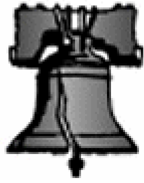

National Right to Work Committee®

Fact Sheet

The National Right to Work Committee, 8001 Braddock Rd., Springfield, Virginia 22160, (703) 321-9820, (800) 325-7892, www.nrtwc.org

A COALITION OF EMPLOYEES AND EMPLOYERS

109th Congress

Big Labor 'Card Check' Schemes Rife With Abuses

Union Bosses' Mistrust of Workers Causes Tactic to Spread

Under the guise of efficiency, union lobbyists have sharply intensified their efforts to promote so-called "card check organizing" through federal legislation. The misnamed **"Employee Free Choice Act"** (H.R.1696/S.842) would rewrite the rules for unionization drives by allowing union bosses to acquire monopoly-bargaining privileges through "card check" automatically, without the employer's acquiescence.

This cynically-labeled measure was introduced in the U.S. House by George Miller (D-Calif.) and in the U.S. Senate by Ted Kennedy (D-Mass.). It may more accurately be referred to as the **"Card Check Forced Unionism Bill."** It would effectively bar employee secret-ballot elections over unionization unless union officials consented to them.

A better alternative is the **"Secret Ballot Protection Act of 2005."**

Introduced in the U.S. House of Representatives by Congressman Charles Norwood (R-Ga.) and in the U.S. Senate by Senator Jim DeMint (R-S.C.), H.R.874/S.1173 is a step toward equal protection of the right to join and the right not to join a union, while maintaining a worker's right to a secret-ballot election. The Secret Ballot Protection Act would bar union bosses and (typically intimidated) employers from cutting deals to impose forced representation on employees through "card checks."

To most Americans, the term **"card check"** means nothing.

But to union bosses, this term potentially means billions of extra dollars collected in forced-union dues, above and beyond the $8 billion in forced dues and "fees" that unions already report collecting each year on forms filed with the U.S. Labor Department.

To understand what "card checks" and "card check organizing" are, one must first understand what Big Labor seeks to achieve through the acquisition of so-called "union authorization cards."

Under current law, union officials may obtain bargaining power over workers who don't sign cards as well as those who do, over union nonmembers as well as union members. That's because federal labor law authorizes union **"exclusive representation"** over private and federal-government employees in all 50 states. So-called "exclusive representation" is more accurately labeled as monopoly bargaining.

- Under Section 9(a) of the 1947 Taft-Hartley Act, a union that has been certified or recognized as the representative of the workers in a bargaining unit has the right of "exclusive representation" for all workers in that unit:

> Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit [that the federal government deems] appropriate for such purposes . . . shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

- The concept of "exclusive representation" means that the union is the sole bargaining agent for the unit. The employer is prevented from dealing with any other organization in the determination of wages, hours, and working conditions for that unit. The employer is also prevented, under most circumstances, from implementing changes in the conditions of work without prior negotiations with the union. Moreover, the individual employee within the bargaining unit, whether a union member or not, is unable to bargain with the employer on his or her own behalf unless union bosses grant their permission.

"Card checks" empower union bosses to force employees to accept a union as their exclusive bargaining agent solely through the acquisition of signed "union authorization cards" from employees in a particular bargaining unit. Since union officials themselves keep the signed cards until they obtain the required number, workers have no real privacy rights vis-à-vis Big Labor in this process. And under the watchful eyes of union organizers, workers may be intimidated into signing not just themselves, but all their nonunion fellow employees, over to union-boss control.

Union officials virtually never intend to merely obtain the power to negotiate pay, benefits, and working conditions for those employees who sign such cards.

When union officials seek the power to bargain with a business only on behalf of those employees who choose to join the union, it need not be determined whether pro-union workers constitute a majority.

As the U.S. Supreme Court has made clear in 1938's *Consolidated Edison* decision and in subsequent rulings, nothing in federal law bars either a minority or a majority union from seeking and obtaining employer recognition as a members-only bargaining agent.

In recent decades, however, union officials have only very rarely exercised their members-only option. Instead, virtually all union organizing drives focus on obtaining bargaining privileges over nonmembers as well as members. The National Right to Work Committee has long favored amending federal labor law to guarantee the individual worker's freedom to bargain on his or her own behalf, regardless of coworkers' union status.

But as long as federal law authorizes union officials to acquire monopoly-bargaining power, they should at least have to clear the hurdle of a secret-ballot vote in order to get it. Congress should certainly not make it easier for Big Labor to deny employees the opportunity to bargain for themselves by endorsing the expansion of "card check organizing."

"Card checks" frequently go in tandem with misleadingly-named "neutrality agreements," which typically require employers to help union officials secure monopoly-bargaining power.

A **"neutrality agreement"** is actually a contract between union officials and an employer under which the employer agrees to *support* attempts to organize its workforce. Although these agreements come in several different forms, common provisions include:

- **Gag Rule:** Far from promoting employer "neutrality," most "neutrality agreements" impose a gag order on speech not favorable to the union. The company, including its managers and supervisors, is prohibited from sharing with workers any information that might be construed as negative about the union or unionization, including even uncontested, objective facts. As long as the unionization drive continues, top managers must do everything within their power to ensure employees hear only one side of the story: the version union officers want employees to hear.

