



***Flexible Packaging Association***

# Employee Free Choice Act (EFCA)

## What Every Employer Needs to Know About This Proposed Law

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Preventive Strategies and  
Positive Solutions for the Workplace

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# Employee Free Choice Act EFCA

## The Economy

- Market down
- Job insecurity up
- Economic stimulus gives the government more control

## Political Environment

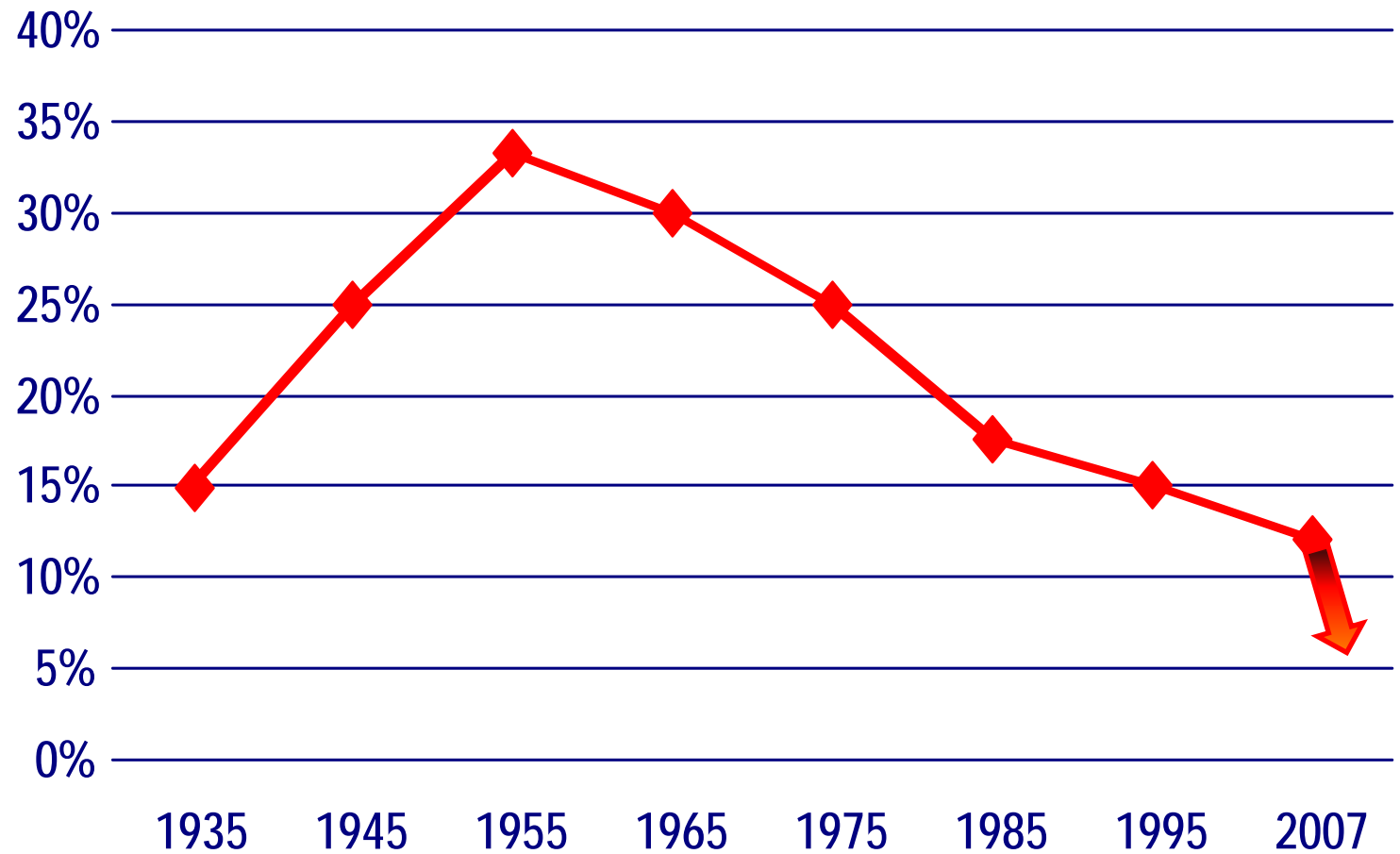
- President Obama
- Larger democratic majority in senate
- Labor's contributions and expectations

## "State of the Unions"

- Steady decline in membership
- Fewer NLRB supervised elections
- "Change To Win" breaks from AFL-CIO (2006); now a "remerger" of the two entities?



