

ISSUE BRIEF

Card-Check Neutrality Procedures

Federal labor law requires that a union represent a majority of workers before it can gain employer recognition. However, majority status can be demonstrated by means other than a National Labor Relations Board (NLRB)-sponsored election, a process that is frequently marked by a lengthy and bitter employer-run, anti-union campaign. Increasingly, workers and employers are bypassing NLRB-sponsored elections, instead determining majority status through a less confrontational procedure known as card-check. In most cases, the employer also agrees to remain neutral during this process. Card-check neutrality agreements are completely consistent with U.S. labor law and have proven to be a fair and effective way for workers to gain a voice on the job.

Under the Wagner Act of 1935, the precursor to the current National Labor Relations Act (NLRA), employers were prohibited from campaigning against a union engaged in an organizing drive. Whether or not a group of employees formed a union was considered to be a decision for them to make without outside interference or pressure. In fact, any antiunion statement by an employer was considered an unfair labor practice. After the enactment of the Taft-Hartley Act of 1947, however, employers won the right to insist on NLRB elections because it gave them an opportunity to campaign against the union and to use the legal system to delay recognizing and negotiating with unions.

A card-check neutrality procedure is a fair and appropriate method of determining if employees wish to be represented by a union. A 1999 study by Rutgers University Professor Adrienne Eaton and colleague Jill Kriesky found that workers gained union representation about 70 percent of the time when there was a cardcheck agreement—compared with an NLRB election success rate of about 50 percent.

Card-check procedures allow workers and employers to avoid conflict-ridden situations and enable them to build a win-win scenario in which both parties benefit. Many employers are willing to agree to neutrality and card-check because of the value unions add to the business via partnership, supply of skilled labor and improved relations with customers.

A card-check neutrality procedure permits workers to gain recognition by proving that a majority wants to be represented by a union. After a majority of the workers signs a union authorization card or petition asking the employer to recognize the union, the employer can voluntarily acknowledge the majority status of the union and begin negotiations for a first contract.

Employers who receive a request for recognition are not obligated to recognize the union automatically. In some instances, the employer and the union work out a legal process with guidelines. A respected community leader or a professional arbitrator can be designated as a neutral third party to monitor the agreement and verify that the union authorization cards or petition represents a majority of the workers. Employers who agree to card-check recognition often also agree to remain neutral throughout the process—though this is not always the case. The union often agrees to refrain from engaging in picket lines, protests or strikes during the organizing campaign. If an employer had any reason to think the signatures to prove majority support have been improperly

obtained through misrepresentations or coercive measures, it would have a lawful duty to reject the union's request for voluntary recognition.

The usual reaction of employers to a demand for voluntary recognition is negative. Employers usually insist upon NLRB elections that enable them to engage in a lengthy process that gives them time to thwart and delay workers' desires for a union. That is why growing numbers of workers are resorting to card-check neutrality procedures to gain union representation.