- **Preemptive "Card Checks:"** Most "neutrality agreements" include a clause in which the company publicly announces in advance that, should a simple majority of employees sign "union authorization cards," the company will recognize the union as the monopoly-bargaining agent of all employees without first allowing a secret-ballot election. Experience shows that many employees are coerced or misled into signing authorization cards. For instance, employees are often falsely told that authorization cards are merely health insurance enrollment forms, non-binding "statements of interest," requests for an election, or even tax forms. Furthermore, when an employer tacitly declares that it is unconcerned about such abuses and will not investigate alleged instances, employees may well decide that resistance to unionization is futile.

- **Access to Premises:** "Neutrality agreements" commonly give union officers permission to come on company property during work hours for the purpose of collecting "union authorization cards." This differs from the guidelines set by the National Labor Relations Board (NLRB) and the courts, under which an employer has no obligation of, and may actually be prohibited from, providing union bosses with direct access to employees.

- **Access to Employees' Personal Information:** "Neutrality agreements" frequently require that the company provide personal information about employees to the union, including where employees and their families live. Armed with a company-provided list of the name and address of each employee, union officials can conduct multiple home visits to pressure a targeted employee to sign a "union authorization card." Some employees report they cannot stop such intrusive and potentially intimidating visits even by repeatedly telling union organizers they have no interest in signing an authorization card.

- **Captive Audience Speeches:** Employees may be forced to attend company-financed "captive audience" speeches pursuant to "neutrality agreements." In these mandatory forums, managers often watch approvingly while union officials put pressure on employees to sign "union authorization cards." (However, actual collection of signed cards while managers and/or supervisors are watching is illegal, according to a June 2004 ruling by an NLRB administrative law judge.) Sometimes it is announced that the union and company have already formed a "strategic partnership," making union representation seem a foregone conclusion. In one facility owned by Johnson Controls Inc., it was strongly implied that if workers did not support the union's organizing effort, they risked losing potential job opportunities. (The script for one apparently typical captive

audience speech is available at www.nrtw.org/d/jci_captive.htm on the website of the National Right to Work Legal Defense Foundation.)

In light of the destruction "neutrality agreements" wreak on employee-management relations, one may reasonably ask why any employer in his or her right mind would ever agree to sign one. But the sad fact is, employers often sign "neutrality agreements" under duress, because they believe they have no other way to fend off union picketing, threats, or comprehensive **"corporate campaigns."** (Corporate campaigns utilize many tactics, but typically involve the generation of negative publicity aimed at reducing an employer's goodwill with employees, investors, or the general public.) Some employers are pressured by other employers into signing "neutrality agreements." Some agreements may require an employer to seek to impose the "neutrality agreement" on other companies with whom it affiliates.

Moreover, misguided state and local politicians have in recent years passed a number of laws and ordinances mandating that employers who wish to do business with the state or locality must sign "card check/neutrality agreements."

In one notorious case, the San Francisco Airport Authority mandated that any concessionaires who wished to lease space at the airport had first to sign a "neutrality agreement." However, with legal arguments made by Right to Work attorneys that regulation was later found to be federally preempted. Its enforcement was enjoined in *Aeroground, Inc. v. City & County of San Francisco,* 170 F. Supp. 2d 950 (N.C. Cal. 2001). Unfortunately, many Big Labor politicians are still attempting to require "card check/neutrality agreements" as a condition of contracting with the government or of obtaining grants, even though most, if not all, such requirements are barred by federal law.

Despite the enormous pressure, alluded to above, that union officials are able to bring to bear on a business to secure its consent for a "card check/neutrality" deal, many employers continue to resist selling out employee rights that the law now entitles a business to protect. Under the U.S. Supreme Court's 1974 decision in *Linden Lumber v. NLRB*, an employer "who has not engaged in an unfair labor practice impairing the electoral process" cannot be legally required to recognize a union as employees' monopoly-bargaining agent based on a showing of signed cards alone.

The Miller-Kennedy bill, H.R.1696/S.842 would make "card checks" the norm even where there isn't so much as an allegation of employer misconduct. Consequently, during unionization drives only the views workers express while being monitored by union officials would count.

Union lobbyists arrogantly claim that no one should be concerned about eviscerating employees' freedom to oppose unionization. When union agents intimidate workers, they imply, it's always "for the workers' own good." But the reality is there are many good reasons why a worker might not want to join or be represented by a union.

For example, the latest data from the Bureau of National Affairs (BNA) in Washington, D.C., show that nearly four million private-sector unionized employees nationwide work in sectors for which the mean earnings of unionized employees are *lower* than the earnings of union-free employees. And the BNA data aren't even adjusted for cost of living, which is on average far higher in heavily unionized regions.

Looking at the BNA data alone, many unionized workers in sectors like manufacturing or wholesale and retail trade have good reason to suspect their real take-home pay is lower than it would be if they were union-free. Many others don't like the fact that union bosses seem more interested in militant electioneering than in anything else. There's no logical reason for Congress to pass a measure that destroys employees' opportunity to cast a secret ballot against potentially detrimental union representation.

