of a dispute, and simultaneously therewith notifies any State or Territorial agency established to mediate and conciliate disputes within the State or Territory where the dispute occurred, provided no agreement has been reached by that time; and

(4) continues in full force and effect, without resorting to strike or lockout, all the terms and conditions of the existing contract for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later:

The duties imposed upon employers, employees, and labor organizations by paragraphs (2), (3), and (4) [paragraphs (2) to (4) of this subsection] shall become inapplicable upon an intervening certification of the Board, under which the labor organization or individual, which is a party to the contract, has been superseded as or ceased to be the representative of the employees subject to the provisions of section 9(a) [section 159(a) of this title], and the duties so imposed shall not be construed as requiring either party to discuss or agree to any modification of the terms and conditions contained in a contract for a fixed period, if such modification is to become effective before such terms and conditions can be reopened under the provisions of the contract. Any employee who engages in a strike within any notice period specified in this subsection, or who engages in any strike within the appropriate period specified in subsection (g) of this section, shall lose his status as an employee of the employer engaged in the particular labor dispute, for the purposes of sections 8, 9, and 10 of this Act [sections 158, 159, and 160 of this title], but such loss of status for such employee shall terminate if and when he is reemployed by such employer. Whenever the collective bargaining involves employees of a health care institution, the provisions of this section 8(d) [this subsection] shall be modified as follows:

(A) The notice of section 8(d)(1) [paragraph (1) of this subsection] shall be ninety days; the notice of section 8(d)(3) [paragraph (3) of this subsection] shall be sixty days; and the contract period of section 8(d)(4) [paragraph (4) of this subsection] shall be ninety days.

(B) Where the bargaining is for an initial agreement following certification or recognition, at least thirty days' notice of the existence of a dispute shall be given by the labor organization to the agencies set forth in section 8(d)(3) [in paragraph (3) of this subsection].

(C) After notice is given to the Federal Mediation and Conciliation Service under either clause (A) or (B) of this sentence, the Service shall promptly communicate with the parties and use its best efforts, by mediation and conciliation, to bring them to agreement. The parties shall participate fully and promptly in such meetings as may be undertaken by the Service for the purpose of aiding in a settlement of the dispute.

[Pub. L. 93–360, July 26, 1974, 88 Stat. 395, amended the last sentence of Sec. 8(d) by striking the words "the sixty-day" and inserting the words "any notice" and by inserting before the words "shall lose" the phrase ", or who engages in any strike within the appropriate period specified in subsection (g) of this section." It also amended the end of paragraph Sec. 8(d) by adding a new sentence "Whenever the collective bargaining . . . aiding in a settlement of the dispute."]

(e) [Enforceability of contract or agreement to boycott any other employer; exception] It shall be an unfair labor practice for any labor organization and any employer to enter into any contract or agreement, express or implied, whereby such employer ceases or refrains or agrees to cease or refrain from handling, using, selling, transporting or otherwise dealing in any of the products of any other employer, or cease doing business with any other person, and any contract or agreement entered into heretofore or hereafter containing such an agreement shall be to such extent unenforceable and void: *Provided*, That nothing in this subsection (e) [this subsection] shall apply to an agreement between a labor organization and an employer in the construction industry relating to the contracting or subcontracting of work to be done at the site of the construction, alteration, painting, or repair of a building, structure, or other work: *Provided further*, That for the purposes of this subsection (e) and section 8(b)(4)(B) [this subsection and subsection (b)(4)(B) of this section] the terms "any employer," "any person engaged in commerce or an industry affecting commerce," and "any person" when used in relation to the terms "any other producer, processor, or manufacturer," "any other employer," or "any other person" shall not include persons in the relation of a jobber, manufacturer, contractor, or subcontractor working on the goods or premises of the jobber or manufacturer or performing parts of an integrated process of production in the apparel and clothing industry: *Provided further*, That nothing in this Act [subchapter] shall prohibit the enforcement of any agreement which is within the foregoing exception.

(f) [Agreements covering employees in the building and construction industry] It shall not be an unfair labor practice under subsections (a) and (b) of this section for an employer engaged primarily in the building and construction industry to make an agreement covering employees engaged (or who, upon their employment, will be engaged) in the building and construction industry with a labor organization of which building and construction employees are members (not established, maintained, or assisted by any action defined in section 8(a) of this Act [subsection (a) of this section] as an unfair labor practice) because (1) the majority status of such labor organization has not been established under the provisions of section 9 of this Act [section 159 of this title] prior to the making of such agreement, or (2) such agreement requires as a condition of employment, membership in such labor organization after the seventh day following the beginning of such employment or the effective date of the agreement, whichever is later, or (3) such agreement requires the employer to notify

such labor organization of opportunities for employment with such employer, or gives such labor organization an opportunity to refer qualified applicants for such employment, or (4) such agreement specifies minimum training or experience qualifications for employment or provides for priority in opportunities for employment based upon length of service with such employer, in the industry or in the particular geographical area: *Provided*, That nothing in this subsection shall set aside the final proviso to section 8(a)(3) of this Act [subsection (a)(3) of this section]: *Provided further*, That any agreement which would be invalid, but for clause (1) of this subsection, shall not be a bar to a petition filed pursuant to section 9(c) or 9(e) [section 159(c) or 159(e) of this title].

(g) [Notification of intention to strike or picket at any health care institution] A labor organization before engaging in any strike, picketing, or other concerted refusal to work at any health care institution shall, not less than ten days prior to such action, notify the institution in writing and the Federal Mediation and Conciliation Service of that intention, except that in the case of bargaining for an initial agreement following certification or recognition the notice required by this subsection shall not be given until the expiration of the period specified in clause (B) of the last sentence of section 8(d) of this Act [subsection (d) of this section]. The notice shall state the date and time that such action will commence. The notice, once given, may be extended by the written agreement of both parties.

[Pub. L. 93–360, July 26, 1974, 88 Stat. 396, added subsec. (g).]

REPRESENTATIVES AND ELECTIONS

Sec. 9 [§ 159.] (a) [Exclusive representatives; employees' adjustment of grievances directly with employer] Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: *Provided further*, That the bargaining representative has been given opportunity to be present at such adjustment.

(b) [Determination of bargaining unit by Board] The Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act [subchapter], the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof: *Provided*, That the Board shall not (1) decide that any unit is appropriate for such purposes

if such unit includes both professional employees and employees who are not professional employees unless a majority of such professional employees vote for inclusion in such unit; or (2) decide that any craft unit is inappropriate for such purposes on the ground that a different unit has been established by a prior Board determination, unless a majority of the employees in the proposed craft unit votes against separate representation or (3) decide that any unit is appropriate for such purposes if it includes, together with other employees, any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises; but no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards.

