



THE “CARD CHECK” ISSUE: *The End of Secret Ballots in America?* February 2007

Democrat Proposal: On February 5, 2007, Democrat George Miller of California introduced the Employee Free Choice Act (H.R. 800), which, among other things, would allow the National Labor Relations Board (NLRB) to certify a union without conducting a requested secret-ballot election. More specifically, the bill would amend the National Labor Relations Act (NLRA) to require the NLRB to certify a union without requiring a secret-ballot election when a majority of the bargaining unit employees have signed authorizations (“card checks”) designating the union and there is no other union currently recognized as the exclusive representative of any of the employees in the unit. In other words, unions will be able to pressure private-sector employees to “vote” in favor of their being represented by the unions without having to move to an election where employees can cast their votes in private.

A full committee mark-up of H.R. 800 has been scheduled for Wednesday, February 14th, with House floor action expected in late February or early March.

Recent Legislative Action: H.R. 800 is identical to H.R. 1696 and S. 842 (Senator Ted Kennedy’s bill) from the 109th Congress, neither of which saw legislation action. Rep. Charlie Norwood introduced the Secret Ballot Protection Act (H.R. 874) in the 109th Congress, which would require a secret ballot election for union authorization. The Norwood bill also saw no legislative action.

Background: The NLRA gives private-sector workers the right to join or form a labor union and to bargain collectively over wages, hours, and other working conditions. The “card check” issue involves whether to change the procedures under which workers choose to join, or not to join, a union.

Under current law, the NLRB conducts a secret ballot election for union representation when a union, employer, or employees file a petition requesting one, if at least 30% of employees have signed a petition or union authorization cards. The NLRA does not *require* secret ballot elections.

In general, as the Congressional Research Service reports, unionization campaign rules differ for employees, union organizers, and employers (though some exceptions do apply). During work hours, employees can campaign for union support from their coworkers in both work and non-work areas. If an employer does not allow the distribution of literature in work areas,

employees can only distribute union literature in non-work areas. If an employer allows the distribution of other kinds of literature in work areas, employees may also distribute union literature in those areas.

In general, union organizers cannot conduct a campaign on company property (unless the worksite is hard to access or the company allows other nonemployees to solicit on company property). Organizers may meet with employees and distribute literature on union property and in non-work areas on employer property. Union organizers may also contact employees at home by phone, mail or in person.

Employers may campaign on company property and may require employees to attend meetings during work hours to give the employer position on unionization (but not in the 24-hour period before an election). Employers and supervisors can give employees written information and hold individual meetings with employees.

Rep. Norwood's office cites a recent Zogby poll in which 63% of union workers expressed their belief that stronger laws are needed to protect the secret ballot election process. Employers have also cited coercive tactics from unions (threats of boycotts, etc.) to stop requests for secret ballots.

For additional background on the card check issue, see this webpage:
<http://www.congress.gov/erp/rl/pdf/RL32930.pdf>.

Possible Conservative Concerns: Some conservatives might be concerned that card-check-only "elections" might put undue pressure on employees to agree to union representation, even when they really do not want it. Even though it is illegal for an employer or a union to threaten or coerce any employee to sign a union authorization card, peer pressure in non-secret elections can be powerful. Only government-supervised secret-ballot elections provide the privacy and security needed for employees to vote honestly.

In addition, some conservatives may be concerned that union leaders are using the card check legislation to silence the individual voices of workers. For example, UNITE HERE's Bruce Raynor, said, "There's no reason to subject the workers to an election."

http://townhall.com/columnists/MattKibbe/2007/01/12/big_labor%E2%80%99s_card_check_is_bad_news_for_workers

Administration Position: U.S. Secretary of Labor Elaine Chao issued the following statement last week: "A worker's right to a secret ballot election is an intrinsic right in our democracy that should not be legislated away at the behest of special interest groups."

Outside Group Opposition: Card-check-only legislation is being opposed by a wide variety of conservative and business organizations, including, but not limited to:

- American Hospital Association
- American Hotel and Lodging Association
- Associated Builders & Contractors

- Associated General Contractors
- Independent Electrical Contractors
- International Council of Shopping Centers
- International Foodservice Distributors Association
- International Franchise Association
- National Association of Manufacturers
- National Restaurant Association
- National Retail Federation
- Printing Industries of America
- U.S. Chamber of Commerce

Additionally, the Heritage Foundation released a paper strongly opposing the notion of card check “elections,” described as undemocratic:

<http://www.heritage.org/Research/Labor/wm1255.cfm>.

Outside Group Support: Card check legislation is being supported by a wide variety of liberal and labor organizations, including, but not limited to:

- ACORN
- AFL-CIO
- AFSCME
- Americans for Democratic Action
- Center for American Progress
- Center for America’s Future
- Council on American-Islamic Relations
- Democratic Leadership Council
- Democratic National Committee
- Earth Action Network
- Human Rights Watch
- NAACP
- Sierra Club
- United Students Against Sweatshops
- Unitarian Universalist Association of Congregations – Washington, D.C., office
- UNITE HERE!

<http://www.aflcio.org/joinaunion/voiceatwork/efca/allies.cfm>

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