HUMAN RIGHTS WATCH

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Dear Representative:

We urge you to support the Employee Free Choice Act. This legislation would be a critical first step towards addressing the widespread violation of workers' rights to organize and bargain collectively in the United States.

In 2000, Human Rights Watch published a report documenting the systematic abuse of workers' right to freedom of association in workplaces across the country. The report, *Unfair Advantage*, highlighted the many shortcomings in US labor law and in its enforcement that prevent workers from freely exercising this fundamental human right. Our 2004 report, *Blood, Sweat, and Fear*, focused on violations of workers' rights in US meat and poultry plants and found that little had changed since 2000. The Employee Free Choice Act would help to fix key shortcomings in US law that perpetuate the abuses.

Facilitating Initial Collective Bargaining Agreements

Human Rights Watch has found that workers' right to bargain collectively is often thwarted by employers who engage in "surface bargaining"—negotiating with no intention of ever reaching an agreement. Under current law, even if such illegal bad-faith bargaining can be proven, the remedy is simply more bargaining, where the cycle can repeat itself. For example, we documented a case in which collective bargaining lasted for twelve years, at which point, frustrated and dwindling in numbers, the union surrendered its bargaining rights still without an agreement. One bargaining representative commented, "At this rate, the company would still have deal-killers on the table twenty-five years from now."

The Employee Free Choice Act would help prevent such violations of workers' right to bargain collectively by allowing workers negotiating their first collective contract to seek mediation after ninety days. If mediation were unsuccessful after thirty days, the dispute would be referred to arbitration, leading to a binding contract. (The parties could mutually agree to extend the initial bargaining and subsequent mediation periods.) This proposal would close loopholes in existing legislation, facilitating the good-faith bargaining relationship intended, but rarely realized in practice, under current US law.

Ending Toothless Enforcement

Remedies available for violating US laws protecting workers' right to organize have little deterrent effect and are considered by employers a small price to pay for a union-free workplace. For especially egregious conduct, the National Labor Relations Board (NLRB) can seek an injunction, but it rarely does so. In most cases, the NLRB simply orders the offending employer to restore the status quo and post a notice that it will not repeat the unlawful conduct. In one case we investigated, the NLRB ordered an employer to reinstate a worker, with back pay, fired five years earlier for supporting an organizing drive. After subtracting the worker's interim earnings over five years, the total penalty was only $1,305, plus interest, hardly a significant disincentive to flouting US labor law.

The Employee Free Choice Act would strengthen the penalties for anti-union discrimination committed during an organizing drive or first-contract negotiation by increasing the amount due victimized workers; providing for civil fines of up to $20,000 per violation for willful or repeated illegal acts; and requiring the NLRB to seek injunctive relief if it reasonably believes that an employer "significantly interferes with, restrains, or coerces employees" in the exercise of their rights, as is already required in similar cases against unions. These reforms would not change the basic rules governing workers' right to organize in the United States. Instead, they would give them teeth, making US employers think twice before violating existing US laws protecting freedom of association.

Streamlining Union Certification

Human Rights Watch has found that anti-union discrimination is common during NLRB election campaigns. In one case, an employer illegally threatened to cut pay and benefits if workers chose to form a union and fired two key union supporters. A worker told Human Rights Watch that, as a result, "everybody is scared [to organize] now." The Employee Free Choice Act would go a long way towards closing off this opportunity for employers to undermine workers' right to organize.

Current US rules governing union election campaigns are unfairly slanted against union supporters and allow employers to use myriad tactics to prevent workers from freely choosing whether to organize. Employers are entitled to argue vigorously against union formation while denying union organizers and advocates a parallel opportunity to present their message. Employers can force workers to attend anti-union captive-audience meetings during work time while prohibiting union organizers from holding similar meetings. And employers can issue a steady anti-union drumbeat during the workday but ban union advocates from the workplace and even from distributing information on sidewalks and in parking areas on employer property.

The failure of US labor law to ensure free and fair union elections can be more fully understood by analogy to political elections. The goal in each case is to create an even playing field and guarantee that people can cast votes free from coercion. The one-sided anti-union campaigning that US labor laws allow during organizing drives would rightly be seen as a travesty of minimum standards of electoral fairness in a political contest where all sides must have "equal opportunity to convey their messages to the electorate" to ensure "[t]he fair and free atmosphere needed for effective political campaigning." It should be understood as manifestly unfair in workplace elections, as well.

While the Employee Free Choice act would not address existing unbalanced rules on who can speak openly in the workplace about union formation, it would mitigate the rules' negative impact on workers' rights and help ensure that workers who wish to form unions can do so. Under current US

labor law, employers can refuse to recognize a union and demand an NLRB election even when a majority of workers support union formation as demonstrated by signed worker authorizations—a "card check."

Under the Employee Free Choice Act, if workers requested "card-check" recognition and the NRLB authorized the results, employers would be required to bargain with the union, facilitating and strengthening democratic union selection.

We hope we can count on your support of the Employee Free Choice Act. Its passage would send a message to workers in the United States and around the world that this country's professed support for fundamental workers' rights is not empty rhetoric but official policy.

We would welcome the opportunity to discuss these issues further and can be reached at 202-612-4321.

Sincerely,

/s/

Carol Pier
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Human Rights Watch