## Private Sector Union Membership In the US



# Employee Free Choice Act

## Union Win Rate in Representational Elections Nationwide

- 2001 – 54%
- 2002 – 56%
- 2003 – 57%
- 2004 – 59%
- 2005 – 62%
- 2006 – 61%
- 2007 – 60%

2006 is the first year since 1996 in which Unions did not increase their win rate



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# Payback



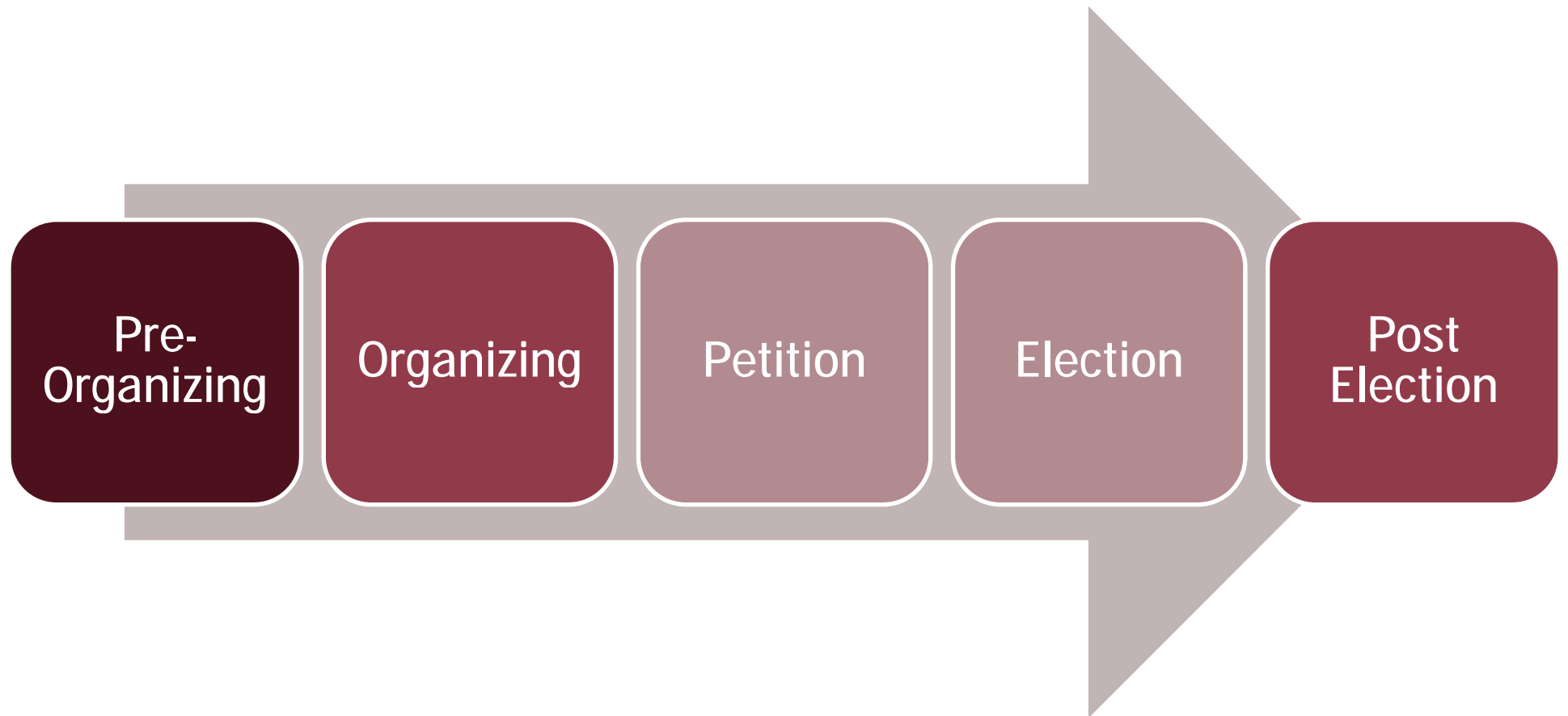
## Section 8(c)

“The expressing of *any* views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic or visual form, shall not constitute or be evidence of an unfair labor practice...”

