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60. Extra Credit: (Submit additional activity not mentioned anywhere in the program). Provide evidence.



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The following pages are examples of education material that members of the CHA Labor Relations Task Force created, as a result of the November 2008 CHAHRM meeting. All materials are available to any healthcare organization in Colorado to revise and personalize and use in their own organizations.

# What is the *Employee Free Choice Act*?

The Employee Free Choice Act is legislation expected to be introduced into congress in the first 100 days of the new Administration that would radically affect the rights of both employees and employers with regards to union representation. Under the new law, it is the employee's signature that union representatives want and need. In addition, under the proposed law employees lose both your right to vote and your right to a secret ballot election!

Under the Current Law, the <i>National Labor Relations Act</i>	Under the Proposed <i>Employee Free Choice Act</i>
30% of employees signing an Authorization Card, triggers a <b>secret</b> ballot election overseen by the National Labor Relations Board.	There is no longer a secret ballot election. <ul style="list-style-type: none"> <li>• Instead, Union representation is awarded based on a majority (50% + 1) of signed authorization cards which are counted regardless of the union obtained them.</li> </ul>
Employees have the opportunity to hear from their employer <i>and</i> the union before committing to representation during a secret ballot election.	Employees may only hear one-sided information or what is necessary to get them to sign an authorization card. Remember, only a signed Authorization Card is necessary for representation.
Employees may "Vote" on a Union Contract.	Employees may no longer vote on a contract.  If a contract is not reached with-in 120 days, an arbitrator makes the contract decisions, not employees.
If a union is voted in, they can not be decertified within the first year. <ul style="list-style-type: none"> <li>• If a contract is not reach within the first year, employees may currently decertify a union.</li> <li>• If a contact is reached, employees may not decertify a union for the duration of the contact.</li> </ul>	Employees must wait 24 months (2 years) before initiating de-certification of a union, all the while paying dues.


For more information on the Employee Free Choice Act and what you can do, please see [www.savetheelection.com](http://www.savetheelection.com), <http://www.uschamber.com/wfi/nurses> and [www.myprivateballot.com](http://www.myprivateballot.com). There are new articles and TV clips to help you learn more about this issue and how to make your voice heard with legislators.

strength    compassion    hope    innovation    expertise

# Employee Free Choice Act

A Presentation to our Associates


Knowledge is Power  
Know the Facts before you Act



## The Background

*Know the Facts before you Act*

- In 2007, legislation was introduced in the United States Congress that, if passed, would have changed the way unions are able to organize a work place. That legislation was not passed.
- It is anticipated that similar legislation will be introduced in 2009.
- You may have heard this referred to as "The Employee Free Choice Act." (EFCA)




## The Background

*Know the Facts before you Act*

Centura Health strongly believes that you have the right to decide if you want to be represented by a union.

Centura Health also strongly believes that before you make a choice, such as joining a union or supporting a law like the Employee Free Choice Act, that you need to have all of the facts.



## Current union organization process

*Know the Facts before you Act*



The current union organization process is basically three steps:



- Sign an "authorization card":** A union asks employees to sign an authorization card demonstrating their interest/desire to be represented by that particular union.
- Hear both sides before you vote:** If a union can obtain cards from 30% of the members of a bargaining unit, then a secret ballot election is held and everyone in the bargaining unit gets to vote.
  - During this process (about a 45 day time period) and before the actual election, employees have the opportunity to hear from both the employer and the union as to the benefits of being union free or having a union represent the employees in that bargaining unit.
- Secret ballot election held:** A secret ballot election is held and is overseen by the National Labor Relations Board. A majority of the employees voting must vote in favor of a union for that union to represent them.
  - Through this process, an employee is given their democratic right to vote in private and make their choice free of intimidation.



## Anticipated EFCA Process

*Know the Facts before you Act*

If passed, the Employee Free Choice Act would result in **4 major changes** to the ways the law (The National Labor Relations Act) allows for unions to organize workers, and act as their representative when interacting with their employer for wages, benefits and other conditions of employment.





