

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

R. BRUCE JOSTEN
EXECUTIVE VICE PRESIDENT
GOVERNMENT AFFAIRS

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June 17, 2009

TO THE MEMBERS OF THE UNITED STATES SENATE:

As support for the Employee Free Choice Act (EFCA) has dwindled, there is now much discussion of possible “compromises.” As a preliminary matter it is important to make clear that the U.S. Chamber of Commerce, the world’s largest business federation representing more than three million businesses and organizations of every size, sector, and region, does not believe that any discussions which are based on EFCA, or pursue the same goals can be fruitful. EFCA is unbalanced and utterly removed from genuine labor law reform.

One of the ideas that is apparently on the table is some type of alternative that would amend the current provisions in EFCA which impose binding **interest** arbitration on employers under the existing structure of the Federal Mediation and Conciliation Services. These changes would require someone to be appointed who would, quite literally, be empowered to write and impose the actual contract governing any and every term and condition of the workplace. That contract would be binding for two years and the workers would have no rights to even vote on the contract. These provisions would apply to every business of any size across the economic spectrum. The drafter of this contract may know nothing about the business in question. This grant of authority to the government to step in and mandate an agreement is completely unprecedented and unacceptable to the business community. Not surprisingly, surveys of the public have found opposition to this approach.

To justify these provisions, or perhaps to support some type of alleged compromise, the unions have deliberately tried to muddy the waters by arguing that the business community’s support for **dispute** arbitration is somehow inconsistent with its opposition to **interest** arbitration as envisioned by the Employee Free Choice Act. This is a desperate attempt at smoke and mirrors because the two situations have absolutely nothing to do with each other.

Dispute arbitration is used to resolve factual disputes (such as whether or not an employee was properly discharged or disciplined) – after a contract has been entered into by the parties. There is long-standing precedent for this type of arbitration and surveys demonstrate its utility and support by the public. This is entirely different from what EFCA calls “arbitration.” What EFCA entails in its **interest** arbitration language is a broad grant of authority to an outside person or entity to actually write and determine every provision of the underlying contract governing an entire workplace – and force the parties into that contract. The comparisons are entirely spurious.

The unions remain troubled by the facts and are trying to deliberately confuse the issues. However, no amount of obfuscation will hide the true impact of the Employee Free Choice Act. Government-mandated binding interest arbitration of any type in the private sector is unworkable and unacceptable. It is also completely unrelated to the business community's support for dispute arbitration.

Thank you for your consideration of this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Bruce Josten". The signature is fluid and cursive, with the first name "R." being a simple flourish, "Bruce" written in a clear cursive, and "Josten" written in a more complex cursive style.

R. Bruce Josten