(c) **[Hearings on questions affecting commerce; rules and regulations]** (1) Whenever a petition shall have been filed, in accordance with such regulations as may be prescribed by the Board—

(A) by an employee or group of employees or any individual or labor organization acting in their behalf alleging that a substantial number of employees (i) wish to be represented for collective bargaining and that their employer declines to recognize their representative as the representative defined in section 9(a) [subsection (a) of this section], or (ii) assert that the individual or labor organization, which has been certified or is being currently recognized by their employer as the bargaining representative, is no longer a representative as defined in section 9(a) [subsection (a) of this section]; or

(B) by an employer, alleging that one or more individuals or labor organizations have presented to him a claim to be recognized as the representative defined in section 9(a) [subsection (a) of this section]; the Board shall investigate such petition and if it has reasonable cause to believe that a question of representation affecting commerce exists shall provide for an appropriate hearing upon due notice. Such hearing may be conducted by an officer or employee of the regional office, who shall not make any recommendations with respect thereto. If the Board finds upon the record of such hearing that such a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof.

(2) In determining whether or not a question of representation affecting commerce exists, the same regulations and rules of decision shall apply irrespective of the identity of the persons filing the petition or the kind of relief sought and in no case shall the Board deny a labor organization a place on the ballot by reason of an order with respect to such labor organization or its predecessor not issued in conformity with section 10(c) [section 160(c) of this title].

(3) No election shall be directed in any bargaining unit or any subdivision within which, in the preceding twelve-month period, a valid election shall have been held. Employees engaged in an economic strike who are not entitled to reinstatement shall be eligible to vote under such regulations as the Board shall find are consistent with the purposes and provisions of this Act [subchapter] in any election conducted within twelve months after the commencement of the strike. In any election where none of the choices on the ballot receives a majority, a run-off shall be conducted, the ballot providing for a selection between the two choices receiving the largest and second largest number of valid votes cast in the election.

(4) Nothing in this section shall be construed to prohibit the waiving of hearings by stipulation for the purpose of a consent election in conformity with regulations and rules of decision of the Board.

(5) In determining whether a unit is appropriate for the purposes specified in subsection (b) [of this section] the extent to which the employees have organized shall not be controlling.

(d) [Petition for enforcement or review; transcript] Whenever an order of the Board made pursuant to section 10(c) [section 160(c) of this title] is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under section 10(e) or 10(f) [subsection (e) or (f) of section 160 of this title], and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

(e) [Secret ballot; limitation of elections] (1) Upon the filing with the Board, by 30 per centum or more of the employees in a bargaining unit covered by an agreement between their employer and labor organization made pursuant to section 8(a)(3) [section 158(a)(3) of this title], of a petition alleging they desire that such authorization be rescinded, the Board shall take a secret ballot of the employees in such unit and certify the results thereof to such labor organization and to the employer.

(2) No election shall be conducted pursuant to this subsection in any bargaining unit or any subdivision within which, in the preceding twelve-month period, a valid election shall have been held.

PREVENTION OF UNFAIR LABOR PRACTICES

Sec. 10. [§ 160.] (a) [Powers of Board generally] The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8 [section 158 of this title]) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agree-

ment, law, or otherwise: *Provided*, That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominately local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this Act [subchapter] or has received a construction inconsistent therewith.

(b) [Complaint and notice of hearing; six-month limitation; answer; court rules of evidence inapplicable] Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint: *Provided*, That no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made, unless the person aggrieved thereby was prevented from filing such charge by reason of service in the armed forces, in which event the six-month period shall be computed from the day of his discharge. Any such complaint may be amended by the member, agent, or agency conducting the hearing or the Board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the member, agent, or agency conducting the hearing or the Board, any other person may be allowed to intervene in the said proceeding and to present testimony. Any such proceeding shall, so far as practicable, be conducted in accordance with the rules of evidence applicable in the district courts of the United States under the rules of civil procedure for the district courts of the United States, adopted by the Supreme Court of the United States pursuant to section 2072 of title 28, United States Code [section 2072 of title 28].

(c) [Reduction of testimony to writing; findings and orders of Board] The testimony taken by such member, agent, or agency, or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall

state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without backpay, as will effectuate the policies of this Act [subchapter]: *Provided*, That where an order directs reinstatement of an employee, backpay may be required of the employer or labor organization, as the case may be, responsible for the discrimination suffered by him: *And provided further*, That in determining whether a complaint shall issue alleging a violation of section 8(a)(1) or section 8(a)(2) [subsection (a)(1) or (a)(2) of section 158 of this title], and in deciding such cases, the same regulations and rules of decision shall apply irrespective of whether or not the labor organization affected is affiliated with a labor organization national or international in scope. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order. If upon the preponderance of the testimony taken the Board shall not be of the opinion that the person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an order dismissing the said complaint. No order of the Board shall require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any backpay, if such individual was suspended or discharged for cause. In case the evidence is presented before a member of the Board, or before an administrative law judge or judges thereof, such member, or such judge or judges, as the case may be, shall issue and cause to be served on the parties to the proceeding a proposed report, together with a recommended order, which shall be filed with the Board, and if no exceptions are filed within twenty days after service thereof upon such parties, or within such further period as the Board may authorize, such recommended order shall become the order of the Board and become affective as therein prescribed.

[The title "administrative law judge" was adopted in 5 U.S.C. § 3105.]

(d) [Modification of findings or orders prior to filing record in court] Until the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

(e) [Petition to court for enforcement of order; proceedings; review of judgment] The Board shall have power to petition any court of appeals of the United States, or if all the courts of appeals to which application may be made are in vacation, any district court of the United States, within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall file in the court the record in the proceeding,

as provided in section 2112 of title 28, United States Code [section 2112 of title 28]. Upon the filing of such petition, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter a decree enforcing, modifying and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the record. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to question of fact if supported by substantial evidence on the record considered as a whole shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with it the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate United States court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28.

(f) [Review of final order of Board on petition to court] Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any United States court of appeals in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the United States Court of Appeals for the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Board, and thereupon the aggrieved party shall file in the court the record in the proceeding, certified by the Board, as provided in section 2112 of title 28, United States Code [section 2112 of title 28]. Upon the filing of such petition, the court shall proceed in the same manner

as in the case of an application by the Board under subsection (e) of this section, and shall have the same jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying and enforcing as so modified, or setting aside in whole or in part the order of the Board; the findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall in like manner be conclusive.