## The anticipated Employee Free Choice Act:

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**4 major changes:**

- Recognition of Union via Card Check process only – no secret ballot election –** Representation can be obtained without a secret ballot election. A union can be chosen to represent a group of employees by simply having a majority of the employees signing authorization cards (50% + 1 of employees in bargaining unit)
- Interest Arbitration/Rushing the First Contract–** If the union and employer cannot agree to a collective bargaining agreement/contract within 90 days, there shall be mediation and then mandatory interest arbitration. An arbitrator decides what the terms of the contract are and the first contract shall be two years in length. Employees in the bargaining unit do not vote to approve or disapprove the contract. This last point is also a change from current law.



## The anticipated Employee Free Choice Act:

*Know the Facts before you Act*

### 4 major changes (cont.):

3. **Monetary Penalties**— for employer violations during union organizing/first contract negotiations — the National Labor Relations Act has **never** included provisions for fines for employees or unions. There are **no** penalties for union wrongdoing in the EFCA. Fines would only apply to employers:
  - Treble back pay awards
  - Civil liability (\$20,000 per violation)
4. **Mandatory Injunctions** - for employee discharges and other employer violations during union organizing. But no violations for unions that engage in similar behavior.

## The 1<sup>st</sup> big change... card check change

*Know the Facts before you Act*



Under the Employee Free Choice Act, there is a **one step process** — get those cards signed.

- **50% plus 1** - All the proposed union needs to show to become your representative is that it has 50% + 1 of the employees in a given bargaining unit that have signed authorization cards.
- **One sided information** — Your ability to hear both sides in a union campaign are gone. You will likely hear only what the proposed union representative tells you as they are attempting to get your signature on a card.
- **Secret ballot election is removed**

## The 1<sup>st</sup> big change... card check change (cont.)

*Know the Facts before you Act*



**Potential problems with the anticipated Employee Free Choice Act process:**

- **Requirements regarding the content of union authorization cards, and how card validity is determined are unknown:**
  - How are the signatures on the cards validated?
  - Can cards signed prior to passage of the EFCA law be used? A "stale" card is usually considered to be one that is signed more than year ago. Can cards signed in the year prior to any passage of the law be used? What if the employee has changed his/her mind?
- **Undue influence, coercion and peer pressure to sign cards.** Under the new law, if passed, an employee could not change his/her mind via a secret ballot election.

## The 2<sup>nd</sup> big change...rushing the first contract/interest arbitration

*Know the Facts before you Act*



Under the Current Law

- Once a union is certified, both sides may bargain for a labor contract.
- There is no time limit imposed, only requirement is that both sides must engage in good faith bargaining.
- There can be no contract without mutual agreement. However, strikes, lockouts, and other tactics may be used by the union.
- If there is an "impasse," the employer may implement their last offer.
- If employees do not like their union, they must wait 12 months after a bargaining unit is initially certified to try and "decertify" the union.

## The 2<sup>nd</sup> big change...rushing the first contract/interest arbitration (cont.)



*If the Employee Free Choice Act is introduced and passes, there will be new bargaining requirements:*

- Bargaining must start within 10 days of written request by union.
- There is a duty to bargain in good faith and "make every reasonable effort" to conclude and sign an agreement.
- If no agreement is reached in 90 days, union can demand mediation.
- If there is no agreement within 30 days of mediation demand, dispute goes to binding arbitration.

## The 2<sup>nd</sup> big change...rushing the first contract/interest arbitration (cont.)



*If the Employee Free Choice Act is introduced and passes, there will be new bargaining requirements:*

- **Interest Arbitration mean Employees no longer vote on contract terms!**
- **Arbitrator sets contract terms**
  - Wages, benefits and other terms and conditions that parties have not agreed upon
  - Arbitrator could decide any contract term whether or not the parties agree
- **Contract terms are binding on employer and union/employees for two (2) years**

## Monetary Penalties and Mandatory Injunctions...the 3<sup>rd</sup> and 4<sup>th</sup> big changes

Know the Facts before you Act



### Monetary Penalties

- Applies only to Employers
- New penalties would apply for unfair labor practice charges committed by employers during "union organizing drives" and/or first contract negotiations. But there are not the same type of penalties for unions who commit similar type of acts.