---- National Labor Relations Act



# The Current Road To Unionization



# Employee Free Choice Act

## The NRLA Today

### Union Certification

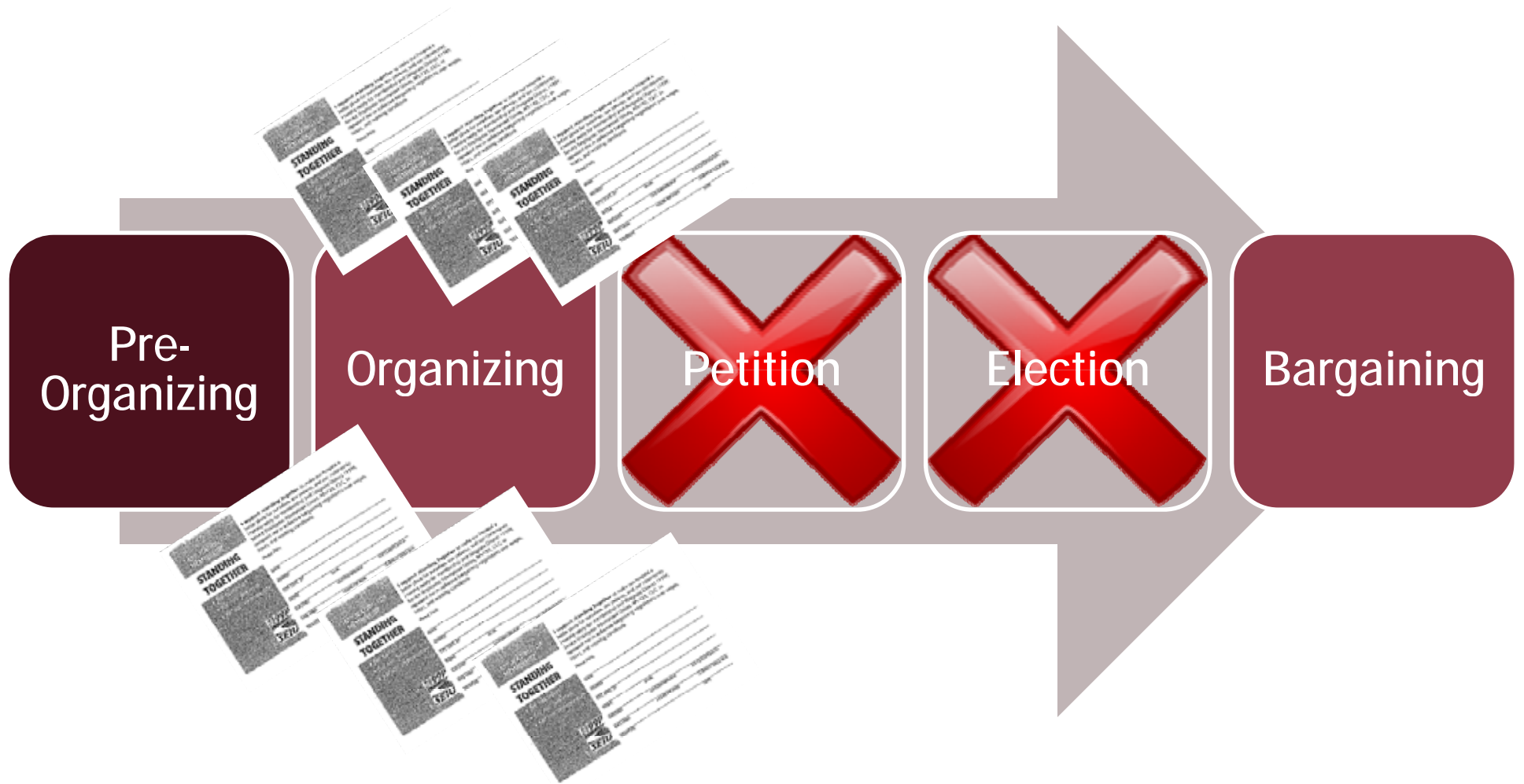
- NLRB supervised secret ballot election the norm
- Card check recognition optional

