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EXAMINING THE EMPLOYEE FREE CHOICE ACT

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ABSTRACT

This thesis compares both the arguments for and against the proposed Employee Free Choice Act (EFCA) and for unions more generally. The EFCA is a proposed amendment to the National Labor Relations Act (NLRA) that was enacted in 1935. The EFCA would streamline union certification, provide interest arbitration, and strengthen the violations for violating the Act. Proponents argue that unions increase wages for workers, decrease income inequality, and increase worker productivity. Opponents argue that unions increase output losses due to strikes, increase output losses due to employment effects, and increase output losses due to restrictive work rules. This thesis will also present the rampant disregard for the NLRA in the form of increased unfair labor practices from employers. Lastly, this thesis will predict the likelihood that the EFCA will be passed and where it stands today.

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I. Introduction

What do unions do?

Over the past fifty years, there has been a negative perception of unions that has become increasingly predominant (Freeman and Medoff, 1984b). "While there are notable exceptions, many on both the right and left now doubt the social relevance and value of America's organized labor movement" (Freeman and Medoff, 1984b, 4). Nonetheless, unions increase wages for their workers and reduce income inequality. Furthermore, unions increase industrial democracy by protecting their workers against arbitrary management decisions such as disciplinary actions, termination, promotions, etc. Without a union, unless specifically stated in an employment contract, workers are "at-will"; workers can be terminated for any reason (Yates, 1998). Employers can treat workers how they please; they can cut wages and eliminate benefits if they so choose. Unions protect workers from this kind of unfair treatment.

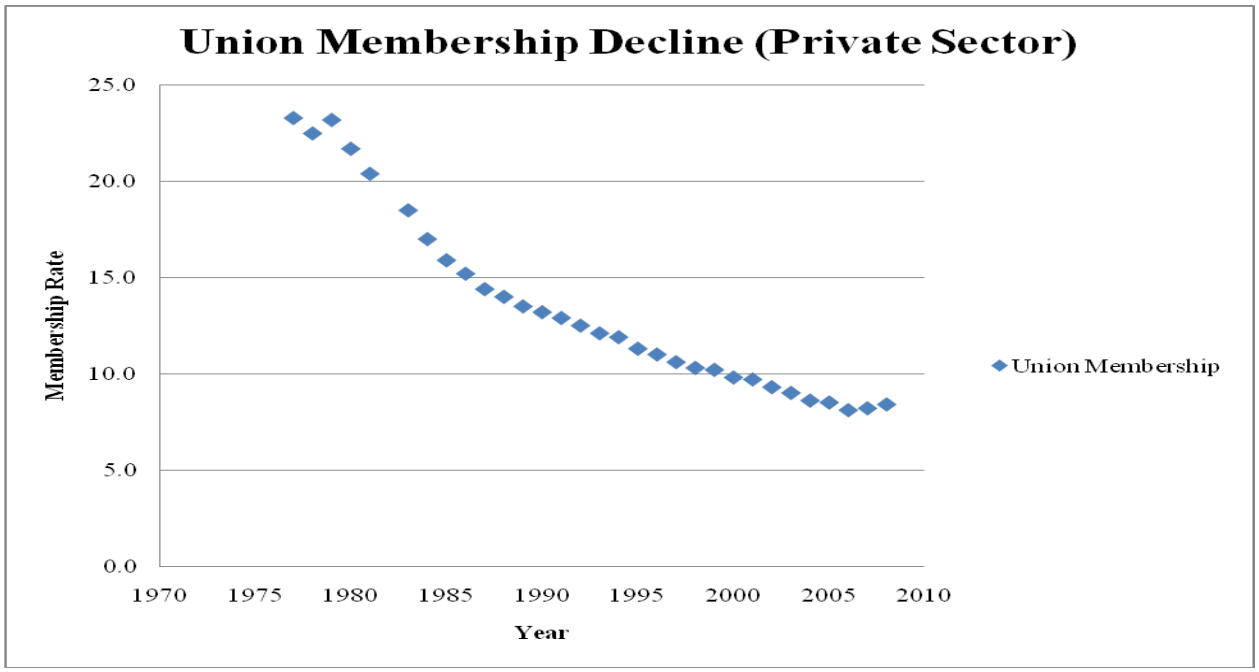
Unions also provide safer workplaces by specifying concise occupational health and safety provisions in their agreements with employers. They also give their workers a right to a fair hearing for grievances against the employer through the grievance procedure of the collective bargaining agreement (Yates, 1998). In addition, unions allow workers to have a voice in their workplace (which reduces turnover and increases team morale and productivity) by giving them strength in numbers (Yates, 1998). Allowing workers to have voice in their workplace levels the playing field between workers and their employees. The average worker has little no bargaining power in their relationship with an employer so he/she can have a difficult time addressing a problem or asking for a raise. "For every Michael Jordan, whose amazing talent gives him tremendous power, there are millions of the rest of us, eminently replaceable" (Yates, 1998, 23). This quote demonstrates that only a small number of people do

have power in the relationship with their employer so organizing with other workers into a union can help the average workers. Many people believe that being a part of a union allows them to better their lots in life (Yates, 1998).

Assault on workers' freedom to organize

The United States has seen a substantial decrease in union concentration over the past several decades, especially in the private sector. In 1973, 24 percent of all wage and salary workers belonged to a union, compared to 12.4 percent in 2008 (Hirsch and Macpherson, 2008). According to the Bureau of Labor Statistics annual news release, the union membership rate for public sector workers in 2008 (36.8 percent) was significantly higher than the rate for private industry workers (7.6 percent) (2009).

Figure 1



SOURCE: Hirsch and Macpherson, 2008

This decline in union density in the private sector is a result of many factors including structural changes in the economy (shift from industrial-based to service-based economy),

decreased interest in unionization, and increased globalization, among many others (Clawson and Clawson, 1999). An additional explanation asserts that employer opposition to union efforts has led to the major decline in union activity. Many employers have become increasingly aggressive in their anti-union tactics, whether legal or illegal. Examples of these tactics include threats, interrogation, misrepresentation of union goals, and discharge for union activity. (Bronfenbrenner, 2009).

In early 2009, Economists Ben Zipperer and John Schmitt of the Center for Economic and Policy Research published statistics regarding the rise in the probability of illegal firings during union election campaigns from 1951 through 2007. Beginning in the late 1970s with the rise of the anti-union movement, employers became more aggressive in their anti-union tactics, often using illegal measures such as termination of a union supporter in order to hinder the success of a union election campaign[1]. Their data was taken from yearly National Labor Relations Board (NLRB) publications listing outcomes of different legal actions that are connected with the National Labor Relations Act (NLRA). Zipperer and Schmitt reviewed this data and estimated the probability of a pro-union worker being illegally fired during a union election campaign. To estimate this, they found the ratio of illegally fired employees to the number of workers who voted pro-union in the election. In 1978, the probability that a pro-union worker was fired during a campaign was 0.7 percent. Over the years, the probability has increased to 1.8 percent in 2007 (Zipperer and Schmitt, 2009).

Zipperer and Schmitt also found that in the late 1990s, 16 percent of union election campaigns resulted in illegal terminations of pro-union workers. In the 2000s, this percentage had increased to 26 percent. Finally, in 2007, 30 percent of union campaigns had an illegal

[1] Termination of a union supporter, if not for economic reasons, is a violation of Section 8(a)(3) of the NLRA.

termination (2009). This data supports the argument that a major reason for the decline in private-sector unionization is aggressive employer opposition to union activities which makes workers fearful of losing their job if they support a union. Under the NLRA, if an employer is found to have illegally terminated an employee for union involvement, the terminated worker is entitled to back pay minus any interim earnings. This small penalty does not provide significant disincentives to engage in this illegal behavior. In fact, it creates an incentive to terminate an important union supporter in order to disrupt the election campaign and instill fear in the other pro-union employees before the election takes place. In other words, both legal and illegal employer anti-union tactics play a considerable role in determining a union's success in an organizing campaign and election.

In a similar paper, Kate Bronfenbrenner studied employer behavior in union election campaigns. Bronfenbrenner obtained NLRB data from a random sample of 1,004 certification elections from January 1, 1999 through December 31, 2003, and from a survey of 562 campaigns taken from that sample. The data was collected from NLRB documents, including charge sheets, settlement agreements, Administrative Law Judge decisions, and NLRB decisions (Bronfenbrenner, 2009). Although a great deal of information on unfair labor practice was collected, it was not the ideal measure of illegal employer behavior because not all unfair labor practices are reported. Among the reasons unfair labor practices might not have been reported during the time period covered is that the reporting of these incidents might have delayed the election further, workers' belief that the remedy from an unfair labor practice is minimal and not worth the hassle of filing charges, and workers' fear of retaliation from their employer. Therefore, in-depth surveys from the union organizers in the sampled elections are the preferred measure of employer behavior.

From the surveys, Bronfenbrenner found that in 64 percent of all elections, employers interrogated workers about their union activity[2]. In 47 percent of elections, employers threatened to cut benefits or wages. Almost 60 percent of elections resulted in a threat of plant closing and 34 percent led to discharged union activists (Bronfenbrenner, 2009). All of these tactics led to a lower election win rate than if these tactics had not been used. Her survey also found that a majority of employers engaged in an aggressive campaign, characterized by 10 or more anti-union tactics, in the face of an organizing drive. Bronfenbrenner found that the union win rate is 45 percent when an aggressive campaign is run and 55 percent when an aggressive campaign is not run.

Over time, the frequency and intensity of these tactics have increased significantly. For example, in 1986-87, 29 percent of elections included a threat of plant closing. This number increased to 57 percent in 1999-2003. The percentage of discharged union activists rose from 30 percent in 1986-87 to 34 percent in 1999-2003 (Bronfenbrenner, 2009).

Bronfenbrenner found that less coercive tactics were used more sparingly, showing the increasingly aggressive nature of employers during election campaigns. For example, promises of improvement were present in 56 percent of elections in 1986-87 and only 46 percent in 1999-2003. In addition, the average number of tactics used by an employer during an election increased from 5 in 1986-87 to 11 in 1999-2003 (Bronfenbrenner, 2009). This data clearly shows an increase in more coercive employer tactics which is consistent over all with the campaigns that were surveyed.

