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Labor Union Recognition Procedures: Use of Secret Ballots and Card Checks

Gerald Mayer, *Congressional Research Service, Domestic Social Policy Division*

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Abstract

The National Labor Relations Act of 1935 (NLRA) gives private sector workers the right to join or form a labor union and to bargain collectively over wages, hours, and other working conditions. An issue before Congress is whether to change the procedures under which workers choose to join, or not to join, a union.

Under current law, the National Labor Relations Board (NLRB) conducts a secret ballot election when a petition is filed requesting one. A petition can be filed by any union, worker, or employer. Workers or a union may request an election if at least 30% of workers have signed a petition or authorization cards (i.e., cards authorizing a union to represent them). The NLRA does not require secret ballot elections. An employer may voluntarily recognize a union if a majority of workers have signed authorization cards.

Legislation introduced in the 110th Congress would, if enacted, change current union recognition procedures. The Employee Free Choice Act of 2007, H.R. 800 and S. 1041, would require the NLRB to certify a union if a majority of employees sign authorization cards. The Secret Ballot Protection Act, H.R. 866, would require secret ballot elections for union certification.

Proponents of both measures sometimes use similar language to support their positions. Employers argue that, under card check recognition, workers may be pressured or coerced into signing authorization cards and may only hear the union's point of view. Unions argue that, during an election campaign, employers may pressure or coerce workers into voting against a union. Supporters of secret ballot elections argue that casting a secret ballot is private and confidential. Unions argue that, during an election campaign, employers have greater access to workers. Unions argue that card check recognition is less costly than a secret ballot election. Employers maintain that unionization may be more costly to workers, because union members must pay dues and higher union wages may result in fewer union jobs.

Mandatory card check recognition may increase the level of unionization, while mandatory secret ballot elections may decrease it. Research suggests that the union success rate is greater with automatic card check recognition than with secret ballots, that unions undertake more union drives under automatic card check recognition, and that the union success rate under card check recognition is greater when a card check campaign is combined with a neutrality agreement (i.e., an agreement where the employer agrees to remain neutral during a union organizing campaign).

To the extent that mandatory secret ballot election or mandatory card check recognition would affect the level of unionization, the economic effects may depend on how well labor markets fit the model of perfect competition. Mandatory card check recognition may improve worker benefits and reduce earnings inequality — if more workers are unionized. Mandatory secret ballot elections may increase inequality in compensation — if fewer workers are unionized. This report will be updated as issues warrant.

Comments

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