

Guaranteeing Employee Free Choice Through Democratic ‘Card-Check’ Procedures

The Employee Free Choice Act provides for certification of a union if the National Labor Relations Board (NLRB) finds that a majority of employees have signed written authorization forms designating the union as their collective bargaining representative.

Democratic card-check procedures are the most effective way to determine the wishes of a majority of employees. Under card-check procedures, employers are only allowed to recognize a union if a *majority* of employees has signed valid written forms authorizing union representation. Any employee who does not sign an authorization form is presumed not to support union representation.

Democratic card-check procedures are necessary to avoid anti-democratic employer coercion through the NLRB election process. Union elections are unlike any other kind of elections because of the inherent coercive power that management holds over employees—the power to deprive employees of their livelihood and to control their pay, hours and working conditions. According to a survey of 400 NLRB election campaigns in 1998 and 1999, 36 percent of workers who vote against union representation explain their vote as a response to employer pressure.¹ The NLRB election process makes matters worse by enabling management to wage lengthy and bitter anti-union campaigns, during which workers can expect harassment, intimidation, threats and firings. By avoiding these inherently coercive and anti-democratic anti-union campaigns, majority-rule card-check procedures help employees make freer choices under less duress.

Democratic alternative procedures are necessary because the NLRB election process is broken. According to workplace surveys conducted by professors Richard Freeman of Harvard University and Joel Rogers of the University of Wisconsin, 42 million employees who are not represented by a union would like to have representation at work.² These workers remain unrepresented largely because the official “election” procedures they must use to choose whether to form a union have become a parody of democracy.

- Under the NLRB election process, delays of months and even years are common, during which management uses every imaginable procedural option to stretch out the process and frustrate the desire of employees to form a union. According to John Logan of the London School of

¹ Kate Bronfenbrenner, “Uneasy Terrain: The Impact of Capital Mobility on Workers, Wages, and Union Organizing,” *U.S. Trade Deficit Review Commission* (2000).

² Richard Freeman and Joel Rogers, “A Proposal to American Labor,” *The Nation* (June 24, 2002); Freeman and Rogers, *What Workers Want* (1999).

Economics, “delays extend the duration and the effectiveness of the employer campaign and undermine employee confidence in the effectiveness of both the union and the labor board.”³ One study has found that unionization rates drop 0.29 percent for each day of delay.⁴

- Under the NLRB election process, management has almost unlimited and mandatory access to employees, while union supporters have almost none. This would be the equivalent, in a congressional election, of one candidate owning all the local print and broadcast media outlets and denying her opponent any access to media.
- Under the NLRB election process, management has total access to a complete and accurate list of employees at all times, while union supporters may have access very late in the process to a list that is often intentionally inaccurate.

Card-check procedures promote healthy relationships between employers and employees. By helping to avoid a pitched battle between management and employees where voting to have a voice on the job is tantamount to a vote “against” the employer, card-check procedures promote healthier labor relations in the workplace. Neutrality agreements—in which management typically agrees not to interfere with employees’ decision about union representation and employees typically agree not to picket or strike—also help avoid the workplace polarization that often results from anti-democratic and coercive anti-worker campaigns. In a recent survey of employers who had used card-check agreements, a majority reported that the agreements resulted in improved relations with the union, enabling management to achieve other bargaining or business goals.⁵

Card-check procedures have been legal throughout the life of the National Labor Relations Act (NLRA). Card-check procedures have always been legal under the NLRA and were once the preferred method of gauging employee choice. In the early years of the NLRA, card-check procedures were presumptively used absent special circumstances requiring an NLRB-supervised election. Today, card-check procedures implemented at the discretion of management are becoming more common in light of the obvious failures of the NLRB election process. However, under current law, management can refuse to recognize a union even when 100 percent of employees have signed union authorization forms and can instead insist on an NLRB election process that

³ John Logan, “Consultants, Lawyers, and the ‘Union Free’ Movement in the USA Since the 1970s,” 33 *Industrial Relations Journal* 197 (Aug. 2002).

⁴ Paul C. Weiler, “Promises to Keep: Securing Workers’ Rights to Self Organization Under the NLRA,” 96 *Harv. L. Rev.* 1769, 1777 (1983) (citing Roomkin & Juris, “Unions in the Traditional Sectors: the Mid-Life Passage of the Labor Movement,” 31 *IRRA Proceedings* 212, 217-18 (1978)).

⁵ *See* Adrienne E. Eaton and Jill Kriesky, “Evaluating the Case Against Card Check,” *Perspectives on Work* (Jan. 2003).

enables management to intimidate employees through a coercive anti-worker campaign.

Card-check procedures similar to the Employee Free Choice Act have been successful in Canada. Labor laws in five Canadian provinces and the federal jurisdiction require union certification upon a showing of authorization forms from a majority of employees, much like the Employee Free Choice Act. The experience of the Canadian provinces with these card-check procedures has been positive.

Card-check procedures benefit society as a whole. Both union and anti-union advocates agree that employees are better able to overcome the obstacles to forming a union under card-check procedures than under the NLRB election process. Higher rates of unionization have been shown to benefit society as a whole in the form of reduced inequality, higher wages and purchasing power for union members and non-members alike, a reduced gender gap, greater access to health care, greater access to pensions, lower poverty rates and higher voter participation.