Through the investigation of the unfair labor documents, Bronfenbrenner (2009) found that unions filed unfair labor practice charges in 39 percent of the survey sample with 926

[2] This is a violation of Section 8(a)(1) of the NLRA which states that "It shall be an unfair labor practice for an employer--to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7."

allegations overall. There were 173 allegations of coercive statements and threats and 161 allegations of discharge for union activity. However, as mentioned before, these unfair labor practice documents cannot fully measure the totality of employer tactics due to many workers' and unions' unwillingness to file charge. In fact, the survey suggests that unfair labor practice charges are filed in less than half of the elections where violations had occurred (Bronfenbrenner, 2009).

If and when the union wins the election, there is no guarantee that they will reach an agreement for their first contract for a very long time. In Bronfenbrenner's survey, only 48 percent of unions had a collective bargaining agreement by the end of the first year. Sixty-three percent had a contract within two years of the election and 70 percent had a contract within three years of the election. Three years after the election, *still* only 75 percent had a contract. This shows that even after enduring the arduous NLRB election, roadblocks remain for workers who strive to have a voice in their workplace.

It may be difficult to understand how the NLRA can be so easily and often violated. However, the widespread violations of the Act are due to the minimal penalties under the law. As stated before, if an employer is found to have illegally terminated an employee for union involvement, the terminated worker is entitled to back pay, minus any interim earnings and possible reinstatement. Furthermore, there is nothing under the NLRA that makes penalties for repeat offenders more severe than for a first offense.

Another penalty for violating the NLRA is to post a notice in the workplace informing workers that the company has received a cease and desist order. Possibly the worst penalty an employer can face is the rerun election, which is ordered if the Board determines that the conduct of either party coerced an employee in any way during an election. From her study,

Bronfenbrenner (2009, 3) concluded, "Our findings suggest that the aspirations for representation are being thwarted by a coercive and punitive climate for organizing that goes unrestrained due to a fundamentally flawed regulator regime that neither protects their rights nor provides any disincentives for employers to continue disregarding the law." However, Congress recently has begun to consider legislative reform due to the realization of the apparent weakness of our current labor law. This legislative reform is known as the Employee Free Choice Act (EFCA) of 2009.

This thesis examines the arguments for and against the EFCA and unions more generally, affirming that the increase in unionization due to the EFCA will have positive economic implications. The paper is divided into six subsequent sections. The first section provides information about the EFCA and how it is different from current legislation. The second section reviews the historical background of unionism in the United States before 1935. The third section provides a brief outline of current labor legislation, including the NLRA and its amendments. The following two sections discuss the cases for and against EFCA. The arguments for the EFCA examine unions' effect on wages, reducing wage inequality, and unions' effect on productivity. The arguments against the EFCA examine the loss of output due to union strike activity, the effect of unions' restrictive work rules, and output losses due to union effects on employment. Lastly, I will present my thoughts on the stronger argument and give an update on the current state of the EFCA and its potential implications for the future of unionization in the United States.

II. The Employee Free Choice Act

The EFCA was originally proposed in 2007 as an amendment to the NLRA. The legislation does three things:

1. It gives unions the choice of obtaining certification as bargaining representative through majority sign-up of employees using signature cards (card check) or through the traditional NLRB election process.

2. It institutes mandatory mediation by the Federal Mediation and Conciliation Service (FMCS) if a union and employer cannot reach an agreement on the first contract within 90 days, and mandatory arbitration if the parties cannot reach a settlement within 120 days (unless both parties mutually agree on another timeframe).

3.It increases employer fines if an employee is discriminated against or is discharged illegally during a union campaign and makes employers liable for triple damages in the case of back pay awards. The employer would also face a federal court injunction if there is reasonable cause that the employer is engaging in any illegal, anti-union activities.

In short, EFCA would streamline union certification, facilitate initial collective bargaining agreements, and strengthen enforcement of the NLRA. The first provision states that instead of going through the NLRB union election process, if the majority of employees in an appropriate bargaining unit sign authorization cards designating the union as their bargaining representative (given that they do not currently have another union as their bargaining representative), the NLRB will certify the union. Under the NLRA, the NLRB election process is inevitable. If between 30 and 50% of employees sign, they must go through the election process. If more than 50% sign the authorization cards, the employees can request voluntary recognition of the union by the employer; however voluntary recognition is extremely rare. The

NLRB election often lasts several months, if not more due to employer delays. The switch to certifying a union after majority vote versus winning a long, drawn-out NLRB election is highly beneficial to the certification of unions (American Rights at Work, 2009).

The second provision of EFCA states that after union certification, the employer and union must meet no later than ten days after a written request for collective bargaining (or another period that both parties mutually agree upon). In this meeting, both parties shall begin to bargain collectively and shall make an effort to conclude and sign a collective bargaining agreement. If, after 90 days of unsuccessful bargaining (or another period that both parties mutually agree upon), either the employer or the union may contact the Federal Mediation and Conciliation Services (FMCS) and request mediation. If, after 30 days of mediation (or another period that both parties mutually agree upon), they still cannot come to an agreement, it will be referred to an arbitration board, which will render a decision and this decision will be binding for two years. This two-year period of binding arbitration can be changed only under written consent of both parties. Thus, this second provision will allow newly formed unions to gain their first contract and within a timely manner (American Rights at Work, 2009).

The last provision of EFCA increases the penalties to employers who commit unfair labor practices. If an employer is charged with discriminating against an employee[3], threatening to discharge employees[4], or engaging in any other unfair labor practice that interferes with or coerces employees while exercising their Section 7 rights during the union campaign or after union certification but before the agreement of their first collective bargaining contract, the employer must award the worker back pay (and, in addition, two times that amount as damages).

[3] This is a violation of Section 8(a)(3) of the NLRA.

[4] This is a violation of Section 8(a)(1) of the NLRA.

Furthermore, the employer can be subject to civil penalties up to $20,000 for each violation. The NLRB decides on the amount of the fine by considering the magnitude of the unfair labor practice and its impact on the charging party as well as other persons who seek to exercise their rights under the Employee Free Choice Act (American Rights at Work, 2009).

The current penalties for committing unfair labor practices are so insignificant that they provide no disincentives for employers to engage in these types of unlawful behavior. The provision proposed under EFCA to increase penalties to employers will discourage employers from violating the law in the future.

III. History of Unionism in the United States Before 1935

A review of the evolution of labor law over the last two hundred years identifies some common themes. The two main trends that occurred throughout labor history are the conflicting, and sometimes violent, relationship between employers and employees and government's involvement in the relationship, which mostly supported employer's objectives.

The first recorded labor union was that of the Philadelphia shoemakers in 1792. This group quickly fell apart but reorganized again in 1794 as the Federal Society of Journeymen Cordwainers. They carried out their first strike in 1799 which lasted almost ten weeks. Strikes had occurred before 1799; however they were unorganized and mostly unsuccessful. Printing was also another widely unionizing industry that grew to several northeast cities by 1805. At this time, the separation of journeymen from their masters had occurred. Masters were excluded from membership in these labor societies due to their separate, and often opposite, viewpoints and interests. As stated in Adam Smith's *Wealth of Nations*, workmen want as much money as possible and their masters want to pay as little as possible. "The former are disposed to combine in order to raise, the latter in order to lower the wages of labour" (Smith, 1776, I.8.11).

In these early societies, strikes were the principal economic weapon used by workers. Workers struck mainly to improve their wages. The societies during this time would construct pay scales and present them to their masters. The first wage scale was prepared by organized printers from New York in 1800 (Perlman, 1950). The strikes were mostly peaceful and orderly; nevertheless, some turned violent. During a strike of the Philadelphia cordwainers in 1806, temporary replacement workers (referred to as scabs by strikers) were beaten outside of the workplace (Perlman, 1950).

The masters' associations bitterly opposed the journeymen's societies and often brought legal challenges in the courts stating that the societies' actions were a conspiracy in restraint of trade. Six criminal conspiracy cases were brought to court between 1806 and 1815 (Perlman, 1950).

The first reported case in 1806 was that of Commonwealth v. Pullis. The Federal Society of Journeymen Cordwainers went on strike in 1805 in order to earn higher wages; however, the strike was ended when eight of its leaders were brought to trial. They were accused of criminally conspiring to raise their wages. The eight leaders were found guilty and charged eight dollars each (a week's pay) and the cost of the trial. In three of the other cases, the journeymen were found guilty of conspiracy (Perlman, 1950).

Union activity was halted at the end of the Napoleonic Wars due to the lifting of the embargo that was created as an attempt at neutrality. This allowed for traders and manufacturers from overseas to bring their products into the American market. This had a negative effect on the union movement as the increased global competition decreased the profits of American industries. After the depression that receded in 1820, conditions improved and allowed for the reintroduction of trade unions throughout many industries (Perlman, 1950).

In the nineteenth century, unions fought hard for a ten-hour workday. The first concerted effort occurred in 1833 among Baltimore workingmen. Their efforts initially proved unsuccessful; however, the movement in Boston in 1835 ended in success. Carpenters in Boston struck for the ten-hour workday and the strike was highly publicized, garnering country-wide support. Even though this specific strike was lost, workers in other cities had gone on strike as well after the Boston carpenters' widespread exposure. Carpenters in Philadelphia achieved victory later in 1835 as their masters granted them a ten-hour workday. The impact of the carpenters' victory extended to other cities whose trade masters granted a ten-hour workday as well (Perlman, 1950).

Another victory for unionism occurred in 1842 when the Chief Justice of the Supreme Judicial Court of Massachusetts, Lemuel Shaw, ruled that union activities such as strikes were not criminal conspiracies unless they engaged in illegal behaviors such as forcing workers to strike. This ruling stemmed from the arrest of the leaders of the Boston Journeymen Bootmakers' Society in 1939 for demanding closed shops (an agreement where employers only hire union members). The Municipal Court in Boston found the defendants guilty of conspiracy; though Justice Shaw overturned this when he stated that the doctrine of criminal conspiracy did not apply to unions (Commonwealth v. Hunt).

