



The University of Vermont

To: House Committee on General, Housing, and Military Affairs
From: Jes Kraus, Chief Human Resources Officer
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Subj: Summary of Testimony on H.428

H. 428 would allow labor organizations to represent employees under the State Employees Labor Relations Act without affording employees the opportunity to vote on such representation. This bill would eliminate the long-standing and sacred right to a secret ballot election. It would do away with all the benefits of an election period with a full exchange of ideas and opinions. It would make an employee's union or anti-union sympathies publicly known to co-workers, employers, and unions rather than reserved for a secret ballot. Interestingly, while the bill makes it easy to certify a union, it does not allow for a union to be decertified through the same procedure.

Such drastic legislation, which impinges on the rights of individuals, should fail in the absence of a demonstrated compelling need. There is no such need in Vermont. The current secret ballot process has worked well for decades, and union success in election processes demonstrates that changes to the law are not warranted.

I. HISTORY OF "CARD CHECK"

The law governing labor relations for state employees in Vermont – the State Employees' Labor Relations Act (SELRA) – largely mirrors the National Labor Relations Act (NLRA). The Vermont Labor Relations Board (VLRB) frequently examines National Labor Relations Board (NLRB) cases and other case law under the NLRA for guidance in its own opinions. While card check would be a new concept under SELRA, it is not new under the NLRA.

As the United States Supreme Court noted in 1992, "the NLRA confers rights only on employees, not on unions." (*Lechmere, Inc. v. NLRB*). Much like SELRA, the NLRA was enacted and designed to protect employees, not unions and not employers. In keeping with this core purpose, both SELRA and the NLRA provide that employees have the right to engage in or refrain from union activity, and both provide for a secret ballot election conducted by the NLRB or VLRB to assess employee support of a union.

Before 1947, the NLRA allowed the NLRB to certify unions by relying on a secret ballot election or "any other suitable method." One commonly used "other suitable method" was "card checks," a procedure in which union agents would obtain the signature of workers on cards

Human Resource Services

85 South Prospect Street, Burlington, VT 05405
(802) 656-3368

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authorizing the union to represent the employees. By the late 1930's, the NLRB started to seriously question the reliability of card checks and switched to a policy of not relying on union authorization cards "in the interest of investing . . . [union] certifications with more certainty and prestige by basing them on free and secret elections conducted under the Board's auspices." (*General Box*, 82 NLRB 678 (1949)).

In 1947, Taft-Hartley amendments were passed which changed the NLRA and made the secret ballot election the exclusive means by which a union could obtain NLRB certification to act as the collective bargaining agent for a group of employees. Since 1947, the Board has repeatedly stated that "Board-conducted elections are the preferred way to resolve questions regarding employees' support for the unions." (*Levitz Furniture Co. of the Pacific, Inc.*, 333 NLRB 105 (2001)). The U.S. Supreme Court has also supported the view that "secret ballot elections are generally the most satisfactory, indeed the preferred method of determining employee free choice." (*NLRB v. Gissel Packing Co.*).

The U.S. Supreme Court and the NLRB have announced on more than one occasion that the "core principle" of the NLRA is "voluntary unionism." In the final analysis, the only way to secure this principle is through a secret ballot election in which the employees choose for or against union representation.

II. CURRENT SYSTEM FOR UNION CERTIFICATION IN VERMONT

The right of employees to debate the question of unionization and then to cast a secret vote free from the coercion of union representatives, fellow employees or management is a sacred tenet of labor law. It is the underpinning of over eight decades of sound labor relations in this country. If this right is to be abridged or taken away – as this bill would do – there should be compelling reasons to do so.

The State Employees Labor Relations Act (SELRA) allows a union to file a petition for representation with the Vermont Labor Relations Board as soon as it has secured authorization cards from 30% of the employees in an appropriate bargaining unit. Unions largely control the timing of this process. They decide when to start organizing, when to hand out authorization cards. They need no approval to start such a campaign and they often engage in such activity without management's knowledge. Once they pass the 30% threshold, they control when they file a petition with the Labor Board.

