

WebMemo



Published by The Heritage Foundation

No. 1255
November 14, 2006

Card Check Undermines Workplace Democracy

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Democratic elections are a fundamental right in America. Private ballots, such as those cast in the privacy of the voting booth, ensure that voters can express their wishes without pressure or fear of reprisal. American workers should have this right, too, when they vote on whether to join a union. But the drive to replace private balloting with out-in-the-open “card check” organizing, as proposed in the misleadingly named “Employee Free Choice Act” (EFCA, H.R. 1696), threatens workers’ right to decide for themselves whether to join a union. Congress should think twice before replacing secret ballot elections in the workplace with publicly signed cards.

EFCA would require that, once union organizers submit cards publicly signed by a majority of employees at a firm, the National Labor Relations Board (NLRB) “shall not direct an election but shall certify the individual or labor organization as the [workers’] representative.”¹ Under EFCA, American workers could no longer vote in private on whether or not they want to join a union.

Workplace Democracy Threatened

Labor leaders and some politicians want to abolish workplace elections on unionization and replace them with “card check” campaigns that deny workers the chance to vote on whether to join a union. Their aim is to increase the number of Americans who belong to unions. This is one of organized labor’s highest legislative priorities.

Since the New Deal, most American workers have enjoyed democratic rights when deciding who

will represent them in the workplace. Workers at a company usually choose whether or not to join a union by voting in a private ballot election. Under the current system, union organizers first try to convince workers to join a union and ask them to sign union authorization cards. Once enough workers have signed cards, the organizers submit them to the NLRB and request that the government hold a private ballot election.² If a majority of workers vote in favor, the workers join the union.³

The law, however, does not guarantee that workers will get to vote in every organizing drive. A company can choose to recognize a union without letting workers vote if union organizers hand in authorization cards signed by a majority of its workers. This is known as card check organizing. For several good reasons, companies rarely agree to card checks.

Card Check Opens Door to Fraud

Publicly signed union authorization cards are far more vulnerable to fraud than government supervised elections. In NLRB elections, officials physically inspect and seal the ballot box prior to voting. Before workers can vote, their names are checked

This paper, in its entirety, can be found at:
www.heritage.org/research/labor/wm1255.qfm

Produced by the Center for Data Analysis

Published by The Heritage Foundation
214 Massachusetts Avenue, NE
Washington, DC 20002-4999
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against eligibility lists. And once the election has ended, the votes are counted by an NLRB agent in front of union and employer representatives. At every step of the election, the NLRB works to ensure that the only votes that count are those cast by workers.

Card check campaigns have none of these safeguards against fraud. Union organizers hold signed cards until they submit them to the NLRB, and only their integrity prevents organizers from submitting forgeries. The NLRB assumes that authorization cards are valid unless it receives hard evidence to the contrary. The NLRB case manual is clear on this point:

Although authorizations should be examined on their face (to check, for example, for signatures which appear to be in the same handwriting), their validity should be presumed unless called into question by the presentation of objective evidence. W-4 forms or other documents should not be accepted routinely for checking against signatures on the authorizations, absent objective evidence that provides a reasonable basis for challenging the showing of interest.⁴

Union organizers who find that they can only persuade 48 or 49 percent of a company's workers to sign authorization cards would face a powerful temptation to forge enough signatures to reach 50 percent. No procedural safeguards would prevent such fraud, and employers face a great burden to disqualify any fraudulent cards. Rogue organizers have to be caught red-handed for the NLRB to investigate anything. Congress should not open the door to massive potential fraud that would misrepresent worker preferences.

Card Check Undermines Workplace Democracy

Mandatory card checks, in place of elections, would disenfranchise American workers just to make it easier for unions to organize. For example, under card check, workers who have not been contacted by union organizers have no say in whether or not they join a union. Elections, however, guarantee that every worker has the opportunity to express their views on whether they want to belong to a union.

Equally important, a democratic election with a private ballot ensures that all workers can express their true views without fear of social stigma or retribution. With a private ballot, no one else knows how any individual worker voted, and so workers are free from outside pressure.

But with card check, organizers know who has and who has not signed on to join the union. They can approach workers repeatedly to pressure those who have not yet signed cards. Unsurprisingly, many workers involved in card check campaigns report that they did not want to join a union but that they "just signed to get the organizer or coworker off their back."⁵ Similarly, employees who want a union may be pressured by anti-union coworkers or supervisors into handing back the authorization card.

Publicly signed cards also expose workers to threats of reprisals for making the "wrong" choice. Although it is illegal, some employers threaten to fire workers who join unions. And union organizers have threatened workers that, when the union is recognized, it will work to fire workers who did not sign the authorization cards.⁶ Workers should not have to fear they will lose their jobs for wanting or not wanting to join a union.

1. Employee Free Choice Act of 2005 (H.R. 1696), Section 2 (a).
2. Organizers must collect signatures from at least 30 percent of workers before the NLRB will hold a private ballot election.
3. National Labor Relations Board, "Procedures Guide," at <http://www.nlr.gov/nlr/employee/procedures.asp> (November 14, 2006).
4. National Labor Relations Board, Casehandling Manual, "Part Two—Representation Proceedings," § 11027.1, August 1999, at <http://www.nlr.gov/nlr/legal/manuals/chm2-4.pdf>.
5. Testimony of Mr. Richard Hermanson, Vice President of United Screeners Association Local 1, San Francisco, California, before the U.S. House Committee on Education and the Workforce, Subcommittee on Employer-Employee Relations. Sept. 30, 2004, at http://www.house.gov/ed_workforce/hearings/108th/eer/union093004/hermanson.htm.

Publicly signing a card under these circumstances is not a reliable gauge of whether workers actually do or do not want a union. Only with private ballots do workers know that they can express their desires honestly and without fear of reprisal.

Conclusion

Workers' democratic rights should not be taken away just because they impede union organizing. The attitude of some labor leaders that "there is no reason to subject the workers to an election," should not be written into law.⁷

Publicly signed authorization cards do not reliably reveal employees' desires. Card check organizing exposes workers to pressure, harassment, and threats. Only private ballots protect workers from these abuses and ensure that they can express their true intentions. Congress should not deprive American workers of their right to vote.

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6. See testimony of Bruce G. Esgar before the House Subcommittee on Workforce Protections, July 23, 2002, at <http://edworkforce.house.gov/hearings/107th/wp/uniondues72302/esgar.htm>.
 7. UNITE-HERE President Bruce Raynor, quoted in Steven Greenhouse, "Labor Turns to a Pivotal Organizing Drive," *The New York Times*, May 31, 2003.