Fact Sheet 2011

The Employee Free Choice Act: Professional Employees and the Public

For professional and technical employees, the Employee Free Choice Act is essential to the protection of professional integrity through the right to union representation. Allowing professionals a choice as to how to organize themselves into unions not only benefits the represented professionals but the public at large.

In the 110th Congress, the Employee Free Choice Act was introduced by Senator Edward Kennedy (D-MA) and Representative George Miller (D-CA). "It passed the U.S. House of Representatives, 241-185, on March 1, 2007, and gained majority support in the U.S. Senate on June 26, 2007,"[1] but fell nine votes short of the 60 votes needed to block an opposition filibuster.[2]

The Employee Free Choice Act was reintroduced in the 111th Congress, but neither the House nor Senate versions made it out of committee.[3] Supporters anticipate that the legislation will be reintroduced in the 112th Congress.[4]

- Professionals are joining unions to preserve workplace integrity and respect, and create safe, professional, and rewarding work environments for themselves and their colleagues. **The desire to do their jobs *well* attracts many professional employees to union representation.**
- Professional employees (including management, sales, office, and other professional and technical occupations) accounted for 54.2 percent of all union members in 2010.[5]
- A professional's choice to join or not join a union has been impeded by employer coercion, unreasonable delays, and minimal penalties for employer illegalities.[6]
- Since the passage of the National Labor Relations Act (NLRA) in 1935, employees have been legally able to form unions when a majority sign union authorization cards—a process called "majority sign-up." For years, many responsible employers have allowed employees to form unions in this way, arguing that it results in a healthier relationship between the employer and employees.[7] Under current law, however, the choice of whether to allow majority sign-up or conduct a National Labor Relations Board (NLRB) election rests with the employer, not with employees.[8]
- The Employee Free Choice Act puts the choice to join a union into the hands of employees, allowing them to form a union through majority sign-up if they so choose.[9] It would also guarantee workers a contract when they form a new union and strengthen penalties against employers who break the law during union organizing campaigns or first contract negotiations.

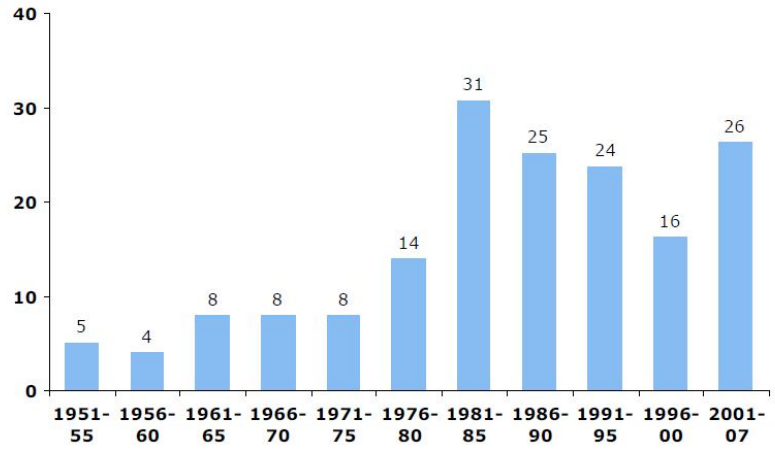
Why Do Professionals Need Labor Law Reform?

Although, in principle, employees' right to organize labor unions and bargain collectively is recognized by U.S. labor law, in reality employees often face many obstacles.[10]

Employer Coercion and Intimidation

- Seventy-five percent of employers faced with organizing drives hire union-avoidance consultants to help suppress employees' right to form a union.[11]
- A 2009 study by the Economic Policy Institute of employer behavior when employees try to organize a union, found that: employers threaten workers in one-on-one meetings 54 percent of the time; employers threaten to cut wages and benefits 47 percent of the time; and Employers fire workers 34 percent of the time.[12]
- Anti-union employers intimidate employees by threatening their jobs. Pro-union employees were fired in 26 percent of union election campaigns over the period 2001–2007.[13] The 26 percent rate is up from about 16 percent in the last half of the 1990s.[14]
- The share of elections in 2001–2007 with an illegal firing was almost as high as the historical peak for such activity—31 percent during the period 1981–1985.[15]

Percent of Union Election Campaigns with an Illegal Firing, 1951-2007



Source: Dunlop Commission (1994), LaLonde and Meltzer (1991), and authors' analysis of National Labor Relations Board data. See Table 1.

