

# LABORnotes

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## The Employee Free Choice Act

# Fight of a Lifetime?

by Jane Slaughter

Nobody wants to say it on the record, but the buzz is we won't get the Employee Free Choice Act in its current form.

President Obama says he's pro-EFCA but wants unions to "accommodate" the other side, despite labor's \$450 million and countless hours of volunteer work devoted to electing him.

[More on Employee Free Choice Act...pages 5-7](#)

Employers aren't interested in compromise, spending \$50 million just on anti-EFCA ads last fall in states where Senate seats were up for grabs, and vowing to spend tens of millions more.

In October Bank of America hosted a conference call for executives led by Bernie Marcus, a co-founder of Home Depot. Marcus lectured CEOs to give money to prevent EFCA and "the demise of a civilization."

A favorite argument against EFCA is that it would deny workers the right to vote on unionization. Union strategists point out that EFCA actually permits either "card check" or a secret ballot—workers would decide which they wanted. Under current law, only the employer can decide.

Another argument is that there's no

## Auto Workers Say: Take Your Concessions & Shut It

by Tiffany Ten Eyck

[See continuing coverage of the UAW's tentative agreement with the Big 3 at [www.labornotes.org](http://www.labornotes.org).]

As Big 3 automakers rolled out plans that would "save" the industry by destroying jobs, it's easy to forget that union members must vote on changes to their contract.

Although auto workers have made concessions in a string of contracts since 1979—the latest slashed new-hire

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Workers rallied at the Capitol for the Employee Free Choice Act, which would ease organizing.

precedent, in the private sector, for the right to arbitration of first contracts. And employers moan, like they did in the Depression, that too much unionization would wreck the reeling economy (see page 6).

Supporters counter that union-won higher wages are exactly what the economy needs. After all, the debt-driven economy has utterly failed.

### BALANCE OF POWER WINS

But in the end, the arguments don't matter. The bill that passes will reflect the balance of power between business and labor. If EFCA is gutted, or fails to pass at all, it will be because not enough Senators were convinced it was in their interests to vote the right way.

How have labor and other movements in the past persuaded reluctant politicians to vote our way? By creating enough turmoil in the streets that legislators know they'd better do something.

The civil rights movement, the anti-Vietnam war movement, the worker upheavals of the 1930s—all led Washington decision-makers to do things

they didn't want to do.

It's possible to admire labor's efforts for two million petition signatures for EFCA and still ask, if this is the fight of a lifetime, why aren't we acting like it?

Could the energy unions channeled for Obama last fall be reawakened for creative actions in 2009? For a huge march on Washington, for civil disobedience at senators' offices, for informational picket lines outside the corporations bankrolling the bosses' campaign, like Home Depot?

Less than three years ago, immigrant workers—most of them not union members—pulled a one-day national strike, bringing more than a million workers, families, students, and supporters into the streets in the largest series of demonstrations our country has ever seen. They were fighting for survival. So is the union movement. This is not the time to be timid. □

**Troublemaker Schools**  
on the Economic Crisis  
Coming Soon! — See page 11



The Employee Free Choice Act would eliminate the requirement for a two-step process in union drives—first sign up a majority of workers, then hold an election. But is it the election itself that's the problem, or the very uneven playing field on which it's held, where the employer has all the advantages?

At the Smithfield Foods hog butcher in Tar Heel, North Carolina, the United Food and Commercial Workers won election rules that created a fair process and then won the election last December, by a margin of 2,041 to 1,879 (see *Labor Notes*, January 2009).

The win came after a 15-year cam-

paign that included firings, beatings, anti-union TV ads, two lost elections, the union's aggressive corporate campaign, in-plant actions, and, finally, a circuit court decision that Smithfield had broken the law. *Labor Notes* talked with Gene Bruskin, who coordinated the campaign.

## How Employee Free Choice Act Would Have Helped at Smithfield

**Labor Notes: Would card check have worked at Smithfield, where there was years of company hostility to the union?**

Gene Bruskin: We would definitely have been able to sign a majority of the workers. We did it on more than one occasion. The "We're Voting Yes" handbill we handed out the day before the vote had close to a majority, and so did a petition we did for a shareholders meeting in 2007.

Remember, we had a strong commit-



During the 15-year campaign to unionize Smithfield, union reps made many house calls. But getting access to workers in the plant was one of the keys to victory.

