

## **Introduction:**

- Back in the 1950s, roughly one-third of the workforce was unionized. Today, that number has declined to 12 percent, with just 7 percent of the private sector workforce belonging to a union and the rest working in government jobs—the only segment where the unions' market share is growing.
- Card Check has the potential to completely reverse this trend, and open up wide swaths of the economy to union organizing.

## **Eliminating Secret Ballots**

- Under the secret ballot process, union organizers ask workers at a facility to sign cards indicating an interest in an election. Once 30% have signed cards, the union can petition the Federal National Labor Relations Board to hold a secret ballot election.
- Both the union and the employer are given the opportunity to make their case, after which workers cast their votes in a federally-supervised election. If the union gets more than 50% of the votes, they are certified by the National Labor Relations Board and the employer must begin collective bargaining.
- Card Check essentially abolishes secret ballot elections and replaces them with a process that requires only signature cards.
- Card Check allows unions to skip the time, expense — and potential risk of losing — that comes with secret ballot elections. Under Card Check, if union organizers can persuade more than 50% of workers at a facility to sign cards, they win.
- Workers could be asked to sign a card almost anywhere, including at their homes at night. Union organizers could go back to any worker who declines to sign over and over again until they get the desired result. And once the union hits that 50% threshold, the National Labor Relations Board would have to certify the union and would be prohibited from holding a secret ballot election — even if many workers want one.
- Under Card Check, a union has no obligation to tell an employer it is launching an organization drive. An employer may not find out an organizing campaign is underway until ordered by the Federal government to start collective bargaining.

## **Binding Arbitration**

- Abolishing secret ballot elections is the part of Card Check that gathers the most attention, but other parts of the bill are equally harmful — in particular, Section Three, which deals with the collective bargaining process.

- Under Section Three, an employer must start collective bargaining with a newly formed union within 10 days. Within 90 days, the parties are expected to have completed a first contract. If not, either side may refer the matter to the National Mediation and Conciliation Service. NMCS has exactly 30 days from the date of the request to strike a deal.
- Should this fail, either side can refer the matter to a federal arbitration panel. The arbitration panel will hand down a contract that is binding on both sides for two years.
- Section Three has the obvious flaw of forcing the complex negotiation of a contract into a compressed time frame. But it also brings the Federal government into contract talks, which was never intended under the National Labor Relations Act.
- Moreover, the legislation does not specify who will sit on the arbitration panel, how they will be appointed, how many panels there should be and what, if any, appeal rights will be established.
- Far from leading to productive bargaining, as unions claim, binding arbitration is likely to cause just the opposite. If a union feels it's losing the edge in contract talks, it has every incentive to stonewall and wait for an arbitration panel to hand down a contract.
- And arbitrators tend to look at both sides' positions and split the difference. This means that both parties have an incentive to take extreme positions that are hardly conducive to productive bargaining.

### **New Penalties**

- Section four of the legislation also includes hefty new penalties — on employers only — during the negotiation of a first contract.
- Penalties on employers for back pay violations are raised to back pay plus two times that amount as liquidated damages. Penalties for violating the National Labor Relations Act, not particularly difficult for the uninitiated, are raised to as much as \$20,000 per violation, in addition to any make-whole remedy.

### **The Tip of the Spear**

- Unions see Card Check as a means of rapidly expanding their ranks. But it goes beyond just adding members. With an increase in membership comes expanding revenue in the form of dues, an exponential increase in the resources unions can put into politics, and a much larger and more robust influence on Capitol Hill.
- And unions have an ambitious legislative agenda. This includes, to mention just a few items:

- Broad expansion of Family Medical Leave Act rights, including paid time off, paid sick leave and the application of FMLA even to the smallest employers.
- Petitioning the National Labor Relations Board to allow the creation of “mini-unions” – small cells of organized employees within workplaces that don’t represent a majority of workers, but which can force employers to bargain with them on pay and benefits.
- Added mandates and funding to encourage aggressive enforcement by federal regulatory agencies such as OSHA and the EPA.
- Repeal of the existing caps on punitive and compensatory damages for most employment discrimination lawsuits.
- Passage of the Paycheck Fairness Act, legislation that would greatly expand the Equal Pay Act, promoting further class-action litigation against employers.
- Passing legislation to resurrect the Clinton administration’s rejected ergonomics regulation — imposing billions of dollars of new costs on businesses.
- Dramatically expanding plant closing notification requirements for even small employers — giving workers private rights of action, and forcing companies to disclose confidential, strategic business plans.
- Imposing heavy financial penalties on employers that switch from defined benefit to defined contribution retirement plans.
- Killing of the trade agenda that has opened up new export markets to American businesses.

### **Political Dynamics**

- Card Check advocates expanded their majority in the House, where the bill passed last year 241-185, and the backstop of a presidential veto is now gone with President-elect Obama.
- Now that the democrats have a hold on the Presidency, the Senate is the only place this legislation could be blocked.
- The Senate vote on Card Check in 2007 was 51-48, falling nine votes short of getting the 60 needed to overcome a filibuster. But in reality, the vote count should be thought of as 52-48, because Sen. Johnson from South Dakota was absent, and he would most likely vote for Card Check. The Senate is now- with the Democrats in favor- 56 Seats plus 2 Independent to the Republicans 40 seats. The Minnesota race has still not formally been called but Democrat Al Franken is in the lead.

Republicans need to be able to hold a filibuster in order for this issue to die in the Senate.