(g) [Institution of court proceedings as stay of Board's order] The commencement of proceedings under subsection (e) or (f) of this section shall not, unless specifically ordered by the court, operate as a stay of the Board's order.

(h) [Jurisdiction of courts unaffected by limitations prescribed in chapter 6 of this title] When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying and enforcing as so modified, or setting aside in whole or in part an order of the Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by sections 101 to 115 of title 29, United States Code [chapter 6 of this title] [known as the "Norris-LaGuardia Act"].

(i) Repealed.

(j) [Injunctions] The Board shall have power, upon issuance of a complaint as provided in subsection (b) [of this section] charging that any person has engaged in or is engaging in an unfair labor practice, to petition any United States district court, within any district wherein the unfair labor practice in question is alleged to have occurred or wherein such person resides or transacts business, for appropriate temporary relief or restraining order. Upon the filing of any such petition the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper.

(k) [Hearings on jurisdictional strikes] Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4)(D) of section 8(b) [section 158(b) of this title], the Board is empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen, unless, within ten days after notice that such charge has been filed, the parties to such dispute submit to the Board satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of, the dispute. Upon compliance by the parties to the dispute with the decision of the Board or upon such voluntary adjustment of the dispute, such charge shall be dismissed.

(l) [Boycotts and strikes to force recognition of uncertified labor organizations; injunctions; notice; service of process] Whenever it is charged that any person has engaged in an unfair labor practice within

the meaning of paragraph (4)(A), (B), or (C) of section 8(b) [section 158(b) of this title], or section 8(e) [section 158(e) of this title] or section 8(b)(7) [section 158(b)(7) of this title], the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred. If, after such investigation, the officer or regional attorney to whom the matter may be referred has reasonable cause to believe such charge is true and that a complaint should issue, he shall, on behalf of the Board, petition any United States district court within any district where the unfair labor practice in question has occurred, is alleged to have occurred, or wherein such person resides or transacts business, for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter. Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law: *Provided further*, That no temporary restraining order shall be issued without notice unless a petition alleges that substantial and irreparable injury to the charging party will be unavoidable and such temporary restraining order shall be effective for no longer than five days and will become void at the expiration of such period: *Provided further*, That such officer or regional attorney shall not apply for any restraining order under section 8(b)(7) [section 158(b)(7) of this title] if a charge against the employer under section 8(a)(2) [section 158(a)(2) of this title] has been filed and after the preliminary investigation, he has reasonable cause to believe that such charge is true and that a complaint should issue. Upon filing of any such petition the courts shall cause notice thereof to be served upon any person involved in the charge and such person, including the charging party, shall be given an opportunity to appear by counsel and present any relevant testimony: *Provided further*, That for the purposes of this subsection district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in promoting or protecting the interests of employee members. The service of legal process upon such officer or agent shall constitute service upon the labor organization and make such organization a party to the suit. In situations where such relief is appropriate the procedure specified herein shall apply to charges with respect to section 8(b)(4)(D) [section 158(b)(4)(D) of this title].

(m) [Priority of cases] Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of subsection (a)(3) or (b)(2) of section 8 [section 158 of this title], such charge shall be given priority over all other cases except cases of like character in the office where it is filed or to which it is referred and cases given priority under subsection (1) [of this section].

Sec. 11. [§ 161.] For the purpose of all hearings and investigations, which, in the opinion of the Board, are necessary and proper for the exercise of the powers vested in it by section 9 and section 10 [sections 159 and 160 of this title]—

(1) [Documentary evidence; summoning witnesses and taking testimony] The Board, or its duly authorized agents or agencies, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question. The Board, or any member thereof, shall upon application of any party to such proceedings, forthwith issue to such party subpoenas requiring the attendance and testimony of witnesses or the production of any evidence in such proceeding or investigation requested in such application. Within five days after the service of a subpoena on any person requiring the production of any evidence in his possession or under his control, such person may petition the Board to revoke, and the Board shall revoke, such subpoena if in its opinion the evidence whose production is required does not relate to any matter under investigation, or any matter in question in such proceedings, or if in its opinion such subpoena does not describe with sufficient particularity the evidence whose production is required. Any member of the Board, or any agent or agency designated by the Board for such purposes, may administer oaths and affirmations, examine witnesses, and receive evidence. Such attendance of witnesses and the production of such evidence may be required from any place in the United States or any Territory or possession thereof, at any designated place of hearing.

(2) [Court aid in compelling production of evidence and attendance of witnesses] In case on contumacy or refusal to obey a subpoena issued to any person, any United States district court or the United States courts of any Territory or possession, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Board shall have jurisdiction to issue to such person an order requiring such person to appear before the Board, its member, agent, or agency, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(3) Repealed.

[Immunity of witnesses. See 18 U.S.C. § 6001 et seq.]

(4) [Process, service and return; fees of witnesses] Complaints, orders and other process and papers of the Board, its member, agent, or agency, may be served either personally or by

registered or certified mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served. The verified return by the individual so serving the same setting forth the manner of such service shall be proof of the same, and the return post office receipt or telegraph receipt therefor when registered or certified and mailed or when telegraphed as aforesaid shall be proof of service of the same. Witnesses summoned before the Board, its member, agent, or agency, shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

(5) [Process, where served] All process of any court to which application may be made under this Act [subchapter] may be served in the judicial district wherein the defendant or other person required to be served resides or may be found.

(6) [Information and assistance from departments] The several departments and agencies of the Government, when directed by the President, shall furnish the Board, upon its request, all records, papers, and information in their possession relating to any matter before the Board.

Sec. 12. [§ 162. Offenses and penalties] Any person who shall willfully resist, prevent, impede, or interfere with any member of the Board or any of its agents or agencies in the performance of duties pursuant to this Act [subchapter] shall be punished by a fine of not more than $5,000 or by imprisonment for not more than one year, or both.

LIMITATIONS

Sec. 13. [§ 163. Right to strike preserved] Nothing in this Act [subchapter], except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike or to affect the limitations or qualifications on that right.

Sec. 14. [§ 164. Construction of provisions] (a) [Supervisors as union members] Nothing herein shall prohibit any individual employed as a supervisor from becoming or remaining a member of a labor organization, but no employer subject to this Act [subchapter] shall be compelled to deem individuals defined herein as supervisors as employees for the purpose of any law, either national or local, relating to collective bargaining.

(b) [Agreements requiring union membership in violation of State law] Nothing in this Act [subchapter] shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law.

