# Unions may get a powerful new weapon

■ *If passed, the Employee Free Choice Act could make it easier for unions to organize, require employers to go to mediation or arbitration, and raise penalties for employers who violate labor laws.*

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So that great new worker you just hired, the one with impeccable credentials and great references, wasn't a worker after all. At least, that's not all he was. He was also a union organizer and now he is using every available opportunity to talk to your employees about joining the union.

This tactic, known as salting, is a particularly effective tool in the organizer's arsenal and it may become even more powerful later this year.

CONSTRUCTION INDUSTRY SPOTLIGHT

The 110th U.S. Congress will begin today. For the first time in 12 years the Democrats will control both the House and the Senate. Among the many issues that our legislators will address will be one of particular interest to contractors and other employers in union-heavy industries: the Employee Free Choice Act.

The Employee Free Choice Act or EFCA (H.R. 1696 and S. 842) is the first major attempt to reform labor law in decades. The EFCA had, as of April 2005, 214 co-sponsors in the House, just four shy of a majority, and 44 co-sponsors in the Senate, seven short of a majority. Although the bill must still dodge the veto power of the President, after last November's election, there is a real possibility of this bill passing both houses of Congress.

What would the proposed legislation and its passage mean for the construction industry nationwide and here in Washington?

The EFCA proposes three major changes to the current law. It would:

**1.** Require employers to recognize a union as the exclusive bargaining agent for their employees based solely on the "card check" process rather than the secret ballot election that has been in use for decades.

**2.** Require employers to submit to binding mediation or arbitration of first contracts with the new union.

**3.** Impose stiff penalties on employers for violations of the act, including court-imposed restraining orders, treble back pay damages and civil fines up to $20,000 per violation.

## The card check

Workers can organize and join unions through a secret ballot election conducted by the National Labor Relations Board. The NLRB conducts an election if a group of workers can show support of at least 30 percent of their fellow workers. Support is usually garnered through a "card check" process.

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If organizers can collect signed authorization cards from 30 percent of the workers in a given bargaining unit, they can hold an election. While there may be pressure from organizers and even co-workers to sign these cards, the employees are free to vote as they wish when the election is held.

However, if the EFCA were to become law, employees could bypass the election process entirely and move straight to the "card check" process. Suddenly, that organizer you hired can do more than just pressure your workers into an election. Those cards can single-handedly certify a union as your employees' new bargaining representative.

## First contracts

In the past, once a union was certified as the bargaining representative, the employer and the union would settle down to the task at hand — namely, bargaining. Both sides are required by law to bargain in good faith and attempt to reach a reasonable agreement.

If the EFCA becomes law, the employer has 90 days to reach an agreement with the union. If the parties cannot agree on the terms of the agreement within 90 days, either party may refer the dispute for mediation. If mediation fails to bring the employer and the union together within 30 days, the case will be referred to arbitration, the results of which will bind the parties for two years.

## New teeth for an old act

Perhaps the most striking provisions of the EFCA are the new penalties employers could face for violations of the National Labor Relations Act during the organizing or bargaining processes. These new provisions:

- Require the NLRB to seek a federal court injunction or restraining order against an employer whenever there is reasonable cause to believe the employer has committed a violation of the NLRA during an organizing campaign or first contract drive.
- Increase to three times back pay the amount an employer is required to pay a worker who was discharged or discriminated against during an organizing campaign or first contract drive.
- Provide civil fines of up to $20,000 per violation against employers found to have willfully or repeatedly violated the NLRA during an organizing campaign or first contract drive.

You may be thinking that these penalties couldn't apply to you. After all, you would never dream of "willfully or repeatedly" violating anybody's rights, and certainly not your workers'. Well, remember that salt you hired? He is not alone. There is another way unions use salters that may prove even more dangerous if the EFCA becomes law.

Imagine a host of such applicants coming to your jobsite requesting employment. Now imagine that instead of pretending to be qualified applicants looking for an honest day's work, they are wearing union hats and buttons and openly proclaim that their primary goal is to organize your workplace. Would you hire such applicants? Not likely. But refusing to hire such applicants may be a violation of the NLRA which could lead to very expensive and inconvenient penalties, diverting energy from what you should really be doing — building construction projects.

Regardless of whether the EFCA becomes law or not, navigating the legal landscape of labor relations requires competent professional advice.

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