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BACKGROUNDER

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The NLRB Can Protect Worker Voting Rights Administratively

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Abstract

Only 6 percent of workers currently represented by unions voted for union representation. The remaining workers are represented by legacy labor organizations for which they never voted. The National Labor Relations Board election processes have clearly failed to achieve the National Labor Relations Act's goal of enabling unionized workers to select their own representatives. The Trump Administration can give workers greater ability to choose their own bargaining representatives through administrative actions. The new NLRB should allow employers to periodically call for new union elections, allow union members to request a new vote and at any time, and require unions to win an overall majority of the vote in representation elections.

The National Labor Relations Board (NLRB) election processes have failed to achieve the National Labor Relations Act's (NLRA) goal of enabling unionized workers to select their own representatives. Only 6 percent of workers currently represented by unions voted for union representation. The remaining workers are represented by legacy labor organizations for which they never voted. This happens because unions do not regularly stand for re-election and unions often bypass secret ballot organizing elections altogether.

The NLRB should restore workers' ability to vote on union representation. Administrative changes to NLRB election procedures and Department of Justice (DOJ) enforcement of an anti-corruption statute would allow workers to actually select their bargaining representatives, if they choose to have one. The NLRB and the DOJ should:

Key Points

- Only 6 percent of unionized private sector unions voted for their union. NLRB election procedures do not give American workers representatives of their own choosing.
- Most union members have a union they didn't vote for because unions do not periodically stand for re-election, and because unions can use pressure tactics to bypass secret ballot votes. The Trump Administration can mitigate these problems through executive action.
- The NLRB can and should allow employers to periodically call for union re-election votes while removing impediments preventing workers from calling for new elections.
- The Department of Justice can prevent unions from pressuring companies to forgo secret ballot votes. The NLRB can allow companies to request a secret ballot election any time unions attempt to forgo them.
- These reforms would make unions more democratic and accountable to workers. The Trump Administration does not need an act of Congress to significantly protect workers' rights.

This paper, in its entirety, can be found at **http://report.heritage.org/bg3174**

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Nothing written here is to be construed as necessarily reflecting the views of The Heritage Foundation or as an attempt to aid or hinder the passage of any bill before Congress.

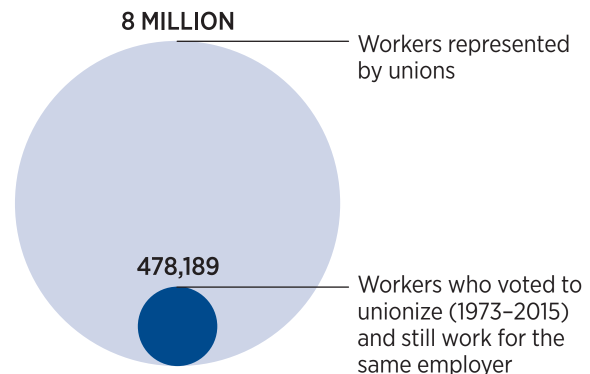
- Permit companies to request periodic re-election votes to determine whether a bargaining representative still has the support of its members;
- Remove unnecessary impediments to filing decertification petitions;
- Require unions to win the support of a majority of all workers in a workplace before bargaining on their behalf;
- Allow companies to request an election whenever unions request card-check recognition; and
- Prevent unions from inducing companies to forgo a secret ballot election.

The NLRB does not need additional authorization from Congress to implement these reforms. They can be applied administratively. The Trump Administration can and should protect workers' voting rights by strengthening their ability to choose their own representatives.

CHART 1

Only 6 Percent of Workers Voted for Their Union

PRIVATE-SECTOR EMPLOYEES REPRESENTED BY UNIONS IN 2015



NOTE: Figures cover private-sector workers regulated under the National Labor Relations Act (excluding railway and airline employees regulated under the Railway Labor Act). Figures include union members and non-members covered by a collective bargaining agreement.
SOURCES: Heritage Foundation calculations using data on union election votes from the National Labor Relations Board, and data on the job tenure of unionized employees and total union membership from the Current Population Survey. See Appendix for details.

