

Will Franken's Victory Open the Door for the Employee Free Choice Act?

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With Norm Coleman's recent concession, Al Franken has finally captured the second Minnesota seat in the United States Senate. Franken's victory marks a major shift in power in the United States Senate and may open the door to the most radical revision of American labor law since the National Labor Relations Act was first enacted in 1936. After Senator Arlen Specter switched to the Democrat side of the aisle, Mr. Franken becomes the 60th senator who will caucus with the Democrats. If all 60 senators line up behind the Employee Free Choice Act and vote to close debate, a Republican filibuster cannot stop the Employee Free Choice Act from becoming law.

There is ample reason to defeat the Employee Free Choice Act. Despite its name, the Act would actually deprive employees of the privacy and the integrity of a secret ballot election to determine whether employees will be represented by a labor organization. On the contrary, a simple showing of union authorization cards signed by a majority of the employees would entitle the union to recognition and certification as the exclusive bargaining representative of the employees. In a card showing, employees never hear the disadvantages of union representation and never get to express their opinions in private away from the pressure of the union organizer. Authorization card signatures do not necessarily express actual preference for union representation. Organizers often visit employees' homes uninvited. The intrusion may be unwelcome and may even seem threatening. Cornered where they live, employees have no sanctuary to escape from the pressure of home visits. Organizers know that employees will often sign the card just to make them leave.

This is no way to conduct an election – we would never accept a card check as a substitute for a secret ballot election for public office.

Even worse, the Employee Free Choice Act authorizes third parties to impose collective bargaining agreements on employers if they fail to come to terms with the union within 130 days of its certification as the exclusive bargaining representative. This undermines a basic right of all persons in this country – that people are bound only to contracts to which they freely give their consent. Instead, under the Employee Free Choice Act, an arbitrator who is a stranger to the workplace, with no experience in the industry, and no financial responsibility for the business can dictate the wages, benefits and working conditions of the employees for two years.

Finally, the Employee Free Choice Act would tilt the playing field steeply toward the unions with new penalties for unfair labor practices. Under current law, the National

Labor Relations Board can correct unfair labor practices by awarding the economic losses sustained by employees as the result of those practices. Under the Employee Free Choice Act, the Board could award far more than that, including three times the actual losses for discrimination against union supporters before the first contract, and an extra \$20,000 penalty for each violation before that contract. In this way, the law would shift its focus from protecting employees to punishing employers.

In the end, it may be Senator Specter who decides the fate of American labor law. Senator Specter previously stated that the current recession is no time to change labor law so fundamentally. He also stated that intrusive home visits by labor organizers should not be allowed under any circumstance. Those statements are no less true now than when he was a Republican facing a conservative challenger. Both employers and employees have a stake in fair elections by secret ballot rather than the rigged card check so urgently sought by Big Labor.