### Mandatory Injunctions

- Would change the National Labor Relations Act to mandate that an employer stop their actions if there is "reasonable cause" to believe that they have discharged or discriminated against employees involved in a union campaign, threatened them or significantly interfered with the employee's right to be involved in a union campaign. Again, there are no such penalties if a union threatens or significantly interferes with the employee for being involved in or opposing a campaign.

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## In Summary.....

Know the Facts before you Act

- The "Employee Free Choice Act" consists of more than what you may have learned through commercials, e-mails or casual conversations.
- Be informed before you decide to sign anything presented by a union that looks like an authorization card. Examples include sign up cards at education programs and cards sent via e-mail or regular mail asking for your contact information sponsored by unions or other third parties. Remember, your signature may equal your vote.
- Please refer to the Centura Advocacy website on My Virtual Workplace for additional information.

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## Centura's Position....

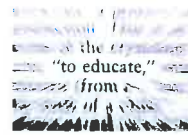
Know the Facts before you Act

- **Building strong relationships:** While Centura strongly believes that each associate has the right to join a union, we do not believe that bringing a third party (a union) into the employee/employer relationship is helpful in the patient care process, our service to our communities, or in the ongoing direct relationships between associates and leaders.
- **Your right to a secret ballot:** Centura does not support the Employee Free Choice Act. We believe it takes away a very fundamental, democratic right – that of a secret ballot election – from our associates.
- **Your right to vote:** Centura does not believe that a union agreement should be imposed on our associates without their right to vote on that agreement.

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## To learn more about both sides of the issue

Know the Facts before you Act



- Contact your human resources department
- See the following websites:
  - [www.savetheelection.com/](http://www.savetheelection.com/)
  - [www.myprivateballot.com/](http://www.myprivateballot.com/)
  - [www.freechoiceact.org](http://www.freechoiceact.org)

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**Knowledge is Empowering**  
**Know the Facts**  
**EFCA in the News – UPDATE No. 1**

**I. Study about the cost of EFCA:**

Empirical data shows that organized Labor's effort to pass the Employee Free Choice Act (EFCA) comes with a terrible cost to jobs and the economy, according to a detailed study released today by noted economist Dr. Anne Layne-Farrar.

According to the study, [An Empirical Assessment of the Employee Free Choice Act: The Economic Implications](#), every 3 percentage points gained in union membership through card checks and mandatory arbitration will result in a 1 percentage point rise in the unemployment rate the following year.

Dr. Layne-Farrar concludes "The costs [of EFCA] should be carefully weighed against any purported benefits of passing the Act, all of which appears to benefit some groups at the expense of others. There is no coherent theoretical argument that explains how the higher costs, greater legal uncertainty, and expanded government intervention entailed in EFCA would improve overall social welfare."

The report finds conclusively that the unionization of 1.5 million existing jobs under EFCA in year one would lead to the loss of 600,000 jobs by the following year. Job losses directly attributed to the passage of the Employee Free Choice Act would be equal to the entire population of Boston, MA.

Recent comments made by organized labor reinforce the economic peril associated with the report's findings.

"Andy Stern, head of the Service Employees International Union, predicts that ECFA would cause unions to 'grow by 1.5 million members a year, not just for five years but for 10 to 15 straight years.'" (*Labor Goes for the Brass Ring, The American Spectator, September 16, 2008*)

"Stewart Acuff, special assistant to AFL-CIO president John Sweeney, said the 428,000 new members last year is just a small portion of what unions could recruit if the card-check bill passes." (*Union membership rises for second straight year, Associated Press, January 28, 2009*)

"EFCA would help achieve organized labor's goal of increasing dues-paying members at the cost to the U.S. Economy and, ironically jobs," said Philip A. Miscimarra of Morgan, Lewis & Bockius LLP, and counsel to the Alliance to Save Main Street Jobs. "This research shows EFCA would promote a surge in job losses and stifled job creation. These are terrible problems at any time, but devastating in today's economic environment."

The consequences of EFCA passage would affect the entire economy and would overwhelm any anticipated wage and benefit increases among the subset of workers that gain union status.