## The NRLA After EFCA

### Union Certification

- Mandatory certification based solely on employees signing cards or petition

# The Road To Unionization After EFCA





# Employee Free Choice Act

**“THERE’S NO REASON TO SUBJECT THE WORKERS TO AN ELECTION.”**

**WHO SAID IT?**



Robert Mugabe  
President of Zimbabwe



Mahmoud Ahmadinejad  
President of Iran



Bruce Raynor  
UNITE HERE Leader

# National Labor Relations Act (NLRA) Today

## Union certification


Can occur voluntarily through “card check recognition”  
(majority required)

**Authorization for Representation Under the National Labor Relations Act**

*I, the undersigned employee of*

Company: \_\_\_\_\_

Address of Company: \_\_\_\_\_  
authorize Local \_\_\_\_\_ affiliated with the International Brotherhood  
of Teamsters to represent me in negotiations for better wages, hours and  
working conditions.




*(PLEASE PRINT)*

Name \_\_\_\_\_ Date \_\_\_\_\_

Home Address \_\_\_\_\_  
*(Number and Street)* *(City, State and Zip Code)*



Social Security Number \_\_\_\_\_ Phone \_\_\_\_\_

Job Classification \_\_\_\_\_

 Signature \_\_\_\_\_



# Sample NLRB Ballot

	<b>UNITED STATES OF AMERICA</b> <b>National Labor Relations Board</b>	
<b>OFFICIAL SECRET BALLOT</b> For certain employees of - <i>SAMPLE</i>		
Do you wish to be represented for purposes of collective bargaining by - <b>LOCAL 456, INTERNATIONAL BROTHERHOOD OF TEAMSTERS?</b>		
<b>MARK AN "X" IN THE SQUARE OF YOUR CHOICE</b>		
<b>YES</b> <input type="checkbox"/>	<b>NO</b> <input type="checkbox"/>	
<p><b>DO NOT SIGN THIS BALLOT.</b> Fold and drop in ballot box. If you spoil this ballot return it to the Board Agent for a new one.</p> <p>The National Labor Relations Board does not endorse any choice in this election. Any markings that you may see on any sample Ballot have not been put there by the National Labor Relations Board.</p>		

# Employee Free Choice Act

## The Canadian Experience with Card Checks



# The Hypocrisy of EFCA

## Chief Sponsor

“ . . . We are writing you to encourage you to use the secret ballot in all union representation elections. . . We feel that the secret ballot is **ABSOLUTELY NECESSARY** in order to ensure that workers are intimidated into voting for a union they might not otherwise choose.”



--Rep. George Miller (D-Calif.)

August 29, 2001

Letter to the Mexican Government

# The Hypocrisy of EFCA

## The AFL-CIO

"...other means of decision-making are 'not comparable to the privacy and independence of the voting booth,' and [the secret ballot] election system provides the surest means of avoiding decisions which are 'the result of group pressures not individual decision[s].'"

AFL-CIO Brief to NLRB, *Chelsea Industries*,  
7-CA-39846 and 7-CA-37016 (May 18, 1998)

# Employee Free Choice Act

## The NRLA Today

### Contract Negotiations

- Bargain at mutually agreeable times
- Employer/Union direct good faith bargaining
- Binding or non-binding mediation/arbitration optional

## The NRLA After EFCA

### Contract Negotiations

- Start bargaining within 10 days of certification
- 90 days to negotiate a first contract
- 30 days of FMCS mediation
- Mandatory interest arbitration for a two-year contract

# Employee Free Choice Act

## The NRLA Today

### Employer Penalties

- NLRB supervised notice posting for most violations
- Reinstatement and back pay
- An order to bargain in good faith
- Injunction
- Contempt proceedings

## The NRLA After EFCA

### Employer Penalties

- Treble back pay
- \$20,000 civil damages
- Injunctions





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# Practical Effects of EFCA

# Effects of EFCA on Employees

## Lose the Right to . . .

- Informed consent -- guaranteed opportunity to hear from union and employer before committing
- Input on certification (e.g., if employee not approached to sign)
- Secret ballot election
- Vote on a contract

Decertify the union for at least 28 months

# Effects of EFCA on Employers

## Certification

- Little or no opportunity to timely communicate with employees under NLRA Section 8 (c)

