Insight

The Faster Labor Contracts Act: What You Need to Know

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Executive Summary

- The Faster Labor Contracts Act, a bill designed to speed up the process by which a newly ratified union and an employer sign an initial collective bargaining agreement or contract (CBA), passed the House in June and now heads to the Senate.

- The bill would set strict timelines—which cumulatively add up to roughly four months—for the union and the employer to come to an initial CBA; if no agreement is reached after the expiration of certain timelines, then the dispute could move to a binding process where a federal arbitration panel would mandate the terms and conditions of the initial CBA.

- The established timelines and the imposition of binding arbitration could hasten the negotiation process and leave employers and workers with less of a voice when deciding on the wages, benefits, and working conditions of the initial contract.

Introduction

The Faster Labor Contracts Act (FLCA), a bill designed to speed up the process by which a newly ratified union and an employer sign an initial collective bargaining agreement or contract (CBA), passed the House by a 230–193 vote in June and now heads to the Senate. Following bill sponsor Donald Norcross's (D-NJ) filing of a successful discharge petition, the FLCA passed the House with the support of all voting Democrats and a small number of Republicans. The bill now faces an uphill battle in the Republican-led Senate. Nevertheless, if signed into law, the FLCA would significantly change the way newly ratified unions and employers come to the terms and conditions of an initial CBA.

The bill, which is supported by labor leaders, sets strict timelines—cumulatively adding up to roughly four months—for the union and the employer to come to an initial CBA. If no agreement is reached after the expiration of certain timelines, the negotiations can be deferred, at the request of one of the parties, to a binding arbitration process that is almost identical to the arbitration provision found in the union-favored Protecting the Right to Organize (PRO) Act. Here, a majority vote of a three-member panel of selected arbitrators will decide on the terms and conditions of the initial contract, which is then binding for two years unless both parties agree to amend it.

The established timelines and the imposition of binding arbitration can hasten the negotiation process and leave employers and workers with less of a voice when deciding on the wages, benefits, and working conditions of the initial contract.

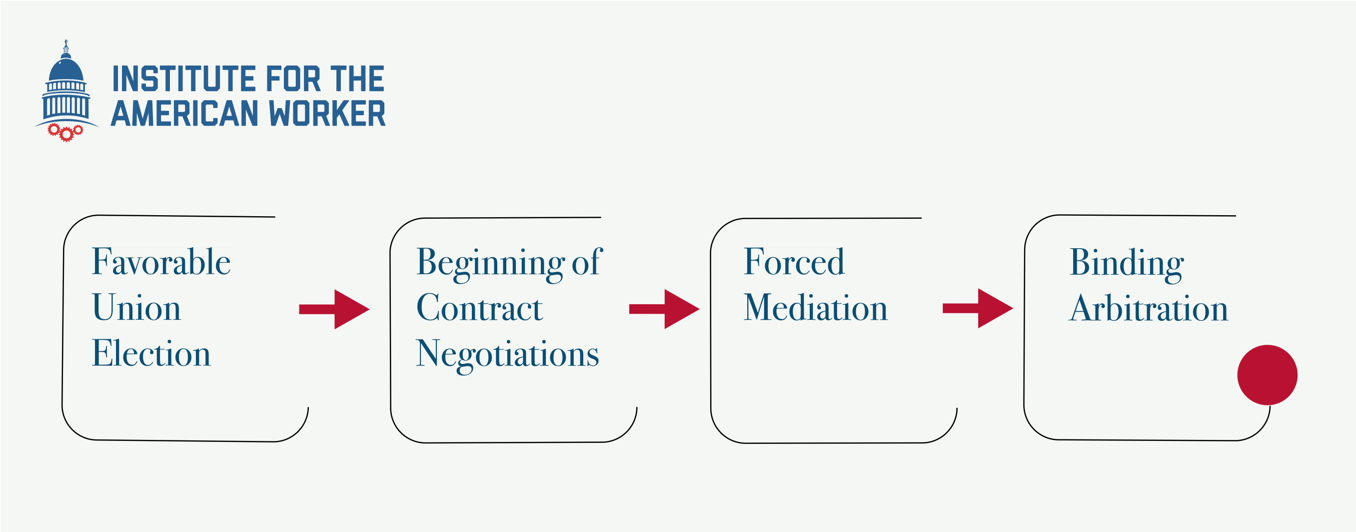
What the FLCA Does

The FLCA is designed to shorten the amount of time it takes for a newly ratified union to reach an initial CBA with the employer. Proponents of the bill argue that it takes far too long for an initial CBA to be signed and that anti-union employers often use delay tactics to secure more favorable terms in the contract. They cite a study by Bloomberg Law that found it takes an average of 465 days for both parties to agree on an initial contract. To expedite the negotiation process and the start of an initial contract, the FLCA would place strict timelines—cumulatively adding up to about four months—for both parties to reach an agreement before a binding arbitration process may begin.