Even though unions were no longer considered criminal conspiracies, they could still be restrained by an injunction under the civil conspiracy doctrine (Dau-Schmidt et al., 2009). This was a common practice in the early twentieth century and there were many possible reasons for an employer to obtain an injunction against a union under the civil conspiracy law. Because of the vague language in this law, it was effortless for an employer to obtain an injunction. For example, a union could be responsible for the behavior of its members and even its sympathizers.

If the action of a sympathizer was found to be violent and/or coercive, the union would be liable (Dau-Schmidt et al., 2009).

The Sherman Act, enacted in 1890, provided another means for employers to obtain injunctions. The Sherman Act made "every contract, combination…or conspiracy in restraint of trade" a violation of the law (Dau-Schmidt et al., 2009, 36). Employers used this law to end strikes and boycotts against their company. They were even able to receive triple damages from these "violations." The ultimate goal of the Sherman Act was to make illegal price-fixing schemes between producers and suppliers of goods; but since the language was so vague, it was extended to union activity. The Supreme Court affirmed that the Sherman Act applied to organized labor in *Loewe v. Lawlor*, 208 U.S. 274 (1908), when workers called for a boycott of their employer's goods because their company refused to allow unionization. Subsequently, these workers were fined treble damages under the law (Dau-Schmidt et al., 2009).

However, in 1914 with the passage of the Clayton Act, the antitrust laws from the Sherman Act no longer applied to labor organizations because Congress found that workers were not commodities or articles of commerce. Furthermore, the Clayton Act prohibited injunctions against organized labor, unless the actions could cause irreparable damage. However, with the Supreme Court's decision in *Duplex Printing Press Co. v. Deering*, 254 U.S. 443 (1921), unions were no longer wholly protected under the Clayton Act as things such as secondary boycotts still resulted in legal injunctions, thus disheartening union members once again (Dau-Schmidt et al., 2009).

Towards the end of the nineteenth century, strikes became more frequent and more violent. A prime example of this is the Homestead Strike of 1892. Negotiations for a new contract between the Carnegie Steel Company and the Amalgamated Association of Iron and

Steel Workers began in February of 1892. The company presented the union with a new wage scale that provided for a reduction in wages. Months had passed and neither party had come to an agreement so by May 30th, the company said that if the union didn't agree to the new wage scale by June 29th of that year, they would start to treat their workers as individuals instead of as a collective unit (Perlman, 1950).

At their final meeting, both parties still had not come to an agreement so the strike began on June 29th. The chairman of Carnegie Brothers and Company, H. C. Frick, hired 300 men from the Pinkerton detective agency to serve as guards. Both the guards and union members went into a battle on July 6th and at least a dozen men on both sides were killed among a number who were critically wounded. By November 20th, 1892, most of the workers returned to work but without representation by a union (Perlman, 1950). This horrific trend of violent strikes continued into the twentieth century with events such as the Lattimer Massacre of 1897, the Ludlow Massacre of 1914, the Everett Massacre of 1916, and the Herrin Massacre of 1922. However, the media never displayed unions in a positive light, overstating negative features while disregarding positive ones. "Strike violence always makes the front page, although it is seldom mentioned that the employers nearly always instigate such violence" (Yates, 1998, 16).

IV. Current Labor Law (1933-present)

The 1930s proved to be a decade of dramatic change in U.S. labor relations and culminated with the enactment of the NLRA. Prior to the Act's passage, the National Industrial Recovery Act (NIRA) of 1933 was passed in an effort to stimulate economic recovery. Section 7(a) of the law gave workers the right to bargain collectively with their employers which led to short-term increased union growth. Nevertheless, this law provided no means of enforcement by

the National Recovery Administration (NRA). The Labor Advisory Board (LAB) was extremely understaffed and was not able to keep track of all of the violations (Ziegler and Gall, 2002).

New York Senator, Robert F. Wagner, was a principal critic of the Act and its vagueness concerning union activities. Wagner believed that legislation that protected workers' right to organize would allow for a growth in unions that would raise wages. Furthermore, Wagner believed that the increase in purchasing power from the growth in unionism would lead the U.S. to economic recovery (Zieger and Gall, 2002). In 1933, Wagner helped to create the National Labor Board (NLB), a seven-member group, which would investigate labor disputes occurring under the NRA. Even with the creation of the NLB, the board members still were unable to force employers to recognize unions or engage in collective bargaining due to the lack of legislation on the matter (Ziegler and Gall, 2002).

Subsequently, Wagner proposed a bill in 1935 called the National Labor Relations Act in order to support union organization and collective bargaining. Section 7 of the Act stipulated that, "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection" (Dau-Schmidt et al., 2009, 55). This bill established the NLRB, a federal agency that enforces workers' rights.

Wagner's bill identified five major unfair labor practices including employer interference with employees' Section 7 rights, employer-supported labor organizations, acts that encourage or discourage membership in a labor organization (including termination), retaliation by employers against employees who have filed charges against them under this Act, and refusal by employers to bargain collectively (Dau-Schmidt et al., 2009). Also, the bill stated that elections for union

representation must take place upon workers' request (at least 30 percent must show support through signatures on authorization cards) and the bill included the rules for the conduct in these elections. Furthermore, the bill required employers to collectively bargain with the union if the union won the election (Dau-Schmidt et al., 2009).

In 1935, the United States Supreme Court declared the National Industrial Recovery Act of 1933 unconstitutional and the NLRA (or Wagner Act) came into law a few months later. The Wagner Act established the mechanism for determining bargaining rights and settling unfair labor practice disputes. This was the first time that there were clear and explicit rules and procedures instituted to protect workers' rights (Dau-Schmidt et al., 2009).

Even after the passage of the Wagner Act, employers were still resistant to unions and many times ignored the law. In some cases, this resistance to the Wagner Act turned violent and the Memorial Day Massacre is a prime example of this. The Steel Workers Organizing Committee (SWOC) was set up in 1936 in Pittsburgh, Pennsylvania and began to represent many steel plants across the city (Bork, 2010). However, many steel companies refused to sign contracts with SWOC, believing that the Wagner Act only required negotiation, not a written agreement. Many of these companies tried to implement company unions, or Employee Representation Plans, to draw their employees' attention away from the actual collective bargaining unit (Bork, 2010).

In May of 1937, SWOC decided to strike three of the companies: Republic Steel Corporation, Youngstown Sheet and Tube, and Inland Steel Company. The strikers organized a march to the picketing site where they met with a police line. After a verbal confrontation, several objects were thrown toward the police. As a result, a few policemen panicked and shot their revolvers directly into the line of strikers. The shooting lasted 15 seconds, but was

followed by beatings of marchers with billy clubs. The violence left devastating effects-- four dead and 84 hurt. Not all employer resistance to unions led to this kind of damage; however, it shows that employers would go to great lengths to keep unions and collective bargaining agreements out of their workplaces (Bork, 2010).

In 1947, Congress enacted the Labor-Management Relations Act (also known as the Taft-Hartley Act). This legislation amended the Wagner Act, mainly by adding a list of unfair labor practices that could be committed by unions. Previously, employers were the only party with a list of unfair labor practices. The passage of the Wagner Act twelve years earlier had garnered many critics. Many conservative legislators accused the Wagner Act of "stacking the deck" in favor of unions and argued that the list of all the unfair labor practices made the employer an easy target for charges (Zieger and Gall, 2002). New Jersey Congressman, Fred A. Hartley, and Ohio Senator, Robert A. Taft, both supported the Taft-Hartley Act, believing that the Wagner Act gave unions an unjust amount of power and put employers at the mercy of unions.

The main purposes of the Act were to reduce the frequency of strikes and to protect employers and workers from alleged wrongdoings by unions. The Taft-Hartley Act intended to balance the interests of both union and employer whereas the Wagner Act mainly supported the interests of unions and workers fighting to organize unions. Supporters of the Taft-Hartley Act contended that the amendments would cause the NLRB to become a more neutral party than before, when they believe it merely supported unions. Furthermore, the Taft-Hartley Act allowed employers to resist unions and to file unfair labor practice charges against them. Hartley believed that this Act changed "NLRB functions from those of an advocate for organized labor to a … role of impartial referee … [and thus it] shifted the whole emphasis of government labor

policies" (Ziegler and Gall, 2002, 155). Unions thought it weakened the NLRA, and in so doing, it gave a greater advantage to employers.

The Labor Management Reporting and Disclosure Act (LMRDA), better known as the Landrum-Griffin Act, was signed into law in 1959 following investigations showing corruption in unions such as the Teamsters and United Textile Workers, which had been engaging in unlawful activities including embezzling union funds (Dau-Schmidt et al., 2009, 77). The Landrum-Griffin Act was designed to regulate internal union activities so that all employees were able to collectively bargain if they so wished. The main provisions of the Landrum-Griffin Act include the requirement of an annual filing of financial reports, constitutions and bylaws (including disbursement of union funds) of the unions with the Secretary of Labor. Furthermore, the Act tries to combat corruption by having union members (in good standing) elect officers through secret ballot at least every five years for national or international unions and at least every three years for local unions (Dau-Schmidt et al., 2009).

In 1978, Congress came very close to passing legislation that would have fundamentally reformed the NLRA; however, a Senate filibuster prevented this bill from being enacted. The bill proposed an adjustment of the free speech and equal access sections under the NLRA. The attempt at reform in 1978 would have provided greater access to employees by union representatives. Because non-employee union organizers can be viewed as trespassers and asked to leave the premises, they do not have equal access to speak to employees about the union. Furthermore, since employees are at work all day, employers have the benefit because they can speak to them often and even hold captive audience speeches. The bill called for unions to have access to the company's premises anytime the employer used the premises for campaign purposes to allow for better informed employees and equal opportunities for both employers and

unions (University of Pennsylvania Law Review, 1979). Employers were victorious as the bill never passed. This allowed employers to continue having the upper hand in the relationship with the union and its members.