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Unelected Representatives

The preface to the NLRA states that its goals include "protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing."[1] The Act has failed at this goal. Chart 1 shows the total number of workers represented by unions under the NLRA and the number of workers who voted for that representation. Only 6 percent of workers covered by NLRA collective bargaining agreements voted for representation by their current union. The remaining 94 percent have a collective bargaining representative of someone else's choosing.[2]

This unrepresentativeness occurs primarily because unions do not periodically stand for re-election. Instead of serving a fixed term of office, unions continue indefinitely as bargaining representatives. Workers hired after a company unionizes inherit the representative their predecessors choose. They are not asked separately whether they want union representation, and, if so, which union should represent them.

This system contrasts sharply with political representation. American voters elect representatives, but those representatives serve for a limited time. If they want to continue in office, they must stand for re-election. The founding fathers considered this electoral accountability so fundamental that these terms of office are written into the Constitution.

Congress requires union officers themselves to serve for fixed terms of office.[3] But Congress did not

1. The National Labor Relations Act, 29 U.S. Code §151 (1935).
2. James Sherk, "Unelected Representatives: 94 percent of Union Members Never Voted for a Union," Heritage Foundation *Backgrounder* No. 3126, August 30, 2016, http://www.heritage.org/research/reports/2016/08/unelected-representatives-94-percent-of-union-members-never-voted-for-a-union.
3. The Labor-Management Reporting and Disclosure Act, 29 U.S. Code §481(b) (1959).

extend that requirement to the underlying union representation. As a result, most union members are represented by a union they never selected.

Adding to this problem is the fact many unions bypass organizing votes altogether. Unions induce employers to recognize them without a secret ballot election. Roughly one-third of new union members are organized through "card-check" campaigns.[4] These workers are never given the opportunity to vote at all on whether to unionize or on which union they want to join.

Dissatisfied Workers

Polling finds many union members are dissatisfied with their union representation. More private-sector union members disapprove than approve of their union leaders by a 10 percentage point margin. Two-thirds believe their union officers primarily look out for themselves. Over seven in 10 believe their officers should be held more accountable. Most union members feel they do not get enough value for their dues.[5]

Such findings are unsurprising. 94 percent of unionized workers are represented by a union for which they did not vote. The current system is insufficient to reflect employees' wishes.

TABLE 1

Union Member Dissatisfaction with Union Representation

PERCENT OF PRIVATE-SECTOR UNION MEMBERS WHO ... :

Approve of America's union leaders	38%
Disapprove of America's union leaders	48%
Believe union officers primarily look out for themselves	67%
Believe union leaders should be held more accountable	82%
Think union dues are too high for the value they get from them	54%

SOURCE: The Word Doctors, "Benchmark Study of Union Employee Election Year Attitudes," October 2010, http://www.nrtwc.org/FactSheets/2010NationalRightToWorkLuntzUnionMemberSurvey.pdf (accessed December 2, 2016). The survey uses a representative sample of 760 union members with a margin of error of plus or minus 3.7 percent.

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Administrative Actions to Hold Unions Accountable

Congress could make unions more representative by amending the NLRA to guarantee secret ballot votes and to require unions to periodically stand for re-election. These reforms would protect workers' right to vote on union representation and hold unions regularly accountable to the workers they represent.

However, Congress is unlikely to pass such legislation. The last substantive modifications to the NLRA came in 1959, and all recent attempts to modify it have failed.[6] The National Labor Relations Board, on the other hand, has broad authority over its election procedures. The NLRB can administratively protect workers' voting rights.

Under President Obama the NLRB moved aggressively to limit unions' electoral accountability.[7] President Trump can learn here from the Obama Administration. The President has the administrative power to make unions more democratically accountable to their members. The Trump Administration should move aggressively to make requesting new votes easier and make it harder for unions to bypass secret bal-

