COMMENTARY

# Abrogating Workers' Rights

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Why is the new Congress in such a hurry to take away workers' right to vote? It seems extraordinary, but the so-called "Employee Free Choice Act" is right there near the top of the Democrats' agenda. This legislation replaces government-sponsored secret ballot elections for union representation with a public card-signing system.

Under the act, once a union gets a majority of the workers to sign a card expressing a desire for a union, that union is automatically certified as the bargaining representative of, and empowered to negotiate on behalf of, all workers. In the 28 states that do not have right-to-work laws, all employees would typically end up having to join the union or pay the equivalent of union dues whether or not they signed the card. Moreover, under the act, the bargaining process would be shortened, with mandatory use of the Federal Mediation Service after 90 days and an imposed contract through binding arbitration 30 days after that.

I am sympathetic to the argument that strengthening the negotiating position of workers is good public policy, and that expanding the choices available to them is the best way to accomplish that. So, for example, pension portability unlocks the golden handcuffs that financially bind workers to jobs they may become dissatisfied with after they have become vested. Health savings accounts are an important first step to liberating people from jobs they put up with only because they fear a disruption in health-care coverage.

When it comes to unions, it doesn't take a very deep appreciation of game theory to understand that a worker's best position comes when a nonunion company has a union knocking on the door. Indeed, one allegation about "union busting" by supporters of the bill is that, during union certification elections, one employer in five "gave illegal previously unscheduled wage increases while a similar number made some kind of illegal unilateral change in benefits or working conditions."

In other words, they made workers better off. But, never fear, the Employee Free Choice Act will limit these unconscionable increases in pay, benefits and working conditions by imposing fines of up to $20,000 against employers who make such "unilateral changes." Similar penalties will be assessed against employers who caution that unionization may cause them to shut down or move production elsewhere.

Sometimes the interests of workers and unions coincide, sometimes they do not. The chief complaint by the bill's sponsors is that unions only win secret-ballot elections half of the time. Apparently workers, after they think things over and when neither the union nor the company knows how they vote, often decide they are better-off without the union.

The solution of the Employee Free Choice Act is to do away with such elections. It is hard to see how that "empowers" workers. And it is hard not to conclude that this bill has little to do with employee choice or maximizing employee leverage, and everything to do with empowering union bosses and organizers.

The unions allege that companies use unfair election campaign tactics and that a pro-employer National Labor Relations Board doesn't punish them. But statistics cited by the leftwing Web site, Daily Kos, on behalf of this allegation come from 1998 and 1999 -- when the entire NLRB had been appointed by President Clinton. In any event, roughly half the injunctions brought against companies by the NLRB were overturned by federal courts: This does not suggest under-enforcement of the law by the NLRB.

All of this does not mean that there are no legitimate complaints about the union certification process. Companies have been found that fired workers for union organizing activities. One careful examination of NLRB data found that there were 62 such cases in fiscal 2005. This is not a large number in a work force of 140 million, or in a year where there were more than 2,300 certification elections. But it is 62 too many, and it would be reasonable to stiffen the penalties for employers who break the law. But it is hard to think of offering more pay or better worker conditions as something that should be punished with draconian penalties, as the Employee Free Choice Act does.

Most important, it is totally unreasonable to deny all 140 million American workers the right to a secret ballot election because some employers break the law. Not only is such a remedy disproportionate, it is counterproductive -- if one's goal is worker empowerment. How can a worker be better off if both his employer and his prospective union boss know his views on the union when the secret ballot is replaced with a public card signing? For the worker it is the ultimate example of being caught between a rock and a hard place.

The political rhetoric in support of this bill is a willful exercise in obfuscation. For example, on the presidential campaign stump John Edwards says, "if you can join the Republican Party by just signing a card, you should be able to join a union by just signing a card." The fact is, you -- and everyone else -- can join any union you want by just signing a card, and paying union dues and meeting any other obligations imposed by the union. But, under this bill, contrary to Mr. Edwards's false analogy, signing a card to join the Republican Party does not oblige you to vote for the Republican ticket in a secret ballot election. The Employee Free Choice Act would take care of that by abolishing such elections. If the Edwards principle was applied to the political process in the 28 non-right-to-work states, Karl Rove and Republican Party organizers could force all Democrats and independents to become Republicans and pay dues to the party if a majority of voters signed Republican Party cards. That is free choice?

The final proof that this bill is about union power, and not worker choice, is revealed by its treatment of the flip side of unionization: decertification elections. These are secret ballot elections in which workers get to decide that they have had enough of the union. So under the Employee Free Choice Act can a majority of workers decertify the union by signing a card? *Not on your life.* Here unions want the chance to engage in a campaign to

give workers both sides of the story -- and maybe do a better job of representing them -- before the union's fate is decided, by a secret-ballot vote.

No one has ever argued that secret-ballot elections are a perfect mechanism, either in politics or in deciding unionization. But they are far and away the best mechanism we have devised to minimize intimidation and maximize the power of the people who really matter, whether citizen or worker. Congress should think a lot harder before it decides to do away with workers' right to vote.

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