After the petition is filed, the Labor Board determines whether the petitioned unit is appropriate – either by agreement of the parties or, if necessary, through unit hearings – and then schedules a secret ballot election for all eligible voters in that unit. The election is scheduled at the employees' place of work at convenient times for employees. If necessary, employees who may

not be present on election day are allowed to vote by mail. The employer must provide the union with a list of employee names and addresses so the union can complete its campaigning.

Current law places numerous restrictions on management during a union campaign to ensure that the election is free from coercion. A manager may not ask anyone how they plan to vote. Management may not during the course of an election campaign make promises to improve working conditions. Management may not discriminate against any individual because of their union sympathies.

On election day, the Labor Board, not management, conducts the election at the employees' place of work. No campaigning can occur around the voting area. The union and management may have observers sit with the Board representative throughout the process to make sure the election is run smoothly and free from any coercion on either side. When the voting is over, the ballots are counted by the Labor Board and the outcome is determined by a majority of those voting – just like a political election. This is workplace democracy in action, and it has been the bedrock principle of labor relations in this country since 1935.

III. SECRET BALLOT ELECTIONS WORK WELL IN VERMONT

A. Unions under the VLRB's jurisdiction have won 84% of elections under the current secret ballot system.

The process described above has worked well for Vermont's employees, and for that matter, for unions. Looking at the statistics compiled by the VLRB, **there were 75 union elections conducted by the Labor Board between 2009 and 2019. Unions won 63 of those 75 – an 84% success rate.** Any assertion that coercion, discrimination, or any other factor has discouraged employees from voting for a union is simply not true, and certainly not supported by these statistics.

At UVM in particular, there have been seven union elections since 1996. Unions have won five out of the seven. All were conducted by the Vermont Labor Relations Board by secret ballot. Three different labor organizations were involved in these elections: the Teamsters (police unit, 1996); the United Electrical Workers (service and maintenance unit, 1997); United Academics, AAUP-AFT (full time faculty, 2001; part time faculty 2003); United Staff Union/ VT NEA (2012); United Staff Union/ VSEA (2014) Teamsters (police sergeants, 2019). Over 1000 employees are represented by unions on the UVM campus. In neither of the unsuccessful elections was there any allegation of misconduct against UVM.

B. Illegal or objectionable conduct by management can be resolved through the VLRB.

Some may argue that card check will prevent the opportunity for management coercion. The statistics noted above do not support the need for such a drastic change in the way employees decide whether to elect union representation. But even putting aside the numbers, current law already has a robust process for rectifying and thereby discouraging management from engaging in any coercive or unfair activity—that is, through the filing of an unfair labor practices claim with the VLRB. The Labor Board is fully empowered to rectify any case of discrimination or coercion brought before it.

In addition, if a union loses an election and then claims that management engaged in objectionable conduct during that election, the union can file objections with the Labor Relations Board, and if successful, another election will be conducted. None of these processes is difficult or lengthy to complete.

C. UVM has never been found guilty of an unfair labor practice or coercive conduct during a union election.

All elections at UVM have followed a fair campaign period during which no charges of misconduct were filed by either party against the other. No employee has ever been threatened or coerced in any way. At the elections, turnout among eligible voters has been robust. No unfair labor practice charges have ever even been filed against the University.

From an *employee* viewpoint, the current system works. It provides them with the opportunity for full and fair debate on the issues and the final opportunity to cast a secret ballot away from the eyes of both union organizers and managers. From the *union* viewpoint, the current system has resulted in stunning success ratios. And from the *management* viewpoint, the current system allows it an opportunity to be heard in a fair and noncoercive way during a campaign, and, just as important, provides management with the knowledge that when the employees vote for unionization, they have done so in the most democratic of processes and with full knowledge of the issues.