## Bargaining

- Practical repeal of Section 8(d)

## Penalties

- Significant
- Chilling impact

# Effects of EFCA on Collective Bargaining

- Excessive contract demands by unions
- 120 days of stalling tactics during negotiations
- Arbitrator-imposed labor costs and productivity standards
- Early strike and other job action strategies

# Effects of EFCA on Collective Bargaining

- Arbitrators likely to impose risky underfunded multi-employer benefit plans
- One contract will serve as a floor for the next: Davis-Bacon II
- Effective elimination of the right to strike

# Effects of EFCA on Collective Bargaining

- Cottage industry for attorneys and economists
- Contracts written by unaccountable arbitrators
- Arbitrator decides employer's ability to compete
- One size-fits-all contracts



# Effects of EFCA on Organizing Tactics

- Increased use of “salts” and union plants
- First-time organizing of employees of medium and small employers and bargaining units
- Rampant filing of unfair labor practice charges

# Effects of EFCA on Card Signing

- Increased union coercion and employee peer pressure to secure signed union cards
- Bounty programs for securing signed cards

# IT PAYS TO BE UNION

Each year, thousands of workers just like you choose to form a union in order to gain control over their working conditions. Union workers earn more, enjoy better benefits, and have the kind of job security that non-union workers could only hope to have.

The only way to have a true voice in your workplace is through a union contract, a legally binding document that protects you, your wages, and your working conditions. Through the union, workers negotiate for:

- Reasonable caseload requirements and staffing levels
- Wage increases
- Safe workplace conditions
- Employer-paid health insurance
- Adequate training for floating assignments
- Job security and seniority rights
- Pensions
- Paid holidays and vacations
- Opportunities for advancement
- Protection from unfair treatment and favoritism by management



With a union contract, the playing field is level, the employees sit at the negotiating table across from management and negotiate their terms and conditions of employment.

Without a legal binding contract, all of your current benefits can be taken away or reduced by your employer. With a union contract, all terms and conditions agreed upon in the contract are **GUARANTEED** and can not be changed without your consent.

Your work place may have a process for handling complaints and issues, but right now, the final decision is still in the administration's hands. UFCW's contracts have grievance procedures where the final step is an arbitrator, a non-biased person who hears both sides and gives a decision.

Union contracts provide job protection, increased wages and benefits, safety language, a grievance procedure and most importantly, a **VOICE**.

**UFCW REPRESENTS HEALTH CARE WORKERS ACROSS THE U.S.  
WE HAVE THE EXPERIENCE AND EXPERTISE TO REPRESENT YOU!**

Organizing Incentive Program for facilities which are organizing to have Local 7 represent them, the following Incentive Program is to be implemented immediately

- \$5.00 per authorization card obtained during the organizing campaign, paid to the person obtaining the card.
- \$10.00 per authorization card at the successful conclusion of a card check or the successful conclusion of an NLRB election, paid to the person originally obtaining the authorization card.
- \$15.00 per authorization card (signed prior to the successful card check/NLRB election) at the point that a contract is negotiated and approved, paid to the person originally obtaining the authorization card.



For Information Contact  
UFCW Local 7's Organizing Department  
(303) 425-0897 or (800) 854-7054  
Extensions 300, 350, 353 & 401  
[Healthcareworkers.ufcw7.org](http://Healthcareworkers.ufcw7.org)  
or [www.ufcw7.org](http://www.ufcw7.org)



Organizing incentive program for facilities which are organizing to have Local 7 represent them, the following Incentive Program is to be implemented immediately[:] \$5.00 per authorization card obtained during the organizing campaign, paid to the person obtaining the authorization card[:] \$10.00 per authorization card at the successful conclusion of a card check or the successful conclusion of an NLRB election, paid to the person ..."