Moving to the most recent development in the labor movement, the latest version of the EFCA was introduced into Congress on March 10, 2009. Its goal is "To amend the National Labor Relations Act to establish an efficient system to enable employees to form, join, or assist labor organizations, to provide for mandatory injunctions for unfair labor practices during organizing efforts, and for other purpose" (H.R. 800, 110 Cong., 2007). Looking back to Wagner's goal for the NLRA, he believed that especially during tough economic times, it is important that workers are free to organize into unions so that they can bargain with their employers for higher wages which will increase purchasing power (Perlman, 1950). We have seen a sharp decline in the middle class over the past few decades. The EFCA will help to stop this trend and allow for a more equitable distribution of income.

V. Case for EFCA

Proponents of the EFCA cite several reasons why it should be enacted: the EFCA will restore employee rights given under the NLRA, it will reduce unfair labor practices in elections, and it will strengthen the penalties for violating the law. With the proposed majority sign-up, or card check, the choice of whether or not a union is certified is in the hands of the worker instead of the dominant companies (AFL-CIO, 2009). Proponents believe that majority sign-up is very important because it helps level the playing field and gives workers a fair and express path to form a union. Many argue that NLRB elections attract more coercion and intimidation than majority sign-up would. Forty-six percent of workers have reported feeling pressure from management during NLRB elections, whereas only fourteen percent of workers have reported

feeling pressure from the union during majority sign-up (American Rights at Work, 2009). Furthermore, workers who do win a union are often delayed or denied a collective bargaining agreement. A study from MIT reported that 44 percent of workers who won union certification had never reached their first collective bargaining agreement (AFL-CIO, 2009). EFCA will guarantee that employers cannot delay bargaining and workers will reach their first contract by providing mediation services and binding arbitration if an agreement cannot be met within 120 days.

In addition, as is evident in Bronfenbrenner's (2009) study, employers commonly intimidate, threaten, and even terminate workers who try to form unions. "When faced with organizing drives, 25 percent of employers fire at least one pro-union worker; 51 percent threaten to close a worksite if the union prevails; and 91 percent force employees to attend one-on-one anti-union meetings with their supervisors" (American Rights at Work, 2009). Also, government reports found that the rights of 29,559 workers were violated by their employers just in 2007 alone, and this figure includes only the documented reports (AFL-CIO, 2009).

Lastly, the penalties for employers who violate the law are so insignificant that many consider it "the cost of doing business" (AFL-CIO, 2009). Current labor law fails to adequately protect the rights of workers because the penalties are not strong enough to deter violations. As stated earlier, if an employer has been found guilty of illegal terminating an employee for his/her union affiliation, the union must pay the worker back pay minus interim earnings. "Many employers find the punishment for breaking the law a bargain if firing a pro-union employee scares others from supporting the union" (American Rights at Work, 2009). Proponents believe that the increased penalties from EFCA will finally give employers an incentive to abide by the law. Those who support EFCA believe that if enacted, EFCA will bring the labor-management

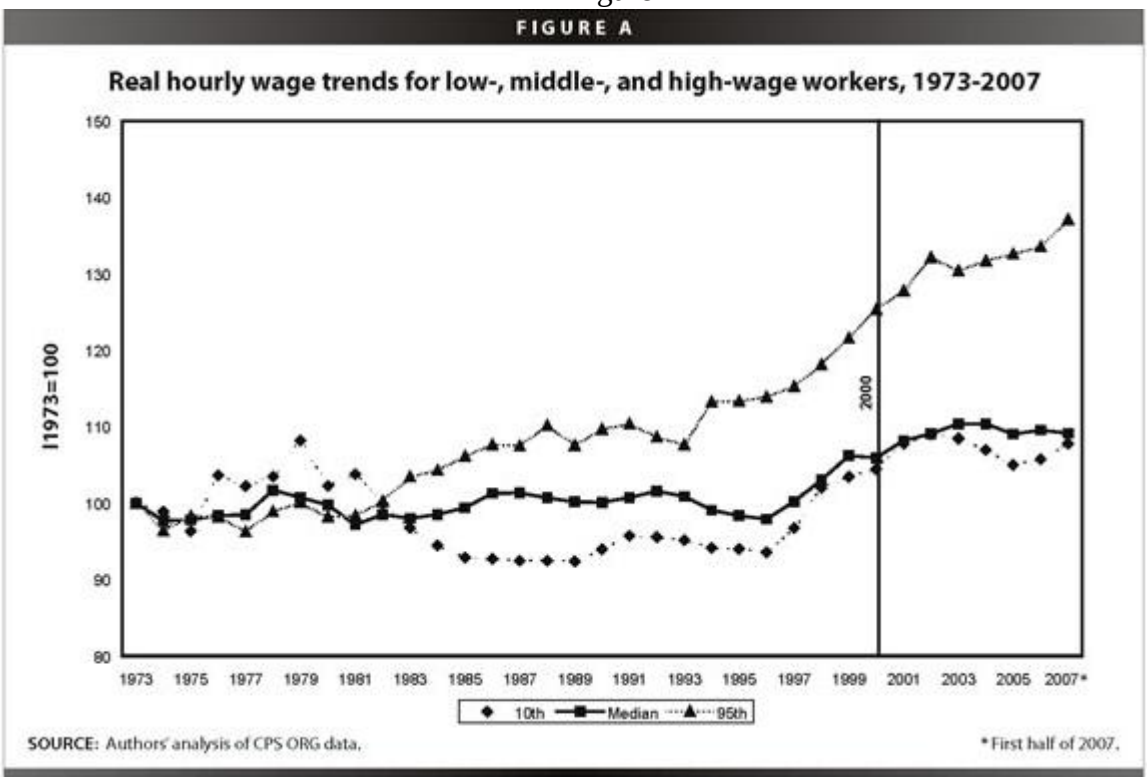
relationship back into balance. This is positive because it will reduce problematic issues such as turnover and will give workers a greater voice in the workplace.

Nevertheless, the legislative battle over EFCA is essentially a battle over whether unions should play a larger or smaller role in our society. Supporters of EFCA argue that unions have a positive influence on the economy, while opponents argue that they have a negative influence on the economy. Thus, it is constructive to review the arguments made by the two sides in this respect.

Rising Wage Inequality

Many have been perplexed at the reality that as productivity has risen over the past few decades, real wages have been stagnant, especially among those with lower incomes. In other words, American workers who have been helping to create this growth in productivity haven't seen any gains from it. Since 2000, productivity has increased almost twenty percent but the real median hourly wage has only increased by three percent. At the same time, real wages increased nine percent for those at the 95^{th} percentile of the wage distribution (Bernstein and Mishel, 2007). Economists Lawrence Mishel and Jared Bernstein reported trends of wages and employment in the 2000s. As is evident in Figure 2, wage growth of low- and middle-wage workers has been relatively stagnant with some growth in the late nineties. However, high-wage workers' real wages have increased at a substantial rate compared to the low- and middle-wage workers. The difference in wages between low- and middle-wage workers and high-wage workers is now at a historic high (Bernstein and Mishel, 2007).

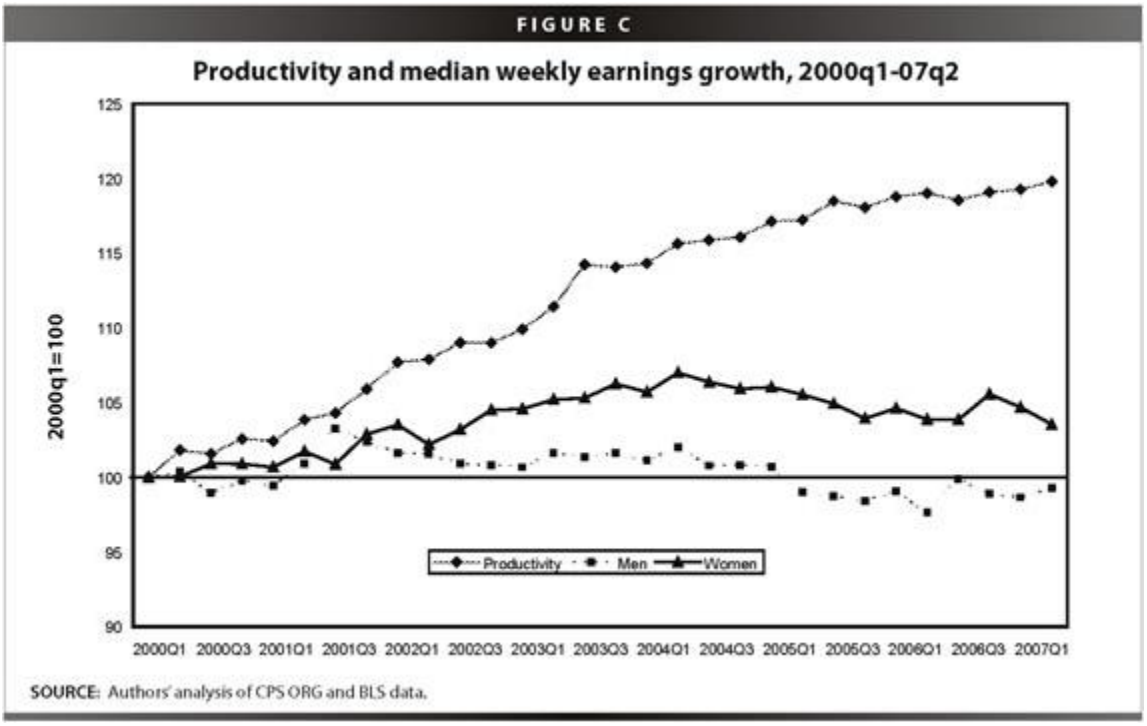
Figure 2



SOURCE: Bernstein and Mishel, 2007

Using Current Population Survey data from 2007, Mishel and Bernstein also estimated the percent changes in real hourly wages from 2000 to 2007. For women, those at the 10th percentile in the wage distribution had an increase in real wages of 1.9 percent. Those at the 20th percentile had an increase of 2.2 percent and those at the median wage had an increase of 4.7 percent. Increasing further, those at the 80th percentile had an increase of 8.7 percent and finally, those at the 95th percentile had an increase of 11.8 percent (Mishel and Bernstein, 2007). This data supports the reality that real wages for high-wage workers rose more than those of any other wage group, proving the growing wage inequality between low- and high-wage workers.