The empirical results presented in the paper therefore recommend against passing EFCA. The study complements a recent report authored by renowned legal scholar Richard A. Epstein titled the [\*Case Against the Employee Free Choice Act\*](#). Professor Epstein's report summarized the economic impact of EFCA by suggesting that "The bottom line therefore is that the passage of EFCA will create huge dislocations in established ways of doing business that will in turn lead to large losses in productivity."

To view the full report by Dr. Layne-Farrar visit <http://ssrn.com/abstract=1353305>. Funding for the Study was provided by the Alliance to Save Main Street Jobs.

**About the Author:**

A highly regarded economist from the non-partisan firm LECG Consulting, with more than more than a decade of experience Dr. Anne Layne-Farrar received her BA in economics with honors, summa cum laude, from Indiana University (Bloomington), her master's and her PhD in economics from the University of Chicago. She has published articles in *Antitrust*, *Global Competition Review*, and *Regulation Magazine* and has numerous publications in academic journals, including *Antitrust Law Journal*, *Harvard Journal of Law and Public Policy*, and *Journal of Competition Law and Economics*.

**II. *Employer Intimidation and Lagging Union Rates in Organizing Elections not borne out.***

On March 4, 2009, the Center for Union Facts (CUF) released an analysis of National Labor Relations Board (NLRB) data which refutes union claims of widespread employer intimidation and lagging union win rates in organizing elections.

In the first-half of 2008, labor unions won 66% of NLRB secret ballot elections, the highest win-rate in decades. This figure counters union leader claims that the Employee Free Choice Act (EFCA) is needed in order to further tip the scales towards the unions in organizing campaigns. Further, NLRB statistics tell a different story about employer unfair labor practices (ULP).

In 2007 and 2008 the NLRB received 4,208 unique petitions requesting a secret ballot election. During that span the NLRB determined that only 158 election-related ULP charges or 3.75% which alleged unlawful terminations had merit. The Board further determined that 309 such claims were without merit. These figures come from the NLRB's Case Activity Tracking System (CATS) which is used to tabulate the statistics in the Board's annual reports. A complete copy of the CATS database was obtained by CUF through a Freedom of Information Act request.

"The facts do not support the claims made by union officials and their allies who allege misconduct far beyond reality," said Rick Berman Executive Director of the Center for Union Facts. "The data indisputably demonstrates that unions are largely successful in organization



campaigns and that very few employees are inappropriately terminated during those campaigns.”

### **III. Americans Support EFCA – really?**

A new Gallup Poll published March 17, 2009, suggests that a majority of Americans support the Employee Free Choice Act (53%). However, this same study reveals the majority of Americans “...have barely begun to pay attention to the issue.” In fact, according to the study, EFCA has its highest support (58%) among those who are not following news about the bill at all.

See the study at: <http://www.gallup.com/poll/116863/Majority-Receptive-Law-Making-Union-Organizing-Easier.aspx>

### **IV. News about Unions interacting with each other AND interactions among themselves:**

a. OAKLAND, Calif. and WASHINGTON, March 19 /PRNewswire-US Newswire/ -- In a dramatic agreement likely to accelerate the drive to pass the Employee Free Choice Act and rapidly promote unionization in the healthcare sector, the [Service Employees International Union](#) and the [California Nurses Association/National Nurses Organizing Committee](#) today announced the signing of a transformative cooperation agreement.

Under the pact SEIU and CNA/NNOC, the largest unions in the nation representing healthcare workers and registered nurses, respectively, will work together to bring union representation to all non-union RNs and other healthcare employees and step up efforts to enact Employee Free Choice.

Increased union representation in healthcare, say the unions, would play a huge role in strengthening the ability of nurses and other employees to fight for improved patient care standards, promote economic recovery through improved economic standards and sharply assist efforts to enact genuine healthcare reform nationally and in state capitols.

Concurrently, SEIU and CNA/NNOC jointly endorsed measures to allow states to adopt single-payer, or an expanded and updated Medicare for all, as a comprehensive, cost-effective healthcare reform.

