

Executive Memorandum

No. 948
November 12, 2004



Published by The Heritage Foundation

Congress Should Protect Secret-Ballot Union Representation Elections

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Unions exist to allow workers to present a united front to their employers and to protect the economic interests of the workers they represent. For this reason, labor law explicitly gives workers the right to support or not to support a union, prohibits “company unions,” and insists that a union demonstrate it has the support of a majority of workers in any bargaining unit before it may represent those workers.

In recent years, unions have adopted new organizing tactics that represent an end run around the prerogatives of those workers. Unions’ increasing use of neutrality and card-check arrangements denies workers the privacy and security of a secret-ballot election and allows unions to win representation rights through intimidation and collusion with employers. To strengthen union accountability to workers, Congress should either establish that secret-ballot elections will be held before workers may be organized or, at a minimum, strictly limit the use of card-check and neutrality agreements.

Under the National Labor Relations Act (NLRA), a union may be recognized as the representative of a bargaining unit when it demonstrates that it has the support of a majority of those workers. A union will typically begin this process by collecting workers’ signatures on “authorization cards.” With signatures from a simple majority of

workers, the union may request that the employer recognize the union voluntarily. If the employer refuses, the union may petition the National Labor Relations Board for a secret-ballot election. If a majority of those voting indicate support for the union, that union must be recognized.

The Problem. Neutrality and card check change this process, undercutting the right of workers to decide whether to allow a union to negotiate on their behalf. In theory, neutrality agreements ensure that an employer will not actively oppose unionization or criticize the union. In practice, they often allow union representatives

access to employees during company time or provide union officials with employees’ personal information (e.g., addresses and phone numbers). Card check commits the employer to recognize the union once presented with signed authorization cards from a majority of workers. Yet authorization cards are notorious for overstating the level of union support: Unions frequently lose secret-bal-

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- The best way to prove majority support for union representation is through a secret-ballot vote.
 - Congress should act to prevent unions from misusing neutrality and card-check agreements, which prevent workers from voting on unionization.
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This paper, in its entirety, can be found at:
www.heritage.org/research/labor/em948.cfm
Produced by the Thomas A. Roe Institute for
Economic Policy Studies

Published by The Heritage Foundation
214 Massachusetts Avenue, NE
Washington, DC 20002-4999
(202) 546-4400 • heritage.org

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lot elections even after collecting signatures from two-thirds of workers.

A combination of card check and neutrality is likely to overstate union support. Employees may sign authorization cards to avoid union coercion—a possibility that increases when the union has personal information about employees. After observing a pro-union meeting held on company time, workers may conclude that the union has the employer's endorsement. Either situation will create “false positives”—workers who are mistaken for union supporters.

Unions secure card check and neutrality through corporate campaigns or by making concessions to employers. Corporate campaigns involve a wide range of groups and tactics: Civic groups may try to create public pressure; the employer's customers may be encouraged to take their business elsewhere; and charges may be leveled against the company that damage its reputation or lead to litigation. Corporate campaigns take many different forms, but they share one common feature: The objective is to pressure the company—not its workers—into approving union representation.

In some instances, unions have agreed in advance to make concessions or to limit future wage and benefit demands in exchange for neutrality and card-check agreements. For instance, the United Steel Workers agreed to limit all wage increases as part of one neutrality agreement, and the United Auto Workers has apparently agreed to lower wages for its workers in order to secure a neutrality agreement with an auto parts supplier.

Options. Because card check and neutrality may be negotiated with management before the union has demonstrated *any* support among workers, they can allow an employer to collude with union officials and effectively choose a union for its employees. Misuse of neutrality and card check might eventually allow for the creation of “company unions” beholden to management and lethargic about protecting workers.

To ensure that unions have genuine support among workers before recognition by employers, the NLRA should be amended to limit the use of neutrality and card-check arrangements. For example:

- Requiring a secret-ballot election before a union may be recognized will ensure that workers have the final say on who, if anyone, represents them and minimize the risk that neutrality agreements will lead to the creation of company unions.
- If Congress is unwilling to mandate elections, it should at least prohibit “neutrality” agreements that provide direct assistance to unions. Particularly, employers should be prohibited from disclosing employees' personal information to union officials. Congress should also consider allowing workers who oppose unionization to intervene and force a secret-ballot vote.
- Card check is an unreliable measurement of worker sentiment. Employers should retain the right to call for a vote if they have any doubt about union support. Congress should reject calls for legislation that would force employers to recognize a union solely on the basis of signed authorization cards.

Conclusion. Unions should be directly accountable to the workers they seek to represent. Labor law should scrutinize arrangements that weaken union accountability. Neutrality and card-check agreements can lead to the recognition of unions over the objections of a majority of workers—a result that is completely contrary to the purposes of labor law. If Congress will not abolish neutrality and card-check agreements, it should at least strictly limit their use.

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