

THE REALITY OF “CARD CHECK” UNION ORGANIZING:

IS YOUR COMPANY PREPARED?

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The Employee Free Choice Act

What is EFCA?

- ▶ Changes the National Labor Relations Act to promote unionization of the workforce
- ▶ Requires recognition of the union if a majority of employees of the bargaining unit sign authorization cards
- ▶ Provides for binding arbitration if a collective bargaining agreement is not signed within 90 days
- ▶ Significantly increases penalties for “unfair labor practices”

THE LEGAL FRAMEWORK

- ▶ National Labor Relations Act
- ▶ National Labor Relations Board
- ▶ Election Procedure
- ▶ Unfair Labor Practice Procedure

CURRENT ELECTION PROCEDURE

- ▶ 30% of employees must sign A-Cards
- ▶ NLRB conducts secret ballot election in 4 – 6 weeks
- ▶ You can educate your employees about the union
- ▶ If union wins, contract negotiations start
- ▶ Negotiations can continue indefinitely

EFCA UNIONIZATION PROCESS

- ▶ Establishes “card check” recognition
- ▶ Simple majority for recognition (50% plus 1 of the “bargaining unit”)
- ▶ No employer notification
- ▶ NLRB determines validity of the cards based on list of eligible employees
- ▶ No signature verification

How Will the Process Work?

- ▶ Disgruntled employee contacts the union
- ▶ Union representative explains process and coaches the employee
- ▶ Employee distributes cards at work or at free pizza party arranged by the union
- ▶ Employee gives signed cards to union rep
- ▶ Union rep files petition with the NLRB
- ▶ Congratulations! You are unionized and you never saw it coming

What does a union authorization card look like?

The card can be any size, any shape, any color and it can contain any language or information as long as it contains the following language suggested by the National Labor Relations Board:

"I hereby authorize [name of the union] to represent me for the purposes of collective bargaining."

Traditional Authorization Card

Sample Card

LOCAL UNION #88, I.B.E.W.

We believe that only through collective bargaining can we have a voice in our work place. We have had experience for all, excellent job security and fair benefits, wages and working conditions. Therefore, I do hereby authorize I, of Loc. I.B.E.W. to represent me in collective bargaining with the employer.

PLEASE PRINT:

NAME: _____

EMPLOYER NAME: _____ DATE: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP: _____ PHONE: _____

EMP# _____ DEPARTMENT: _____

SIGNATURE:

NOTE: This authorization is an appeal and does not constitute an offer of employment. Your right to sign this card is protected by Federal Law.

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Pizza Party Sign-In

- ▶ Authorization language can be buried in pages of text and pictures
- ▶ Authorization is valid even if the employee is under the influence of alcohol

Clever Authorization Card

Sign up to fight the union bosses with American Solutions and the Workforce Fairness Institute and enter a drawing to

Wiin a Wii

Join our campaign to defeat the Employee ~~Free~~ **FORCED** Choice Act

Last Name:

First Name:

E-Mail Address:

Sponsored by American Solutions and the Workforce Fairness Institute. Visit us on the web at www.AmericanSolutions.com or WorkforceFairness.com

CURRENT BARGAINING PROCESS

- ▶ If union wins election, the employer must negotiate in good faith for a reasonable length of time.
- ▶ The employer is not required to enter into a contract.

EFCA BARGAINING PROCESS

- ▶ Negotiations must begin within 10 days after the union is certified.
- ▶ Negotiations limited to 90 days.
- ▶ After 90 days, the Federal Mediation and Conciliation Service attempts to resolve any disputed issues within 30 days.
- ▶ After 30 days the case is referred to an arbitration board.
- ▶ The arbitration board writes a contract binding on both parties for at least 2 years.

HOW IT WILL WORK

- ▶ The employer and union meet within 10 days.
- ▶ Union presents their model contract.
- ▶ Union drags their feet on negotiations, making no concessions.
- ▶ Mediation is unsuccessful.
- ▶ Arbitration Board writes a contract based on the union's model contract with few, if any, changes.