Article Link:

<http://news.prnewswire.com/ViewContent.aspx?ACCT=109&STORY=/www/story/03-19-2009/0004991205&EDATE=>

b. **SEIU lays off workers. Thought is move is to push more resources towards organizing. March 17, 2009.** Even the SEIU’s own staff is not immune to layoffs! Seems the SEIU’s *Union of Union Representatives* is taking aim against the SEIU, filing charges with the NLRB stemming from the SEIU’s plan to lay off 75 of its 200 staff employees.

<http://www.nytimes.com/2009/03/17/us/17brfs-UNIONISACCUS BRf.html? r=1>

## V. *Colorado Senator a Target for Lobbying Efforts:*

MARCH 18, 2009

# Unionizing Fight Focuses on 3 States

By [KRIS MAHER](#) and [BRODY MULLINS](#)

The battle over a bill that would ease union organizing is zeroing in on lawmakers in three states -- Pennsylvania, Arkansas and Colorado.

Business and labor are pressuring three key senators who are up for re-election in 2010, sparing little expense as they ratchet up television and radio ads, and recruit well-connected lobbyists.

"This is truly one of those defining votes," said Terry Madonna, a professor of political science at Franklin & Marshall College in Lancaster, Pa. The senators, he said, "run the risk of incurring the wrath of the business community and labor in ways that are not likely to be forgiven."

In Arkansas, [Wal-Mart Stores Inc.](#), which is bitterly opposed to the bill, has hired a Democratic lobbyist -- and former staffer of Sen. Blanche Lincoln -- to help defeat the bill. Meanwhile, on Monday, the AFL-CIO hosted a candlelight vigil with union members, religious leaders and state politicians outside the Capitol building in Little Rock to urge passage of the bill.

In Pennsylvania, the state AFL-CIO has discussed having its members register as Republicans to back Sen. Arlen Specter in a tough primary fight he faces next year -- if he supports the bill.

Another target is newly appointed Sen. Michael Bennet of Colorado, who has no track record on the bill but who faces an election in 2010. Andy Stern, president of the Service Employees International Union, visited Sen. Bennet the day the bill was introduced last week to discuss its importance. The SEIU has said a "no" vote on the bill would affect its support for the Democrat in 2010.

Meanwhile, the Center for Union Facts, a business-backed group, has been running TV ads in Colorado arguing the bill would hurt job creation, and a state business group met with Sen. Bennet.

At this point, lawmakers don't seem to be getting an unmistakable message from the public. A Gallup poll released Tuesday showed that 53% of respondents backed the concept of increased unionization, with 39% opposed. But the poll also found only 12% are following the issue very closely, and an earlier Gallup poll last year found only 35% in favor of unions having greater influence.

The Employee Free Choice Act, introduced in the Senate and the House last week, would allow workers to choose unionization by signing cards, without the company's

knowledge, rather than by voting in a union election. Now, companies can insist on an election and mount a campaign against the union.



*Associated Press*

Sen. Michael Bennet of Colorado

The senators have said they will decide how to vote on the legislation based on its merits, and not allow election-year politics to influence their vote.

"I have had meetings with Wal-Mart representatives, as well as several constituent groups on both sides of this issue," said Sen. Lincoln. "I will continue to hear their views, and as I've stated previously, my first priority remains strengthening the economy and putting 90,000 Arkansans back to work."

Wal-Mart spokeswoman Daphne Moore said executives and managers from "across the country have voiced their concern to senators from several states, including Arkansas."

On Tuesday, Sen. Specter reiterated that he supports a labor-law overhaul, but that he has not voted for passage of the bill. In 2007, he voted to have debate on the bill. "This is the most hotly contested issue in a long time," he said. "I'll vote my conscience."

**In Colorado, Sen. Bennet noted that the bill was introduced just last week. "I will work with all interested parties to make the best decision for Colorado," he said.**

Pro-business organizations have spent millions on ads in key states in the past year. The Center for Union Facts ran \$20 million in ads in 2008 against the bill. Labor unions have mounted their own media campaign, with the labor-backed American Rights at Work spending \$10 million on ads backing the legislation since Labor Day.