



HEADS UP

Senate Dumps Card Check Provision ... Good News and Bad News

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As expected, the card check compromise has arrived. Yesterday, Democratic senators, faced with immovable opposition to the repugnant card check component of the Employee Free Choice Act, dropped that element of the proposed legislation. It appears they will, once again as expected, attempt to replace it with an expedited election feature. As reported below, the initial proposal is that the elections would be conducted within 5-10 days from when a petition is filed. This is good news and bad news. The good news is that the card check provision would protect employers from the “weekend ambush” where a majority of employees could be signed up at a union sponsored Jimmy Buffet concert. The bad news is that an election conducted within 5-10 business days of the filing of a petition will not afford an unprepared employer the opportunity to construct and conduct an effective campaign.

The onerous binding interest arbitration and punitive damages elements are still in as far as we know.

This legislation is expected to be on the Senate agenda in September. Now is the time for employers to finish up the preparation of their union avoidance toolkits and “virtual campaigns.”

The New York Times

Democrats Drop Key Part of Bill to Assist Unions



By STEVEN GREENHOUSE
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A half-dozen senators friendly to labor have decided to drop a central provision of a bill that would have

made it easier to organize workers.

The so-called card-check provision — which senators decided to scrap to help secure a [filibuster](#)-proof 60 votes — would have required employers to recognize a union as soon as a majority of workers signed cards saying they wanted a union. Currently, employers can insist on a secret-ballot election, a higher hurdle for unions.

The abandonment of card check was another example of the power of moderate Democrats to constrain their party's more liberal legislative efforts. Though the Democrats have a 60-40 vote advantage in the Senate, and [President Obama](#) supports the measure, several moderate Democrats opposed the card-check provision as undemocratic.

Win McNamee/Getty Images
Arlen Specter, left, shown with Senator Al Franken, was one of the six Democratic senators who worked to revamp the bill.

In its place, several Senate and labor officials said, the revised bill would require shorter unionization campaigns and faster elections.

While disappointed with the failure of card check, union leaders argued this would still be an important victory because it would give companies less time to press workers to vote against unionizing.

Some business leaders hailed the dropping of card check, while others called the move a partial triumph because the bill still contained provisions they oppose.

The card-check provision was so central to the legislation that it was known as “the card-check bill.” Labor had called the bill its No. 1 objective, and both labor and business deployed their largest, most expensive lobbying campaigns ever in the battle over it.

“This is a very emotional issue,” said Senator [Arlen Specter](#) of Pennsylvania, the Republican turned Democrat who had been lobbied heavily by both sides. “I cannot remember an issue this emotional in all my years in the Senate.”

Several moderate Democrats, including [Blanche Lincoln](#) of Arkansas, have voiced opposition to card check, convinced that elections were a fairer way for workers to unionize. They were swayed partly by business's vigorous campaign, arguing that card check would remove confidentiality from unionization drives and enable union organizers to bully workers into signing union cards.

Though some details remain to be worked out, under the expected revisions, union elections would have to be held within five or 10 days after 30 percent of workers signed cards favoring

having a union. Currently, the campaigns often run two months.

To further address labor's concerns that the election process is tilted in favor of employers, key senators are considering several measures. One would require employers to give union organizers access to company property. Another would bar employers from requiring workers to attend anti-union sessions that labor supporters deride as "captive audience meetings."

Labor unions have pushed aggressively to enact the bill — formally, the Employee Free Choice Act. They view it as essential to reverse labor's long decline. Just 7.6 percent of private-sector workers belong to unions, one-fifth the rate of a half-century ago.

Several union leaders interviewed took the senators' move in stride. One top union official, who insisted on anonymity because lawmakers and labor leaders have agreed not to discuss the status of the bill, said, "Even if card check is jettisoned to political realities, I don't think people should be despondent over that because labor law reform can take different shapes."

While voicing confidence they have the 60 votes to pass the revised bill, labor leaders acknowledged an additional hurdle: two powerful Democrats, [Edward M. Kennedy](#) of Massachusetts and [Robert C. Byrd](#) of West Virginia, are seriously ill.

"This bill will bring about dramatic changes, even if card check has fallen away," said an [A.F.L.-C.I.O.](#) official who insisted on anonymity.

The official said the revised bill achieves the three things organized labor has been seeking.

"Our goals," the official said, "have always been letting employees have a real choice, having real penalties against employers who break the law in fighting unions, and having some form of binding arbitration to prevent employers from dragging their feet forever to prevent reaching a contract."

Senator [Tom Harkin](#) of Iowa, a senior member of the Health, Education, Labor and Pensions Committee, has led a group of six Democrats who have worked closely with labor to revamp the bill. The other senators are Sherrod Brown of Ohio, [Thomas R. Carper](#) of Delaware, Mark Pryor of Arkansas, [Charles E. Schumer](#) of New York, and Mr. Specter.

Labor leaders voiced confidence that if Mr. Pryor backed the compromise, Ms. Lincoln and other moderates would do likewise.

Union leaders argue that under current law, unionization

elections are often unfair because, they say, employers have a huge opportunity to intimidate and pressure workers during the lengthy campaigns that precede the unionization vote.

Business leaders say the current system is fair, asserting that unions lose so many elections because workers oppose paying union dues and do not feel they need unions to represent them.

Corporate lobbyists have indicated they would oppose fast elections, arguing that such a provision would deny employers ample opportunity to educate employees about the downside of unionizing, such as strikes and union dues.

Labor leaders counter that employers will have plenty of opportunity to fight unionization, noting that many companies begin plying employees with anti-union information the day they are hired.

Business also opposes the bill's provisions to have binding arbitration if an employer fails to reach a contract with a new union. Companies argue it would be wrong for government-designated arbitrators to dictate what a company's wages and benefits should be.

"Binding arbitration is an absolute nonstarter for us," said Mark McKinnon, a spokesman for the Workforce Fairness Institute, a business group opposing the bill. "We see it as a hostile act to have arbitrators telling businesses what they have to do."

Several union officials said that once the senators' revisions became public, some union presidents who are card-check enthusiasts might attack the changes, call for scrapping the revisions and demand an up-or-down Senate vote on a bill with card check.

Kate Cyrul, a spokeswoman for Mr. Harkin, declined to discuss details of the bill. "Nothing is agreed to until everything is agreed to," she said.

Union officials have urged the White House and Senate leaders to schedule a vote this month. But Senate leaders have told labor that the Senate is so preoccupied with health care legislation that September would be the earliest time to take up the pro-union legislation.

Best regards,



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