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The Mandatory Card-Check Bill Would Adversely Impact Right to Work States

Some mistakenly believe that the misnamed “Employee Free Choice Act” (EFCA) will have little or no effect in Right to Work states. In fact, EFCA will significantly enhance labor unions’ ability to organize in Right to Work states.

Right to Work laws and constitutional provisions give employees the right to refrain from joining a union or paying union dues when a union is recognized in their workplace. However, Right to Work provisions do not prevent unions from obtaining monopoly bargaining power. Passage of EFCA will make organized labor’s job easier in all 50 states. As soon as a union collects signed authorization cards from a majority of workers in a bargaining unit, the union is certified, the employer must bargain with it, and individual employees no longer can negotiate their own terms and conditions of employment with their employer. Card check empowers unions in several ways. First, unlike the secret ballot, it forces workers to make decisions about unionization in front of union organizers and exposes workers to intimidation by those organizers. In addition, card-check campaigns frequently result in employees signing cards when they have only heard one side of the story, the uncorroborated claims or misrepresentations of union organizers, without hearing management’s perspective. In addition, because unions can define the scope of the bargaining unit, they can manipulate the numbers – if they can’t get a majority of the entire workforce, perhaps they can get a majority of a particular sub-set of employees.

After a union successfully organizes, if the employer and union do not agree on a contract in 90 days, the matter goes to mediation, and, 30 days later, to binding interest arbitration in which a government arbitrator would set all terms of the union contract. In addition to wages and other terms and conditions of employment, union contracts cover things like the extent to which the employer may out-source work and application of the union contract to employees in new business units. Arbitrators may rule on not just mandatory subjects of bargaining, but permissive subjects as well, such as “neutrality clauses” for future organizing. Moreover, bargaining unit workers would not be able to vote to ratify or reject the contract the arbitrator imposes. In addition, EFCA would increase monetary penalties against employers – only – for unfair labor practices during organizing drives and first-contract negotiations, and effectively treat employers as “guilty until proven innocent” if they discharge workers during an organizing drive, making it significantly more difficult for employers to discharge workers for legitimate reasons during organizing drives. The threat of large fines might also deter employers from informing their employees truthfully about the disadvantages of unionization, thus depriving the workers of both sides of the issue in deciding whether to sign union authorization cards.

Although employees could opt out of paying dues in Right to Work states if a union were certified under EFCA’s card-check provisions, employers would still have to deal with more unions, government-imposed union contracts, and increased damages, and more workers would be subjected to union representatives whom they do not want.