Within 10 days of receiving a written request for collective bargaining, both the employer and the union must begin the negotiation process. Once the negotiations have begun, the two parties have 90 days to come to an initial contract. If no contract is signed, then either party may notify the Federal Mediation and Conciliation Service (FMCS) to request mediation to come to an agreement.

If another 30 days expire from the time the request for mediation was made, then the FMCS refers the dispute to a three-person arbitration panel—one member selected by the union, one by the business, and one neutral member agreed upon by both parties. If either party does not name an arbitrator within 14 days, the FMCS would designate one. A majority vote of this three-member panel would decide the terms of the contract, in a manner similar to what is outlined in the PRO Act.

There is no statutory timeline for which these members must decide on the contract. Once decided, however, it is binding for a period of two years, unless both parties agree to amend it.



Source: Institute for the American Worker

Implications of the FLCA

While the FLCA may accelerate the negotiation process for both the employer and the union to reach an initial contract, faster does not always mean better, and the binding arbitration provision sidelines the interests of both parties and leaves the decisions about worker pay, benefits, and working conditions in the hands of arbitrators acting under the auspices of the federal government.

The arbitrary timelines under the FLCA, while making the negotiation process move faster, may not give sufficient time for both parties to reach an initial contract that best represents the interests of both sides, given all the facts and circumstances of the working arrangement.

Under current law, no statutory timelines exist for unions and employers to come to an initial CBA. Both parties are simply required under the National Labor Relations Act to bargain in good faith to reach a mutually agreed upon contract. It typically takes a year or longer to agree to an initial collective bargaining contract.

The time it takes for both parties to reach an initial contract depends upon a multitude of factors, including the industry, employer size, workplace complexity, negotiator experience, and the level of cooperation or contentiousness between negotiators. Because the initial contract often lays the groundwork for future contracts, a methodical process that ensures that the interests of both parties are properly represented is justified and reasonable.

Attempting to arbitrarily accelerate the negotiating process can compromise the development of an initial contract. Both parties may not be given adequate time to flesh out their sides of the argument and allow for a healthy "back and forth" between the two to resolve conflicts and reach an agreement. According to an analysis by Bloomberg Law, fewer than 10 percent of initial collective bargaining contracts were signed within the roughly 120-day period that the FLCA would mandate, implying that most initial contracts would be required to meet a hastened negotiation process. Consequently, the FLCA could result in underdeveloped initial contracts that do not fully represent the interests of both parties and consider all the nuances of the working arrangements and could thus create an incomplete framework for future contracts.

While the timelines in the FLCA could compromise the negotiation process, the binding arbitration provision would reduce the representation of the two most interested stakeholders, the union and the employer. When the negotiators of the employer and the union are substituted for a three-member arbitration panel, the voices and interests of the most knowledgeable and interested parties would be sidelined in favor of what the arbitrators desire.

These mandatory arbitrators, either selected by the parties or by the FMCS, may not know or understand all the nuances of the working relationship the same way the workers and the employer do. Furthermore, the selected arbitrators may have a political or other bias that influences their decision, either unfairly in favor of the union or the employer. Therefore, the decisions made by the arbitrators may be made without the proper input, knowledge, and fairness that best represent the interests of workers and their employers.

Conclusion

The House-passed FLCA attempts to speed up the process by which newly ratified unions reach an initial CBA with their respective employer by establishing strict deadlines to reach an initial agreement and moving to a binding arbitration process if certain timelines are not met. If passed in the Senate and signed into law, the FLCA would dramatically alter the manner by which initial CBAs are conducted.

The strict timelines mandated by the FLCA could hasten the negotiation process and lead to underdeveloped contracts that do not fully represent the interests of both the workers and the employers. Because initial contracts often serve as the foundation for future contracts, a hastened negotiation process could negatively affect future work arrangements and contracts. Furthermore, by imposing a binding arbitration process that is almost identical to the arbitration provision found in the PRO Act, the FLCA would diminish the voices and interests of workers in favor of those of third-party arbitrators.