Figure 3



SOURCE: Bernstein and Mishel, 2007

The above figure demonstrates that workers, both men and women, have not been receiving the gains in productivity that they have helped to create. A possible explanation for why this has occurred is due to the low union density in our economy. As discussed in the introduction, union membership rates have been declining rapidly since the early seventies, partially due to the rise in the anti-union movement. Economist John Schmitt agrees with this explanation in his paper, "Inequality as Policy." He explained that income inequality was flat from the early 1950s until the 1970s. Subsequently, in the 1970s inequality started to soar, with the top one percent of all U.S. taxpayers receiving almost eight percent of national income in 1979 and the top one percent of all U.S. taxpayers receiving over 18 percent of national income in 2007 (Schmitt, 2009). Schmitt (2009) wrote that this can be attributed to the increase in power of employers relative to their workers over the last few decades. Having a strong union

presence in the economy would allow workers to have a stronger voice in their workplace and receive a higher share of the profitability that they are creating.

Union Effect on Productivity

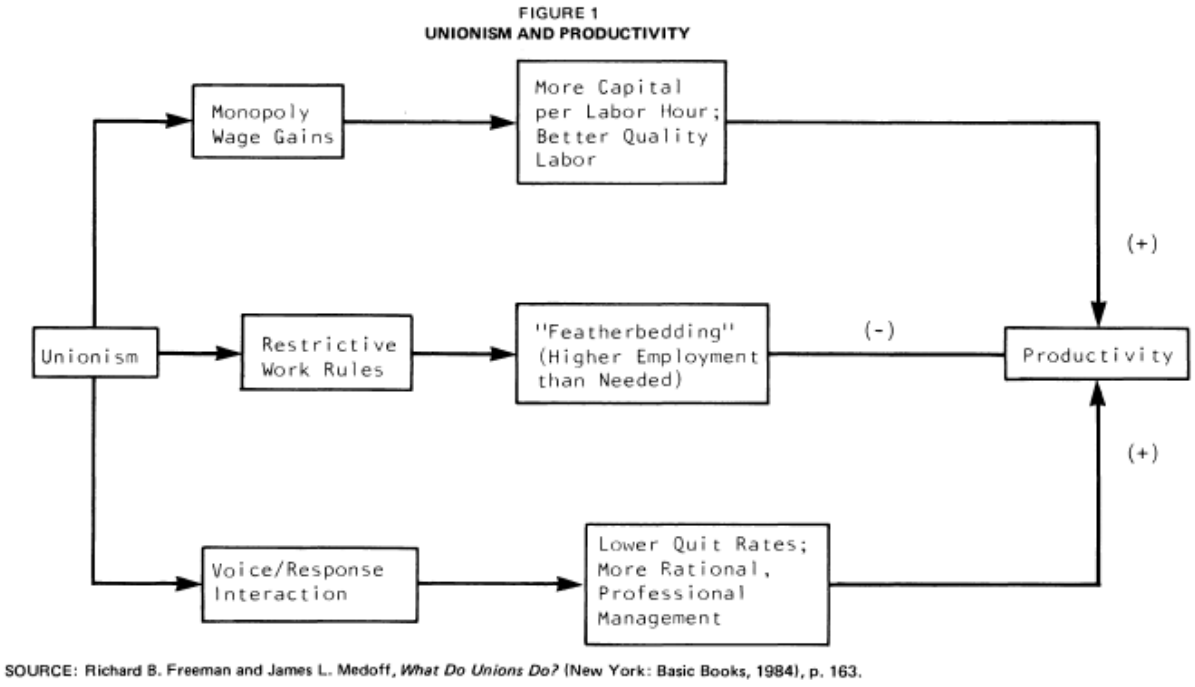
For decades, economists have debated whether or not unions and collective bargaining have a positive effect on productivity. According to economic theory, because unions have a positive effect on wages, management increases the quality of its labor, which leads to increased productivity (Freeman and Medoff, 1984). While this theory is not hotly disputed, the real question is whether or not unions have a positive effect on productivity when we control for the differences in labor quality and the amount of capital that labor has to work with. Put another way, Freeman and Medoff (1984) desired to compare both union and nonunion workplaces that have the same amount of productive inputs to see which workplace produces the most output.

Freeman and Medoff (1984) contend that there are two types of union effects: "monopoly" effects and "voice/response" effects. The monopoly model suggests that employers in a unionized workplace adjust capital per worker and better the quality of workers until the output of the last unit of labor matches the wage rate of union workers. The improved quality of labor then increases productivity in the firm. However, this could lead to unions lowering productivity due to restrictive work practices. Nevertheless, this is unlikely because an employer who doesn't receive high productivity from his workers while still paying high wages will surely fail in a competitive market.

Furthermore, Freeman and Medoff (1984) argue that the voice/response model increases productivity through increased efficiency within the firm. If employers respond positively to unions in their workplace, employees will be content in their job which will decrease turnover. Turnover leads to lowered productivity because the employer will have to take time and money

to recruit new employees and these new employees will take time to train for their position, thus lowering productivity. On the other hand, Freeman and Medoff believe that improved relations could sometimes produce negative effects. For example, a work rule such as seniority could lead to decreased productivity if an unproductive employee retains his/her employment solely due to their seniority. Work rules that hinder employer control can decrease productivity in a firm. The diagram below from Freeman and Medoff demonstrates the positive and negative factors that influence positive productivity gains.

Figure 4



SOURCE: Freeman and Medoff, 1984

The most important aspect of the voice/response model is that if the relationship between management and workers is good, then high productivity is likely to occur. On the contrary, if the relationship between management and workers is poor, then lower productivity is likely to occur. The question Freeman and Medoff (1984) ask is whether "productivity-augmenting" or "productivity-reducing" behavior prevails in our economy.

To study the impact of unions on productivity, the production function is used which indicates the output of a firm for all the inputs used by each worker, including capital and the quality of labor. A fraction of labor that is unionized must be included in this as well. There are two key ways of measuring the relationship between unionism and productivity. The value added method is a dollar measure of products sold at their market price and the other way is to simply measure physical units of output (Freeman and Medoff, 1984).

With the value added method (using 1972 data), workers who were unionized in manufacturing industries were 20 to 25 percent more productive than their nonunionized counterparts. However, these unionized firms used more capital per worker than they had predicted, so the fixed results led to a 10 to 15 percent productivity increase over their nonunionized counterparts. Using this same method (with 1974 data), Freeman and Medoff (1984) found that unionized contractors involved in office building construction were 39 percent more productive than their nonunionized counterparts. When analyzing studies using physical units of output, the same unionized contractors involved in office building construction were 36 percent more productive than their nonunionized counterparts (Freeman and Medoff, 1984).

When analyzing productivity in the underground bituminous coal mines, Freeman and Medoff found results that varied widely over a long time period. They found that there was positive productivity for organized mines in 1965 (33 to 38 percent), small negative to positive productivity effects in 1970 (-4 to 8 percent), significant negative effects in 1975 (-20 to -17 percent), and less significant negative effects in 1980 (-18 to -14 percent). Freeman and Medoff conclude that these varied results derive from changes in labor relations over time (positive or negative relationship between management and union). For example, when relations are good, both management and labor are more likely to work together for the betterment of the firm.

Freeman and Medoff attribute the declining productivity after 1965 to the death of the effective leader of the United Mine Workers, John L. Lewis. After his death, the union was fraught with internal opposition and many work stoppages occurred. When the union became more stable in the late seventies, the mines started to become more productive.

They conclude that the studies show that unionized workplaces on the whole are more productive than nonunionized workplaces. However, they note that it should not be inferred that greater productivity leads to greater profitability due to greater labor costs and greater capital intensity (Freeman and Medoff, 1984). By and large, Freeman and Medoff argue that good industrial relations is closely associated with higher productivity.

Another paper examined the effect of unionization on productivity with data from the U.S. cement industry. The following econometric analyses are based on six cement plants that became unionized between 1953 and 1976. This paper focused on the change in output within an establishment over time. The cement industry was ideal to study because of the homogenous nature of cement since it is produced to universally accepted specifications (Clark, 1980). Because of cement's homogeneous nature, the study was able to measure output from the six plants in physical units. Data was taken from annual surveys by the Portland Cement Association that has information on finished cement and cement shipments. Studying the cement industry also has its advantages because the technology is relatively standardized between unionized and nonunionized plants.

Past studies have found a union productivity differential of about 6-8 percent (Clark, 1980). These past studies have been criticized because they did not address the problems of firm effect and labor quality bias. Firm effects are important to study because productivity varies across plants because of differences in organizational factors (Clark, 1980). This includes

differences in managerial ability which, if omitted, can lead to biased estimates of the union productivity effect. By adding a time-series dimension, firm specific effects can be included. After controlling for individual firm effects, the paper found that unionization led to an increase in productivity in the range of 6-10 percent (Clark, 1980).

This study also estimated the extent of labor quality bias in the previous studies examined. Before unionization in a cement plant, for example, the firm had freedom to match low- and high-quality workers in a way that was cost-minimizing for the firm. It is common for unionization to lead to a shift in the quality mix of workers in a plant. If a collective bargaining agreement has a provision for the salary for an entry-level job, the firm has an incentive to hire more high-quality workers than low-quality workers. This is why it is important to control for worker quality differences following unionization so that there is no bias in measuring the union productivity effect.

The increase in productivity that is attributed to the higher quality of new workers is given by $hD(1-\beta)$, "where h is the efficiency advantage of new workers, D is the proportion of new workers in the total workforce, and $(1-\beta)$ is labor's share" (Clark, 1980, 461). The calculations found that changes in worker quality do not have a great effect on productivity as increases in worker quality only led to an increase in productivity by two percent. However, by including turnover estimates, the effect is closer to one percent. Overall, by controlling for differences in individual firm effects and worker quality, unionization in the cement industry has led to an increase in productivity by 6-8 percent (Clark, 1980).

