This workshop will examine the campaign to pass the Employee Free Choice Act (EFCA). It will look at the case for labor law reform made by the American labor movement, as well as the strategies and tactics the two U.S. labor federations (the AFL-CIO and Change to Win) and their constituent unions used to promote the passage of the legislation. The session will also examine the efforts of the U.S. business community (led by the Chamber of Commerce) to defeat the bill. The role that industrial/employment relations academics and academic research played in the campaign will be discussed and the political environment in which Congress considered this potentially historic effort to reform labor law will be analyzed. Ultimately, the session will shed light on the difficulty of bringing about change to a highly adversarial system of employee representation.

Several weeks following the January 2009 inauguration of U.S. President Barack Obama, EFCA was introduced in both the U.S. House of Representatives and the Senate. While the battle between the supporters and opponents of this legislation had actually been joined earlier in the decade, the intensity of the fight over EFCA escalated through the summer at which point Congress turned its attention to health care reform and EFCA was temporarily set aside. It is expected that debate over labor law reform will resume once health care legislation is either passed or defeated. This could occur as early as January 2010.

The battle over EFCA is the latest chapter in a two hundred year old relationship between American workers and the unions they formed and American employers. For two centuries this relationship has been characterized by political, economic, and physical conflict. During the first 125 years the balance of power generally favored employers. However, during the Great Depression of the 1930s, Congress took steps to more equally balance the power of unions and employers. The most significant initiative in this regard was the passage of the National Labor Relations Act (NLRA), a law that gave most American workers the rights to organize a union, bargain collectively, and strike.
Sine the Act’s passage the balance of power between the two parties has swung back and forth. In the years following the passage of the Act in 1935, the labor movement grew rapidly, both in terms of membership and bargaining power. The passage of the Taft-Hartley Amendments to the NLRA in 1947 weakened legal protections for unions and employer power increased. The booming economy of the 1950s and the 1960s, coupled with the growing power of unions, again gave unions the upper hand. It was during this period that union density, the percentage of the workforce that belongs to unions, peaked at a high of 35 percent.

Beginning in the 1970s, however, employers began to probe for loopholes in the NLRA and discovered that the law lacked teeth. Slowly, the protections it provided employees were eroded and the playing field became tilted heavily in management’s favor. This imbalance has been one of the primary reasons for the decline of the American labor movement.

For American unions, the passage of EFCA represents an opportunity to restore the kind of balance in labor-management relations fostered by the NLRA in 1935. However, consistent with the history of conflict between unions and employers, both parties are engaged in a political fight over the passage of EFCA that some observers consider to be unprecedented. The intensity of this battle suggests that this legislation would have a significant impact on the current balance of power between labor and management in the U.S. By June 2010 it is likely that EFCA will either have been passed by Congress, in some form, or defeated.