

EXPANDING WORKERS' COLLECTIVE BARGAINING RIGHTS

Majority Card-Up/Card Check for Public Sector Workers Organizing Rights for Public Sector Workers Independent Contractors

MAJORITY SIGN-UP/CARD CHECK FOR PUBLIC SECTOR WORKERS

Analysis:

In many states where the law currently allows public sector workers to organize, the public employers are not required to recognize a union even if a majority of employees demonstrates that they desire union representation. Instead, the employer can choose not to respect its employees' choice and can force workers to undergo a time-consuming election process that enables management to intimidate workers and pressure them to abandon their support of the union through a coercive anti-worker campaign. A majority sign-up or card check statute makes employer recognition of its workers' union mandatory if a majority of workers have signed appropriate authorizations. States can craft their own such statutes for their public sector and non-NLRA private sector workers without raising any NLRA preemption issues.

Rationale:

When a majority of workers decides to form a union, their decision should be respected by their employer. Instead, many state labor relations laws, modeled on the National Labor Relations Act, include the NLRA's delay-ridden representation process, with its debilitating obstacles to employee free choice. This process doesn't work; it does not provide workers with freedom to choose whether to be represented by a union. Workers are not only forced to wait months and years, but also to endure harassment and discrimination while legal wrangling keeps them from enjoying the benefits of unionism.

Talking points:

Why majority sign-up? Current law already allows employers to recognize a union if a majority of employees demonstrates that they desire union representation. But, under current law, an employer is not required to recognize a union – even if 100% of the workers have designated the union as their representative. Instead, under current law, the employer chooses – the employer

can force workers to undergo the time-consuming NLRB election process that enables management to intimidate workers and pressure them to abandon their support of the union through a coercive anti-workers campaign. A majority sign-up statute makes such recognition mandatory if a majority of workers have signed appropriate authorizations.

How does the statute work? Under the proposed statute, when a majority of employees signs authorizations, the union can file a petition with the state labor relations board and the board must investigate their petition. If the board determines that such forms have been signed by a majority of workers, the board must certify the union as the employees' collective bargaining representative.

Is the majority sign-up process democratic? Yes. It encourages participation by all workers because it requires that a majority of all employees in a bargaining unit support union representation. In contrast, under the NLRA, only a majority of employees who actually vote in an NLRA-conducted election must support the union in order for the union to be certified as employees' representative.

The majority sign-up procedure is also more democratic than the NLRA process because it allows employees to express their true wishes free from employer coercion. It avoids anti-democratic and inherently coercive anti-union campaigns that are encouraged by the NLRB election process.

Where has it been tried? Verifying majority status through authorizations is a procedure that works; it has been a voluntary procedure with the National Labor Relations Board since its passage in 1935 and has been endorsed and validated by Congress and the courts, including the U.S. Supreme Court. Increasingly, states are turning to procedures for majority sign-up through authorizations as a democratic and effective way to guarantee workers' choice. New York's Governor George E. Pataki signed a bill, effective January 28, 2002, which allows private sector non-NLRA employees to form a union through an authorization process; New York has provided such procedures for its public sector workers since 1999. Legislation was also passed in New York authorizing the governor to negotiate tribal gaming compacts that include this process. Both Illinois and California have enacted legislation providing for majority sign-up procedures for their public sector workforces; Massachusetts has included such a procedure in legislation regulating charter schools since 2000. Mandatory majority sign-up is an important element of the federal Employee Free Choice Act, introduced in the House and Senate in 2003 and now endorsed by 208 in the House and 35 in the Senate.

Elements:

Whenever a petition has been filed by a labor organization [or an employee or group of employees or any individual, depending on the current statutory requirements], alleging that a majority of employees in a unit appropriate for the

purpose of collective bargaining wish to be represented by a labor organization, the board shall investigate the petition.

If the board finds that a majority of the employees in a union appropriate for bargaining has signed authorizations designating the individual or labor organization specified in the petition as their bargaining representative and that no other individual or labor organization is currently certified or recognized as the exclusive representative of any of the employees in the unit, the board shall not direct an election but shall certify the individual or labor organization as the representative described in [statute's collective bargaining provision.] [This provision is mandatory and supersedes the direction of an election.]

The majority representation provisions apply when no other individual or labor organization is currently certified or recognized as the exclusive representative of any of the employees in the unit.

Authorizations shall contain the name of the union, the name of the employee, indicate that the employee authorizes the union as his or her collective bargaining representative and be signed and dated.

Examples:

New York

California

Massachusetts

IL, Public Act 93-0444; HB 3396

New Mexico, N.M. Stat. Ann Section 10-7E014 (2004)

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Analysis:

State, county, and municipal employees, teachers, university workers, and fire and police officers in many states do not have the right to form a union for collective bargaining. Even when public workers have the right to form a union and bargain, state statutes often limit what their employers can be required to bargain about.

Rationale:

Collective bargaining for public employees ensures that state residents will receive the highest quality public services possible because front-line public

employees, who provide these services, will have a voice on their job. Creating an environment that facilitates cooperative efforts will allow workers to put their knowledge and experience to work for all residents, leading to new innovations and even better services. In addition to creating great state government, collective bargaining will give fairness to these frontline workers who should have the same rights and freedoms as their private sector counterparts. It will be up to state workers themselves to choose whether or not to form unions and bargain collectively.

Examples:

Washington state, University of Washington employees: In 1998, even though eighty percent of its graduate student employees had signed union cards, the University of Washington refused to recognize the workers' union. Meetings were initiated with the governor, influential legislators, and top University administrators; union members were mobilized for rallies and a letter-writing campaign; and workers threatened to strike. The University recognized the union, but refused to bargain collectively because Washington had no legislation authorizing bargaining for University workers. In early 2002, after months of grass-roots political work, bills passed a closely divided legislature extending full collective bargaining rights to university faculty and staff. Since then, hundreds of graduate students and faculty have formed unions.

Maryland higher education workers: In Maryland, legislation extending collective bargaining rights to support and service staff in their public university system in 2001 has resulted in collective bargaining agreements for over three thousand workers.

Oklahoma municipal employees collective bargaining bill: No. 1529

**COLLECTIVE BARGAINING RIGHTS FOR
INDEPENDENT CONTRACTORS**

Analysis:

When workers have no identifiable employer or are [probably improperly] classified as independent contractors, they are excluded from collective bargaining statutes. These often include taxi, limousine and truck drivers; couriers; home health workers; and others. Legislation can be formulated that creates an employer of record for such workers so they can form a union and bargain collectively.

Alternatively, where private employers use “independent contractors” in order to avoid legal obligations and financial liabilities, legislation can “disincentivize” their use. This type of legislation transfers these obligations and liabilities back to the “real” employer, such as requiring that the “real” employer be responsible for health and safety requirements and for compliance with drug testing rules, and liable for air pollution and other health obligations.

Examples:

In **California** and **Washington**, legislation to create an employer of record for home care workers has led to collective bargaining agreements for thousands of workers. In 2003, Illinois legislation granting the right to bargain to 20,000 home care workers was signed into law. A ballot initiative in October 2000 gave bargaining rights to 13,000 home care workers in **Oregon**.

In 2002, **California** court interpreters gained union representation following legislation requiring state courts to hire them as employees, not independent contractors. HB 5445

In 2004, **Maine** enacted legislation to establish a forestry rate proceedings panel to set rates of compensation for forest products harvesting and hauling services [loggers and log haulers; the legislation declares that such proceedings do not constitute a conspiracy, combination in restraint of trade, illegal monopoly or price fixing. H.P. 972 – L.D. 1318; 26 MRSA Section 931