Wage Determination in the Union and Nonunion Sectors

A study from researchers at Princeton University sought to estimate the union-nonunion wage differential. Instead of simply designating a dummy variable that signifies union membership and holding other worker characteristics constant, they estimated separate wage equations for union and nonunion workers. Bloch and Kuskin (1978) obtained their data from the May 1973 Current Population Survey; they limited their study to white, non-Spanish males who were employed in the private sector and between the ages of 25 and 64. They narrowed their study to white males to avoid any of the unobserved effects of discrimination and limited it to 25 to 64 year olds so that they could avoid men who are still in school and/or have only part-time jobs. Furthermore, they used only private sector employees to avoid the complexities that would arise due to the different wage structures of private and public sector employees.

The dependent variable used here was the natural logarithm of each worker's typical weekly earnings divided by the worker's typical weekly hours. The most substantial independent variables in the equations are education, experience and experience-squared (Bloch and Kuskin, 1978). They measured experience by subtracting education and six years from an individual's age which signifies potential work experience after schooling. Marital status and veteran status were other independent variables in the equation. Marital status can be seen by employers as a proxy for responsibility and stability (Bloch and Kuskin, 1978). They also included dummy variables for industry and occupation to adjust for differing labor demand over different labor markets. Ultimately, they found a wage differential of 15.87 percent. Education and experience were rewarded more in the wages of non-union workers. Regardless of this, the union-nonunion wage differential was positive across most occupations and more so for occupations that require less skill and for occupations that are generally highly unionized. Their

results clearly suggest that the structure of wages between union and nonunion workers is significantly different, benefiting workers who are unionized.

With more recent data, Budd and Na (2000) also estimated the union wage premium. They measured it not for union members, but for employees covered by a collective bargaining agreement. In the United States, it is possible to not be a union member but be represented by a union. Using CPS data from between 1983 and 1993, 10 percent of employees in the private sector were covered by a collective bargaining agreement but not members of a union. When estimating the union wage premium by using union membership rather than union coverage, the premium will be upward biased.

Budd and Na's (2000) analysis uses CPS data on 19,102 full-time, private sector employees from 1983 to 1993. All of these employees live in the 22 right-to-work states which gives employees the choice of whether or not they want to join the union. While some may choose not to join the union, they are still entitled to equal application of the contract terms while paying little or no union dues. In right-to-work states between 1983 and 1993, only 83.73% of full-time, private sector employees covered by a collective bargaining agreement were members of a union. Budd and Na isolated the study to only right-to-work states, where employees are free to choose their union status, instead of including all states because that could lead to skewed results.

To estimate the union wage premium, Budd and Na (2000) used an ordinary least squares regression equation with a dummy variable for union status. They found that the union wage premium is 12.1 percent and with the great number of observations in their study, it is statistically significant with a t-statistic of 15.96. Estimating the union wage premium for union

members instead of covered nonmembers, the result is approximately 14 percent, which fits in the conventional wisdom that the union wage premium is around 15 percent.

Equalizing Wages for Workers

Many past studies have shown that the wage premium for unionized workers, as compared to non-unionized workers with similar characteristics, ranges from 10 to 20 percent. However, these studies only estimated the union wage premium of the average worker. They did not estimate the union wage premium for workers above or below the average. They estimate this mainly by using ordinary least squares (OLS) regression, keeping key worker characteristics such as sex, ethnicity, experience and education constant. In Schmitt's study, he used quantile regression which estimates the union wage effect at any given point in the wage distribution. Schmitt measured the union wage effect at every decile of the distribution. The data was obtained for the quantile regression from the Current Population Survey (CPS), a monthly survey of households that is representative of the nation and given by the Census Bureau. The survey includes specific demographics of the respondents, including whether they are unionized or not, age, ethnicity, education, wage, and industry of employment (Schmitt, 2008).

With this data for workers aged 16 to 64 from 2003 through 2007, Schmitt found that the union wage premium for the *average* worker is 11.9 percent using ordinary least squares (Schmitt, 2008). For the lowest wage workers in the 10^{th} percentile, they had a 20.6 percent union wage premium. This premium decreases at every decile and is 13.7 percent for workers in the 50^{th} percentile, which is still higher than the 11.9 percent for the average worker. This premium continues to decrease until it is 6.1 percent at the top 90^{th} percentile (Schmitt, 2008). All of these results are statistically significant at at least the one percent level. To summarize, the union wage premium is the highest for low-wage workers and lowest for high-wage workers,

which shows that unionization benefits low-wage workers the most. It still benefits high-wage workers, but not as much as the impact on low-wage workers.

VI. Case against EFCA

Opponents of the EFCA cite these three main arguments: card check eliminates the private ballot, arbitrating the first contract (interest arbitration) allows government regulators to take charge of private business decisions, and the proposed penalties are too harsh (U.S. Chamber of Commerce, 2009). First, those against the EFCA attest that card check eliminates secret ballot elections and replaces them with a method that requires only signature cards. Once the majority (50% + 1) signs these cards, the union will be introduced into the workplace (U.S. Chamber of Commerce, 2009). Opponents fear that the card check will allow union organizers to threaten and coerce workers into signing the signature cards. However, their argument is fundamentally flawed. The EFCA does not eliminate a secret ballot; it simply gives the option of a card check. Therefore, the secret ballot election is not eliminated and this argument is simply unfounded. Furthermore, proponents can also argue that without card check, employees are intimidated and coerced (through captive audience meetings and so on) to vote against the union, not the other way around.

Second, opponents also contend that giving government regulators' control of contract decisions is very detrimental. They are speaking of the section of the EFCA that states that an arbitration panel will settle the dispute (facilitate an initial collective bargaining agreement) if it has not been settled in 130 days. Those against the EFCA claim that this is harmful because government arbitrators may have little or no knowledge of the particular business and could impose a two year contract deciding all workplace terms and conditions without a vote by the company or employees (U.S. Chamber of Commerce, 2009). Furthermore, they claim that

during this time in our economy, reducing business flexibility through binding arbitration is especially detrimental. The U.S. Chamber of Commerce claims:

> Binding arbitration would mean that both parties are likely to get stuck with a contract they don't like...for an employer, you could be stuck with a contract that is completely incompatible with your cost structure and your business model -- and you would have to live with that contract for two years.

This is simply not true. According to the EFCA, the decision of the arbitrator is binding for two years unless revised during the two years by written consent of both the parties. This means that the parties can continue to negotiate until they reach an agreement and override the decision of the arbitrator. The arbitrator's decision is only binding for two years if the parties cease negotiation.

Lastly, opponents believe that the EFCA unfairly punishes businesses. They attest that this is unfair and "potentially disastrous for small or medium businesses, who are not familiar with unionizing campaigns or the National Labor Relations Act" (U.S. Chamber of Congress, 2009). They also believe that the $20,000 penalty for violations is too harsh. It is the responsibility of business owners to know and understand labor law and what unfair labor practices are before hiring employees. Furthermore, an employer can be subject to a civil penalty up to $20,000 for each violation. The penalty is determined by the severity and impact of the unfair labor practice (ULP) and whether these ULPs were committed willfully and/or repeatedly. Therefore, if a small or medium business committed a slight and first-time violation, they will not be charged $20,000 (a non-"disastrous" penalty).

Loss of Output Due to Strikes

Just as supporters of EFCA use numerous arguments to support their position that unions play a positive role in society and EFCA will help unions to grow, EFCA's opponents cite several reasons why unions play a negative role, and as EFCA will help unions grow, this legislation should be defeated.

One of the arguments put forward from those who oppose EFCA involves the labor movement's excessive use of the strike. It is widely believed that the strike is a union's strongest source of power because it can reduce profitability of the firm (Rees, 1962). Many firms and individuals believe that unions are "strike happy" and that the increased prevalence of unions due to the enactment of EFCA will cause the number of annual strikes to increase. This would, they argue, lead to greater loss of output and profits. Those opposed to EFCA believe that the mandated terms of an initial agreement (interest arbitration) will "give rise to the likelihood of decreased stability, as employers seek to recoup losses during renewal bargaining, only to be met with increased strike probability" (Fisher & Phillips LLP).

Economists Neumann and Reder (1984) studied the relationship between strike activity and output among manufacturing industries. In the simple case of a nonstorable good produced by one firm, the costs of a strike are "the sum of the losses of quasi-rents by the employer, the loss of wages and producers' surplus by workers, and the consumers' surplus by consumers" (Neumann and Reder, 1984, 198). However, in a situation where there are many producers, striking firms generate a loss to the two parties involved, but do not generate a loss to consumers or producers. Customer welfare is unaffected because other producers will just increase their output to counteract the lowered production by those producers involved in striking.

Neumann and Reder's (1984) study focuses on estimating the industry costs of strike activity. They obtained their data on this issue from the U.S. Bureau of Labor Statistics (BLS) work stoppages historical file. The data covers the period 1953-78 and includes 63 industries that make up the entire U.S. manufacturing sector. In their analysis, Neumann and Reder found that in only 34 out of the 63 industries was there a correlation between strikes and output (at the five percent significance level). In the other 29 industries (46 percent) there was not a statistically significant correlation.

Furthermore, Neumann and Reder (1984) analyzed the cost of strike activity by examining the loss in output in the month a work stoppage begins and the total loss in output caused by a work stoppage (allowing for pre- and post-strike adjustments to production). They found that the industry cost of strike activity was zero for 44 out of the 63 industries. The remaining 19 industries had a strike cost of greater than zero but still relatively small with the percentage of annual output loss due to strikes ranging from .011 to 1.54 percent with an average annual loss of these 19 industries at .278 percent (Neumann and Reder, 1984). Their evidence shows that strike activity has not caused significant economic loss.