(c) [Power of Board to decline jurisdiction of labor disputes; assertion of jurisdiction by State and Territorial courts] (1) The Board, in its discretion, may, by rule of decision or by published rules adopted pursuant to the Administrative Procedure Act [to subchapter II of chapter 5 of title 5], decline to assert jurisdiction over any labor dispute involving any class or category of employers, where, in the opinion of the Board, the effect of such labor dispute on commerce is not sufficiently substantial to warrant the exercise of its jurisdiction: *Provided*, That the Board shall not decline to assert jurisdiction over any labor dispute over which it would assert jurisdiction under the standards prevailing upon August 1, 1959.

(2) Nothing in this Act [subchapter] shall be deemed to prevent or bar any agency or the courts of any State or Territory (including the Commonwealth of Puerto Rico, Guam, and the Virgin Islands), from assuming and asserting jurisdiction over labor disputes over which the Board declines, pursuant to paragraph (1) of this subsection, to assert jurisdiction.

Sec. 15. [§ 165.] Omitted.

[Reference to repealed provisions of bankruptcy statute.]

Sec. 16. [§ 166. Separability of provisions] If any provision of this Act [subchapter], or the application of such provision to any person or circumstances, shall be held invalid, the remainder of this Act [subchapter], or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

Sec. 17. [§ 167. Short title] This Act [subchapter] may be cited as the "National Labor Relations Act."

Sec. 18. [§ 168.] Omitted.

[Reference to former sec. 9(f), (g), and (h).]

INDIVIDUALS WITH RELIGIOUS CONVICTIONS

Sec. 19. [§ 169.] Any employee who is a member of and adheres to established and traditional tenets or teachings of a bona fide religion, body, or sect which has historically held conscientious objections to joining or financially supporting labor organizations shall not be required to join or financially support any labor organization as a condition of employment; except that such employee may be required in a contract between such employee's employer and a labor organization in lieu of periodic dues and initiation fees, to pay sums equal to such dues and initiation fees to a nonreligious, nonlabor organization charitable fund exempt from taxation under section 501(c)(3) of title 26 of the Internal Revenue Code [section 501(c)(3) of title 26], chosen by such employee from a list of at least three such funds, designated in such contract or if the contract fails to designate such funds, then to any such fund chosen by the employee. If such employee who holds conscientious objections pursuant to this section

requests the labor organization to use the grievance-arbitration procedure on the employee's behalf, the labor organization is authorized to charge the employee for the reasonable cost of using such procedure.

[Sec. added, Pub. L. 93–360, July 26, 1974, 88 Stat. 397, and amended, Pub. L. 96–593, Dec. 24, 1980, 94 Stat. 3452.]

LABOR MANAGEMENT RELATIONS ACT

Also cited LMRA; 29 U.S.C. §§ 141–197

[Title 29, Chapter 7, United States Code]

SHORT TITLE AND DECLARATION OF POLICY

Section 1. [§ 141.] (a) This Act [chapter] may be cited as the "Labor Management Relations Act, 1947." [Also known as the "Taft-Hartley Act."]

(b) Industrial strife which interferes with the normal flow of commerce and with the full production of articles and commodities for commerce, can be avoided or substantially minimized if employers, employees, and labor organizations each recognize under law one another's legitimate rights in their relations with each other, and above all recognize under law that neither party has any right in its relations with any other to engage in acts or practices which jeopardize the public health, safety, or interest.

It is the purpose and policy of this Act [chapter], in order to promote the full flow of commerce, to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce.

TITLE I, Amendments to

NATIONAL LABOR RELATIONS ACT

29 U.S.C. §§ 151–169 (printed above)

TITLE II

[Title 29, Chapter 7, Subchapter III, United States Code]

CONCILIATION OF LABOR DISPUTES IN INDUSTRIES AFFECTING COMMERCE;

NATIONAL EMERGENCIES

Sec. 201. [§ 171. Declaration of purpose and policy] It is the policy of the United States that—

(a) sound and stable industrial peace and the advancement of the general welfare, health, and safety of the Nation and of the best interest of employers and employees can most satisfactorily be secured by the settlement of issues between employers and employees through the processes of con-

ference and collective bargaining between employers and the representatives of their employees;

(b) the settlement of issues between employers and employees through collective bargaining may by advanced by making available full and adequate governmental facilities for conciliation, mediation, and voluntary arbitration to aid and encourage employers and the representatives of their employees to reach and maintain agreements concerning rates of pay, hours, and working conditions, and to make all reasonable efforts to settle their differences by mutual agreement reached through conferences and collective bargaining or by such methods as may be provided for in any applicable agreement for the settlement of disputes; and

(c) certain controversies which arise between parties to collective bargaining agreements may be avoided or minimized by making available full and adequate governmental facilities for furnishing assistance to employers and the representatives of their employees in formulating for inclusion within such agreements provision for adequate notice of any proposed changes in the terms of such agreements, for the final adjustment of grievances or questions regarding the application or interpretation of such agreements, and other provisions designed to prevent the subsequent arising of such controversies.

Sec. 202. [§ 172. Federal Mediation and Conciliation Service]

(a) [Creation; appointment of Director] There is created an independent agency to be known as the Federal Mediation and Conciliation Service (herein referred to as the "Service," except that for sixty days after June 23, 1947, such term shall refer to the Conciliation Service of the Department of Labor). The Service shall be under the direction of a Federal Mediation and Conciliation Director (hereinafter referred to as the "Director"), who shall be appointed by the President by and with the advice and consent of the Senate. The Director shall not engage in any other business, vocation, or employment.

(b) [Appointment of officers and employees; expenditures for supplies, facilities, and services] The Director is authorized, subject to the civil service laws, to appoint such clerical and other personnel as may be necessary for the execution of the functions of the Service, and shall fix their compensation in accordance with sections 5101 to 5115 and sections 5331 to 5338 of title 5, United States Code [chapter 51 and subchapter III of chapter 53 of title 5], and may, without regard to the provisions of the civil service laws, appoint such conciliators and mediators as may be necessary to carry out the functions of the Service. The Director is authorized to make such expenditures for supplies, facilities, and services as he deems necessary. Such expenditures shall be allowed and paid upon presentation of itemized vouchers therefor approved by the Director or by any employee designated by him for that purpose.

(c) [Principal and regional offices; delegation of authority by Director; annual report to Congress] The principal office of the Service shall be in the District of Columbia, but the Director may establish regional ofiices convenient to localities in which labor controversies are likely to arise. The Director may by order, subject to revocation at any time, delegate any authority and discretion conferred upon him by this Act [chapter] to any regional director, or other officer or employee of the Service. The Director may establish suitable procedures for cooperation with State and local mediation agencies. The Director shall make an annual report in writing to Congress at the end of the fiscal year.