4. Rafael Gely and Timothy Chandler, "Card-check Recognition: New House Rules for Union Organizing," *Fordham Urban Law Journal*, Vol. 35, No. 2 (2008), http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2282&context=ulj (accessed December 5, 2016). Note that Table 2 shows twice as many workers organized through NLRB elections than card-check recognition. AFL–CIO membership gains due to "mergers and affiliation" are not newly organized workers.
5. The Word Doctors, "Benchmark Study of Union Employee Election Year Attitudes," October 2010, questions 13 and 30–33, http://www.nrtwc.org/FactSheets/2010NationalRightToWorkLuntzUnionMemberSurvey.pdf (accessed December 5, 2016). The survey used a representative sample of 760 public and government union members with a margin of error of plus or minus 3.7 percent.
6. The Labor-Management Reporting and Disclosure Act passed in 1959.
7. For example, in *Lamons Gasket Co.*, 357 NLRB No. 72 (2011), the Obama Board prevented workers organized without a secret ballot election from requesting a secret ballot vote on unionizing. In *UGL-UNICCO Service Co.*, 357 NLRB No. 76 (2011), the Obama Board held that workers cannot request a decertification election when their firm changes ownership. The Obama Board also issued regulations shortening the time period for union elections in order to limit the time employers have to campaign against unionizing.

lot elections. Such reforms would have much the same effect as requiring unions to stand for re-election and guaranteeing a secret ballot. They would further the NLRA's goal of promoting representatives of workers' own choosing and hold unions more electorally accountable—without requiring an act of Congress. To protect worker voting rights the new Administration should pursue five specific reforms.

Verification Votes

The NLRA does not require unions to regularly stand for re-election. But it does allow unionized employers to ask for a new election if they suspect their employees no longer support their union.[8] Employers could, in theory, periodically call for union re-election votes to verify that their employees still support the union.

In practice, NLRB policy makes requesting such verification votes difficult. The NLRB maintains a "presumption of majority support." The Board assumes workers continue to support a union after voting it in once. To request a new vote, an employer must provide evidence of a "good faith doubt" that this has changed.[9] Employers typically may not solicit such evidence. For example, firms cannot survey their employees to see if the union has lost support unless they already have a strong reason to believe this has happened.[10] Relatively few employers can meet this standard and so verification votes rarely occur.[11]

The majority support doctrine presumes that workers do not change their minds and that new hires hold the same opinions as their predecessors. No democracy operates on these assumptions; they all require elected representatives to stand for re-election. Moreover, this doctrine exists nowhere in the NLRA; the Board created it through its case law.[12] The NLRB could change that case law and rule that the passage of time creates reasonable doubt about union support. The Board should overrule its prior rulings and hold that the presumption of majority support only lasts for three to six years after each election. This would enable firms to request a verification vote any time thereafter.

Putting a time limit on the presumption of majority support would come close to creating a fixed term of office for union representation. It would permit—but not require—unionized employers to easily request union elections. Firms would have no obligation to ask for a new vote, but any firm that suspected its union had lost support from the rank-and-file could let them vote again.

This reform would expand worker voting rights. However, the choice of whether to call for another election would remain with the employer. The NLRB should also make requesting a new vote easier for workers.

Let Employees Request a Vote at Any Time

Workers may currently petition for a decertification election to change or remove their union. However, the NLRB's "contract bar" doctrine limits the filing of these petitions to a one-month window every three years. Workers may only file decertification petitions 60 to 90 days before their union contract expires. The NLRB does not process decertification petitions filed while a collective bargaining agreement remains in effect. This makes removing an unwanted union unnecessarily difficult.