- For every worker fired, 395 coworkers receive the message: get involved with the union and you'll get a pink slip.[16]
- Under the NLRA, employers found guilty of illegally firing a pro-union employee may be ordered to give back pay to the employee, minus whatever the fired employee has earned in the interim.[17] These penalties are small and often take years to be decided. In 2009, the average back pay award was only $5,149.[18]
- The NLRA is intended to protect employees from employer intimidation and coercion. The penalties for law-breaking employers are so minimal, however, that many continue to break the law in order to suppress unions and view the fines as a cost of doing business.[19]

- Threats to relocate or close the workplace in the event of unionization are common. Of the employers faced with a union organizing drive, 57 percent threaten to close their worksite in the event of a union victory in an NLRB election.[20]

Undemocratic National Labor Relations Board Elections

Elections held by the NLRB create an advantage for anti-union employers:

- Voters are vulnerable to employer threats to move the company, harassment of pro-union employees, and firings as anti-union employers attempt to influence NLRB elections.[21]
- Employers and union organizers are not given equal access to voter lists and voters. Employers may use time at work to press their anti-union message, while employees are prohibited from using the workplace or time at work to organize and discuss union activities.[22]
- Voters can also be forced to listen to the employer's position in captive-audience meetings. Captive-audience meetings are required meetings on company time that present a strong one-sided, anti-union message to employees. Of the employers faced with a union organizing drive, nine out of 10 employers use this tactic of captive-audience meetings.[23]
- Employers will, 80 percent of the time, train supervisors on how to attack unions and require them to deliver anti-union messages to workers they oversee.[24]
- Outside consultants hired to run anti-union campaigns are brought in by three out of four employers.[25]
- This one-sided message is often compounded with required one-on-one meetings between employees and their supervisors during which employees are asked about their views on unions. To suppress employee support for unionization, 63 percent of employers interrogate workers in one-on-one meetings with their supervisors.[26]
- In an NLRB election, an employer can delay the election and the outcome for long periods. The NLRB election is also held on company property and is therefore usually conducted at the employer's "campaign" headquarters.[27]
- Under current law, if over 50 percent of a bargaining unit signs a petition indicating they no longer support the union, the employer must withdraw recognition of the union immediately without an election and can no longer bargain with the union.[28] Though no election is necessary to get rid of a union, an election is necessary to form a union unless the employer agrees to majority sign-up.[29]

Delays in Reaching a First Contract

- Employees' rights to bargain collectively are routinely violated even after the union wins the NLRB election. The NLRA's intent is to facilitate the creation of a first contract which determines wages, hours, and employment conditions. Employers, however, often impede the creation of a contract through delay tactics and unwillingness to bargain in good faith.[30]
- Delay tactics and surface bargaining are illegal under the NLRA, but the law has no deterrents to force employers to bargain in good faith with a new union. As a result,

in 52 percent of organizing campaigns, workers lack a collective bargaining agreement a full year after demonstrating majority support for union representation.[31] Even two years after an election, 37 percent of newly formed unions still had no labor agreement.[32] According to a study by MIT, under the current law 44 percent of workers who form a new union never reach a first contract. [33]

The Solution for Professionals: The Employee Free Choice Act

Current law does not adequately protect employees' right to a free and fair choice to join a union and bargain collectively. The Employee Free Choice Act restores and reaffirms employees' rights to organize and bargain collectively by reforming the unionization process in three key ways:

Majority Sign-Up

- First, the Employee Free Choice Act puts the decision to form a union and how it will be formed in the hands of employees rather than the employer. If a majority of employees sign union authorization cards, validated by the NLRB, then a company must recognize the union.[34] As Forbes Magazine's National Editor Quentin Harvey explained, "It's about giving the workers the choice of what style they want."[35]
- According to the House committee report, the Employee Free Choice Act "does not eliminate the NLRB election process, which remains an option for employees as it is under current law."[36] Even the Wall Street Journal editorial page acknowledged that "the bill doesn't remove the secret ballot option from the National Labor Relations Act."[37]
- ***Majority sign-up exists under current labor law.*** The NLRA outlines two ways of forming a union: either through the NLRB election machinery or by majority sign-up when a majority of employees sign union authorization cards and their employer agrees to recognize the union based on majority support.[38]
- ***Majority sign-up is not new***. Since 1935, the NLRA has always maintained and regulated both of these paths to union representation. National firms with good labor relations, such as AT&T and Kaiser Permanente, have used majority sign-up successfully for years, as provided in the NLRA.[39]
- In workplaces that have voluntarily opted for majority sign-up procedures under current law, the process is commonly paired with a neutrality agreement. Under such agreements, both parties work together to set rules that give employees a chance to freely decide whether to form a union without pressure or interference from either party.[40]

Harsher Penalties for Employers Who Break the Law

- In 2009, 14,825 employees received back pay in cases alleging employer violations of workers' rights under the NLRA.[41]
- The Employee Free Choice Act would increase the penalties for employers who violate employees' rights. The penalty for employers who illegally fire or discriminate against pro-union employees would be increased from straight back-pay to three times the back-pay they are owed. There would also be a civil penalty of up to $20,000 for willful or repeated violations of employee rights during organizing campaigns or first contract negotiations.[42]

- The Employee Free Choice Act would also require more timely correction of injustice. The NLRB would be required to seek injunctive relief when it has cause to believe that an employer has violated its employees' rights through termination, discrimination, threats, or other illegal acts during an organizing drive or first contract negotiations.[43]

First Contract Negotiations

- The Employee Free Choice Act addresses problems surrounding the negotiation of a first contract by offering both employers and employees access to mediation and arbitration in order to reach a collective bargaining agreement in a timely fashion.[44]
- Under the Employee Free Choice Act, employers or employees can request mediation by the Federal Mediation and Conciliation Service if they are unable to negotiate a first contract within 90 days. If both parties are unable to reach an agreement after 30 days of mediation, then the dispute is referred to binding arbitration, guaranteeing employees a timely first contract.[45]

Unions Allow Professionals to More Effectively Serve the Public

Unions allow professional employees to do their jobs to the best of their training, education, and abilities through vital workplace protections. Rationalization of personnel procedures and protection against arbitrary dismissal afford professional employees the ability to speak up when they see a threat to professional integrity.

- Union representation also allows professional employees to rectify situations they see impacting their profession and work quality. Take the situation faced by Registered Nurses (RNs) as an example:
  - One in five RNs are quitting patient care as a result of inadequate hospital staffing.[46] There are insufficient nurses to do what needs to be done on any given shift, and those who are on duty are exhausted and stressed.[47]
  - Registered nurses are driven to organize to protect their ability to practice nursing at a level that meets "professional standards of professional practice, provides professional satisfaction, and protects the health care consumer."[48]
  - According to studies, critical nurse work satisfaction and patient care could be improved by adopting lower nurse-to-patient ratios which would entice nurses who have left the profession to return.[49]
  - Collaborative decision-making and innovative conflict resolution strategies have allowed nurses to voice their professional concerns. Unionization has allowed RNs to collectively mobilize as an influential force in the hospital culture and to enhance their professional status.[50]
  - In a recent example, thousands of RNs and nurse practitioners in Northern and Central California voted nearly unanimously to approve a new three-year contract with Kaiser Permanente that guarantees fixed schedules, additional pay if they are reassigned to a different department, new protocols for more rapid management responses to staffing disputes, "full protection of all existing standards in health care coverage, post-retirement medical benefits, pensions and annual 5 percent pay increases each year of the agreement."[51] This new contract also benefits

patients by providing regional committees to determine additional staffing based on patient need and more freedom and authority to better care for their patients.[52]