(d) [Transfer of all mediation and conciliation services to Service; effective date; pending proceedings unaffected] All mediation and conciliation functions of the Secretary of Labor or the United States Conciliation Service under section 51 [repealed] of title 29, United States Code [this title], and all functions of the United States Conciliation Service under any other law are transferred to the Federal Mediation and Conciliation Service, together with the personnel and records of the United States Conciliation Service. Such transfer shall take effect upon the sixtieth day after June 23, 1947. Such transfer shall not affect any proceedings pending before the United States Conciliation Service or any certification, order, rule, or regulation theretofore made by it or by the Secretary of Labor. The Director and the Service shall not be subject in any way to the jurisdiction or authority of the Secretary of Labor or any official or division of the Department of Labor.

FUNCTIONS OF THE SERVICE

Sec. 203. [§ 173. Functions of Service] (a) [Settlement of disputes through conciliation and mediation] It shall be the duty of the Service, in order to prevent or minimize interruptions of the free flow of commerce growing out of labor disputes, to assist parties to labor disputes in industries affecting commerce to settle such disputes through conciliation and mediation.

(b) [Intervention on motion of Service or request of parties; avoidance of mediation of minor disputes] The Service may proffer its services in any labor dispute in any industry affecting commerce, either upon its own motion or upon the request of one or more of the parties to the dispute, whenever in its judgment such dispute threatens to cause a substantial interruption of commerce. The Director and the Service are directed to avoid attempting to mediate disputes which would have only a minor effect on interstate commerce if State or other conciliation services are available to the parties. Whenever the Service does proffer its services in any dispute, it shall be the duty of the Service promptly to put itself in communication with the parties and to use its best efforts, by mediation and conciliation, to bring them to agreement.

(c) [Settlement of disputes by other means upon failure of conciliation] If the Director is not able to bring the parties to agreement by conciliation within a reasonable time, he shall seek to induce the parties voluntarily to seek other means of settling the dispute without resort to strike, lockout, or other coercion, including submission to the employees in the bargaining unit of the employer's last offer of settlement for approval or rejection in a secret ballot. The failure or refusal of either party to agree to any procedure suggested by the Director shall not be deemed a violation of any duty or obligation imposed by this Act [chapter].

(d) [Use of conciliation and mediation services as last resort] Final adjustment by a method agreed upon by the parties is declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective-bargaining agreement. The Service is directed to make its conciliation and mediation services available in the settlement of such grievance disputes only as a last resort and in exceptional cases.

(e) [Encouragement and support of establishment and operation of joint labor management activities conducted by committees] The Service is authorized and directed to encourage and support the establishment and operation of joint labor management activities conducted by plant, area, and industrywide committees designed to improve labor management relationships, job security and organizational effectiveness, in accordance with the provisions of section 205A [section 175a of this title].

[Pub. L. 95–524, § 6(c)(1), Oct. 27, 1978, 92 Stat. 2020, added subsec. (e).]

Sec. 204. [§ 174. Co-equal obligations of employees, their representatives, and management to minimize labor disputes] (a) In order to prevent or minimize interruptions of the free flow of commerce growing out of labor disputes, employers and employees and their representatives, in any industry affecting commerce, shall—

(1) exert every reasonable effort to make and maintain agreements concerning rates of pay, hours, and working conditions, including provision for adequate notice of any proposed change in the terms of such agreements;

(2) whenever a dispute arises over the terms or application of a collective-bargaining agreement and a conference is requested by a party or prospective party thereto, arrange promptly for such a conference to be held and endeavor in such conference to settle such dispute expeditiously; and

(3) in case such dispute is not settled by conference, participate fully and promptly in such meetings as may be undertaken by the Service under this Act [chapter] for the purpose of aiding in a settlement of the dispute.

Sec. 205. [§175. National Labor-Management Panel; creation and composition; appointment, tenure, and compensation; duties] (a) There

is created a National Labor-Management Panel which shall be composed of twelve members appointed by the President, six of whom shall be elected from among persons outstanding in the field of management and six of whom shall be selected from among persons outstanding in the field of labor. Each member shall hold office for a term of three years, except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, and the terms of office of the members first taking office shall expire, as designated by the President at the time of appointment, four at the end of the first year, four at the end of the second year, and four at the end of the third year after the date of appointment. Members of the panel, when serving on business of the panel, shall be paid compensation at the rate of $25 per day, and shall also be entitled to receive an allowance for actual and necessary travel and subsistence expenses while so serving away from their places of residence.

(b) It shall be the duty of the panel, at the request of the Director, to advise in the avoidance of industrial controversies and the manner in which mediation and voluntary adjustment shall be administered, particularly with reference to controversies affecting the general welfare of the country.

Sec. 205A. [§ 175a. Assistance to plant, area, and industrywide labor management committees]

(a) [Establishment and operation of plant, area, and industrywide committees] (1) The Service is authorized and directed to provide assistance in the establishment and operation of plant, area and industrywide labor management committees which—

(A) have been organized jointly by employers and labor organizations representing employees in that plant, area, or industry; and

(B) are established for the purpose of improving labor management relationships, job security, organizational effectiveness, enhancing economic development or involving workers in decisions affecting their jobs including improving communication with respect to subjects of mutual interest and concern.

(2) The Service is authorized and directed to enter into contracts and to make grants, where necessary or appropriate, to fulfill its responsibilities under this section.

(b) [Restrictions on grants, contracts, or other assistance] (1) No grant may be made, no contract may be entered into and no other assistance may be provided under the provisions of this section to a plant labor management committee unless the employees in that plant are represented by a labor organization and there is in effect at that plant a collective bargaining agreement.

(2) No grant may be made, no contract may be entered into and no other assistance may be provided under the provisions of this section to

an area or industrywide labor management committee unless its participants include any labor organizations certified or recognized as the representative of the employees of an employer participating in such committee. Nothing in this clause shall prohibit participation in an area or industrywide committee by an employer whose employees are not represented by a labor organization.

(3) No grant may be made under the provisions of this section to any labor management committee which the Service finds to have as one of its purposes the discouragement of the exercise of rights contained in section 7 of the National Labor Relations Act (29 U.S.C. § 157) [section 157 of this title], or the interference with collective bargaining in any plant, or industry.

(c) [Establishment of office] The Service shall carry out the provisions of this section through an office established for that purpose.

