



What Courts Have Said About Union Authorization Cards

While current law provides for secret ballot elections for union recognition, it does not require them. With increasing frequency, unions are using “card check” recognition – a process, frequently subject to coercion and abuse, where union organizers ask workers to sign authorization cards in their presence. While the law permits the use of authorization cards, federal courts have made clear that it is a less reliable form of determining the will of workers. The following are excerpts from federal court decisions discussing union authorization cards:

“[S]ecret elections are generally the most satisfactory -- indeed the preferred -- method of ascertaining whether a union has majority support.” *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 602 (1969).

“It would be difficult to imagine a more unreliable method of ascertaining the real wishes of employees than a ‘card check,’ unless it were an employer's request for an open show of hands. The one is no more reliable than the other. Overwhelming majorities of cards may indicate the probable outcome of an election, but it is no more than an indication, and close card majorities prove nothing.” *NLRB v. S. S. Logan Packing Co.*, 386 F.2d 562, 565 (4th Cir. 1967).

“[I]t is beyond dispute that secret election is a more accurate reflection of the employees' true desires than a check of authorization cards collected at the behest of a union organizer.” *NLRB v. Flomatic Corp.*, 347 F.2d 74 (2nd Cir. 1965).

“An election is the preferred method of determining the choice by employees of a collective bargaining representative.” *United Services for Handicapped v. NLRB*, 678 F.2d 661, 664 (6th Cir. 1982).

“Freedom of choice is ‘a matter at the very center of our national labor relations policy,’ and a secret election is the preferred method of gauging choice.” *Avecor, Inc. v. NLRB*, 931 F.2d 924, 934 (D.C. Cir. 1991).

“Although the union in this case had a card majority, by itself this has little significance. Workers sometimes sign union authorization cards not because they intend to vote for the union in the election but to avoid offending the person who asks them to sign, often a fellow worker, or simply to get the person off their back, since signing commits the worker to nothing (except that if enough workers sign, the employer may decide to recognize the union without an election).” *NLRB v. Village IX, Inc.*, 723 F.2d 1360, 1371 (7th Cir. 1983).

“[O]n average 18% of those who sign authorization cards do not want the union. They sign because they want to mollify their friends who are soliciting, because they think the cards will get them dues waivers in the event the union should prevail, and so on. On average, then, we expect to see -- and do see -- substantial slippage between the cards and the votes in a simon-pure election.” *Montgomery Ward & Co. v. NLRB*, 904 F.2d 1156, 1162 (7th Cir. 1990).

“In approaching the question of a possible standard for card recognition, we must begin by recognizing that ‘cards are not the functional equivalent of a certification election,’ and elections have a ‘preferred status’ as a means of determining representation. Three reasons are primary in the Board's conclusion that cards do not have the same standing as certification election. (1) There is greater opportunity for coercion of employees by union organizers, as compared with a secret ballot. (2) Arguably, employees may misunderstand the import of signing an authorization card, because of misreading, failure to read, or union misrepresentation. (3) When cards are used, the employer has no opportunity to speak to his employees concerning their determination to have union representation, and an employer's right to communicate to employees concerning representation is arguably guaranteed under § 8 (c) of the Taft-Hartley Act.” *Truck Drivers Union v. NLRB*, 487 F.2d 1099, 1107 (D.C. Cir. 1973).

“The conflicting testimony in this case demonstrates that authorization cards are often a hazardous basis upon which to ground a union majority.” *J. P. Stevens & Co., Gulistan Div. v. NLRB*, 441 F.2d 514, 522 (5th Cir. 1971).

“On the relationship between union authorization cards and election results, the Fourth Circuit said:

In 1962, Board Chairman McCulloch presented to the American Bar Association data indicating some relationship between large card-signing majorities and election results. Unions which presented authorization cards from thirty to fifty per cent of the employees won nineteen per cent of the elections; those having authorization cards from fifty to seventy per cent of the employees won only forty-eight per cent of the elections, while those having authorization cards from over seventy per cent of the employees won seventy-four per cent of the elections.

The Board recently reported that this data has not been updated.” *Conair Corp. v. NLRB*, 721 F.2d 1355, 1378 (D.C. Cir. 1983).

There is no doubt but that an election supervised by the Board which is conducted secretly and presumably after the employees have had the opportunity for thoughtful consideration, provides a more reliable basis for determining employee sentiment than an informal card designation procedure where group pressures may induce an otherwise recalcitrant employee, to go along with his fellow workers. *NLRB v. Cayuga Crushed Stone, Inc.*, 474 F.2d 1380, 1383 (2nd Cir. 1973).