



The Secret Ballot Protection Act **Reduce Coercion in Union Organizing;** **Protect Employee Privacy**

Currently, the preferred method for determining whether or not employees want a union to represent them is a secret ballot election overseen by the National Labor Relations Board (NLRB). The NLRB provides detailed procedures that ensure a fair election, free of fraud, where employees may cast their vote confidentially without peer pressure or coercion from unions or employers. However, current law also permits employers and unions to bypass elections and agree to union recognition by the use of “card check” procedures, where employees are forced to declare their preference in front of union organizers. Not only are card check procedures a less accurate reflection of employees’ desires, but they also invite coercion, intimidation, and abuse. In addition, card check procedures have been abused by unions that launch attacks on employers, called corporate campaigns, in an effort to pressure companies to agree to card check elections even where it’s not clear that a majority of the employees support the union. The Secret Ballot Protection Act (S. 1173, H.R. 874) would require the use of secret ballots for union recognition thereby increasing workplace democracy and decreasing the use of coercive and intimidating tactics in union organizing.

Card Check Procedures Invite Coercion and Abuse

The annals of NLRB case law are packed full of examples where the use of card checks have been challenged on coercion, misrepresentation, forgery, fraud, peer pressure, and promised benefits.¹ In recent testimony before the House Subcommittee on Workforce Protections, an employee described the various misrepresentations and coercive tactics used by union organizers utilizing card checks. The tactics included threats of termination, deportation, and loss of 401(k) and health benefits for not signing a card; and promises of green cards, termination of supervisors, and free turkeys for employees who did sign cards.² It is no wonder then that federal courts have questioned the reliability of card check procedures. For example, in one case the Fourth Circuit observed that, “It would be difficult to imagine a more unreliable method of ascertaining the real wishes of employees than a ‘card check,’ unless it were an employer’s request for an open show of hands.”³

Secret Ballot Elections Are the Fairest Way to Determine Employees’ Wishes

To ensure a fair election free of employer and union coercion, the NLRB follows strict procedures.⁴ An NLRB agent is present and oversees the entire voting process to make certain that neither the employer nor the union can determine how an individual employee votes. Throughout the election, both employer and union representatives are able to monitor the process. However, they are strictly observers and may not speak with the voters or see how a particular employee votes.

¹ See July 23, 2002, *Testimony of Daniel V. Yager before the House Subcommittee on Workforce Protections* (listing over 100 cases involving challenges to card check elections), available at <http://edworkforce.house.gov/hearings/107th/wp/uniondues72302/yager.pdf>.

² See July 23, 2002, *Testimony of Bruce G. Esgar before the House Subcommittee on Workforce Protections*, available at <http://edworkforce.house.gov/hearings/107th/wp/uniondues72302/esgar.htm>.

³ *NLRB v. S.S. Logan Packing Co.*, 386 F.2d 562, 565 (1967).

⁴ See *Information for Voters in NLRB Elections*, (detailing procedures) available at http://www.nlr.gov/nlr/shared_files/brochures/election.asp.

Secret Ballot Elections Are Held Promptly

In 2004, the latest year for which data is available, 94% of all elections were held within 56 days.⁵ Although union leadership alleges that they have problems succeeding in secret ballot elections, unions actually win in over 50% of them.⁶

The NLRB, the Supreme Court, Rep. George Miller, and the AFL-CIO All Have Supported Secret Ballot Elections

In a recent brief to the Ninth Circuit Court of Appeals, the NLRB stated “Congress and the Supreme Court regard a secret ballot election conducted under the Board’s auspices as the preferred method for resolving representational disputes in the manner that best ensures employee free and informed choice.”⁷ Similarly, a letter sent by Rep. George Miller and 15 other members of Congress to Mexican government officials said, “We understand that the secret ballot is allowed for, but not required, by Mexican labor law. However, we feel that the secret ballot is absolutely necessary in order to ensure that workers are not intimidated into voting for a union they might not otherwise choose.”⁸ Even the AFL-CIO has expressed support for secret ballot elections, arguing that in *decertification* petitions secret ballot elections “provide the surest means of avoiding decisions which are the results of group pressures and not individual decisions.”⁹

The Secret Ballot Protection Act Would Reduce Coercion in Union Organizing

The Secret Ballot Protection Act (H.R. 874, S. 1173), introduced by Rep. Charlie Norwood and Sen. Jim DeMint, would amend the National Labor Relations Act to require that union recognition be based on a secret ballot election, conducted by the NLRB. The bill does this by making it an unfair labor practice for an employer to recognize or collectively bargain with a union unless it was selected by a majority of employees in a secret ballot election conducted by the NLRB. Similarly, the bill makes it an unfair labor practice for a union to try to secure recognition without using a secret ballot election. The bill’s requirements are not retroactive and do not apply to collective bargaining relationships in effect prior to enactment.

Requiring that secret ballot elections be used for union recognition will protect employee privacy, limit the opportunity for union coercion, and help ensure that employees have the final say over whether or not they want to be represented by a union.

⁵ See NLRB General Counsel Memorandum 05-01, available at http://www.nlr.gov/nlr/shared_files/gcmemo/gcmemo/gc05-01.pdf.

⁶ See *Number of Elections Decreased in 2004; Union Win Rate Increased for Eighth Year*, DAILY LABOR REPORT (BNA) (May 3, 2005).

⁷ Brief for the National Labor Relations Board as Amicus Curiae in the *Chamber of Commerce of the United States v. Bill Lockyer* at 5 (citing *Linden Lumber Div., Sumner & Co. v. NLRB*, 419 U.S. 301, 307 (1974); *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 596 (1969)).

⁸ August 29, 2001, letter to Junta Local de Conciliación y Arbitraje del Estado de Puebla from Reps. George Miller, Dennis Kucinich, Bernard Sanders, William Coyne, Lane Evans, Bob Filner, Martin Olav Sabo, Barney Frank, Joe Baca, Zoe Lofgren, Calvin Dooley, Fortney Stark, Barbara Lee, James McGovern, Marcy Kaptur, and Lloyd Doggett.

⁹ Joint Brief of the United Automobile, Aerospace, and Agricultural Implement Workers of America, the United Food and Commercial Workers, and the AFL-CIO in *Chelsea Industries and Levitz Furniture Co. of the Pacific, Inc.*, Nos. 7-CA-36846, 7-CA-37016 and 20-CA-26596 (NLRB).