(d) [Authorization of appropriations] There are authorized to be appropriated to carry out the provisions of this section $10,000,000 for the fiscal year 1979, and such sums as may be necessary thereafter.

[Pub. L. 95–524, § 6(c)(2), Oct. 27, 1978, 92 Stat. 2020, added Sec. 205A.]

NATIONAL EMERGENCIES

Sec. 206. [§ 176. Appointment of board of inquiry by President; report; contents; filing with Service] Whenever in the opinion of the President of the United States, a threatened or actual strike or lockout affecting an entire industry or a substantial part thereof engaged in trade, commerce, transportation, transmission, or communication among the several States or with foreign nations, or engaged in the production of goods for commerce, will, if permitted to occur or to continue, imperil the national health or safety, he may appoint a board of inquiry to inquire into the issues involved in the dispute and to make a written report to him within such time as he shall prescribe. Such report shall include a statement of the facts with respect to the dispute, including each party's statement of its position but shall not contain any recommendations. The President shall file a copy of such report with the Service and shall make its contents available to the public.

Sec. 207. [§ 177. Board of inquiry]

(a) [Composition] A board of inquiry shall be composed of a chairman and such other members as the President shall determine, and shall have power to sit and act in any place within the United States and to conduct such hearings either in public or in private, as it may deem necessary or proper, to ascertain the facts with respect to the causes and circumstances of the dispute.

(b) [Compensation] Members of a board of inquiry shall receive compensation at the rate of $50 for each day actually spent by them in the work of the board, together with necessary travel and subsistence expenses.

(c) **[Powers of discovery]** For the purpose of any hearing or inquiry conducted by any board appointed under this title, the provisions of sections 49 and 50 of title 15, United States Code [sections 49 and 50 of title 15] (relating to the attendance of witnesses and the production of books, papers, and documents) are made applicable to the powers and duties of such board.

Sec. 208. [§ 178. Injunctions during national emergency]

(a) [Petition to district court by Attorney General on direction of President] Upon receiving a report from a board of inquiry the President may direct the Attorney General to petition any district court of the United States having jurisdiction of the parties to enjoin such strike or lockout or the continuing thereof, and if the court finds that such threatened or actual strike or lockout—

(i) affects an entire industry or a substantial part thereof engaged in trade, commerce, transportation, transmission, or communication among the several States or with foreign nations, or engaged in the production of goods for commerce; and

(ii) if permitted to occur or to continue, will imperil the national health or safety, it shall have jurisdiction to enjoin any such strike or lockout, or the continuing thereof, and to make such other orders as may be appropriate.

(b) [Inapplicability of chapter 6] In any case, the provisions of sections 101 to 115 of title 29, United States Code [chapter 6 of this title] [known as the "Norris-LaGuardia Act"] shall not be applicable.

(c) [Review of orders] The order or orders of the court shall be subject to review by the appropriate United States court of appeals and by the Supreme Court upon writ of certiorari or certification as provided in section 1254 of title 28, United States Code [section 1254 of title 28].

Sec. 209. [§ 179. Injunctions during national emergency; adjustment efforts by parties during injunction period]

(a) [Assistance of Service; acceptance of Service's proposed settlement] Whenever a district court has issued an order under section 208 [section 178 of this title] enjoining acts or practices which imperil or threaten to imperil the national health or safety, it shall be the duty of the parties to the labor dispute giving rise to such order to make every effort to adjust and settle their differences, with the assistance of the Service created by this Act [chapter]. Neither party shall be under any duty to accept, in whole or in part, any proposal of settlement made by the Service.

(b) [Reconvening of board of inquiry; report by board; contents; secret ballot of employees by National Labor Relations Board; certification of results to Attorney General] Upon the issuance of such order, the President shall reconvene the board of inquiry which has previously reported with respect to the dispute. At the end of a sixty-day period (unless the dispute has been settled by that time), the board of inquiry

shall report to the President the current position of the parties and the efforts which have been made for settlement, and shall include a statement by each party of its position and a statement of the employer's last offer of settlement. The President shall make such report available to the public. The National Labor Relations Board, within the succeeding fifteen days, shall take a secret ballot of the employees of each employer involved in the dispute on the question of whether they wish to accept the final offer of settlement made by their employer, as stated by him and shall certify the results thereof to the Attorney General within five days thereafter.

Sec. 210. [§ 180. Discharge of injunction upon certification of results of election or settlement; report to Congress] Upon the certification of the results of such ballot or upon a settlement being reached, whichever happens sooner, the Attorney General shall move the court to discharge the injunction, which motion shall then be granted and the injunction discharged. When such motion is granted, the President shall submit to the Congress a full and comprehensive report of the proceedings, including the findings of the board of inquiry and the ballot taken by the National Labor Relations Board, together with such recommendations as he may see fit to make for consideration and appropriate action.

COMPILATION OF COLLECTIVE-BARGAINING AGREEMENTS, ETC.

Sec. 211. [§ 181.] (a) For the guidance and information of interested representatives of employers, employees, and the general public, the Bureau of Labor Statistics of the Department of Labor shall maintain a file of copies of all available collective bargaining agreements and other available agreements and actions thereunder settling or adjusting labor disputes. Such file shall be open to inspection under appropriate conditions prescribed by the Secretary of Labor, except that no specific information submitted in confidence shall be disclosed.

(b) The Bureau of Labor Statistics in the Department of Labor is authorized to furnish upon request of the Service, or employers, employees, or their representatives, all available data and factual information which may aid in the settlement of any labor dispute, except that no specific information submitted in confidence shall be disclosed.

EXEMPTION OF RAILWAY LABOR ACT

Sec. 212. [§ 182.] The provisions of this title [subchapter] shall not be applicable with respect to any matter which is subject to the provisions of the Railway Labor Act [45 U.S.C. § 151 et seq.], as amended from time to time.

CONCILIATION OF LABOR DISPUTES IN THE HEALTH CARE INDUSTRY

Sec. 213. [§ 183.] (a) [Establishment of Boards of Inquiry; membership] If, in the opinion of the Director of the Federal Mediation and

Conciliation Service, a threatened or actual strike or lockout affecting a health care institution will, if permitted to occur or to continue, substantially interrupt the delivery of health care in the locality concerned, the Director may further assist in the resolution of the impasse by establishing within 30 days after the notice to the Federal Mediation and Conciliation Service under clause (A) of the last sentence of section 8(d) [section 158(d) of this title] (which is required by clause (3) of such section 8(d) [section 158(d) of this title]), or within 10 days after the notice under clause (B), an impartial Board of Inquiry to investigate the issues involved in the dispute and to make a written report thereon to the parties within fifteen (15) days after the establishment of such a Board. The written report shall contain the findings of fact together with the Board's recommendations for settling the dispute, with the objective of achieving a prompt, peaceful and just settlement of the dispute. Each such Board shall be composed of such number of individuals as the Director may deem desirable. No member appointed under this section shall have any interest or involvement in the health care institutions or the employee organizations involved in the dispute.

