



Big Labor *Card Check* Legislation on the March

Union boss power grab would harm workers and our economy

In his autobiography, President Barack Obama stated, “I owe these unions” for his political success. Today, with his election as President, it appears his views have hardly changed.

Congressional leaders like Senate Majority Leader Harry Reid and House Speaker Nancy Pelosi also appear eager to repay Organized Labor for the roughly billion dollars in 2008 campaign support union officials siphoned off from union treasuries to help put them into power.

This Big Labor “soft” support took many forms, including putatively “non-partisan” phone banks and get-out-the-vote drives, propoganda mailings, and the salaries and benefits of full-time campaign “volunteers” last year.

This idea of “payback” explains why, during this time of unprecedented economic stress, the union bosses’ economy-killing Card Check Forced Unionism Bill is still at the top of the new Congress’ agenda.

In fact, President-elect Barack Obama, Nancy Pelosi's enormous new House majority, and the new 57-seat Big Labor-controlled Senate are all chomping at the bit to ram the Card Check Forced Unionism Bill, cynically labeled “The Employee Free Choice Act” by Sen. Tom Harkin (D-IA) and Rep. George Miller (D-CA), into law.

If they succeed, American workers will no longer be able to vote for or against union boss representation in a secret ballot election. Instead, the union bosses will be able to intimidate workers one-on-one into signing so-called “union authorization cards,” making it much easier for Big Labor to obtain “exclusive” (monopoly) bargaining control over employees.

Just as bad, is once these workers are forcibly unionized without a vote by mandatory arbitration, if the union bosses can stretch out negotiations for 90 days by making outrageous demands, Obama Administration bureaucrats will come in and “solve” the problem by imposing the terms and conditions of employment upon those workers.

Well aware of how much he and his party owe the union bosses, Democrat bosses have repeatedly stated his intention to pass the Card Check Forced Unionism Bill.

Card Check Means Worker Abuse

If passed, the *Card Check* Bill would empower union officials to impose forced unionism through *Card Check* automatically, with no recourse for any pro-Right to Work employee or employer.

Enactment of this legislation would surely result in a sharp spike in instances of harassment like those described in a complaint filed not long ago with the National Labor Relations Board (NLRB) by a Washington, IN resident who works at an ethanol plant.

In a sworn affidavit, the employee told the NLRB that she had repeatedly told United Food and Commercial Workers (UFCW) union agents that she was “NOT [emphasis hers] interested” in signing a union “authorization” card. Nevertheless, she wrote, “They continue coming to my home when asked not to come back! They continue showing up when asked to leave. I feel as though I am being badgered, harassed in a manner that is clearly not necessary. No is no.”

Enactment of the *Card Check* Bill would also surely result in hundreds of thousands, if not millions, of additional workers being corralled under union monopoly bargaining control. Under current law, union bosses are already able to acquire monopoly power to negotiate employees' pay, benefits, and work rules solely through the collection of signed "union authorization cards."

Consequently, individual workers under the peering eyes of union organizers may be intimidated into signing not just themselves but all of their non-union fellow employees over to union boss control.

But the fight to block enactment of Card Check forced-unionism legislation in Congress won't be easy, because 224 House members and 39 Senators have already signed on to cosponsor the bill.

Additionally, President Obama, who cosponsored and voted for the bill as a Senator in the 110th Congress, has promised to sign *Card Check* into law.

At stake are employee freedom and potentially 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.

Card Check's "Binding Arbitration" Clause Allows Big Labor Puppets to Write the Contracts

If passed, the *Card Check* Forced Unionism Bill would also allow labor union officials to tighten their stranglehold on American workers.

By requiring "binding arbitration" in the resolution of labor relation disputes during initial contract negotiations, the *Card Check* Bill magnifies union bosses' monopoly bargaining power.

The fact is, under *Card Check's* binding arbitration clause if the union bosses can stretch out negotiations for 90 days by making outrageous demands, Obama Administration bureaucrats will come in and impose the terms and conditions of employment upon workers.

The tactic hinges on the judgment of the Federal Mediation and Conciliation Service (FMCS) to settle the contract dispute. Unfortunately, this agency, like others handling labor issues at the federal level, is routinely stacked with Big Labor sympathizers.

Thus, the "neutral" party is virtually never neutral.

The ultimate goal of this underhanded Big Labor tactic is to bypass the normal approval process for costs incurred through Big Labor negotiations.

If *Card Check* passes, union officials are confident they have the upper hand and have no incentive to attempt to ensure a speedy and mutually beneficial contract.