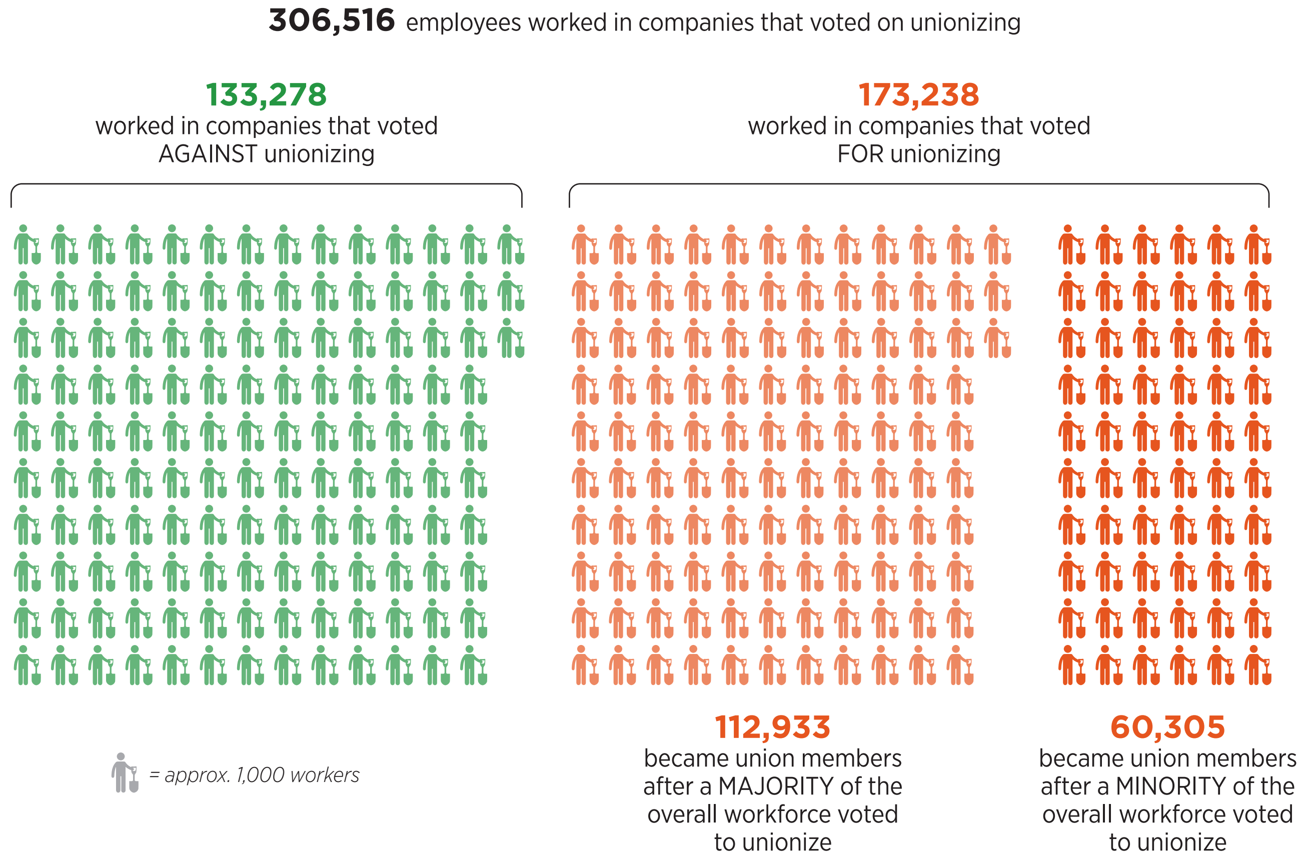
Like the presumption of majority support, the contract bar exists solely in NLRB case law.[13] Nothing in the National Labor Relations Act requires it.[14] It exists primarily to guarantee unions stability during the course of a contract. The stability resulting from that guarantee should not outweigh the impor-

8. 29 U.S. Code §159(9)(c)(B).
9. *Levitz Furniture Company of the Pacific*, 333 NLRB No. 105.
10. More precisely, the standard is that an employer must already have a "good faith doubt" about its union's majority status before it can conduct a survey to determine whether its employees support the union. See *Struksnes Construction Co.*, 165 NLRB 1062 (1967), and *Allentown Mack Sales & Service, Inc. v. National Labor Relations Board*, 522 U.S. 359 (1998). However, a firm that has sufficient evidence to conduct a survey generally already has sufficient evidence to request a verification vote.
11. In fiscal years (FY) 2012, 2013, 2014, and 2015 the NLRB conducted a total of 57 RM (employer requested) elections—less than 1 percent of all representation votes held during this period.
12. See, for example, *Celanese Corp. of America*, 95 NLRB 664 (1951).
13. See, for example, *National Sugar Refining Co. of New Jersey*, 10 NLRB 1410, 1415 (1939).
14. The NLRA prohibits new union elections within one year of a previous certification or decertification election. The Act says nothing about ongoing contracts prohibiting a new vote. See 29 U.S. Code §159(c)(3).