Moving to more recent data, the table below exhibits data on the number and frequency of strikes in the United States since 1960. This data contradicts many popular beliefs. First, the number of strikes is surprisingly small and has been steadily decreasing over the past few years. Second, the percentage of working time wasted due to strike activity is exceedingly small. "In fact, if one were to add up all the man-days lost to strikes since 1960, they would sum to far less than all the man-days lost by unemployment in a single typical year" (Hyclak et al., 2005, 358). Contrary to popular belief, the lost output due to strikes is very insignificant.[5]

[5] Many argue that the decrease in strike activity over the past few years is due to the decreasing union membership rates. Looking at the number of workers involved in strikes divided by total number union members, we can control

Table 1

Strikes* in the United States, 1960 to 2009

Year	*Number of Strikes*	*Workers Involved (1,000s)*	*Percentage of Estimated Working Time*	*Year*	*Number of Strikes*	*Workers Involved (1,000s)*	*Percentage of Estimated Working Time*
1960	222	896	0.09	1985	54	324	0.03
1961	195	1,031	0.07	1986	69	533	0.05
1962	211	793	0.08	1987	46	174	0.02
1963	181	512	0.07	1988	40	118	0.02
1964	246	1,183	0.11	1989	51	452	0.07
1965	268	999	0.10	1990	44	185	0.02
1966	321	1,300	0.10	1991	40	392	0.02
1967	381	2,192	0.18	1992	35	364	0.01
1968	392	1,855	0.20	1993	35	182	0.01
1969	412	1,576	0.16	1994	45	322	0.02
1970	381	2,468	0.29	1995	31	192	0.02
1971	298	2,516	0.19	1996	37	273	0.02
1972	250	975	0.09	1997	29	339	0.01
1973	317	1,400	0.08	1998	34	387	0.02
1974	424	1,796	0.16	1999	17	73	0.01
1975	235	965	0.09	2000	39	394	0.06
1976	231	1,519	0.12	2001	29	99	<0.005
1977	298	1,212	0.10	2002	19	46	<0.005
1978	219	1,006	0.11	2003	14	129	0.01
1979	235	1,021	0.09	2004	17	171	0.01
1980	187	795	0.09	2005	22	100	0.01
1981	145	729	0.07	2006	20	70	0.01
1982	96	656	0.04	2007	21	189	<0.005
1983	81	909	0.08	2008	15	72	0.01
1984	62	376	0.04	2009	5	13	<0.005

Note: *Excludes strikes involving fewer than 1,000 workers and lasting less than one day.
SOURCE: U.S. Bureau of Labor Statistics, Work Stoppages Summary, February 17, 2010.

for this argument. By looking at the numbers in 2004, 2006, and 2008, we find that the ratio of workers involved in strikes to total union members is .82 percent, .46 percent, and .45 percent, respectively (U.S. Bureau of Labor Statistics, 2010). This shows us that not only are strikes decreasing in absolute terms, but they are also falling in relative terms. Thus, the argument cannot be made that the decrease in strike activity over the past few years is due to the decreasing union membership rates.

Restrictive Work Rules

Opponents of EFCA also argue that unions force employers to accept unnecessary work rules that lead to lower productivity. It is the case that unions sometimes do negotiate provisions that mandate a minimum number of workers be employed to work on a specific machine or do a particular task (especially in the manufacturing sector) (Johnson, 1990). This can lead to featherbedding where productivity is diminished because too many workers are assigned to do a job. This is also known as the law of diminishing marginal returns (Johnson, 1990).

Unions also bargain over work intensity, such as the speed at which an employee is expected to work or the number of responsibilities a worker is expected to perform. Many see this as "the greatest…current handicap faced by union contractors" (Allen, 1986, 218). Featherbedding is also defined as a work rule that has employers hire more labor of a specific type than would otherwise be hired at a given wage rate (Simler, 1962). This gives management less flexibility to choose the lowest cost combination of inputs.

Allen has attempted to estimate the effect of union work rules on employment and costs in the building trades. In his introduction, he reported the view of an anti-union author, "Unions had shackled the industry with make-work rules and jurisdictional distinctions even more preposterous, perhaps, than the restrictions that have all but ruined the railroads" (Allen, 1986, 212-213). This was a very common view that was perpetuated by journalistic accounts of "horror stories" such as a journeyman assigned to man an automatic elevator. Most of these accounts were anecdotal and the majority was reported by less-than-objective business groups (Allen, 1986). A number of studies in the 1950s and 1970s actually showed that the effect of these work rules on efficiency had been exceedingly overestimated in the media (Allen, 1986).

Allen's (1986) study directly estimates the effect of work rules in the construction industry by comparing demand elasticities for union and nonunion contractors. This study was inspired by Freeman and Medoff's thought that work rules generate lower demand elasticities in the unionized sector. Lower demand elasticities are thought to arise in the union sector because union contractors are less able to modify input quantities than nonunion contractors. Allen concentrated on contractor behavior in samples of data from commercial office building and school construction and on factor misallocation resulting from these work rules.

Prior to Allen's study, the most comprehensive research in this area was performed by Haber and Levinson in 1952. They interviewed 268 labor, management, and government representatives in 16 cities to see what effect union work rules had on costs. They found that union work rules increased costs by three to eight percent and that "an over-all evaluation of the extent and importance of union working rules strongly suggests that their adverse impact is much less than has been widely alleged" (Allen, 1986, 218).

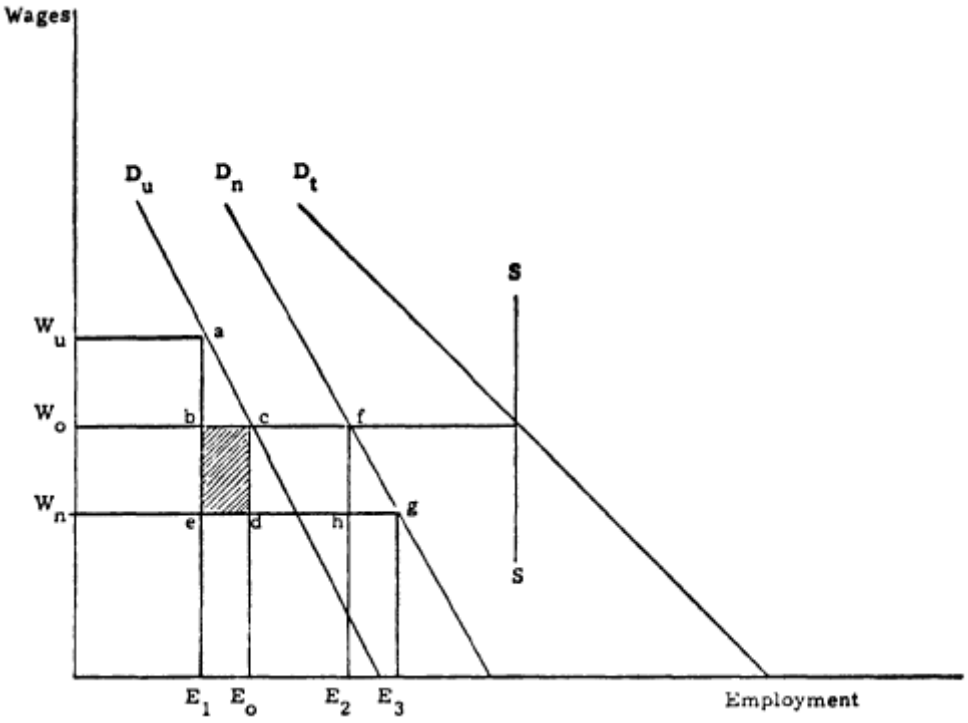
Allen's (1986) work utilized two data sets, one comprising 83 commercial office building projects from 1974 and the second set consisting of 68 school building projects from1972. They were obtained by the Construction Labor and Material Requirements series from the BLS. Ultimately, Allen found that the lower demand elasticity in the union sector led to overstaffing of 3.2 percent and that the elimination of union work rules would decrease labor costs by 5 percent. The decrease in total cost would be two percent because labor has a forty percent share of total cost. Allen concludes his study by stating that higher productivity from unionized workers and lower hiring and training costs (due to lower turnover) more than offsets the higher costs due to union work rules. Furthermore, many of these work rules have been eliminated in the past

couple of decades due to growth in technology and change in production processes (Hyclak et al., 2005).

Output Losses due to Union Effects on Employment

Another argument by EFCA opponents is that unions' effect on employment negatively affects output. Assuming that the demand for labor is not perfectly inelastic, when unions increase wages higher than would have otherwise existed, employment levels will decrease (Hyclak et al., 2005). When employment levels decrease in the union sector, those who do not drop out of the labor market will seek employment in the nonunion sector. This will result in output loss which is depicted in the figure below.

Figure 5



SOURCE: Rees, 1963

SS is the labor supply, D_u is the labor demand in the union sector, D_n is the labor demand in the nonunion sector, and D_t is labor demand in both of the sectors. Initially, the wage level is

w_o for both of the sectors. When the union raises its wage level to w_u, employers in the union sector will reduce employment from E_o to E_1. The workers who no longer have jobs in the union sector will seek employment in the nonunion sector, increasing employment from E_2 to E_3, dropping the wage level from w_o to w_n. With the reduced number of employees in the union sector, the loss in output is aE_1E_oc. The gain in output in the nonunion sector is fE_2E_3g. Because the loss in output in the union sector exceeds the gain in output in the nonunion sector, the net loss in output is represented by the shaded area *bedc*. The net loss in output is often referred to as the deadweight loss due to unionism (Hyclak et al., 2005).

Economist Albert Rees estimated this loss by multiplying the employment effect of unionism (the number of individuals transferred out of the union sector) by the union wage premium by one-half. Rees obtained his wages premium data from Lewis' estimates from the last nonrecession year in his study, 1957. The union wage premium was 15 percent in 1957 which indicates a wage effect of about $700 dollars per worker per year. Also in 1957, union membership was about 17 million and it was estimated that about 1.7 million workers were transferred out of the union sector because of union's effect on wages. Thus, the output loss is approximately $600 million by multiplying $700 dollars by 1.7 by one-half. This deadweight loss may seem great; however, gross national product was $443 billion dollars in 1956 so the loss was only a meager 0.14 percent of national output (Rees, 1963). Rees admitted that his calculations assumed a lot such as no unemployment as a result of unionization; however, his colleague, H. Gregg Lewis, found nearly the same result (a 0.15 percent loss of national output) by using a more sophisticated method of calculation.

