

# No More Stacked Deck:

## *Evaluating the Case Against*

# Card-Check Union Recognition

ADRIENNE E. EATON AND JILL KRIESKY

Much of the management community has long argued against union recognition via “card check,” the presentation to an employer of signed cards authorizing union representation for a majority of employees in a unit. Their core argument, that workers deserve the right to a secret-ballot election, has remained unchanged. But the campaign to oppose these arrangements has recently intensified, perhaps due to the increased forcefulness and success of union efforts to secure card-check and neutrality agreements (whereby an employer agrees to remain neutral during an organizing drive).

The Labor Policy Association (LPA), which published *Employee Free Choice: It’s Not in the Cards* in 1998, has been a leader in this effort.<sup>1</sup> This past summer, a House subcommittee held hearings on a bill that would prohibit card-check recognition. Among those testifying in favor of the prohibition were LPA senior vice president Daniel Yager, co-author of *Employee Free Choice*, and Jarol Manheim, a George Washington University professor.

As scholars who have conducted research for several years on neutrality and

card-check agreements (N/CC), we offer an empirical evaluation of the arguments against card check. Whether free choice is “in the cards” is a decision for policy makers. But if policy makers are to deal workers a fair hand on this issue—and many workers would argue that the current situation is far from fair—then they have an obligation to draw from a deck that isn’t stacked. The goal of our research is to bring some empirically grounded, clear thinking to the discussion.<sup>2</sup>

### **Neutrality, Card Check, and Corporate Campaigns**

Manheim’s written testimony before the House Subcommittee on Workforce Protections emphasizes the link between “corporate campaigns” and N/CC. Manheim identifies himself as an expert on this union tactic, and his testimony argues that “unions decided to marry their campaigns to a tandem of organizing demands—card check and neutrality. . . .”<sup>3</sup> In contrast, our interviews with both union and management representatives indicate that corporate campaigns are not a frequently used strategy to secure neutrality and/or card check.<sup>4</sup>

No more than a handful of the agreements we have studied involved cor-

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porate campaigns. The union leverage most often cited by employers is quite old-fashioned—the threat of a work stoppage. About one-third of the agreements studied were negotiated within the context of a broader labor–management partnership. In response to union and employee willingness to assist the company in meeting its performance goals, employers agree to an organizing process that is clearly less disruptive of workplace activities than the traditional National Labor Relations Board (NLRB) election process.

When deciding whether or not to agree to N/CC, employers assess the “business case” via the same cost–benefit analysis they use for any union demand. Many employers have refused N/CC demands, and others have successfully bargained “neutrality only” language instead of the card-check arrangements sought by unions.

### Employee Rights, Oversight, and Union Abuses

Manheim raises the concern that in deciding whether to enter such agreements employers may be bargaining away employee rights granted by the National Labor Relations Act (NLRA). While employers are bargaining away their *own* rights, there is no evidence of lost workers’ rights. Note also that unions and employers are both waiving their statutory rights with these agreements: three-fourths of the written agreements we analyzed incorporated limitations on union organizing behavior as well as on management. These include union speech limitations, notice requirements, and time limits.

N/CC opponents argue there is a lack of oversight of card-check campaigns as compared with the carefully regulated NLRB election process; Yager, for exam-

ple, told the House subcommittee that card-check campaigns generally have no neutral oversight.<sup>5</sup> Our data refutes his assertion. A strong majority of the card-check agreements we studied provided for certification by a neutral third party, typically an arbitrator.

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In *Employee Free Choice* and elsewhere, Yager and his co-authors identify union abuses of the card-check recognition process, which, in their view, the NLRB has failed to address.<sup>6</sup> One is deliberate union misrepresentation of what the card means. We asked our employer interviewees about this. A majority believed that there had been misrepresentation,

but most also reported that misrepresentation is rare, in part because the parties often work together to design the card and/or the material given to employees about the card. Employers combat misrepresentations through workforce education, meetings with union leaders and organizers, grievance arbitration, and NLRB charges.

In its publications, LPA paints a picture of employers so hamstrung by union pressure that they cease to protect their employees.<sup>7</sup> The NLRB is portrayed as a regulator unwilling to intervene. Our interviews uncovered a different scene. We found only two employers that never respond to allegations of union wrongdoing in the organizing process. In both cases, they had concluded that unionization was desirable in the particular markets in which they operate.

