

## What's really behind the opposition to card check and neutrality agreements?

Why do opponents of card check and neutrality agreements advocate for the government to intervene and make innovative partnerships between business and labor illegal? Why disallow businesses and unions from choosing a legal and legitimate process that works for them?

While opponents of card check and neutrality agreements present themselves as defenders of democracy and American workers, their true motivations are more aligned with a right-wing ideological objective to eradicate labor unions and arrest collaborations between workers and employers.

When unionbusting consultants (used by 82 percent of employers facing organizing campaigns) brazenly tell clients and potential customers that “winning an NLRB election undoubtedly is an achievement; a greater achievement is not having one at all” it

becomes clear that the goal is shutting down free choice in the workplace, not protecting it.<sup>7</sup>

And when conservative strategist Grover Norquist publicly supports plans to “crush labor unions as a political entity” and ultimately “break the unions,” one might question the sincerity of stated concerns about workers’ rights.<sup>8</sup>

With escalating anxiety about job insecurity, the rising cost of health insurance, and the disappearance of pensions, today’s workers are best served by processes that enable them to democratically choose whether they want to establish a labor union. When employers agree to voluntarily recognize their employees’ union, the government, anti-union business interests, and politicians should step aside and let employers and workers work together.

### About American Rights at Work

Founded in 2003, American Rights at Work is a nonprofit advocacy organization dedicated to educating the American public about the barriers that workers face when they exercise their democratic rights in the workplace. Our mission is to fight for a nation where the freedom of workers to organize unions and bargain collectively with employers is restored, guaranteed and promoted.

### Resources on NLRB Elections and Voluntary Recognition Agreements

The following publications are available for download on our website, [www.americanrightsatwork.org](http://www.americanrightsatwork.org).

- *Free and Fair: How Labor Law Fails U.S. Democratic Election Standards*, June 2005

This report investigates how current union election procedures measure up to U.S. democratic standards, and concludes that in spite of the presence of secret ballots, union representation elections fall alarmingly short of living up to the most fundamental tenets of democracy.

- *Undermining the Right to Organize: Employer Behavior During Union Representation Campaigns*, Dec. 2005

Findings from this report reveal that a majority of employers aggressively use both legal and illegal anti-union tactics during union representation elections, which impedes workers’ ability to form unions.

- *The Labor Day List: Partnerships that Work*, Sept. 2005

This publication features partnerships between successful employers and their employee’s unions. Many of the employers mentioned have engaged in voluntary recognition agreements involving card check.

## Fact Over Fiction: Opposition to Card Check Doesn't Add Up

**Fact over Fiction** examines the validity of claims by anti-union lobbyists, policymakers, and business interests that card check campaigns leave employees more vulnerable to union pressure than during National Labor Relations Board (NLRB) elections.

For the first time ever, pro- and anti-union **workers who have experienced both methods of union formation were surveyed on the existence of union and employer pressure** during union recognition campaigns.

### About the Survey

Commissioned by American Rights at Work, Rutgers University and Jesuit Wheeling University professors Adrienne Eaton, Ph.D., and Jill Kriesky, Ph.D., conducted a **national telephone survey of 430 randomly-selected workers** from worksites where employees sought to form unions using either an NLRB election or card check process in 2002.

Unlike any other research on this issue to date, survey respondents included workers who voted for and against the union in NLRB elections, and were selected from campaigns in which the union won or lost. The Eagleton Research Center at Rutgers University conducted the calls over several weeks in 2005.

**While the survey polled workers on their opinions about union and employer pressure, it is important to note that they are qualitatively different.** Pro-union workers and union organizers can attempt to make their case persuasively. But employers control the workplace and frequently use their power to hire, fire, and change work schedules to pressure workers during the weeks leading up to an NLRB election. When faced with organizing drives, 30 percent of employers fire pro-union workers, 49 percent threaten to close a worksite if the union prevails, and 51 percent coerce workers into opposing unions with bribery or favoritism.<sup>1</sup> The survey results must be reviewed with these distinctions in mind.

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## New data: Workers' opinions on coercion during union formation

The survey findings reveal two important facts that largely dismiss claims of union coercion in card check campaigns as gross exaggeration.

### Management coercion is the problem, not union coercion.

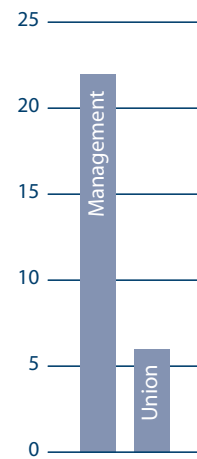
- Of all workers surveyed (election and card check combined), four times as many workers reported that management coerced them “a great deal” as opposed to the union (22% vs. 6%).
- During NLRB elections, 46% of workers complained of management pressure, compared to only 14% of workers during card check campaigns reporting pressure from the union.