VII. Conclusion

Summary of Findings

After investigating the arguments for and against EFCA, the evidence suggests that this legislative reform will have a positive influence on the economy. Greater levels of unionization will lead to positive productivity gains in unionized firms, will allow workers to earn higher wages and receive a greater share of the profits they are helping to create, and will help to restore the middle class.

In the first argument for EFCA, research demonstrated that as productivity has risen over the past few decades, real wages have been stagnant, a phenomenon that would be less likely with greater unionization. In the past ten years, the real median hourly wage rose three percent while productivity rose almost twenty percent. Real wages have been especially stagnant for low-wage workers. In fact, Bernstein and Mishel noted in 2007 that the difference in wages between low- and high-wage workers is now at a historic high. They found that the workers at the lowest 10^{th} percentile of the wage distribution had an increase of 1.9 percent from 2000 to 2007 while those at the 95^{th} percentile had an increase of 11.8 percent. This indicates that wage inequality has been increasing.

It has also been proven that a substantial union-nonunion wage differential exists. The first study by Bloch and Kuskin performed an ordinary least squares regression, holding worker characteristics constant, and found a differential of about fifteen percent. The second study by Budd and Na also performed an ordinary least squares regression; however, they measured the differential between workers covered and not covered by a collective bargaining agreement. This was done because it is possible for nonunion members to be covered under a collective bargaining agreement and receive union-level wages, among the other terms and conditions of

employment. Ultimately, they found a wage differential of about fourteen percent. Both studies are consistent with the conventional belief that the union-nonunion wage differential is about fifteen percent.

An additional study by Schmitt in 2008 also performed an ordinary least squares regression to determine the union-nonunion wage differential; however, this was done at every decile of the wage distribution instead of just measuring the differential for the average worker. Schmitt found a differential of 20.6 percent for the lowest decile and a differential of 6.1 percent at the highest decile, indicating that the union-nonunion wage differential benefits low-wage workers the most. These studies suggest that an increase in unionization, which would be likely with the enactment of the EFCA, will increase wages for many workers, especially for low-wage workers. This will ultimately help to reduce the wage inequality between low- and high-wage workers. Lastly, studies performed to analyze union impact on productivity vary, especially between industries and time eras, although Freeman and Medoff do conclude that unionized workplaces are more productive than nonunionized workplaces.

The arguments against the EFCA may have had relevance decades ago, but they are no longer convincing. First, opponents of the EFCA argue that an increase in unionization will lead to excessive use of strikes. Neumann and Reder (1984) analyzed the costs of strike activity and found the strike cost to be zero for 44 out of 63 industries and the other 19 industries had an annual loss of .278 percent which is still quite small. Furthermore, recent data (see Table 1) shows that the number of strikes has been decreasing over the past few decades and is now very small. The percentage of working time lost due to strikes in 2009 was less than 0.005. The strike argument may have been relevant in the 1960s and 1970s but is no longer compelling.

Opponents of EFCA also argue that greater unionization is harmful because it will lead to an increase in costs because of unions' use of restrictive work rules. A study by Allen (1986) showed that lower demand elasticity in the union sector led to overstaffing of 3.2 percent and if these work rules were eliminated, labor costs would decrease by 5 percent. However, Allen argued that higher productivity from unionized workers, and lower hiring and training costs, more than offset the higher costs due to union work rules. In addition, the use of restrictive work rules has significantly decreased over the past two decades because of growth in technology and change in production processes.

Lastly, opponents of EFCA argue that greater unionization will lead to greater output losses due to union effects on employment. However, two studies found a loss of only about 0.15 percent of national output. This percentage is very small and can be made up through other avenues such as greater productivity.

It is quite evident after analyzing both arguments that the arguments for EFCA have more validity. The arguments made against EFCA have largely been discredited by scholars. These arguments may have been convincing years ago, but are no longer relevant as loss of output due to strikes and employment effects, and costly restrictive work rules do not play a large role in our economy anymore.

As is discussed in the historical sections, workers have always had a difficult time organizing unions because of negative perceptions of unions. Contrary to these beliefs, greater unionization due to EFCA will be beneficial to our economy by raising productivity and by increasing and equalizing wages for workers.

The NLRA is Not Sufficient

The NLRA does not protect workers' right to organize and bargain collectively. First, the road to organizing is extremely arduous under the NLRA. Thirty percent of workers must sign authorization cards then go through the election process. The NLRB election often lasts several months, if not more due to employer delays. The election is also often ridden with coercion and intimidation which can lead to a union loss. Bronfenbrenner (2009) found that a majority of employers engage in aggressive anti-union campaigns which decrease the union win rate. Bronfenbrenner (2009) also found that employers have increased the frequency and intensity of anti-union tactics over the past couple decades, which has a strong positive linear relationship with the rising wage inequality in our nation. EFCA allows for a union to be certified if the majority of workers sign authorization cards (also known as the "card check" provision), thus streamlining union certification so that employers have less of an opportunity to encourage employees to vote against the union.

The NLRA is also insufficient in protecting workers' democratic rights as it includes no provisions regarding a time frame for an initial collective bargaining agreement to be reached. In no way does union certification mean that the union will reach its first contract. Bronfenbrenner (2009) found that only 48 percent of unions had a collective bargaining agreement in the year after they were certified. Three years after certification, only 75 percent had a collective bargaining agreement. EFCA allows for the first collective bargaining agreement to be reached within 120 days after union certification, allowing the wages, hours, and other terms and conditions of employment to be clearly laid out for employers and their workers.

Lastly, the NLRA is insufficient because it does not provide any disincentives for employers to engage in unfair labor practices. Currently, under the NLRA, if an employer is

found to have illegally terminated an employer for their union affiliation, the employer must award back pay, minus interim earnings. This punishment is hardly severe and some employers see these light punishments as opportunities to scare other employees from voting for the union. Zipperer and Schmitt (2009) found that in 2007, 30 percent of union campaigns had an illegal termination, up from 16 percent in the 1990s. EFCA would stop this trend as it would provide illegally terminated workers three times back pay and fine the employer up to $20,000 for each unfair labor practice committed. EFCA would finally encourage employers to abide by the law with its stricter punishments.

The NLRA is very weak legislation and this is proved by the rampant disregard for the law that is found in statistics regarding the frequency of unfair labor practices over the years. Employer opposition to union efforts has led to the major decline in union activity (Clawson and Clawson, 1999). Schmitt (2009) also wrote the rising income inequality in our nation can be attributed to the decline in union activity due to employers' aggressive anti-union behavior. EFCA is needed as the NLRA fails to protect worker's rights to organize and bargain collectively. Even if EFCA does not pass with its three original provisions, some combination of amendments will help to rebuild our nation's working class.

Future of EFCA

On March 1, 2007, EFCA was introduced in the 110th Congress as H.R. 800 and S. 1041. H.R. 800 passed the House of Representatives by a vote of 241-185. S. 1041 received 51 votes, but fell short of the 60 needed to end a Republican filibuster (Cunnick, 2007). EFCA was introduced again on March 10, 2009 as H.R. 1409 and S. 560. The House bill had 223 co-sponsors, seven less than in 2007. The Senate bill had 40 cosponsors, six less than in 2007. On September 1, 2009, a spokesperson for Harry Reid (D-Nev.), the Senate Majority Leader, said

that the Senate would consider a healthcare reform bill, an energy bill, and a financial reform bill before going back to EFCA (Bureau of National Affairs, 2010). EFCA needs 60 votes in the Senate and while all indications were that it had 51, it did not have the 60 needed to defeat a filibuster and was unlikely to pass in its original form (Cunnick, 2007).

As a part of their anti-EFCA campaign, Republicans have proposed the Secret Ballot Protection Act, H.R. 1176 and S. 478, which would make recognizing a union by majority sign-up an unfair labor practice. In addition, a number of Senators have introduced amendments to the original legislation. Senator Arlen Specter (D-Pa.) has proposed a measure to speed up the election process instead of having majority sign-up. Specter also proposed requiring elections to be held within ten days of filing a petition.

Specter does not support binding arbitration but agrees reaching a collective bargaining agreement can be arduous. For that reason he proposed requiring first negotiations to begin no later than 21 days after union certification. He also proposed that either party be permitted to request mediation if an agreement is not reached within 120 days (Bureau of National Affairs, 2010).

The majority sign-up provision of EFCA is probably the most contended aspect. Majority sign-up is a reason why many Senators have expressed opposition to EFCA. One possible alternative to majority sign-up that has been proposed involves shortening the time that elections are held (which is one of the amendments suggested by Specter). Many believe that EFCA will not pass until the majority sign-up provision is replaced with an arrangement that allows elections to take place on a faster schedule. Most unions are willing to negotiate about this and the AFL-CIO President, John Sweeney, was even quoted as saying that, "EFCA must contain a fair and just process for workers to decide whether unionization is appropriate, and that

it does not necessarily have to be card check authorization that achieves that goal" (Bureau of National Affairs, 2010).

Many supporters of EFCA hoped that some combination of the above amendments to the original EFCA bill would be able to gain the support of all 60 Democratic and Independent members of the Senate. Sixty votes would defeat any Republican effort to filibuster the bill and lead to its passage. The proposed amendments to EFCA would make it a weaker piece of legislation; however, it would still be a step in the right direction for the labor movement.

However, in January, Republican Scott Brown won a surprising victory over Massachusetts Attorney General Martha Coakley for the Massachusetts Senate seat that had been previously held by Democrat Ted Kennedy (Burns, 2010). This gave Republicans a 41st seat in the United States Senate. The end of the Democrats' 60-seat majority would allow Republicans to filibuster any version of EFCA the Democrats might propose, especially since Brown is an opponent of EFCA (Burns, 2010).

Although the Democrats came very close to passing EFCA in 2009, the legislation has been placed on the backburner until the composition of the Senate changes. Labor law reform may one day take place, but for now, that status quo prevails.

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