

Feinstein Floats Card Checks by Mail as EFCA Alternative

With the Employee Free Choice Act (EFCA) at impasse in the Senate, Senator Diane Feinstein (D-CA) has offered an alternative substituting the card check provision with a mandatory mail-in election. While details of the proposal have yet to be revealed, it would likely involve employees mailing to the National Labor Relations Board (NLRB) a written indication of their support for the union, either with a union authorization card or an election ballot. Feinstein's proposal also reportedly includes an alternative to EFCA's mandatory first contract arbitration, but the details have not been released. Under current law, the NLRB may use mail-in ballots in place of secret ballot elections in rare instances where long distances are involved or where eligible voters are scattered because of their duties. This is not first time, however, that switching to mail-in elections has been proposed. In 1994, William Gould, then the Chairman of the NLRB, pushed the agency to use it. NLRB regional officials, however, filed written comments highlighting the "potential for interference by any party" and the fact that far fewer employees vote in mail-in elections compared to traditional secret ballot elections. Indeed, in *Shepard Convention Services*, the NLRB ordered a mail-in election and out of 438 eligible voters, only 77 cast ballots and with 40 cast for the union, it was elected by 9 percent of the eligible voters. The election results were rejected by the federal court of appeals. Like card-check, mail-in elections are inferior to traditional secret ballot elections.