### NLRB elections invite far more exposure to coercion than card check campaigns.

- Workers in NLRB elections were twice as likely (46% vs. 23%) as those in card check campaigns to report that management coerced them to oppose the union.

- Workers in NLRB elections were 53% more likely than those in card check campaigns to report that management threatened to eliminate jobs, and 28% more likely to report that management discriminated against union supporters.
- Fewer workers in card check campaigns than in elections felt pressure from coworkers to support the union (17% vs. 22%).
- Fewer than one in twenty (4.6%) workers who signed a card with a union organizer reported that the presence of the organizer made them feel pressured to sign the card.
- Workers in card check campaigns were almost twice as likely as those in elections (62% vs. 33%) to report that management took a neutral position and left the decision to form a union up to workers.

### Opposition Seeks to Solve the Wrong Problem

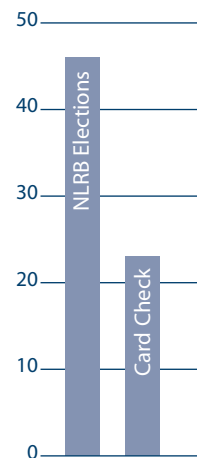


■ Percentage of Workers Responding Yes

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### NLRB Elections Invite Management Coercion

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■ Percentage of Workers Responding Yes

## The debate on how workers form unions

The new survey data contributes to the growing policy debate over the processes by which workers form unions.

Workers' unions, a bipartisan coalition of policymakers, and a growing number of employers seek to protect the use of card check and neutrality agreements as a viable, democratic alternative to an NLRB election process fraught with problems.

They contend that aggressive unionbusting in the weeks before the vote and a weak labor law system that fails to protect workers from employer interference in NLRB elections corrupts the democratic

integrity of this process.<sup>2</sup> As a result, card check and neutrality agreements have become the preferred union organizing method.

But anti-union employers, conservative business associations, and their allied policymakers seek to ban such cooperation and innovation between employers and their employees' unions. They advocate for the government to restrict union representation campaigns exclusively to the archaic and undemocratic NLRB election process that severely tilts the playing field in the employer's favor.

## What are card check campaigns and neutrality agreements?

In the 21<sup>st</sup> century American workplace, adversarial relationships pitting employers against unions during organizing drives increasingly are being replaced with cooperative agreements involving “card check.”

Within these arrangements, successful employers such as Cingular Wireless and Kaiser Permanente freely choose to recognize a labor union when a majority of employees provide signed cards authorizing union representation.

Card check procedures are commonly paired with neutrality agreements. These voluntary pacts between employers and union representatives establish a code of conduct that prohibits each party from disparaging the other or using intimidating, coercive tactics on employees. Under this process,

both parties work together to set rules that give workers a chance to freely decide to form a union without pressure or interference from either side.

Employers who have experienced card check and neutrality agreements attest that this process significantly reduces costly, drawn-out conflicts that commonly surround NLRB election processes.<sup>3</sup> As a result, these cooperative arrangements are defining new labor standards that balance profitability with workers' needs and rights.<sup>4</sup>

While card check and neutrality agreements have grown more popular in recent years, they are not new. Card check and neutrality agreements are a long-standing, legitimate process of union formation that is recognized under labor law.<sup>5</sup>

<sup>1</sup>Chirag Mehta and Nik Theodore, *Undermining the Right to Organize: Employer Behavior During Union Representation Campaigns*, Center for Urban Economic Development, University of Illinois, December 2005.

<sup>2</sup>See Gordon Lafer, Ph.D., *Free and Fair? How Labor Law Fails U.S. Democratic Election Standards*, American Rights at Work, June 2005, explaining that NLRB elections fail the most basic tests of meeting democratic election standards.

<sup>3</sup>Other motivations cited by employers for agreeing to neutrality and card check were: adding value to the business, the ability to secure or expand customers who cared about unionization of the firm, and the ability of the unions to supply qualified, skilled labor, among others. From Dancing with the Smoke Monster: Employer Motivations for Negotiating Neutrality and Card Check Agreements,” in *Justice on the Job: Perspectives on the Erosion of Collective Bargaining in the United States*, forthcoming, W.E. Upjohn Institute for Employment Research, Kalamazoo, Michigan.

<sup>4</sup>American Rights at Work, *The Labor Day List: Partnerships that Work*, September 2005.

<sup>5</sup>James Brudney, “Neutrality Agreements and Card Check Recognition: Prospects for Changing Paradigms,” 90 *Iowa Law Review* 819 (2005).

<sup>6</sup>Mehta and Theodore, *Undermining the Right to Organize*.

<sup>7</sup>Jackson Lewis, *Winning NLRB Elections: Avoiding Unionization Through Preventive Employee Relations Programs*, 4th ed. (Chicago: CCH Incorporated, 1997) 87.

<sup>8</sup>Steven Hayward and Rick Henderson, “Happy Warrior: Grover Norquist on building anti-tax coalition,” *Reason Magazine*, Feb. 1997.