IV. THE PROBLEMS WITH CARD CHECK

A. Card Check is undemocratic

At its core, H.428 takes away the right of employees to vote in a secret ballot election. Secret ballot elections are a cornerstone of democracy and have been recognized as the fairest way to conduct union elections, as noted in the section above on the history of card check. While H.428 technically does not remove the option of an election from the law, why would a union that

already has 50% plus one of the employees signed up ever file an election petition? All it has to do is file a petition showing those cards and it will be automatically certified. Going through an election would make little sense for a union.

B. Card Check is unreliable as an indicator of union support.

People sign union cards for many reasons. Some sign because they truly want a union and understand what that means. Others sign because they think the card only means that an election will be held. They sign to get an organizer or a fellow employee off their back. They sign because their friend asks them to sign. They sign because they don't want to be singled out in the face of representations that other employees already signed. They sign because they think they know what they are signing but sometimes do not. They sign because on that particular day they are upset with their supervisor and wish to lodge a protest. An employee who is approached one-on-one by a union organizer may sign a card for many reasons.

The dynamics are very different between casting a private vote in an election and the more public act of signing a card. The willingness of an employee to sign a card when thrust under the employee's nose by a union organizer is quite different from what the employee may feel in the voting booth following a period of reflection. The concept of a secret ballot election focuses the mind's eye on whether unionization is a good idea or not. The card check focuses the mind's eye on the fellow employee or union organizer who is trying to get you to sign a card.

Peer pressure is not confined to high school, and the card check approach cannot guarantee that the employee's decision will be uncoerced nor does it ensure that it will be a private one. If the person signs a card, the union knows it. The union will also know who did not support the drive. The privacy of the ballot box does not exist in the card signing process. By contrast, the secret ballot makes sure no one can be pressured, be it from union organizers or managers, into casting a vote one way or another. In simple terms, no one will ever know how you vote in a secret ballot election. With card checks, everyone will.

C. Card Check eliminates an election period with a full exchange of ideas and opinions.

Under the current system, union authorization cards can be used as evidence of a "showing of interest," and when 30% of employees in a proposed unit are signed up, an election can be held. Prior to that election, employees have the opportunity to fully inform themselves. Employees can share their experiences; talk to their colleagues. People can ask questions and receive answers. Unions and employers can provide information on what unionization means in areas such as:

- the nature of being exclusively represented by a union
- what collective bargaining is all about
- what fees and costs may be associated with a union

- what the pros and cons of choosing unionization may be

But the use of union authorization cards to actually *certify* a union is wrong. A card check approach does not create a fully informed electorate. It denies employees the opportunity to learn what they can about union representation before they vote. It creates majority status with a wink and a nod.

D. Card Check does not impose any re-election requirements for unions.

A full and free election by secret ballot is particularly important because unions do not stand for re-election. Unlike our political representatives, a union does not have to campaign each year or even every several years to maintain its status as the majority representative of employees. That makes the first – and often the only – election so important. Employees denied a secret ballot election in the first instance would not have a second chance. If card check were a reliable indicator of informed employee preferences, it also should work in reverse – it should allow employees who gather the signatures of 50 percent plus one of their colleagues to decertify a union. But H.428 does *not* allow *decertification* through the same card check process.

V. CONCLUSION

H.428 does not help individual employees. It helps unions avoid legitimate informed debate by the employees it seeks to represent. It helps unions avoid contrary points of view. It helps unions avoid a full and free election. Instead, it enables them to secure representation rights secretly by collaring employees one at a time and then claiming majority status. The bill insulates unions but does nothing for employees.

The State Employees' Labor Relations Act is not unique. It functions like most labor acts. It is designed to afford employees the right to decide whether or not they wish to be represented by a union. The law is not designed to force unionization or sneak it in the back door. It is not designed to make it as easy as possible for a union to win representation rights. It is designed for the employees, set up to ensure that they can decide the kind of environment they want to work in, and to make that choice privately, free from pressure on either side.

H.428 does not secure and enhance employee rights or the freedom to choose. Taking away a secret ballot sacrifices the rights of individual employees to decide in a democratic way whether and by whom they want to be represented. There is no reason to abolish this right. Employees should be able to choose whether to enlist union representation without pressure and following an ability to become fully informed.