(b) [Compensation of members of Boards of Inquiry] (1) Members of any board established under this section who are otherwise employed by the Federal Government shall serve without compensation but shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in carrying out its duties under this section.

(2) Members of any board established under this section who are not subject to paragraph (1) shall receive compensation at a rate prescribed by the Director but not to exceed the daily rate prescribed for GS–18 of the General Schedule under section 5332 of title 5, United States Code [section 5332 of title 5], including travel for each day they are engaged in the performance of their duties under this section and shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred by them in carrying out their duties under this section.

(c) [Maintenance of status quo] After the establishment of a board under subsection (a) of this section and for 15 days after any such board has issued its report, no change in the status quo in effect prior to the expiration of the contract in the case of negotiations for a contract renewal, or in effect prior to the time of the impasse in the case of an initial bargaining negotiation, except by agreement, shall be made by the parties to the controversy.

(d) [Authorization of appropriations] There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.

TITLE III

[Title 29, Chapter 7, Subchapter IV, United States Code]

SUITS BY AND AGAINST LABOR ORGANIZATIONS

Sec. 301. [§ 185.] (a) [Venue, amount, and citizenship] Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act [chapter], or between any such labor organization, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

(b) [Responsibility for acts of agent; entity for purposes of suit; enforcement of money judgments] Any labor organization which represents employees in an industry affecting commerce as defined in this Act [chapter] and any employer whose activities affect commerce as defined in this Act [chapter] shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

(c) [Jurisdiction] For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal offices, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

(d) [Service of process] The service of summons, subpoena, or other legal process of any court of the United States upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization.

(e) [Determination of question of agency] For the purposes of this section, in determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

RESTRICTIONS ON PAYMENTS TO EMPLOYEE REPRESENTATIVES

Sec. 302. [§ 186.] (a) [Payment or lending, etc., of money by employer or agent to employees, representatives, or labor organizations] It shall be unlawful for any employer or association of employers or any person who acts as a labor relations expert, adviser, or consultant to an employer or who acts in the interest of an employer to pay, lend, or

deliver, or agree to pay, lend, or deliver, any money or other thing of value—

(1) to any representative of any of his employees who are employed in an industry affecting commerce; or

(2) to any labor organization, or any officer or employee thereof, which represents, seeks to represent, or would admit to membership, any of the employees of such employer who are employed in an industry affecting commerce;

(3) to any employee or group or committee of employees of such employer employed in an industry affecting commerce in excess of their normal compensation for the purpose of causing such employee or group or committee directly or indirectly to influence any other employees in the exercise of the right to organize and bargain collectively through representatives of their own choosing; or

(4) to any officer or employee of a labor organization engaged in an industry affecting commerce with intent to influence him in respect to any of his actions, decisions, or duties as a representative of employees or as such officer or employee of such labor organization.

(b) [Request, demand, etc., for money or other thing of value]

(1) It shall be unlawful for any person to request, demand, receive, or accept, or agree to receive or accept, any payment, loan, or delivery of any money or other thing of value prohibited by subsection (a) [of this section].

(2) It shall be unlawful for any labor organization, or for any person acting as an officer, agent, representative, or employee of such labor organization, to demand or accept from the operator of any motor vehicle (as defined in part II of the Interstate Commerce Act [49 U.S.C. § 301 et seq.]) employed in the transportation of property in commerce, or the employer of any such operator, any money or other thing of value payable to such organization or to an officer, agent, representative or employee thereof as a fee or charge for the unloading, or in connection with the unloading, of the cargo of such vehicle: *Provided*, That nothing in this paragraph shall be construed to make unlawful any payment by an employer to any of his employees as compensation for their services as employees.

(c) [Exceptions] The provisions of this section shall not be applicable (1) in respect to any money or other thing of value payable by an employer to any of his employees whose established duties include acting openly for such employer in matters of labor relations or personnel administration or to any representative of his employees, or to any officer or employee of a labor organization, who is also an employee or former employee of such employer, as compensation for, or by reason of, his service as an employee of such employer; (2) with respect to the payment or delivery of any money or other thing of value in satisfaction of a judgment of any court or a decision or award of an arbitrator or impartial chairman or in compromise, adjustment, settlement, or release of any claim, complaint,

grievance, or dispute in the absence of fraud or duress; (3) with respect to the sale or purchase of an article or commodity at the prevailing market price in the regular course of business; (4) with respect to money deducted from the wages of employees in payment of membership dues in a labor organization: *Provided*, That the employer has received from each employee, on whose account such deductions are made, a written assignment which shall not be irrevocable for a period of more than one year, or beyond the termination date of the applicable collective agreement, whichever occurs sooner; (5) with respect to money or other thing of value paid to a trust fund established by such representative, for the sole and exclusive benefit of the employees of such employer, and their families and dependents (or of such employees, families, and dependents jointly with the employees of other employers making similar payments, and their families and dependents): *Provided*, That (A) such payments are held in trust for the purpose of paying, either from principal or income or both, for the benefit of employees, their families and dependents, for medical or hospital care, pensions on retirement or death of employees, compensation for injuries or illness resulting from occupational activity or insurance to provide any of the foregoing, or unemployment benefits or life insurance, disability and sickness insurance, or accident insurance; (B) the detailed basis on which such payments are to be made is specified in a written agreement with the employer, and employees and employers are equally represented in the administration of such fund, together with such neutral persons as the representatives of the employers and the representatives of employees may agree upon and in the event the employer and employee groups deadlock on the administration of such fund and there are no neutral persons empowered to break such deadlock, such agreement provides that the two groups shall agree on an impartial umpire to decide such dispute, or in event of their failure to agree within a reasonable length of time, an impartial umpire to decide such dispute shall, on petition of either group, be appointed by the district court of the United States for the district where the trust fund has its principal office, and shall also contain provisions for an annual audit of the trust fund, a statement of the results of which shall be available for inspection by interested persons at the principal office of the trust fund and at such other places as may be designated in such written agreement; and (C) such payments as are intended to be used for the purpose of providing pensions or annuities for employees are made to a separate trust which provides that the funds held therein cannot be used for any purpose other than paying such pensions or annuities; (6) with respect to money or other thing of value paid by any employer to a trust fund established by such representative for the purpose of pooled vacation, holiday, severance or similar benefits, or defraying costs of apprenticeship or other training programs: *Provided*, That the requirements of clause (B) of the proviso to clause (5) of this subsection shall apply