# Effects of EFCA on Freedom of Speech

- Minimal or no opportunity to timely communicate with employees
- A reticence to communicate at all: up to \$20,000 civil penalty per violation

# Summary of Overall Effects of EFCA

- Effective elimination of secret ballot elections
- Silence employers – stifle employees
- Guarantee a first contract
- Cement the union's position
- Chill free speech rights of supervisors and reduce employer ability to communicate



# Summary of Overall Effects of EFCA

- Vast increase in union market share
- Huge increase in union dues collected
- Labor political war chest greatly expanded



# Open EFCA Questions

- Will authorization cards obtained by the Union before the passage of the law be effective?
- What kind of Arbitration will occur – last best offer or interest based?
- How and when will appropriate bargaining units be determined?
- Is the two-year period extended when arbitration takes 18 months?
- And many more. . .



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# EFCA Status Report: Where Does It Stand Now?

# Status of EFCA



## STATUS

“Change is finally having a President...who will make the Employee Free Choice Act the law of the land.”

--- Barack Obama

# Status of EFCA



- In 2007, passed House by vote of 241 – 185
- 2007 Senate cloture vote failed 51-48 (need 60)

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- 2009: 8 likely supporters of EFCA have replaced Senators who opposed EFCA  
Filibuster-proof
- Introduced in the House on February 4, 2009
- 15 Million signatures in support
- Executive Orders already issued



# Possible Compromises

- Secret ballot elections in five days
- Binding arbitration only when surface bargaining occurs
- Executive order

# PREPARING YOUR ORGANIZATION FOR **EFCA**

## What to Consider Now



# Reasons why unions successfully organize

## TLC is the key

- Treatment  
(or perception of treatment)
- Lack of Communication  
(VOICE)
  - Employee  
Participation/Engagement



## Publicize a Positive Employee Relations Union-Free Philosophy

- Pro-employee; not anti-union
- Content
- Means of publicizing
- Frequency of publicizing
- Orientation

## Train Supervisors

- Your positive employee relations union-free philosophy
- Unions, union cards, union organizing tactics and EFCA
- Their NLRA free speech rights and supervisor skills

## Train Supervisors

- How to ask open-ended questions: "Why?"
- Update your access, solicitation, distribution and electronic communications policies
- "Early" warning signs

## Educate All Employees on Union Topics

- Discuss your positive employee relations/union-free philosophy
- Describe EFCA
- Describe/role-play card-signing tactics
- Distribute an annotated union card

# 1199SEIU United Healthcare Workers East

**1199SEIU**  
United Healthcare Workers East

Application for Membership/ Aplicación para Membresía

Name/Nombre

Home Address/Dirección de Casa

City/Ciudad

Home Phone/Teléfono de Casa

Other Phone/Otro Teléfono

E-mail/Correo electrónico

Lawyer talk:  
it's a contract

What will the union do  
with your personal  
information?

What do you  
know about  
this group?

What are the  
obligations of  
membership?

You lose the right to  
represent yourself

How long have you been a PCA? / ¿Cuanto tiempo llevas como PCA?

I hereby apply for membership in 1199SEIU, United Healthcare Workers East and authorize it to represent me for the purposes of collective bargaining over wages, hours, and working conditions. Yo autorizo a 1199SEIU, United Healthcare Workers East a ser mi representante exclusivo para propósito de negociación colectiva en asuntos relacionados a salarios, horas y condiciones de trabajo.

There are no guarantees  
with collective bargaining

The union gets  
control over these



## Educate All Employees on Union Topics

- Discuss your positive employee relations/union-free philosophy
- Describe EFCA
- Describe/role-play card-signing tactics
- Distribute an annotated union card

## Maximize Employee Involvement Programs

- Form *ad hoc* committees
- Institute peer grievance review
- Offer binding arbitration
- Evaluate effectiveness of issue-reporting tools

