



Employee Representation Rights

Public Policy Issue Statement, January 24, 2005

Background

Enacted in 1935, the National Labor Relations Act (NLRA) is the principle statute governing collective bargaining activities in the private sector. The NLRA was enacted to ensure the right of willing employees to assemble and collectively bargain with employers on matters of workplace welfare, including wages, working conditions, and benefits. The collective bargaining process in the state public sector is usually controlled by state laws and regulations similar to the NLRA. Under the NLRA, a union can seek to be certified as the employees' bargaining agent through a contested, secret-ballot election administered by the National Labor Relations Board (NLRB). Under a limited set of circumstances, current law allows employers to forgo the secret-ballot election and allow a union to gain recognition as the employees' representative through a card check or neutrality agreement with the employer. In its simplest form, a card check agreement requires the employer to recognize the union as the employees' representative if the union produces a majority of employee authorization cards from the appropriate workforce unit.

Issue

As the use of card check recognition and neutrality agreements has grown over the last decade, so has the concern over whether these types of agreements are voluntary and if employees are able to select third-party representation free from interference or coercion by employers or unions.

SHRM Proposed Position

SHRM believes that human resource professionals have a responsibility to understand, support and champion employment-related actions that are in the best interests of their organizations and their employees with regard to third-party representation by unions. Employee NLRA rights to form, join, assist or refrain from joining a union without threats, interrogation, promises of benefits, or coercion by employers or unions must be protected. The NLRA needs to provide appropriate and effective mechanisms to govern union-management relations, including the employee representation process.

SHRM believes that government-supervised secret-ballot elections are the best process for representation and decertification elections under the NLRA. A decertification election is an

election held following the filing of a petition by employees who allege that the union previously certified or currently recognized by the employer as the bargaining representative no longer represents a majority of the unit employees. A union that wins a decertification election will be certified by the NLRB as a bargaining agent, just as if the union had won a certification election. Secret-ballot elections are a fundamental democratic principle embodied in the NLRA, allowing employees to cast their votes free from interference or coercion by employers or unions. SHRM also acknowledges that under the NLRA, exceptions to the secret-ballot election process may be appropriate. SHRM believes that, in such instances, the chosen process (such as card checks and/or neutrality agreements) must be conducted in a voluntary manner that ensures that employees have the opportunity to make an informed free choice.

SHRM's proposed position statement supports the following key elements of this issue:

Employee Free Choice: SHRM recognizes the inherent rights of employees to form, join, assist in or refrain from joining a union.

Secret-Ballot Elections: SHRM supports and encourages secret ballot elections as the most effective process for validating majority representation, as such elections minimize inappropriate outside influences and are consistent with underlying and fundamental principles of democracy. However, SHRM also recognizes that alternative processes may be available under the NLRA that legitimately validate the will of the majority in the workplace.

Majority Representation: SHRM believes that representation without a valid majority of employee interest is fundamentally wrong.

Illegal and Unethical Behavior: SHRM believes that any illegal and/or unethical behavior initiated by any party during a campaign should not be tolerated.

Open Communication: SHRM believes an employee's decision regarding whether to join or refrain from joining a union should be based on relevant information and free choice.