to such trust funds; (7) with respect to money or other thing of value paid by any employer to a pooled or individual trust fund established by such representative for the purpose of (A) scholarships for the benefit of employees, their families, and dependents for study at educational institutions, (B) child care centers for preschool and school age dependents of employees, or (C) financial assistance for employee housing: *Provided*, That no labor organization or employer shall be required to bargain on the establishment of any such trust fund, and refusal to do so shall not constitute an unfair labor practice: *Provided further*, That the requirements of clause (B) of the proviso to clause (5) of this subsection shall apply to such trust funds; (8) with respect to money or any other thing of value paid by any employer to a trust fund established by such representative for the purpose of defraying the costs of legal services for employees, their families, and dependents for counsel or plan of their choice: *Provided*, That the requirements of clause (B) of the proviso to clause (5) of this subsection shall apply to such trust funds: *Provided further*, That no such legal services shall be furnished: (A) to initiate any proceeding directed (i) against any such employer or its officers or agents except in workman's compensation cases, or (ii) against such labor organization, or its parent or subordinate bodies, or their officers or agents, or (iii) against any other employer or labor organization, or their officers or agents, in any matter arising under the National Labor Relations Act, or this Act [under subchapter II of this chapter or this chapter]; and (B) in any proceeding where a labor organization would be prohibited from defraying the costs of legal services by the provisions of the Labor-Management Reporting and Disclosure Act of 1959 [29 U.S.C. § 401 et seq.]; or (9) with respect to money or other things of value paid by an employer to a plant, area or industrywide labor management committee established for one or more of the purposes set forth in section 5(b) of the Labor Management Cooperation Act of 1978.

[Sec. 302(c)(7) was added by Pub. L. 91–86, Oct. 14, 1969, 83 Stat. 133; Sec. 302(c)(8) by Pub. L. 93–95, Aug. 15, 1973, 87 Stat. 314; Sec. 302(c)(9) by Pub. L. 95–524, Oct. 27, 1978, 92 Stat. 2021; and Sec. 302(c)(7) was amended by Pub. L. 101–273, Apr. 18, 1990, 104 Stat. 138.]

(d) [Penalty for violations] Any person who willfully violates any of the provisions of this section shall, upon conviction thereof, be guilty of a misdemeanor and be subject to a fine of not more than $10,000 or to imprisonment for not more than one year, or both.

(e) [Jurisdiction of courts] The district courts of the United States and the United States courts of the Territories and possessions shall have jurisdiction, for cause shown, and subject to the provisions of rule 65 of the Federal Rules of Civil Procedure [section 381 (repealed) of title 28] (relating to notice to opposite party) to restrain violations of this section, without regard to the provisions of section 7 of title 15 and section 52

of title 29, United States Code [of this title] [known as the "Clayton Act"], and the provisions of sections 101 to 115 of title 29, United States Code [chapter 6 of this title] [known as the "Norris-LaGuardia Act"].

(f) [Effective date of provisions] This section shall not apply to any contract in force on June 23, 1947, until the expiration of such contract, or until July 1, 1948, whichever first occurs.

(g) [Contributions to trust funds] Compliance with the restrictions contained in subsection (c)(5)(B) [of this section] upon contributions to trust funds, otherwise lawful, shall not be applicable to contributions to such trust funds established by collective agreement prior to January 1, 1946, nor shall subsection (c)(5)(A) [of this section] be construed as prohibiting contributions to such trust funds if prior to January 1, 1947, such funds contained provisions for pooled vacation benefits.

BOYCOTTS AND OTHER UNLAWFUL COMBINATIONS

Sec. 303. [§ 187.] (a) It shall be unlawful, for the purpose of this section only, in an industry or activity affecting commerce, for any labor organization to engage in any activity or conduct defined as an unfair labor practice in section 8(b)(4) of the National Labor Relations Act [section 158(b)(4) of this title].

(b) Whoever shall be injured in his business or property by reason of any violation of subsection (a) [of this section] may sue therefor in any district court of the United States subject to the limitation and provisions of section 301 hereof [section 185 of this title] without respect to the amount in controversy, or in any other court having jurisdiction of the parties, and shall recover the damages by him sustained and the cost of the suit.

RESTRICTION ON POLITICAL CONTRIBUTIONS

Sec. 304. Repealed.

[See sec. 316 of the Federal Election Campaign Act of 1972, 2 U.S.C. § 441b.]

Sec. 305.[§ 188.] Strikes by Government employees. Repealed.

[See 5 U.S.C. § 7311 and 18 U.S.C. § 1918.]

TITLE IV

[Title 29, Chapter 7, Subchapter V, United States Code]

CREATION OF JOINT COMMITTEE TO STUDY AND REPORT ON BASIC PROBLEMS AFFECTING FRIENDLY LABOR RELATIONS AND PRODUCTIVITY

Secs. 401–407. [§§ 191–197.] Omitted.

TITLE V

[Title 29, Chapter 7, Subchapter I, United States Code]

DEFINITIONS

Sec. 501. [§ 142.] When used in this Act [chapter]—

(1) The term "industry affecting commerce" means any industry or activity in commerce or in which a labor dispute would burden or obstruct commerce or tend to burden or obstruct commerce or the free flow of commerce.

(2) The term "strike" includes any strike or other concerted stoppage of work by employees (including a stoppage by reason of the expiration of a collective-bargaining agreement) and any concerted slowdown or other concerted interruption of operations by employees.

(3) The terms "commerce," "labor disputes," "employer," "employee," "labor organization," "representative," "person," and "supervisor" shall have the same meaning as when used in the National Labor Relations Act as amended by this Act [in subchapter II of this chapter].

SAVING PROVISION

Sec. 502. [§ 143.] [Abnormally dangerous conditions] Nothing in this Act [chapter] shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this Act [chapter] be construed to make the quitting of his labor by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent; nor shall the quitting of labor by an employee or employees in good faith because of abnormally dangerous conditions for work at the place of employment of such employee or employees be deemed a strike under this Act [chapter].

SEPARABILITY

Sec. 503. [§ 144.] If any provision of this Act [chapter], or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act [chapter], or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.