Jim West/jimwestphoto.com

tee in the plant that was challenging management in all sorts of ways. There was the campaign where people risked getting discipline for writing "Union Time" on their hard hats. Committee members were standing up in break rooms and getting people to sign pledge cards to support the union. Workers signed petitions around health and safety and working conditions and delivered

them to human resources. People gave interviews for the union newsletter, with their picture, in which they made statements critical of the company. They handed out thousands of copies of those newsletters in the plant. On several occasions they even stopped the lines in different departments.

But the company insisted on an election. They took the position they would never give card check. They felt they knew how to fight an election campaign and win, like they had done before. Even though this time they had to swallow new rules.

**LN: In your community pressure campaign, starting in 2006, you had been demanding that Smithfield agree to a fair process—which you thought would be card check. The company kept saying, "Let's have an election," and the UFCW had to say, "We don't think the normal NLRB election process can be fair."**

GB: Admittedly, despite our best efforts, this was sometimes confusing to the media and even to our allies. For three years I had to explain why we didn't think an NLRB election could be fair. We said it was a trap. But a lot of people just could not get it, including people who were totally on our side. They assumed it must be fair because it

### What Employee Free Choice Would Do

**If a majority of workers in a workplace sign union authorization cards, validated by the NLRB, the company must recognize the union.** If a majority of employees call for an election instead, the NLRB will hold one.

**Penalties for companies breaking the law are increased.**

- Up to \$20,000 per violation for willfully or repeatedly violating employees' rights during organizing drives or bargaining the first contract.
- Triple back pay for workers fired or discriminated against for pro-union activity during a drive.
- The NLRB must seek a federal court injunction when there is reason to believe a company has violated workers' rights during a drive, such as firing or threatening to fire union supporters. Precedent says an injunction would be issued immediately.

**Companies may not drag out first-contract bargaining indefinitely.** If the two sides cannot reach a contract within 90 days, either one may request mediation from federal mediators. If mediation doesn't work, they go to binding arbitration.

was a secret ballot.

**LN: But you did end up with an election, though it was run under different rules than the usual NLRB vote. Reportedly, the agreement said that the election would take place quickly; union organizers would have scheduled access to nonwork areas of the plant; neither side would speak ill of the other; and all formal communication, including handbills and the scripts for the company's captive-audience meetings, would be reviewed by both sides and by a mutually agreed monitor if necessary. Since you didn't have card check, which of these was most important in allowing a fair election?**

GB: Access was key. It was huge. After union reps were demonized for so long and chased away by the police and demonized in all these ads—after all that, the actual presence of the union in the plant sent a completely different message.

It was also tremendous encouragement to the organizing committee. They felt so backed up, no longer alone. On some days, when the union reps came the committee welcomed them, and marched in with them. Union reps

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### The 'Secret Ballot' Sham

#### How Is This Democratic?

Votes on union representation often look more like fake elections under a dictatorship than like elections for public office in the United States. One side—the anti-union employer—has the lion's share of power. It controls workers' jobs and livelihoods. The campaign is conducted on the employer's property, during work hours.

What would it be like if a political campaign were conducted under the same conditions as an NLRB election? Imagine a city election where an incumbent mayor could:

- Force voters to attend his or her campaign rallies [captive-audience meetings].
- Permit the opponent to campaign only in city parks and recreation centers [break rooms].
- Threaten to fire the opponent's supporters.
- Prevent an opponent from campaigning more than a few hours a day [on breaks and between shifts].
- Imply that the city will move to Mexico if the opponent wins.
- If the opponent wins the election anyway, delay that person from taking office [appeals to the courts].

[Adapted from "The Employee Free Choice Act: Questions and Answers," by the Economic Policy Institute.]

## The Employee Free Choice Act

### Employers Bring Back Old Arguments from the Depression

# It's About Power and Democracy

Republicans are up in arms about the negative effect the Employee Free Choice Act would supposedly have on the economy. They made similar arguments 75 years ago when confronted with the prospect of massive worker organizing during the Depression.

Were they right then? What's their opposition really about today? Labor Notes spoke with Dana Frank, a labor historian at the University of California Santa Cruz.

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EFCA is really about power and democracy in the workplace, and it tips the balance of power toward unions—we hope. That's what the National Labor Relations Act of 1935 was designed to do, address the Depression by shifting the balance of power toward workers and their unions.

