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BLACK  
C o m m e n t a t o r**  
Commentary, analysis and investigations  
on issues affecting African Americans  
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**April 9, 2009 - Issue 319**

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**The Employee Free Choice Act  
Corporate America's Sly Approach  
African World  
By Bill Fletcher, Jr.  
BlackCommentator.com Editorial Board**

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So, the battle has been joined. The announcement of efforts to pass the Employee Free Choice Act—legislation to make it easier for workers to join or form unions—was accompanied by the announcement of efforts on the part of corporate America to derail it even before it entered Congress. Now that the legislation is in Congress, the battle lines have been drawn. But corporate America has been handling this situation in a very sly way. They are framing their opposition to EFCA in terms of their allegedly protecting the right of workers to a secret ballot election to choose a union.

One of the issues that is never being discussed is why is it that employers should have ANY say in what is or should be the right of workers to make their own decisions. When you think about it, it is quite amazing. The workers are attempting to decide on whether they wish an organization to help them to bargain to improve their lives and the employer has a right to intervene in this entire matter and, for all intents and purposes, intimidate workers into submission.

EFCA proposes that workers be able to choose a union via a mechanism called "card check." There is no mystery to this. The idea is that workers sign membership cards and if they get more than 50% of those in their bargaining unit, the employer will recognize the union as their representative. In fact, one can do this right now, but employers do not HAVE to accept card check today; they can in fact demand that there be an election. EFCA would give the choice of an election or card check to the workers and not to the employers.

I have been on talk show radio programs where some callers will insist that an employer should be able to express their opinion on the worker's choice of representative. I continue to ask, why? First, there is a power imbalance between workers and employers. Workers know that an employer can fire and dismiss workers, therefore, the opinion or even an implication by the employer can distort the

democratic decision making process. Think about elections that have taken place in authoritarian societies where the election may "technically" be secret ballot, but the reality is that the voters know that if they vote the wrong way there will be profound implications (e.g., military coups; physical intimidation). Thus, when employers call a worker into their office and begin to express their views on a union, and particularly suggesting that a union will result in the business closing or the loss of jobs, this creates a situation where it is impossible to have a free and fair election. In fact, it is amazing that unions win as many elections as they do!

The second point here is that workers are explicitly restricted from involving themselves in most managerial decisions. There are entire sections of collective bargaining agreements that are called "management rights." This means that the employer has the right to run the company as it wishes; pick supervisors; etc., without ANY involvement by the union. In other words, corporate America is saying to workers that capitalists have a right to run their own businesses as they wish without any involvement by workers, but they also have a right to interfere in the right of workers to join or form unions!

EFCA does not go far enough. Employers should have no right to involve themselves in the worker's right to choose their representative. There should be severe punitive damages against any employer that involves themselves in a worker's choice of whether to unionize or not. This is not a matter of free speech. This is a matter of restricting the ability of employers to intimidate workers and distort their (the workers) ability to freely exercise their statutory rights.

We need EFCA to pass. In order for it to pass, millions of people need to be mobilized to realize that EFCA is not about building the union-as-institution, but about expanding democracy and advancing a process that has historically proven to be a mechanism to raise the living standards of working class people. That is the significant challenge that faces organized labor and its allies, but it is a challenge that must be addressed if the fight for EFCA is to be understood by the people of this country as a fight that they must themselves enter.

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**BlackCommentator.com** Executive Editor, Bill Fletcher, Jr., is a Senior Scholar with the [Institute for Policy Studies](#), the immediate past president of [TransAfrica Forum](#) and co-author of, [Solidarity Divided: The Crisis in Organized Labor and a New Path toward Social Justice](#) (University of California Press), which examines the crisis of organized labor in the USA. Click [here](#) to contact Mr. Fletcher.

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