FIGURE 1

Thousands of Employees Unionized Without Representation

Thanks to NLRB rules, about 60,000 workers were placed in unions from 2012 to 2015 even though the union failed to get majority support from the workers.



SOURCES: Heritage Foundation analysis and National Labor Relations Board, Election Reports, FY 2012–2015, https://www.nlrb.gov/reports-guidance/reports/election-reports (accessed April 22, 2016).

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tance of allowing workers to choose their own representatives—especially given that only 6 percent of current unionized workers voted for their union. The NLRB can and should eliminate the contract bar, ruling that workers may request a new vote at any time, regardless of the presence of a collective bargaining agreement. This would enable dissatisfied workers to more easily call for a vote, even if their employer does not request one.

Overall Majority Standard

Unions do not need support from a majority of a firm's workers to win an election. They need only a majority of those who vote. This seemingly small distinction matters. Between 2012 and 2015, one-third of workers organized in NLRB elections came from firms where the union lacked majority support in the workforce.[15] This contributes to the problem of unions primarily representing workers who did not vote for them.

15. Sherk, "Unelected Representatives: 94 percent of Union Members Never Voted for a Union."

The Board can lessen this problem by changing its election standards. The NLRB should require unions to obtain the votes of a majority of workers in a bargaining unit, irrespective of how many vote in the election.

The Board has administrative discretion to make this change. Under the Supreme Court's *Chevron* precedent, federal agencies may interpret ambiguous statutory language.[16] The NLRA requires employers to bargain with labor organizations "selected…by a majority of employees."[17] The Board has historically interpreted this to require unions to win a majority of votes cast in organizing elections, even if those votes are a minority of the workforce. The courts have upheld this interpretation.[18] The Railway Labor Act (RLA) contains almost identical language for railway and airline unions. Until 2010, the National Mediation Board (NMB)—the agency overseeing RLA elections—interpreted this language to require unions to obtain votes from a majority of all employees, not just voters.[19] The courts also upheld this interpretation.[20] The NLRB may choose either electoral standard.

A conservative NLRB should switch to the overall majority standard. It can do so without congressional authorization. Either issuing new regulations or changing the case law would suffice to implement this change. The overall majority standard would cause unions to represent fewer workers who did not select them.

Card-Check Undermines Employee Choice

These changes would make the NLRB election process more reflective of workers' wishes. But they would not solve the problem of unions subverting the secret ballot election process. Under the NLRA, employers may request a secret ballot election when a union claims it has majority support. Or the employer can recognize the union without a vote—so-called card-check organizing. Nothing in the statute guarantees workers a right to a private ballot.

This has created a dynamic in which workers effectively become bystanders in union organizing drives. Unions often wage "corporate campaigns" to pressure companies into agreeing to accept card-check. They attempt to hurt a company's reputation and sales until it agrees not to ask for a vote.[21] (The "Fight for $15" campaign is a high-profile example of a recent corporate campaign.[22]) As former UNITE-HERE President Bruce Raynor put it: "We're not businessmen, and in the end of the day they are. If we're willing to cost them enough, they'll give in."[23] The corporate campaign continues until either the union gives up or management agrees to card-check.

Such corporate campaigns shift the decision to unionize from workers to management. The company's choice determines whether the workers have union representation, and if so, which union will represent them. If an employer accepts card-check, its workers do not vote on these matters.[24] Workers who