Rather than directly redistribute wealth, the NLRA was actually a compromise to let workers be free to have a democratic voice in the workplace.

One of the purposes of the NLRA was to address so-called underconsumption, which meant that if you're going to have a healthy economy, people have to be able to buy the things they make.

## How EFCA Would Have Helped Smithfield Workers Win Sooner

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marched in with 25-30 workers. It was definitely crucial.

The company had created ads of this supposed UFCW organizer, swarthy, unshaven, knocking on the worker's door at his house. The worker opens the door, and it's chained, he's peeking out at a glaring union rep. In the background his wife is holding a baby. The union guy pushes his way in and sits at the table with the worker and his quivering wife, pushing a card at him.

They also had big posters in the plant before we made the agreement, saying union organizers are like cockroaches: "Once you get them in the house it's hard to get 'em out." After all that, to have the union walk in the plant with security was a real contradiction.

**LN: What about the "no disparagement" agreement?**

GB: In the end it didn't help that much. Smithfield figured out a way to talk about dues and all that stuff anyway. They were not allowed to threaten to close the plant, but they got all these articles about plant closings and put them all over without comment.

If the wealth gap is too huge you have a lot of people producing things they can't buy. Liberal economists in the Roosevelt administration wanted to support a labor movement because, these theories said, redistribution will help the whole economy.

Still, wages didn't spike the day after the NLRA passed or even the first two years. High levels of unionization weren't achieved until World War II, and the full strength of unions demanding higher wages happened in 1946 and all the way through the '50s. It was a long-term process.

### WHO IS THE ECONOMY FOR?

It's a little different now because the economy is more globalized—but it was global then. The central questions haven't changed: who is the economy for, who does it serve?

Government's job is to assure we have a healthy economy, and one of the reasons we're in trouble now is because there's such a vast wealth disparity. Elites have an outrageous amount of power and they don't want to share it.

It's important to remember that

The role of the monitor was that he kept them honest. Nobody got fired, and if they did we would have had an immediate hearing. We saw all their literature first. If we couldn't agree, the monitor would decide within 24 to 48 hours. Both sides went to the monitor a bunch of times.

One fact that was really important was the limit on the mandatory meetings management could call. There were only two, the length was defined, they had to be scripted, and the union saw the script in advance. Limiting those to a half-hour script really helped, especially in the last week when companies always get really aggressive. The company couldn't take any questions from the floor.

**LN: So these election rules that Smithfield agreed to were very unusual. How did UFCW get Smithfield to agree to rules like that?**

GB: Those rules came about in a settlement of Smithfield's suit against the union, which they filed because of our two-and-a-half-year national public campaign criticizing their treatment of workers in the plant. We had demonstrations at supermarkets, at their annu-



Slobadan Dimitrov/LA County AFL-CIO

Union members sign cards supporting the Free Choice Act.

Roosevelt didn't give us the NLRA, just like Johnson didn't give us the Civil Rights Act. They had to do it, because people built massive movements from below.

And labor legislation itself doesn't change how the pie is distributed. Like we saw in the '90s, you can have the NLRA, high profits, and high productivity, but little went to workers because the labor movement was not in the position to take it. If you don't have strong, democratic unions that can exercise power from below, you won't have redistribution of wealth.

Managers are afraid of equality and democracy—that's what this debate is always about. □

al shareholders meetings, and at numerous events of Paula Deen, the cooking celebrity who was under contract to promote Smithfield's brand. This type of activity prompted the company to file suit—and we continued it even after the suit was filed.

**LN: Can the penalties in EFCA keep employers from breaking the law, or are they still too mild?**

GB: Stiff penalties are definitely important, but what I would like to see would be that a fired worker could be put back to work immediately. That is much more important than the triple back pay. Getting one of our best people put back 10 years later didn't help us for the 10 years he was gone.

But if they fired somebody and that person was put back to work immediately and everybody saw that, it would be really powerful.

Even after we get card check with EFCA, companies can still run effective campaigns against card signing. It's the same scare. Everybody would rather have the choice of EFCA rules, but unions still have to realize that we can't avoid organizing and empowering workers—that's what it's all about. □

# Why We Need a New Law

by Melinda Burns and Dawn Hobbs

We are two award-winning journalists who were fired two years ago for leading a union campaign at the *Santa Barbara News-Press*. We are still waiting for justice, along with six other reporters, all union activists, who were fired in early 2007.

