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Let Them Have a Secret Ballot

Union workers on the verge of one less freedom.

By Mark Mix

Is it necessary to destroy employee secret-ballot elections over unionization in order to "save democracy" in the workplace?

As crazy as that sounds, it's the premise of new legislation sponsored by Senator Ted Kennedy (D., Mass.) and Congressman George Miller (D., Calif.) and enthusiastically supported by AFL-CIO president John Sweeney and other union officials.

Under current federal labor law, if a majority of employees in a federally determined "bargaining unit" votes to be represented by a union, then that union becomes the "exclusive" bargaining agent of all employees in the unit, including those who would prefer another union or would rather bargain for themselves.

Exclusive (i.e., monopoly) bargaining certainly does violate the individual employee's free choice. But that's not what Kennedy and Miller are interested in protecting in their cynically labeled "Employee Free Choice Act."

Instead, they want to change the current federal policy that normally allows an employer to require that a secret-ballot election be held to determine whether a majority of employees wish to be unionized.

Joined by Sweeney and telecommunications union chief Morton Bahr, Kennedy and Miller introduced their measure November 13. As described by its sponsors, the Kennedy-Miller bill would make forced unionism through so-called "card checks" a government-granted entitlement for big labor. Today, union officials cannot normally deny employees the opportunity to vote on unionization in a secret-ballot election without the employer's acquiescence.

Union organizers would rather wipe out any possibility of secret-ballot elections, because they lose roughly half of them. They would instead prefer that signatures on union authorization cards be considered a formal vote in favor of unionization.

Though Kennedy-Miller purportedly rewrites federal law in several ways to make it easier to corral employees into a union against their will, the card-check provision is the key one. Attempting to justify it, Miller suggested that the only possible explanation for why unions win "only 50 percent of elections"

is that "the deck is stacked against" unions. As a consequence, the U.S. supposedly now projects an "undemocratic" image to the rest of the world. This is nonsense.

Miller simply ignores good reasons why workers might want to vote against unionization. For example, the Bureau of National Affairs *Union Membership and Earnings Data Book* reports that in 2002, the mean earnings of non-union manufacturing workers were \$18.26, compared to \$17.45 for union manufacturing workers. BNA data also indicate that in key sectors like manufacturing, telecommunications, construction, and retail sales, unionized workers are far more likely to lose their jobs as a result of shutdowns, bankruptcies, or mass layoffs than are non-union workers.

With federal labor law openly biased in favor of union monopoly bargaining, the secret-ballot vote policy is one of the few provisions employees can currently use to avoid potentially detrimental union representation.

As the U.S. Supreme Court pointed out in *NLRB v. Gissel*, employees who do not actually wish to be unionized frequently sign authorization cards as a result of union-boss misrepresentations, threats, or "group pressure." Card-check drives usually involve union organizers making highly intrusive "home visits" or pestering employees on the job.

And union officials themselves vociferously oppose the decertification of unions without a secret-ballot vote. The AFL-CIO joined in a 1998 court brief insisting that unionized employees must be given a chance to cast a secret-ballot vote before the union is decertified, even if most have already signed a petition opposing the union. Echoing *Gissel*, the brief said that a union's workplace status should not be the result of "group pressure."

Clearly, organized labor bosses demand card-check certification out of expediency, not because they sincerely believe that cards reliably express the views of employees.

Enactment of the Kennedy-Miller bill would empower union bosses to secure card-check recognition without the employer's consent. Then they could circumvent "problem" firms.

A perfect case in point is the Cintas Corporation, America's largest uniform supplier, whose management has fought off frivolous litigation and a malicious p.r. campaign designed to extract their consent for card-check recognition.

That's why top union bosses are vowing to "bring Cintas down" for exercising its legal right to abide by dozens of secret-ballot elections, in which Cintas employees at various facilities have overwhelmingly voted down unionization. Because a number of companies like Cintas are refusing to be cowed by big-labor smear campaigns, Americans can expect union officials to make a major push to pass the Kennedy-Miller card-check bill.

Big labor's intensifying efforts to "organize employers, not employees," as one

union strategist put it in an influential labor-journal article, make the injustice of the federal labor laws authorizing forced unionism all the more clear.

Effectively eliminating workplace secret-ballot elections through Kennedy-Miller would be a giant step in the wrong direction. Instead, Congress should approve H.R.391/S.1765, the National Right to Work Act, which would restore the individual employee's freedom to refuse to pay dues or "fees" to an unwanted union.

— *Mark Mix is president of the National Right to Work Committee.*

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