



The Employee Rights Act of 2018

Introduced by Rep. Phil Roe (R-TN)

Labor-management relations laws, such as the *National Labor Relations Act* (NLRA) and *Labor-Management Reporting and Disclosure Act* (LMRDA), have not been substantively amended in decades. The *Employee Rights Act of 2018* updates these laws to protect the interest of workers, as well as employers and unions.

The NLRA was intended to provide employees with a choice whether or not to associate themselves with labor unions; the law has not been amended in over 40 years and needs to be modernized to reflect the realities of the contemporary workforce and workplace. Labor unions have slowly encroached on employees' freedom of association, and Congress should update relevant laws in order to restore the rights of workers in the workplace and uphold the rights of workers who do not wish to be a part of union activities.

The *Employee Rights Act of 2018* addresses three primary issues:

A Guarantee of Secret Ballot Elections

Currently, if a union receives signed cards from a majority of employees, an employer can voluntarily recognize the union without an election. Unions will often pressure employers to agree to such a card check campaign. These campaigns involve paid union organizers persuading workers to sign cards in favor of union representation. This persuasion frequently takes the form of harassing visits to workers' homes, deception, and coercion. Oftentimes employees will report they thought they were only signing a card to allow an election or they were pressured into signing without knowing the consequences.

The proposed legislative solution is to require that all unions under the NLRA be certified through a secret ballot election. During a secret ballot election, the threat of "strong-arm" tactics by the union is significantly less. Furthermore, a secret ballot election can also remove potential conflicts of interest present in card check campaigns where unions may give concessions to an employer for agreeing to forgo an election.

Elections Dues Protection for Employees

In right-to-work states, employees have the option to become full members of a union and pay dues, or to choose not to become a member and not pay dues. In states without right-to-work protections, employees may have to pay dues as a condition of employment, but they have the right to opt out of having their dues used for the union's non-bargaining expenses, such as politics. If, however, an employee does not proactively object, their dues may be used by the union for political and other non-bargaining purposes.[1] Many employees are unaware of their right to opt out of having their dues used for these purposes.

The proposed legislative solution to ensure employees are aware of their rights related to the use of union dues is to require that employees opt in to having their dues used for non-bargaining purposes, rather than requiring them to opt out. The political branches of unions, which often play little to no part in bargaining matters, receive funds from many employees who would not support them except that they are unaware of the right to opt out.

Periodic Recertification of Unions

Under the NLRA, a labor union can only be decertified through an arduous process that must take place in a specified timeframe and that can easily be blocked by frivolous charges filed by the union against the employer. These obstacles make the process of removing an unwanted union difficult. Furthermore, many employees currently subject to union representation never voted to be represented by the union. In some cases, unions have been in place for decades and very few if any employees currently in the bargaining unit voted for them. At an April 2018 hearing, the Health, Employment, Labor, and Pensions Subcommittee heard testimony from Ford autoworker Terry Bowman about how generations of employees have come and gone at Ford plants without having the opportunity to vote for or against the union that has been in place for decades.

The proposed legislative solution to this problem is to allow for periodic recertification of unions based upon certain triggering events, such as turnover of a majority of employees in a bargaining unit. Unions are supposed to represent employees, and such a safeguard as recertification would help ensure that union representation is the preference of current employees, not former employees.

Summary

The *Employee Rights Act of 2018* contains three provisions.

1. It amends the NLRA so that a union can only be certified through a secret ballot election and not a card check campaign.
2. It amends the LMRDA to require that unions receive opt-in permission from employees before using union dues on non-bargaining related expenses, such as politics.
3. It amends the NLRA to allow employers to request a secret ballot recertification election to determine whether their employees wish to remain represented by a union when there has been turnover of more than 50 percent of the bargaining unit.

¹ *Communications Workers of Am. v. Beck*, 487 U.S. 735 (1988).