# Preparing for EFCA

## Conduct a Bargaining Unit and Supervisor Status Analysis and Take Actions to Achieve Desired Results

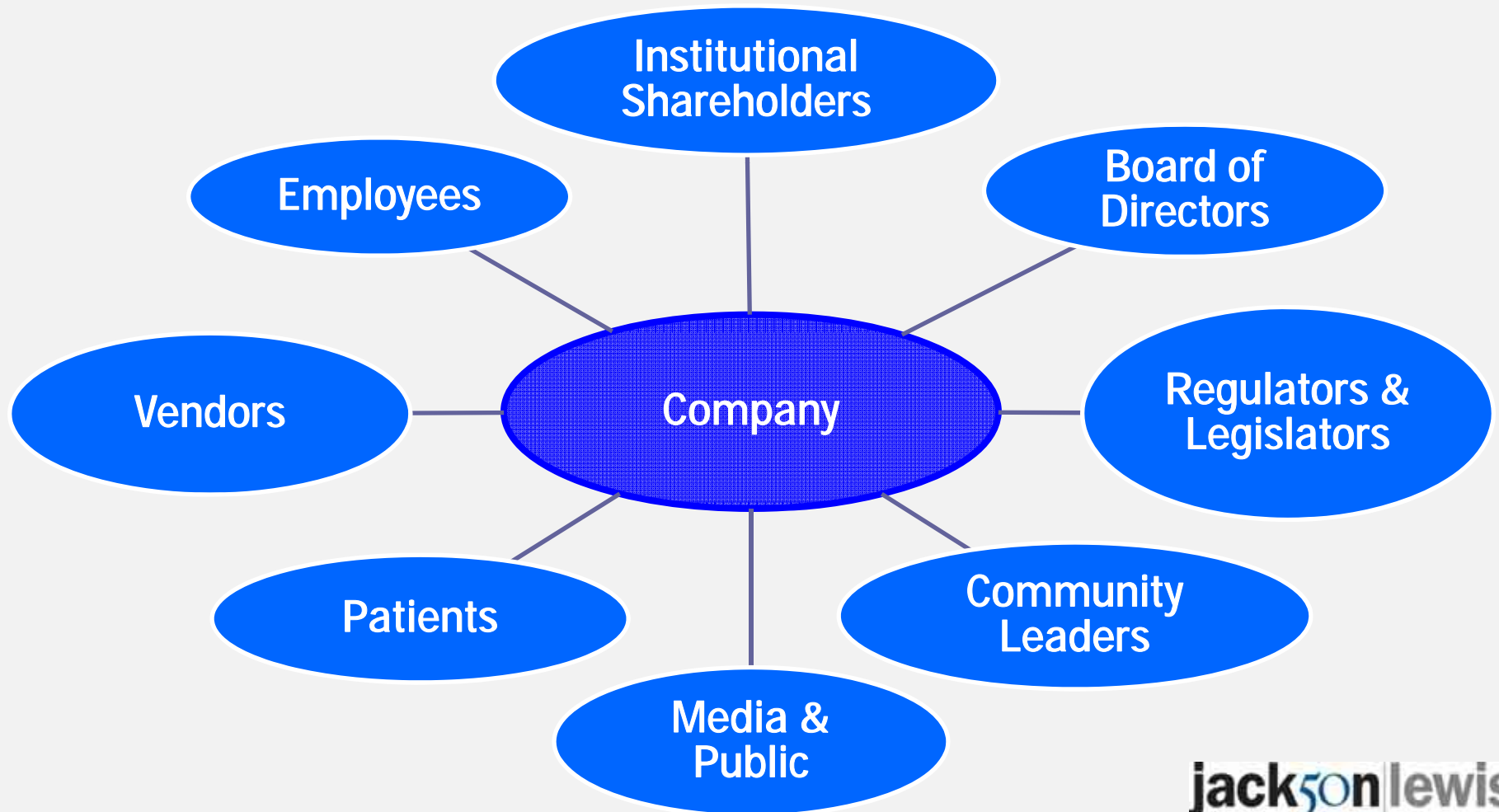
- Single site v. multi-location units
- Integrate or separate operations for optimum outcome
- Add/delete supervisor duties

## Establish an Early Response Team

- Minutemen and Minutewomen
- Prepared draft scripts and written communications
- Videos

# Preparing for EFCA

## Conduct a “Power Structure Analysis” and Address Perceived External Vulnerabilities



## Lock-down Your Facility

- Publicize and consistently enforce a broad non-employee access, solicitation and distribution policy
- Secure access points
- Secure employee lists



## Conduct an Internal Vulnerability Audit

- “If your company is issue-free, it will be union-free
- Wage & hour issues
- Safety Issues
- Communication Issues
- Perceived treatment issues

## Summary of Points Covered Today

- EFCA is going to happen in some form
- Under the law, it will be easier for unions to organize your employees; it will be harder for employers to campaign
- Your company must change the way you do things
- Devise and implement a pro-active plan now!
- If you are doing the right things, EFCA should not make a difference

# Questions?