- The concerns expressed by RNs about external pressures challenging their professionalism are echoed across disciplinary and industry lines. Software designers may wonder why their programs are rushed out the door before being adequately tested. Teachers and social workers watch their class and caseload sizes increase, while their ability to provide personalized attention to their students and clients decreases.[53]
- Unions allow professionals to voice their concerns about professional integrity and work quality, as well as provide professionals with an advocate in local, state, and the federal government. Unions represent professionals and work on issues important to the public, like protecting public services from budget cuts and privatization and promoting safe staffing levels.

Why Does the Employee Free Choice Act Matter to Professionals Now?

One crucial factor in reforming and rejuvenating the American economy is the restoration of balance between employees and employers. The Employee Free Choice Act helps to restore a healthy employee-employer balance by placing the decision to form a union and how to form it back in the hands of employees.[54] Forty leading economists, including three Nobel laureates, have signed a statement of support for the Employee Free Choice Act. They believe that reforming labor law is essential to strengthening employees' rights and restoring prosperity to the middle class.[55] Nobel laureate Paul Krugman supports the Employee Free Choice Act as a way to provide balance to the employer-employee relationship and decrease inequality.[56]

- The Employee Free Choice Act would facilitate increased organization by unions, shifting "income distribution in favor of the middle class, enhancing the purchasing power of this key group of the nation's consumers and allowing them to once again afford to buy automobiles, homes with 30-year fixed rate mortgages, and all the other goods and services important to American life."[57] Additionally, "firms that become unionized are no more likely to fail than firms that remain non-union."[58]
- Wages for American workers have stagnated, and the gap between the rich and poor has grown wider. Unionized workers, including professionals, earn more than their non-union counterparts.[59] Union contracts also help employees to negotiate staffing and overtime, safety and health policies, cost of living raises, adequate pensions, vacations, promotion systems and transfer policies, and a workable grievance system.[60]
- Over the last 30 years, the declining rates of union membership have coincided with larger inequities in pay between employees and CEOs. An important reason for the shift from broadly-shared prosperity to growing inequality is the erosion of employees' ability to form unions and bargain collectively.[61] In 1980, when unionization rates were higher, CEO pay was 42 times the pay of average employees.[62] In 2010, CEO pay was 343 times the median pay of a worker.[63]
- Inequality in the United States has reached levels not seen since the Great Depression. Inequality is increasing with the wealthiest 10 percent, especially the wealthiest one percent, holding more of the nation's wealth. In 1962, the wealthiest one percent of Americans compared with median income workers held a ratio of wealth of 125 to one. By 2009, the ratio increased to 225 to one.[64]

- Unions also help to counter gender and minority pay inequities. In 2010, 11.1 percent of female workers, 13.4 percent of African American workers, 10.9 percent of Asian workers, and 10 percent of Hispanic workers were union members.[65] In 2010, female union members earned 25.3 percent more ($217 extra per week) than non-union female workers.[66] African American union members earned a median weekly salary nearly 23.7 percent higher ($183 extra per week) than their non-union counterparts; the difference for Hispanic and Asian workers was 33.6 percent ($259 extra per week) and 7.4 percent, respectively.[67]

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For more information on professional workers, check the DPE website: www.dpeaflcio.org.

The Department for Professional Employees, AFL-CIO (DPE) comprises 23 AFL-CIO unions representing over four million people working in professional, technical and administrative support occupations. DPE-affiliated unions represent: teachers, college professors, and school administrators; library workers; nurses, doctors, and other health care professionals; engineers, scientists, and IT workers; journalists and writers, broadcast technicians, and communications specialists; performing and visual artists; professional athletes; professional firefighters; psychologists, social workers, and many others. DPE was chartered by the AFL-CIO in 1977 in recognition of the rapidly growing professional and technical occupations.

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