

EFCA's Toxic Arbitration Clause

By Timothy H. Lee

Although its original provisions eliminating the secret ballot in union elections drew the most immediate opposition, the Employee Free-Choice Act's (EFCA's) arbitration clause undermines workers' right to have the final say over the terms and conditions under which they work. Instead, EFCA transfers that power in many cases to unaccountable government arbitrators with no stake in a workable outcome.

Current Labor Law:

- Grants *workers* the final say in deciding whether to accept or reject contract terms offered by employers during the bargaining process.
- Section 8 of the National Labor Relations Act (NLRA) requires both employers and employee representatives to meet and bargain "in good faith with respect to wages, hours, and other terms and conditions of employment."
- Critically, however, Section 8 provides that "*such obligation does not compel either party to agree to a proposal or require the making of a concession.*"
- This safeguards the principle of mutual consent and free choice by allowing workers to reject terms they ultimately cannot accept.

EFCA's Proposed Arbitration Clause:

- Replaces the will of workers with the whims of *government arbitrators*.
- Section 3 of EFCA empowers government arbitrators to unilaterally "render a decision" after just 120 days of bargaining, thereby dictating contract terms upon workers and employers alike.
- Since most contract negotiations exceed 120 days, the breathtaking toxicity of these arbitration provisions is obvious.

Other Consequences of Arbitration Clause:

- Workers and employers will have less motivation to negotiate reasonably. Instead, they will have an incentive to submit extreme proposals to the arbitrator, in the hope that the arbitrator will split the baby and choose some "middle ground."
- Workers may be forced to participate in dangerously underfunded multi-employer union pension plans.
- Drags out contract settlement, as states like Michigan that have imposed mandatory arbitration rules witnessed the average period exceed fifteen long months. This leaves both anxious workers and strapped employers in a precarious holding pattern.
- Fails to identify how arbitrators will be appointed, which opens the door to further uncertainty and governmental mischief.
- Harms the broader American economy. Whereas workers and employers have a mutual stake in ensuring a workable agreement, unaccountable government arbitrators who parachute in to dictate agreements suffer no consequence from sending businesses into ruin.
- A quantitative study by Dr. Anne Layne-Farrar of the Social Science Research Network concludes that EFCA may cost 600,000 jobs in just one year.
- Workers can no longer terminate the negotiation process or decertify unions that forfeit employees' trust during negotiations.