16. *Chevron U.S.A., Inc. v. Natural Resources Defense Council*, 467 U.S. 837.
17. 29 U.S. Code §159(a)
18. See, for example, *NLRB v. Central Dispensary & Emergency Hospital*, 145 F.2d 852, 853 (DC Cir., 1944).
19. In 2010, the Obama Administration switched NMB elections to the NLRB standard of a majority of voters, not a majority of workers.
20. See, for example, *Air Transport Association of America v. National Mediation Board*, 719 F.Supp. 2d 26 (DC Cir., 2010), in which the district court, upholding the rule change, held the NMB had the discretion under *Chevron* to adopt either standard because the statutory language was ambiguous.
21. Jarol Manheim, *The Death of a Thousand Cuts: Corporate Campaigns and the Attack on the Corporation* (NY: Routledge, 2000), e-book.
22. The Service Employees International Union is waging the Fight for $15 campaign against McDonald's. The full slogan is "Fight for $15 and a union."
23. Jarol Manheim, testimony before the Subcommittee on Workforce Protections, Committee on Education and the Workforce, U.S. House of Representatives, July 23, 2002, http://archives.republicans.edlabor.house.gov/archive/hearings/107th/wp/uniondues72302/manheim.htm (accessed December 7, 2016).
24. Once an employer agrees to card-check the union must collect membership cards from a majority of workers at the company. However, the decision to sign is public—made in front of the union organizer. This exposes workers to pressure and harassment. Many workers who sign union cards subsequently vote "no" in a secret ballot election. See James Sherk and Ryan O'Donnell, "EFCA: High Pressure Spin-Selling and Creating Organizing for Unions," Heritage Foundation *WebMemo* No. 2335, March 11, 2009, http://www.heritage.org/research/reports/2009/03/efca-high-pressure-spin-selling-and-creative-organizing-for-labor-unions.

do not want a particular union's representation may nonetheless get it. As one union organizer explained:

> One of the concerns organizers might have about waging economic war on an unorganized company is that it might turn employees against the union. I look at it this way: If you had massive employee support, you probably would be conducting a traditional organizing campaign.[25]

Card-check and corporate campaigns directly contradict the NLRA's goal of encouraging representatives of employees' own choosing. They undermine workers' voting rights. Administrative actions by the NLRB and the DOJ can significantly decrease their occurrence.

Ease Election Requests

Companies facing a corporate campaign currently cannot call for a secret ballot election to determine their workers' preferences. The NLRA requires the Board to conduct a secret ballot election:

> Whenever a petition shall have been filed, in accordance with such regulations as may be prescribed by the Board…by an employer, alleging that one or more individuals or labor organizations have presented to him a claim to be recognized as the [collective bargaining] representative.[26]

The NLRB interprets this language to only permit employer-requested elections when a union claims a majority of workers want its representation. No vote will occur if the union avoids expressly making that claim.[27] Consequently, corporate campaigns can continue indefinitely without workers getting to express their preferences in a secret ballot election. The NLRB should re-interpret this statutory language to allow employer-requested elections whenever a union asks for card-check.

The NLRA does not require that a union *expressly claim* to be a collective bargaining representative before an election can occur, but only requires that the employer *allege* a union has done so. The Act leaves it up to the Board to determine the circumstances under which employers may file such allegations. The NLRB should make requesting card-check sufficient grounds for calling for a vote.

A union requesting card-check procedures implicitly claims support from a firm's workers, even if it avoids expressly using those words. Card-check occurs when an employer sees no need for an election because the union clearly commands majority support. Asking for card-check implies the union either currently has or will imminently have that support. The NLRB can and should update its election petition requirements to reflect this reality.[28] The Board should allow employers to allege a union has implicitly claimed majority support—and therefore request an election—whenever that union tries to bypass the election process.

This change would shift the decision to unionize back to workers. Under such regulations, companies facing corporate campaigns could call for an election. This would make unionizing much less dependent on a union's economic leverage than on employee preferences.

Clarify "Thing of Value"

The DOJ can also take steps to protect secret ballot elections. Employers usually agree to accept card-check in exchange for union concessions. These concessions typically include agreeing in advance to employer-friendly contract terms or ending a corporate campaign. However, the Labor-Management Relations Act (LMRA) seems to prohibit these exchanges. Section 302 of the LMRA prohibits employers from delivering "any money or any other thing of value" to a labor union.[29] Congress wanted to prevent firms from buying off unions in exchange for weaker contracts.

25. Joe Crump, "The Pressure Is On: Organizing Without the NLRB," *Labor Research Review*, Vol. 1, No. 18 (1991), http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1176&context=lrr (accessed December 5, 2016).
26. 29 U.S. Code §159(c).
27. *New Otani Hotel & Garden*, 331 NLRB 1078 (2000).
28. For a more detailed exposition of the legal justification for such a ruling see the *amicus curiae* brief of the Chamber of Commerce of the United States before the National Labor Relations Board in *Marriott Hartford Downtown Hotel vs. UNITE HERE Local 217*, Case No. 34-RM-88, http://www.chamberlitigation.com/sites/default/files/cases/files/2007/Marriott%20Hartford%20Downtown%20Hotel%20v.%20UNITE%20HERE%20Local%20217%20%28NCLC%20Brief%29.pdf (accessed December 5, 2016).
29. 29 U.S. Code §186(a).

