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Unions Know That Card Check Does Not Reveal Employees' Free Choice

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Organized labor's highest legislative priority, the Employee Free Choice Act (EFCA, H.R. 800), would replace secret ballot union organizing elections with "card check," in which union organizers publicly solicit workers' signed union authorization cards. If a majority of a company's workers sign cards, they all automatically join the union without an election. In public, unions argue that card check reveals employees' preferences more reliably than the private ballot. But in private, union activists acknowledge that workers often sign union cards because of peer pressure or harassment and that publicly signed cards do not reflect workers' true intentions. That is why unions argue against letting workers use card check to leave a union. Policymakers should understand that union activists know that card check does not reveal employees' free choice.

Card Check Would Not Solve Alleged Problem. Labor activists want Congress to require workers to publicly sign a union card to join a union, rather than cast a private ballot. Unions say that card check is the only way to determine whether workers truly want to join a union because companies routinely fire union supporters and intimidate workers into voting down unionization.

In fact, such firings are both illegal and rare. Data from the National Labor Relations Board (NLRB) show that employers illegally fired union supporters in only 2.7 percent of organizing election campaigns between 2003 and 2005.¹ If widespread corporate intimidation were a problem, however, forcing employees to make their choice in public

instead of letting them vote in private would only make it worse.

Unions Know Card Check Is Unreliable. Nonetheless, unions publicly insist that Congress should pass EFCA because card check best reveals workers' intentions. In private, however, union organizers agree that publicly signed cards do not reflect workers' true beliefs.

Union organizers currently solicit signed union cards from workers to request that the NLRB hold an organizing election. Union organizing manuals caution organizers that a worker's signature on a union card does not mean that he or she wants to join a union or will vote for the union in the election. Unions have known this for decades. The AFL-CIO's 1961 *Guidebook for Union Organizers* states:

NLRB pledge cards are at best a signifying of interest at a given moment. Sometimes they are signed to "get the union off my back".... Whatever the reason, there is no guarantee of anything in a signed NLRB pledge card except that it will count towards an NLRB election.²

Unions regularly submit publicly signed authorization cards from a large majority of a company's

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workers, only to see the workers reject the union in the privacy of the voting booth. In a study of organizing campaigns, the AFL-CIO admitted that “it is not until the union obtains signatures from 75% or more of the unit that the union has more than a 50% likelihood of winning the election.”³

When organizers solicit union cards, they visit workers’ homes in groups and put them on the spot with high-pressure tactics. They only give one side of the story and ask workers to commit immediately. If a worker does not sign the card, they return again and again until the worker does.⁴ Cards signed under these circumstances are far less likely to reveal a worker’s true intention than a private vote held after time for reflection.

Unions Oppose Card Check for Decertification. Unions know that card check does not reliably reveal workers’ wishes and that it can lead to workers being pressured into signing a card. That is why unions have argued against letting workers use card check to decertify their union as passionately as they now argue in favor of card check for organizing. In a brief to the NLRB, the AFL-CIO quoted the Supreme Court in arguing that workers deserve the privacy of the voting booth when deciding to leave their union:

[A] representation election is a solemn...occasion, conducted under safeguards to voluntary choice.... [O]ther means of decision making are not comparable to the privacy and independence of the voting booth.⁵

The AFL-CIO also argued that public cards do not reflect workers’ true choice:

[T]he NLRA representation election system provides the surest means of avoiding decisions which are the result of group pressures and not individual decision.⁶

Unions know that private ballots best reveal workers’ desires. And yet the unions disfavor private ballots for union organizing.

Real Goal Is More Members. Some see card check as a means of reducing unions’ long-term decline. In the modern economy, unions are harder to sell to workers than in the manufacturing economy of two generations ago. Today’s jobs require unique skills and talents that do not easily lend themselves to general representation.

Consequently, union membership has fallen steadily since the 1950s, although it has increased slightly over the past two years. The proportion of private-sector workers who belong to unions has fallen by more than half over the past 25 years.⁷ Unions seek to reverse that trend, and they know that card check allows them to organize workplaces without workers’ majority support. United Food and Commercial Workers organizer Joe Crump openly admits that with card check, “You don’t need a majority or even 30% support among employees.”⁸

Crump instructs organizers not to worry that aggressive campaigning for a company to skip an election might turn workers against the union because “if you had massive employee support, you probably would be conducting a traditional organizing [election] campaign.”⁹ Unions want card check to make it easier to recruit dues-paying

1. J. Justin Wilson, “Union Math, Union Myths,” Center for Union Facts, June 2008, p. 7, at www.unionfacts.com/downloads/Union_Math_Union_Myths.pdf (March 6, 2009).
2. AFL-CIO. *AFL-CIO Organizing Survey* (Washington, D.C.: AFL-CIO, 1989).
3. Woodrow J. Sandler, “Another Worry for Employers,” *U.S. News and World Report*, March 15, 1965, p. 86.
4. James Sherk, “How Union Card Checks Block Workers’ Free Choice,” Heritage Foundation *WebMemo* No. 1366, February 21, 2007, at www.heritage.org/Research/Labor/wm1366.cfm.
5. Brief for Charging Parties and the AFL-CIO, *In Re Chelsea Industries, Inc. and Levitz Furniture Company of the Pacific, Inc.*, before the National Labor Relations Board, Case Nos. 7-CA-36846 and 7-CA-37016, May 18, 1998, p. 13 (internal quotation marks omitted).
6. *Ibid.*
7. Barry T. Hirsch and David A. Macpherson, “Union Membership and Coverage Database from the Current Population Survey,” at www.trinity.edu/bhirsch/unionstats (January 5, 2009).

members, not to defend workers' right to freely choose to join or not join a union.

Conclusion. Labor activists argue that publicly signed union cards are the best way to prevent intimidation and harassment and to protect employees' free choice. Privately, however, they acknowledge that a decision made in public does not reliably reveal a worker's true intentions. Unsurprisingly, they have strongly opposed efforts to let

workers decertify a union by card check. Unions seek to reverse the decline in union membership by facilitating the organizing of workplaces where the majority of workers do not want to unionize. Congress should remember this when considering stripping workers of the privacy and protection of the voting booth.

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8. Joe Crump, "The Pressure is On: Organizing Without the NLRB," *Labor Research Review*, Volume 18, Fall/Winter 1992, p. 43.

9. *Ibid.*, p. 42.