# IBEW® Legislative
# FACT SHEET
# EMPLOYEE FREE CHOICE ACT

## BACKGROUND:

Polls show that up to 57 million Americans would join a union if given a real choice. However, when workers try to get a voice on the job by forming a union, employers respond with intimidation, harassment, and retaliation. Unfortunately, federal law does not address this injustice.

The Employee Free Choice Act (S. 560 in the Senate and H.R. 1409 in the House of Representatives), introduced by Senator Edward Kennedy (D-MA) and Representative George Miller (D-CA), ensures that when a majority of employees in a workplace decide to form a union, they can do so without the debilitating obstacles employers currently use to block their workers' free choice.

The Employee Free Choice Act allows employees to freely choose whether to form unions by signing cards authorizing union representation, provides mediation and binding arbitration for first contract disputes, and establishes penalties for violations of employee rights when workers attempt to form a union.

## IBEW POSITION:

Cosponsor and support S. 560 and H.R. 1409. If your Representatives or Senator is a cosponsor of the Employee Free Choice Act, be sure to thank them.

## STATUS:

Both S. 560 and H.R. 1409 were introduced in their respective chambers on March 10, 2009. S. 560 was read twice and referred to Senate Committee on Health, Education, Labor and Pensions. H.R. 1409 was read twice and referred to House Committee on Education and Labor.

(Over)

# Employee Free Choice Act (Continued)

**KEY POINTS:**

- The Employee Free Choice Act provides for certification of a union as the bargaining representative if the National Labor Relations Board (NLRB) finds that a majority of the employees in an appropriate unit have signed authorization cards designating the union as its bargaining representative. Essentially, the Employee Free Choice Act makes mandatory the current voluntary recognition provisions permitted by the NLRB since the inception of the National Labor Relations Act in (NLRA) in 1935. However, if a majority of employees prefer instead to hold an election, they will continue to enjoy that right.

- This process, known as "card check recognition" or "majority sign-up", has become increasingly necessary because of growing anti-democratic employer coercion practiced during NLRB sponsored elections. Union elections are unlike any other kind of elections because of the inherent coercive power that management holds over employees – the power to deprive workers of their livelihood and to control their wages, hours and working conditions. The NLRB election process makes matters worse by enabling management to wage lengthy and bitter anti-union campaigns, during which workers can expect harassment, intimidation, threats and firings. By avoiding these inherently coercive and anti-democratic, anti-union campaigns, majority-rule card-check procedures help employees make a real choice.

- The Employee Free Choice Act provides that either employers or employees may request mediation from the Federal Mediation and Conciliation Services (FMCS) if no agreement is reached on a first contract after 90 days of bargaining. If the FMCS is unable to bring the parties to agreement after 30 days of mediation, the dispute must be submitted to binding arbitration. Both timelines can be extended if the employee and union agree. This provision is necessary because even when employees surmount the many obstacles and form a union, 32 percent of the time workers are unable to negotiate a contract within a year.

- Currently, employers who commit Unfair Labor Practices (ULPs), such as firing workers who are sympathetic to the union, pay no penalties. If found guilty, such employers are only required to "make the aggrieved worker whole" by paying back wages only. Unfortunately, if the worker had earnings elsewhere, these will often reduce the amount of back pay required of the offending employer. The Employee Free Choice Act contains meaningful penalties including "treble" (three times) back pay and civil penalties of up to $20,000 per violation against employers found to have willfully or repeatedly violated employees' rights during an organizing campaign or first contract drive.