EFCA PENALTY PROVISIONS

- ▶ Accelerated investigation of unfair labor practice charges.
- ▶ Triple back pay awards.
- ▶ \$20,000 fine for each unfair labor practice in addition to back pay.

HISTORY OF EFCA?

- ▶ Legislation currently pending in Congress.
- ▶ Sponsored by all labor unions.
- ▶ Passed the House March 1, 2007.
- ▶ Majority support in Senate June 26, 2007, but blocked by Republican filibuster.
- ▶ President Obama has promised to sign it.
- ▶ Supported by most Democrats in Congress.
- ▶ Reintroduced in both House and Senate in March 2009.

LIKELIHOOD OF PASSAGE

- ▶ Will easily pass House of Representatives.
- ▶ Tough call in the Senate.
- ▶ 60 votes needed to defeat filibuster.
- ▶ As of April 27, Democrats held 58 seats.
- ▶ Minnesota's Al Franken likely to prevail in court challenge of election results.
- ▶ On April 28, Pennsylvania's Arlen Specter switched from Republican Party to Democratic Party.

OMG! WHAT IF IT PASSES?



ALL IS NOT LOST!

- ▶ Start now.
- ▶ Self-evaluate your vulnerability.
- ▶ Train your supervisors.
- ▶ Educate your employees and new hires.
- ▶ Communicate, communicate, communicate.

EVALUATE YOUR RISK

- ▶ Are your employees treated fairly?
 - Wages
 - Discipline
 - Terminations
 - Promotions
 - Policies and Procedures
 - Are your employees treated with dignity and respect?

EVALUATE YOUR RISK

- ▶ How well do you communicate with your employees?
 - Do you have a complaint procedure?
 - Do you respond to complaints?
 - Do you keep hourly employees informed about the status of the Company?
 - Do you effectively inform hourly employees about your compensation and benefit plans?

TRAIN YOUR SUPERVISORS

- ▶ Basic supervisory skills
 - Hiring
 - Discipline
 - Termination
 - Avoiding harassment and discrimination
 - Company policies and procedures
 - Communication skills

TRAIN YOUR SUPERVISORS

- ▶ Union warning signs
 - Strangers meeting with employees
 - Changes in employee performance
 - Increase in employee complaints
 - Employees collecting contact information
 - Unusual employee meetings or gatherings
 - Rumors of union activity
 - Union authorization cards or literature
 - Changes in employee attitudes
 - Union activity nearby or at competitors

TRAIN YOUR SUPERVISORS

What they can or cannot say or do

T I P S

- ▶ Threaten employees
- ▶ Interrogate employees
- ▶ Promises to employees
- ▶ Spying on employees

TRAIN YOUR SUPERVISORS

- ▶ What to do if the union shows up
 - Be professional
 - Request that they leave the jobsite
 - Call the police if they don't leave
 - Don't accept material from union reps
 - Don't get drawn into a physical confrontation
 - Report the visit to appropriate company officials

TAKE AFFIRMATIVE ACTION

- ▶ Improve your hiring program
 - Better interviews
 - Skill Testing
 - Background checks
- ▶ Eliminate marginal or worse employees
- ▶ Maintain a consistent discipline practice
- ▶ Maintain an effective employee orientation
 - Clearly explain your position on unions
 - Consider an orientation video about unions

TAKE AFFIRMATIVE ACTION

- ▶ Evaluate and update your employee policies and procedures
- ▶ Evaluate and update your employee handbook
- ▶ Review your compensation and benefits
- ▶ Tear down all ivory towers

**The Reality of “Card Check” Union Organizing:
Is Your Company Prepared?**

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Donald Cope is a Sacramento, California based attorney with over 15 years of experience representing management in employment and labor relations matters. Prior to attending law school, Mr. Cope worked in the oil and gas industry for 17 years as a petroleum engineer and manager. Combining his management experience and legal knowledge, Mr. Cope utilizes a practical approach to assist his clients in avoiding workplace disputes.