If the Employee Free Choice Act had been in place when we began organizing, we would likely have had our jobs back and a union contract long before now.

But since our company has been able to both use the law and flout the law, we've spent two years without a company paycheck or health insurance and two years of not knowing if we'll be able to pay our bills each month.

An administrative law judge ordered our reinstatement in late 2007, but Wendy McCaw, the company's multi-millionaire owner and co-publisher, appealed that decision. We have no idea when we will get our jobs back.

To date, McCaw has hired eight law firms to keep us out of the newsroom and block a fair contract. Our union has been at the bargaining table for 14 months with no tangible results. The NLRB has announced it will prosecute the *News-Press* for bad-faith bargaining, but there is no penalty for breaking the law.

## UNION NEEDED

We started our union drive in July 2006, after five top editors resigned. They said they could no longer uphold the basic standards of journalistic integrity because McCaw was attacking reporters and editors and interfering in news coverage.

We knew we needed a contract to protect ourselves from Mc-

Caw's dictatorial tactics and ensure that we could do our jobs with dignity. Within two weeks, 80 percent of the newsroom employees signed cards to join the Graphic Communications Conference of the Teamsters.

We asked McCaw, based on the cards, to recognize our union and start bargaining, but she refused. So, in September 2006, we held an election and 85 percent of us voted to join the Teamsters. Yet despite our overwhelming victory, McCaw challenged the vote with frivolous claims and delayed our union certification for nearly a year.

In December 2007, an administrative law judge ruled that McCaw was guilty of illegally firing, harassing, intimidating, and spying on union members. But

McCaw simply went on breaking the law.

## BAD FAITH

We have endured more than a year of fruitless and insulting negotiations as McCaw's agents continue to reject the union's contract proposals. Last fall, another reporter, the ninth overall, was fired. He was on our negotiating team.

During the past two years, more than 10,000 *News-Press* readers have cancelled their subscriptions. More than 70 newsroom employees have quit or been fired.

Our families have been uprooted and our careers put on hold while an outlaw employer with millions to spend gets away with "gaming" the system. She continues to bully employees because there are no serious consequences.

Inside the newsroom, our remaining colleagues are fearful of retaliation as they attempt to hang on to a paycheck. Most are afraid even to be seen in public with us fired reporters, let alone participate in any union activities.

The Employee Free Choice Act may come too late to rescue us. But no more workers should have to suffer what we've been through these past two years.

Bad bosses should have to pay stiff fines and punitive damages for illegally firing and harassing their workers during union campaigns. They should be required to recognize a union through majority sign-up, if that is what their employees want. And there should be mandatory arbitration if an employer refuses to bargain in good faith.

We need these new rules to make sure the scale isn't so tilted to one side. □



Slobodan Dimitrov/LA County AFL-CIO

## LA Unions March for Free Choice Act

The Los Angeles AFL-CIO hosted a 10-mile march February 5, putting hundreds of activists out on the wet pavement to drum up support for the Employee Free Choice Act. The march left union headquarters in downtown Los Angeles and, seven hours later, ended up at a county federal building in Westwood for a closing rally. Marchers rallied en route, including at a car wash where workers have been battling their employer for better treatment.

Organizers say the march was a kick-off for county-wide actions that will continue, all aimed at forcing California and national lawmakers to take EFCA seriously.

"We had immigrant hotel workers, construction workers, firefighters, UPS drivers, and college professors all marching hand in hand for the same cause," said Mary Gutierrez of the LA County Fed. "You don't get that diversity anywhere besides the labor movement."

A day earlier, unions brought busloads to Washington, D.C., for a rally of workers, union brass, and politicians stumping for EFCA.

The wretched state of current labor law took center stage as workers brought their stories of fired organizers and frustrated union drives from throughout the country. The most recent National Labor Relations Board annual report says workers must wait about nine months before judges respond to illegal firings, intimidation, and harassment—delays that work to the advantage of employers.

"While not a panacea for all shortcomings in U.S. labor law and practice," says a recent Human Rights Watch report, EFCA would "go a long way toward ensuring that U.S. workers are no longer systematically prevented from exercising their basic right to freedom of association."

Nationwide, more than 1.5 million petition signatures have been collected for the bill's passage, and organizers hope to reach 2 million soon.

—Tiffany Ten Eyck