At the same time it upheld the legality of "card checks" in 1969's *NLRB v. Gissel*, the U.S. Supreme Court admitted that employees who do not wish to be unionized frequently sign authorization cards as a result of union-boss misrepresentations, threats, or "group pressure." Union officials themselves agree that the "card check" process is fraught with abuses -- when the shoe is on the other foot.

The AFL-CIO hierarchy joined in a 1998 legal 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 a union. Echoing *Gissel*, the brief said that a union's workplace status should not be the result of "group pressure."

Clearly, Big Labor is demanding "card check" certification out of expediency, not a sincere belief that cards reliably express employees' views.

Any genuine labor-law reform must recognize the fact that the right to join or support a union and the right not to do so deserve equal protection under the law. H.R.1696/S.842 falsely assumes these rights are in conflict, and that purely non-coercive speech or actions that might dissuade a worker from exercising his or her right to join a union somehow violate that worker's right to join a union. Speaking at a May 12, 2004 press conference on Capitol Hill, hotel worker Faith Jetter dismissed such loopy logic out of hand:

> I do not care what decision any employee makes regarding whether or not to be represented by the HERE [Hotel Employees and Restaurant Employees] union, but I think it is each employee's individual choice, to be made with full knowledge of what that choice means. . . .
>
> I would . . . want to hear all sides of the story, not just the union's side.

Ms. Jetter, a housekeeping inspectress for the Renaissance Hotel in Pittsburgh, Pa., was visiting Washington, D.C., in order to express her support for legislation introduced in the 108th Congress by Rep. Charlie Norwood (R-Ga.), as an alternative to the 108th Congress's version of the "Card Check Forced Unionism Bill."

A total of 11 employees from five states joined Mr. Norwood on the platform that day as he explained to reporters why he had sponsored **"H.R. 4343, the Secret Ballot Protection Act of 2004."** In his personal statement, a four-year employee of the Freightliner Chassis Corp. in Gaffney, S.C., showed how, as implemented, the "card check" system is even more unfair than it is in theory. Materials handler Mike Ivey explained:

> In this process of obtaining the needed signatures, there are a lot of untruths told. Employees are told at off-site meetings that these cards only represent their attendance at these meetings. What they are not told is that these cards

are a legally binding document, which states that the employee is pro-union. . . .

Temporary contracted employees are told they will be hired if they sign this card. The union [actually] has nothing to do with the hiring of these employees. Cards of employees who have quit or have been terminated are still included in the count for the union. Where is the fairness there?

The National Right to Work Committee opposes union monopoly bargaining regardless of how it is imposed.

Prohibiting monopoly bargaining while safeguarding employees' freedom to form unions that represent their members only would subject union officials to the same rules that already apply to officers of other private groups and return personal freedom to the workplace.

Since 1991, at least two Free World countries that formerly authorized "exclusive bargaining," New Zealand and Australia, have switched to systems in which individual workers in unionized businesses may bargain for themselves. Both countries enjoyed above-average growth in production, productivity, and personal income in the years after they made the change.

Some of the potential economic benefits of repealing monopoly bargaining in the U.S. can be seen by contrasting real earnings levels, job growth, and other key economic indices in states where monopoly bargaining is most prevalent with indices in states where it is least prevalent.

When interstate differences in cost of living are factored in, the mean weekly earnings in 2001 of employees in the 10 states with the lowest share of private-sector workers under union monopoly bargaining were $683. That's nearly $30 a week, or roughly $1500 a year, more than the mean of $654 earned by employees in the 10 states with the highest share of unionized employees. (The mean earnings data come from the Bureau of National Affairs in Washington, D.C., as adjusted by the "Interstate Cost-of-Living Index" created for the American Federation of Teachers union by Dr. F. Howard Nelson.)

Low monopoly-bargaining density states enjoy an even greater advantage in economic growth indices than they do in real earnings, as one can see by reviewing the subsequent performances of the states that had the lowest and highest monopoly-bargaining densities in 1992.

Over the next decade, the 10 states with the smallest share of workers under monopoly bargaining enjoyed an aggregate job growth of 27.7%, more than double the 13.5% growth among the states where Big Labor wielded the most monopoly power. For growth in the number of people covered by employment-based health insurance, the advantage for the lowest monopoly-bargaining states was 24.6% vs. 12.5%. The monopoly-bargaining system has, by all evidence, undermined the very economic goals union officials purport to hold near and dear. Imposing more of the same on employees is no solution.

Because it would raise the hurdle union officials need to clear before they can compel union nonmembers to accept unwanted union representation, the Committee supports enactment of the **"Secret Ballot Protection Act of 2005, H.R.874/S.1173."** But more fundamental reforms are also called for. The Committee is also pushing for passage of the **"National Right to Work Act,**

H.R.500/S.370," which would bar private-sector compulsory union dues and "fees" in all 50 states, and ultimately for federal monopoly-bargaining repeal.