

WebMemo

No. 1369

February 23, 2007

Revised and updated June 20, 2007



Published by The Heritage Foundation

Card Checks Would Not Solve Alleged Problems with Union Organizing Elections

James Sherk

Labor activists argue that secret ballot organizing elections are stacked against workers who want to join a union. Companies, they allege, systematically fire pro-union workers, threaten to shut down if their workers unionize, and use stalling tactics to delay holding votes. At the same time, say the activists, companies bombard their workers with anti-union messages at work, while union organizers do not have access to workers to make their case. Union activists contend that the solution to these problems is card checks, in which union organizers have workers publicly sign cards indicating their desire to join a union instead of voting with a secret ballot.

The activists' allegations of widespread abuses have little factual basis. But even if they were true, forcing workers to vote in public would not end abuse. Even worse, card-check organizing would actually make workers more vulnerable to intimidation, not less.

No Cure for Illegal Firings. The government prohibits companies from firing union supporters and investigates allegations of illegal firings. Companies that fire union supporters must reinstate them with full back pay and hold a new election free of coercion.

Nonetheless, union activists argue that Congress should pass card check because employers regularly fire union supporters during organizing election campaigns in order to intimidate the remaining workers.¹ They claim this happens in one-quarter of organizing campaigns. Election campaigns, they say, do not reflect employees' free choices when

workers fear losing their job if they speak up in support of a union. The facts, however, do not support these allegations.

Government statistics reveal that most cases of alleged firings are baseless. Most unfair labor practice complaints that unions brought before the National Labor Relations Board (NLRB) in 2005 were either withdrawn or dismissed.² The NLRB found substantiated evidence of illegal firings in just 2.7 percent of organizing election campaigns that took place that year.³

The claim that companies fire workers in one-quarter of organizing drives comes from a survey of union organizers.⁴ Union organizers are not an impartial source, and, as noted, government investigators reject almost all of their allegations. Actual investigations reveal little evidence of employer misconduct.

Even if union activists are right, however, card checks would only make it easier for companies to fire union supporters. Companies do not know how individual workers vote in the privacy of the voting booth, but a union card signed in public is an entirely different matter. If there is a real problem with companies systematically firing workers who

This paper, in its entirety, can be found at:
www.heritage.org/research/labor/wm1369.cfm

Produced by the Center for Data Analysis

Published by The Heritage Foundation
214 Massachusetts Avenue, NE
Washington, DC 20002-4999
(202) 546-4400 • heritage.org

Nothing written here is to be construed as necessarily reflecting the views of The Heritage Foundation or as an attempt to aid or hinder the passage of any bill before Congress.

want to unionize, then the government should not strip those workers of their privacy and inform employers of exactly who has signed on.

No Cure for Illegal Threats. Labor activists claim that employers regularly attempt to intimidate workers by threatening to shut down or move their plants if their workers unionize and argue that card checks could curtail this intimidation.⁷ Union organizers say that employers make such threats in half of all organizing campaigns, although they rarely follow through.⁶ But such threats are already illegal and are grounds for setting aside an election.

Card checks would also do nothing to prevent companies from making these threats. Abolishing private elections does not address the problem of employers making empty threats to their workers. Companies can deliver illegal threats just as effectively whether employees vote in private or sign up for a union in public.

Delays Are Already Rare. Employers use legal maneuvers to delay holding organizing elections, say unions. They claim that companies file baseless objections with the NLRB in order to drag out election campaigns for months. This reportedly gives employers more time to intimidate their employees and causes workers to lose confidence in the

union.⁷ To prevent interminable delays before a vote, labor activists argue that the government should replace private ballots with public union cards that would not be subject to such delays.

But the facts undermine the unions' premise. The typical organizing election takes place 39 days after union organizers file an election petition. Over 94 percent of organizing elections take place within eight weeks of organizers filing a petition.⁸ Eight weeks is hardly an unreasonable delay for a decision that demands consideration by workers. Congress should not strip workers of their right to a private vote because labor activists think 39 days is too long to wait before workers vote.

Publicly Signed Cards Would Not Stop Employers from Making Their Case. Unions claim that employers have an unfair advantage campaigning against unionizing during organizing elections. In the words of AFL-CIO President John Sweeney, "supervisors to shovel anti-union propaganda to the employees whose schedules, evaluations and advancement they control" and force "workers to attend one-sided, anti-union meetings where management can legally fire pro-union workers who speak out."⁹ Unions say that card checks would remedy this problem.