An agreement to accept card-check clearly constitutes a "thing of value" when delivered in exchange for union concessions. The union demonstrates it considers card-check at least as valuable as the concessions offered in return. These concessions are often substantial.

For example, in 2003 the Service Employees International Union (SEIU) signed a secret agreement with several major California nursing home companies. The companies agreed to card-check at 42 of their facilities. In exchange, the SEIU agreed not to press for significant wage increases, to give the nursing homes full control over benefits, and to let them fire employees at will. SEIU also agreed to lobby for higher Medicaid reimbursement rates and to unionize workers only at those nursing homes—even if workers at other nursing homes requested SEIU representation. These terms came to light after dissident union members leaked them to the press.[30]

The SEIU deal represents the type of side agreement between employers and unions that Congress intended §302 to prevent. The DOJ sadly has not treated card-check agreements as "things of value" under the LMRA.

Under the Trump Administration, this treatment should change. The DOJ should announce that it considers card-check a "thing of value" if offered in consideration for anything else of value, such as contract concessions or the cessation of a pressure campaign. The DOJ should also file charges against unions and employers that exchange card-check for other concessions.

These changes would still allow employers to voluntarily recognize a union through card-check, but they would prevent unions from pressuring or inducing employers to waive secret ballot elections. Absent such pressure or inducements, most employers will insist on a secret ballot vote, returning the choice of union representation back to workers.

Conclusion

Unions claim legitimacy as workers' representatives in order to win representation elections. But only 6 percent of U.S. union members voted for the union that currently represents them, with the rest simply inheriting a union someone else selected. Few workers select "representatives of their own choosing" under current NLRB election procedures.

The Trump Administration can protect workers' voting rights by addressing these problems administratively. The new NLRB could and should allow employers to periodically call for new union elections, allow union members to request a new vote and at any time, and require unions to win an overall majority of the vote in representation elections. The NLRB should also allow employers to request a vote whenever unions try to bypass the election process. The DOJ should prohibit unions from offering concessions to firms that forgo secret ballot votes. Such reforms would give workers greater ability to choose their own bargaining representatives.

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30. Matt Smith, "Union Disunity," *SF Weekly*, April 11, 2007, http://www.sfweekly.com/sanfrancisco/union-disunity/Content?oid=2162525 (accessed December 5, 2016).

Appendix: Data and Methodology

Chart 1 estimates the number of union-represented workers who voted for a union and remain represented by the union they voted for. Calculations for this figure are as follows:

1. The author compiled data from the NLRB on the number of pro-union votes cast in certification elections unions won between FY 1973 and FY 2015.[31] For FY 1973–2009, this information is available in various tables in the NLRB annual reports under the subheading "Valid Votes Cast in Elections Unions Won: Votes for Unions."[32] The NLRB discontinued its annual report in 2010, but that year it published online the statistical data that would have populated the report.[33] For FY 2011–2015, the author directly tabulated the number of votes cast in favor of union representation in elections won by unions from the NLRB's published annual election reports.[34]

2. The author used data from the Current Population Survey (CPS) 2010 and 2012 job tenure supplements to calculate the proportion of union-represented employees that have worked at the same job for a given number of years.[35] The author restricted this analysis to union-represented workers in industries covered by the NLRA. The author used tenure data from the 2012 supplement for tenure up to 39 years. The 2012 supplement top-codes job tenure at 39 years; the earlier supplements do not. For job tenure estimates exceeding 39 years the author used the estimates from the 2010 supplement.

3. The author then multiplied this proportion by the number of pro-union votes cast each year.[36] For example, the 2012 job tenure supplement shows that 43 percent of workers represented by unions have worked at their current employer for at least 10 years. Approximately 50,000 pro-union votes were cast in elections unions won in 2005. The author then multiplied 50,000 by 43 percent to obtain a preliminary estimate of the number of pro-union voters still employed by the firm at which they voted. For 2005, this figure was roughly 21,500 workers. The author repeated this process for each year from 1973 through 2015. Negligible numbers of workers who voted for union representation before 1973 remain employed at the firm in which they voted.

