

# Card Check

## Denies Workers Freedom to Independently Choose Union Representation

### Summary

### Background

The National Labor Relations Board (NLRB) is a federal agency that was enacted in 1934 and governs all elections for labor unions in the private sector, except for limited industries, including agriculture. In California, the Agricultural Labor Relations Board (ALRB) governs union elections for agricultural employees. Under both the NLRB and ALRB, secret ballot elections are conducted by the respective board if such employees wish to unionize. This process gives both the union and the employer the opportunity to make their case on whether unionization would be the best for the workers. Thereafter, individual employees vote by secret ballot. Observers from both the union and the employer are allowed to be present at the polling location, which generally is the employer's place of business, to watch and make sure the election is being held properly. If after the election, the majority of employees have voted to unionize, they become a union and start collective bargaining procedures. If a majority has voted not to unionize, they stay non-unionized.

Over the last several years, card check legislation has been introduced in various forms at both the state and federal levels to reform the secret ballot procedure utilized by the NLRB and ALRB. A basic card check union drive would simply allow an employee to sign a non-confidential authorization card indicating his/her preference for a specific union to act as the bargaining representative. If a particular union receives more than 50 percent of employees' endorsement on these cards, then that union would become the representative bargaining unit for that workforce. The federal card check legislation, "Employee Free Choice Act" (EFCA), also includes an additional provision that allows a federal arbitrator to write the labor agreement if the bargaining unit elected through the card check process and the employer do not reach an agreement within 120 days. The contract would be imposed with no ability for either employers or employees to challenge it, thereby placing the fate of a company's workforce in the hands of a federal government bureaucrat.

Advocates of card check legislation claim that card check would ease employees' ability to exercise their right to unionize, and increase their opportunities for better wages and benefits. Opponents of card check claim that it is an undemocratic attack on the employees' right to independently cast their vote for unionization through a secret ballot election and is regarded as a mechanism for unions to bolster their declining membership.

### Recent Federal and State Legislation

At the federal level, the U.S. House of Representatives passed the EFCA, H.R. 800, in 2007, but it fell nine votes short in the U.S. Senate. In 2009, EFCA was again introduced in both the U.S. Senate (S. 560) and U.S. House (H.R. 1409). In March/April 2009, S.560 was referred to the Senate Committee on Health, Education, Labor and Pensions and H.R. 1409 was referred to the House Subcommittee on Health, Employment, Labor and Pensions. As of December 2010, neither bill had moved from those committees. Although some Democrat legislators claimed that EFCA would be dealt with during the lame-duck session of Congress, the extension of the "Bush tax cuts" dominated the lame-duck session, leaving no room for EFCA to come up for a vote. With the Republicans winning the majority of the U.S. House in the November 2010 election, card check/EFCA is now a dead issue at the federal level.

At the state level, the most recent attempt at enacting card check for the ALRB was vetoed by Governor Arnold Schwarzenegger in 2010. SB 1474 (Steinberg; D-Sacramento), introduced in March 2010, proposed to allow the ALRB to set aside the outcome of a secret ballot election when there was "employer misconduct." Thereafter, the ALRB could certify a union based solely upon the non-confidential authorization cards. If more than 50 percent of the employees indicated on the card that they wanted an election for union organization, then the union would be certified. In his veto message, Governor Schwarzenegger stated that SB 1474 tipped the scale in favor of the union by allowing the union to challenge employer misconduct, but not providing the employer with the same

ability to challenge union misconduct. The Governor further commented that legislation seeking to alter the secret ballot election process “should not be taken lightly.”

### Prior State Action

Before SB 1474, there were several other attempts to implement card check legislation and alter labor law in California for private employees. As set forth below, these attempts also were rejected by Governor Schwarzenegger.

#### 2009

- SB 789 (Steinberg; D-Sacramento) proposed unionization through card check for California’s agricultural employees, without even showing “employer misconduct” as referenced in SB 1474 discussed above, thus significantly undermining the secret-ballot election process. This bill was vetoed by the Governor due to its fundamental alteration of the secret ballot election that “allows the employee to choose, in the privacy of the voting booth without coercion or manipulation, whether or not to be represented.”

#### 2008

- AB 2386 (Núñez; D-Los Angeles) would have created a new, unsupervised “mediated election” allowing a union to become the bargaining representative of a farm’s employees if a majority of the employees simply returned to the ALRB via postal mail something similar to an absentee ballot. Notably, under this system the union organizers themselves could have given the ballots to the employees, told the employees what to mark on the ballots, and then collected and delivered the ballots to the ALRB. This bill was simply “card check” repackaged, as it also removed the employees’ right to a secret-ballot election. In his veto message, Governor Schwarzenegger stated: “I am concerned that aspects of AB 2386’s novel process weaken workers’ existing privacy rights and protections under the Agricultural Labor Relations Act.”

#### 2007 and Before

- SB 867 (Cedillo; D-Los Angeles), AB 1164 (De León; D-Los Angeles) and 2006 legislation, SB 697 (Kuehl; D-Santa Monica), proposed a card check scheme to organize independent child care providers for purposes of negotiating with state agencies. Similar to the other card check legislation, any bargaining unit that obtained authorization from a majority of the child care providers would become the representative bargaining unit for those providers. All were vetoed by Governor Schwarzenegger due to the “significant fiscal pressures” these bills would place on the state.
- SB 180 (Migden; D-San Francisco) and SB 650 (Migden; D-San Francisco) proposed card check for agricultural workers by simply allowing a union to become the bargaining representative through obtaining a majority of authorization cards. Both bills were vetoed by the Governor due to the alteration of the secret ballot election that protects employees’ right to privacy when determining whether to unionize.

### CalChamber Position

The California Chamber of Commerce opposes the card check method of unionizing employees and believes that workers are better protected from interference and intimidation by casting their vote privately with a secret ballot instead of through a public authorization card available for anyone to review and/or influence. Card check opens the door for union organizers to pressure, manipulate and coerce employees to complete the authorization card and designate their union as the preferred bargaining unit. Accordingly, card check does not provide employees with more “freedom,” as some advocates suggest, but rather takes away their fundamental right to independently vote in a private election. If organized labor were truly concerned with protecting employees’ rights instead of just union membership statistics, it would not be pushing to eliminate employees’ right to vote.

The CalChamber also remains opposed to any radical legislation accompanied with card check that threatens or imposes any form of binding interest arbitration on the parties during negotiations, or imposes unfair, one-sided penalties on the employer. Significant protections already are in place for employees subjected to unfair employment practices by their employer. Additional penalties and procedures that serve only to further regulate the employer’s conduct, but not the union’s conduct, create a substantially unbalanced playing field in favor of union organizers.

**Reasons for  
Position**

- Card check takes away a worker's right to choose, freely and anonymously, whether to unionize by replacing the private ballot with a scheme that allows a union to organize if a majority of workers simply sign a card.
- Union organizers themselves oversee the card check process, and the workers' votes are made public to the employer, the union organizers and co-workers, leaving the door open to intimidation from union organizers.
- To take away employees' access to a private secret ballot is undemocratic.

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