1. See, e.g., AFL-CIO, *Employee Free Choice Act: Employer Interference by the Numbers*, at www.aflcio.org/joinaunion/how/upload/employerinterference.pdf (February 21, 2007).
2. National Labor Relations Board, *Seventieth Annual Report of the National Labor Relations Board for the Fiscal Year Ended September 30 2005*, May 1, 2006, Table 7 at www.nlr.gov/nlr/shared_files/brochures/Annual%20Reports/Entire2005Annual.pdf.
The NLRB closed 20,250 ULP cases against employers in 2005. Of those, 6,222 were withdrawn by the charging party, and 4,876 were dismissed by the government: 55 percent of the total cases closed.
3. J. Justin Wilson, "Union Math, Union Myths," Center for Union Facts, June 2007, at www.unionfacts.com/downloads/Union_Math_Union_Myths.pdf.
4. Kate Bronfenbrenner, "Uneasy Terrain: The Impact of Capital Mobility on Workers, Wages and Union Organizing," September 6, 2000, at digitalcommons.ilr.cornell.edu/reports/3/ (February 21, 2007).
5. AFL-CIO, "The Silent War: The Assault on Workers' Freedom to Choose a Union and Bargain Collectively in the United States," Issue Brief, September 2005, pp. 4–5, at www.aflcio.org/joinaunion/how/upload/vatw_issuebrief.pdf.
6. Kate Bronfenbrenner, "Uneasy Terrain," 2000.
7. AFL-CIO, "The Silent War," pp. 4, 8.
8. Office of the General Counsel, National Labor Relations Board, "Memorandum GC 07-03 Revised, Summary of Operations: Fiscal Year 2006," at www.nlr.gov/shared_files/GC%20Memo/2007/GC%2007-03%20Summary%20of%20Operations%20FY%202006.pdf. The typical election is defined as the median election, which took place 39 days after the election petition's filing.
9. John Sweeney, "Out Front With John Sweeney: Management Controlled Election-Process," AFL-CIO, at www.aflcio.org/aboutus/thisistheafclio/outfront/managementcontrolledballoting.cfm (February 21, 2007).

Union activists are right that employers often try to persuade their workers not to unionize. Supervisors will often hold group meetings where they inform workers of the downsides of joining a union. But Congress should not take away workers' right to vote in privacy because employees get to hear arguments from both sides during the election campaign. Union organizers will not tell workers why they should not join a union. In fact, unions train organizers to avoid topics like dues increases and strike histories that could persuade workers to reject the union.¹⁰ Employers should be able to provide their workers with the other side of the story. That is how democracy works: Voters make an informed decision in private after both sides make their strongest case.

But even if employers' arguing against unionizing were a serious problem, card check laws that force workers to reveal their choice would not solve it. The First Amendment to the U.S. Constitution guarantees employers the right to present their views to their workers. So long as they avoid threats, employers would still be able to hold "captive audience" meetings and "shovel anti-union propaganda" to their workers just as effectively when ballots are public as when they are private.

Card Checks Could Reduce Union Access to Workers. Union activists also claim unions and employers do not have equal access to workers. They point out that management can campaign against unionizing all day long during working hours, while unions may do so only during break times. They say that employees cannot freely choose union membership when they do not get to hear the union case.¹¹ They argue that card checks would fix this problem.

This argument is highly misleading. The government balances the rights of unions and employers

during organizing elections to ensure that workers can hear from both sides. Generally, union organizers may not campaign when workers are on company time. But organizers may speak during unpaid time at work unless the company has a policy prohibiting all solicitation—not just by unions—on its premises.

In addition, the government requires companies to provide union organizers with a complete and accurate list of all employees' names and addresses within seven days of the NLRB's order to conduct an election. If the company refuses, the NLRB will set aside the election and order a re-vote.¹² Union organizers are free to contact employees at home or by phone to make their case, but employers may not.¹³ The law guarantees unions the opportunity to make their case to employees—just not when companies pay those employees to work.

Further, card checks could make it more difficult for unions to contact workers. Employees would still spend an average of 40 hours a week at their place of work. If organizers do not have to file for an election, however, employers would have no obligation to provide them with the list of employee names and addresses. Without that list, organizers would have less access to workers to argue in favor of joining a union.

If employers truly have unfair access to employees, card check proposals that would make it harder for union organizers to meet with workers are not the solution.

Conclusion. Card checks would not remedy the alleged abuses that union activists say justify its passage. Labor activists contend that employers systematically threaten and even fire workers who want to join a union, drag out the election process, and prevent unions from making their case to work-

10. Testimony of Jen Jason, former organizer, UNITE-HERE, before the Subcommittee on Health, Employment, Labor, and Pensions, Committee on Education and Labor, U.S. House of Representatives, February 8, 2007, at edworkforce.house.gov/testimony/020807JenniferJasontestimony.pdf.

11. Testimony of Dr. Gordon Lafer before the Subcommittee on Health, Employment, Labor, and Pensions, Committee on Education and Labor, U.S. House of Representatives, February 8, 2007, at edworkforce.house.gov/testimony/020807GordonLafertestimony.pdf (February 13, 2007).

12. National Labor Relations Board, Office of the General Counsel, *An Outline of Law and Procedure in Representation Cases*, July 2005, Chapter 24, Sections 324, at www.nlr.gov/nlr/legal/manuals/outline_chap24.html.

13. *Ibid.*, Section 321.

ers. These allegations are either baseless or vastly exaggerated. But even if the unions are right, card check laws that make a workers' choice to join a union public would do nothing to solve them. Card checks would actually make it easier for rogue employers to fire union supporters and more difficult for unions to contact workers. American work-

ers have a fundamental right to vote in privacy that Congress should not deny them. That right should not be denied in favor of a process that would not address the allegations of problems with private-ballot elections.

—James Sherk is Bradley Fellow in Labor Policy in the Center for Data Analysis at The Heritage Foundation.