Our research finds that other types of union misconduct involving cards—such as forgery and the use of threats to get employees to sign cards—are extremely rare. As in the case of

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misrepresentation, employers reported using informal and/or formal means, including arbitration and NLRB complaints, to correct such violations. Employers told us unequivocally that they do not stand by and allow unions to violate N/CC agreements and the law.

### Card Check as an Organizing Strategy

Manheim refers to card-check campaigns as “wholesale” organizing, in which “the union needs to convince the company itself, in a sense, to turn over its workers—which is to say, to withdraw from the contest.”<sup>8</sup> As indicated, though, our research indicates the vast majority of employers agreeing to N/CC are continuing to monitor the process

by which employees are making their decision. This process *does* have more favorable outcomes for unions than NLRB elections: card-check campaigns are more likely to result in union recognition, and a subsequent contract, than NLRB elections. However, the fact that unions win only about 80 percent of the time with these ar-

rangements indicates that employees can and do reject unionization in card-check campaigns.

When asked about the impact of the N/CC on organizing tactics, many union respondents indicated that less time was spent on countering management's anti-union message and attacking the employer, and more emphasis was placed on the positive contributions of the union. Beyond that, campaigns were often similar to traditional organizing campaigns. Although N/CC agreements make the hard work of organizing easier, unionists recognize the agreements cannot be viewed as substitutes for that work.

### Employer Advantages through Card Check and Neutrality

Finally, our research finds that N/CC organizing has advantages for employers as well as for workers and unions. N/CC lets an employer shape the organizing campaign by bargaining limitations on the union. If house calls are viewed as an intrusion on employee privacy, for instance, then an employer may be able to limit them by negotiating over the organizing process.

N/CC can also improve union-management relations, which may enable management to achieve other bargaining or business goals. After successfully organizing through N/CC, some unions have been willing to accept flexible agreements to help companies in highly competitive or low union density environments.

In addition, N/CC can reduce the impact of an organizing campaign on production. Where unions already add to a business—via partnership, supply of skilled labor, and improved relations with customers, among other things—the negotiation of a N/CC agreement may pave the way for business improvements to continue without the disruption of a traditional campaign. Indeed,

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Neutrality and card-check agreements can pave the way for business improvements.

organizing processes negotiated by unions and management currently offer the best chance for employees in any setting to determine whether to form a union without disrupting productive workplace activities.

context given the well-known data on unfair labor practices, particularly illegal discharges, by employers. Indeed, these abuses are what motivate use of N/CC agreements in the first place.

8. Manheim, 2002.

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#### NOTES

1. Yager, D. V., T. J. Bartl, and J. J. LoBue. 1998. *Employee Free Choice: It's Not in the Cards*. Washington, DC: Labor Policy Association.
2. The assessment in this article is based on two phases of research. The first, which led to an article published in 2001, included an analysis of interviews with union representatives about their experiences negotiating and organizing under N/CC. It also incorporated a review of the language of over one hundred agreements provided by the interviewees. In the second phase—which produced results presented at the Michigan State University/AFL-CIO Workers' Rights Conference in October 2002—we interviewed employers involved in thirty-four of the aforementioned agreements. See Eaton, A. E., and J. Kriesky. 2001. "Union Organizing Under Neutrality and Card Check Agreements," *Industrial and Labor Relations Review*, Vol. 55, no. 1, pp. 42–59.
3. Manheim, J. Testimony before the House Education and the Workforce Committee, Subcommittee on Workforce Protections, July 23, 2002.
4. We do not share Mannheim's concerns about corporate campaigns. However, the point here is that those concerns are not particularly relevant to the debate on card-check agreements.
5. Johnson, Fawn H. 2002. "Rep. Norwood Calls for Prohibition of Card-Check Union Certification." *Bureau of National Affairs Daily Labor Report*, July 24, AA1–2.
6. See Yager, D. V., and J. J. LoBue, "Corporate Campaigns and Card Checks: Creating the Company Unions of the Twenty-first Century," *Employee Relations Law Journal*, Vol. 24, no. 4 (1999), pp. 21–56.
7. Of course, most trade unionists and many industrial relations scholars will scoff at the idea of employers as protectors of worker rights in the organizing



Adrienne E. Eaton

Adrienne E. Eaton is professor of labor studies and employment relations at Rutgers University where she teaches credit and non-credit courses in collective bargaining and industrial relations. She is also editor-in-chief of the *ILRR*.



Jill Kriesky

Jill Kriesky is extension professor with the Institute for Labor Studies and Research at West Virginia University. She is also director of that university's Office of Service Learning Programs and West Virginia Campus Compact. She serves on the editorial board of the *Labor Studies Journal*.