Instead, Big Labor will stonewall the negotiation process to win the binding arbitration prize.

Not only is the *Card Check* Forced Unionism Bill detrimental to the freedom of the individual worker, it seeks to undermine the original purpose of the National Labor Relations Act (NLRA). The NLRA was passed to provide a framework for contract negotiations, not mandate an outcome of these negotiations. But *Card Check* does just that.

Card Check Would Harm Economy

In 2007, cost of living-adjusted average weekly earnings in the 10 states with 10% or more of private sector employees

subject to union monopoly bargaining were \$713, roughly \$66 less than in the 10 states with 5% or less of private sector employees under Big Labor control.

That comes to a \$3400-a-year disadvantage for full-time employees in states with high monopoly bargaining density!

(The average weekly earnings and cost-of-living data cited come, respectively, from the Bureau of National Affairs in Washington, D.C., and the Missouri Economic Research and Information Center in Jefferson City, MO)

High monopoly bargaining density is also strongly correlated with slower job creation and higher living costs.

Between 1997 and 2007, states with 10% or more of private sector employees under union monopoly (as of 2007) had an aggregate private sector job growth of nearly a third of the 19.5% growth in the states with the lowest amount of union monopoly. (Job growth data comes from the Bureau of Labor Statistics.)

And in 2007, U.S. Administration For Children and Families (USACF) data showed that residents in the 10 states with the highest percentage of private sector employees under union monopoly were nearly three times as likely to depend on federal welfare than residents of the 10 states with the lowest amount of union monopoly bargaining.

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 through *Card Check* is no solution.

***Card Check* Already Rife With Abuse**

Under current labor law, *Card Check* organizing is legal if union officials can pressure a company's management into agreeing to subject its workers to the union boss tactic. But even in these limited circumstances, *Card Check* has already proven rife with abuse.

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 a 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 employee' views.

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, and 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.

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 arrangement 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.

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 [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.

The Miller-Harkin Bill 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 Officials’ Already Enjoy Too Much Power Over Workers

The truth is, passage of *Card Check* would be a massive expansion of union bosses’ power over workers which currently stems from monopoly bargaining and forced dues, which have been mentioned briefly already in this paper.

Under current law, union officials may obtain bargaining power over workers who don't sign cards as well as those who do, over union non-members 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.

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

Forced Dues Compound Injustice of Forced Union Representation

In addition to the power of monopoly bargaining, union officials can also force workers to pay for the “representation” that workers never wanted and never asked for by forcing them to pay union dues.

Congress created this problem when it framed federal labor law in 1935 with passage of the National Labor Relations Act (NLRA).

Currently, should employees working under forced-dues contracts seek other means of representation on the job or object to the manner in which union officials spend their dues, those employees cannot withhold dues in protest without being fired.

Even proponents of compulsory unionism acknowledge that coercion is the central pillar of current federal labor law.

Former Secretary of Labor Robert Reich spelled it out clearly when he explained to an Associated Press reporter that the NLRA embraces the “necessity for coercion.” “In order to maintain themselves,” Reich said, “unions have got to have some ability to strap their members to the mast ... hold their members’ feet to the fire.”

Coercive unionism has a crippling effect on the nation's competitiveness, preventing hard-working Americans from being as productive as they know how to be, destroying businesses and the jobs they provide or sending those jobs overseas.

On the job, union officials routinely demand contracts full of wasteful and inefficient work rules that lead to featherbedding and payroll padding. Such practices, even as they enhance the union bosses’ power by bringing more dues-payers under their control, drive business costs sky-high, help drive employers out of business, and ultimately, throw employees out of work.

Federal law allows states to end forced unionism by passing their own state Right to Work laws. Currently 22 states have done so.

The National Right to Work Committee is strongly opposed to forced dues.

Alternative Legislation

To help address the problem of *Card Check*, the Committee supports enactment of the Secret Ballot Protection Act.

The Secret Ballot Protection Act of 2009 ([H.R. 1176](#) & [S. 478](#)) was introduced in the U.S. House of Representatives by Congressman John Kline (R-MN) and in the U.S. Senate by Senator Jim DeMint (R-SC). H.R.1176 & S.478 provide steps toward equal protection of the right to join and the right not to join a union. 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.”

However, since additional fundamental reforms are called for, the Committee is also pushing for passage of the National Right to Work Act which would bar private sector compulsory union dues and fees in all 50 states, and, ultimately, for federal monopoly bargaining repeal.

Since 1991, at least two free-world countries that formerly authorized “exclusive bargaining,” New Zealand and Australia have switched to systems that allow 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.

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