4. The author adjusted these preliminary estimates to account for the decline in overall union coverage,[37] by multiplying the preliminary estimates

31. This includes RC, RM, and RD elections. Note that this double-counts workers when employees vote in a union, then later vote on decertifying it. This counts pro-union voters twice: first when they vote for the union, then when the same worker votes to retain it as his or her representative. This situation is rare and only slightly affects these results. To the extent it does, the estimates in Charts 1 and 3 slightly overstate the number of workers who voted for their current bargaining representative.

32. See National Labor Relations Board, "Annual Reports," https://www.nlrb.gov/reports-guidance/reports/annual-reports (accessed December 5, 2016).

33. See National Labor Relations Board, "Statistical Tables—FY 2010," https://www.nlrb.gov/reports-guidance/reports/annual-reports/statistical-tables-fy-2010 (accessed December 5, 2016).

34. In elections featuring more than one labor organization, the Center for Data Analysis (CDA) at The Heritage Foundation counted a vote for either union as a vote for union representation. See National Labor Relations Board, "Election Reports," https://www.nlrb.gov/reports-guidance/reports/election-reports (accessed December 5, 2016).

35. The CDA included both union members and non-union members covered by a collective bargaining agreement in these calculations.

36. This analysis assumes that the job tenure distribution does not significantly differ between the average union member and newly organized workers.

37. Many unionized firms have gone out of business. Obviously, then, no one who voted for union representation at those firms remains with their original employer. Job tenure surveys of current union membership do not account for this contraction in overall union membership. To see this mathematically, note that the CPS job tenure supplement gives data on the proportion of current union members employed by the same firm at Time T and Time T – N, which can be represented as P_1 = Number of Union Members Employed with the Same Firm in Time T and Time T – N / Number of Union Members at Time T. We want to know the proportion of union members employed at Time T – N who are still employed at Time T. This can be represented as P_2 = Number of Union members Employed with the Same Firm in Time T and Time T – N / Number of Union Members at Time T –N. We can derive P_2 from P_1 through the identity $P_2 = P_1$ * Number of Union Members at Time T / Number of Union Members at Time T –N.

in step (3) by the ratio of the number of workers' unions represented under the NLRA in 2015 to the number they did in each preceding year. For example, Bureau of Labor Statistics figures show unions represented approximately 8.46 million workers under the NLRA in 2005, and 8.01 million workers in 2015. So the interim 2005 estimate from step 3 (21,500 workers) was multiplied by 8.01/8.46. This produced a final estimate of 20,300 pro-union voters from 2005 still employed at the same firm in 2015. The author repeated this process for every year from 1973 through 2015.

5. The author estimated the number of workers represented by unions under the National Labor Relations Act in step (4) using CPS data made publicly available at Unionstats.com.[38] The CDA used Unionstats estimates of annual private-sector union coverage, then subtracted from that total union-represented workers employed in the railway and airline industries (who are covered by the Railway Labor Act). Data on private-sector union coverage is readily available from 1977–2015 at Unionstats, excepting 1982 when the CPS did not ask union membership questions. The author interpolated 1982 union coverage from 1981 and 1983 coverage. Between 1973 and 1976, the CPS asked only about union membership, not union coverage (which includes non-members covered by collective bargaining agreements). The CDA imputed private-sector union coverage those years by multiplying annual private-sector union membership by the average coverage-to-membership ratio during the 1977–1981 period.[39] Unionstats.com contains data on union coverage by industry from 1983–2015. For prior years, the author imputed airline and railway union coverage by calculating the ratio of railway and airline union coverage to total private-sector coverage in 1983–1985.[40] The author then multiplied this ratio by total private-sector coverage estimates for 1973–1982.

38. Barry T. Hirsch and David A. Macpherson, "Union Membership and Coverage Database from the Current Population Survey," http://www.unionstats.com (accessed December 5, 2016).

39. This ratio is 1.085.

40. This ratio is 0.044.