

# The Coming Battle over Card-Check Organizing

An issue that bears watching by the franchising community.

By David French

A quiet campaign to change the American workplace is underway. From a high of more than 20 percent in 1983, unions saw their membership in gradual decline until last year when the rate finally stabilized. Unions today represent approximately 12 percent of all workers in the United States, but only 8 percent of the private-sector workforce.

Last year, several leading unions broke with the AFL-CIO and set out on a separate path. The break-away factions organized their team under the banner “Change to Win,” and they aim to reverse decades of erosion in union membership. This coalition is led by a different breed of union activist, and they are adopting new tools and tactics to accomplish their objectives. Unlike the traditional union strongholds such as manufacturing and the public sector, “Change to Win” is gunning for membership growth in service industries.

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The new tactics are a combination of pressure and persuasion that have been honed in political and public-policy campaigns over the past 35 years. Neutrality agreements, company campaigns, card-checks and the “Employee Free Choice Act”—these are the tools of union organizing in the 21st century. The words are intentionally bland and unthreatening, but the methods are relentless.

In fact, unions do their best organizing work when these tactics are combined in a kind of permanent campaign. A card-check, which allows an employer to recognize a union if a majority of employees have signed union authorization cards, is going to be much more successful if the union has already achieved a neutrality agreement; and a neutrality agreement is often the outcome of the threat of a corporate campaign. One 1999 study, by the AFL-CIO’s George Meany Center for Labor Studies, found union wins in more than three-

quarters of the campaigns where card-check authorization was employed. By comparison, unions failed in 52 percent of the elections during the survey period when a secret-ballot election was conducted. The study also showed that unions prevail at a very high rate (86 percent) when employer neutrality was paired with card-check authorization.

**This is an issue to watch closely.**

## Look North

For a glimpse of the future in U.S. labor relations, look north of the 49th parallel. According to Richard M. Reice and Christopher Berner, writing in the *National Law Journal*, “American unions hope that the labor landscape will begin to look more like that of Canada, where card-check recognition is standard and the percentage of unionized employees is between 32 percent and 35 percent.” In fact, Canadian law requires union certification upon a showing of signed authorization cards from a majority of employees, clearly a leading reason why unions succeed at a 91 percent rate in Canada. The cornerstone of the union agenda in Washington is new legislation to change the rules governing organizing campaigns. To increase their chances of prevailing, unions are backing a bill to make secret ballot elections illegal. Instead, employers would be required to recognize a union based on a simple show of signed cards. This bill, euphemistically-titled the “Employee Free-Choice Act,” has quietly garnered significant support among pro-labor lawmakers. The U.S. House of Representatives’ version, H.R. 1696, was introduced by Education and Workforce Committee ranking member Rep. George Miller (D-Calif.) and it currently has 213 cosponsors. Companion legislation from the senior Democrat on the Senate Health, Education, Labor and Pensions Committee, Edward Kennedy (D-Mass.), has 42 Senate cosponsors. While immediate action on the “Employee Free Choice Act” is not

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# The most common tactics being deployed by organized labor

## Card Check.

Traditionally, secret-ballot elections have been the primary method to determine if employees wish to be represented by a labor union. The National Labor Relations Act allows an employer to voluntarily recognize the union as long as union authorization cards have been signed by a majority of employees. Unions view elections, which are conducted by the National Labor Relations Board, as an obstacle to their ability to organize efficiently, and would strongly prefer employers to recognize a union on the basis of signed cards alone. Employers and employees often find a secret ballot is more protective of an employee's rights because the decision about supporting the union can be made outside of pressure from either the union or the employer.

## Corporate Campaigns.

Across the country, unions are engaged in a number of highly-aggressive "corporate campaigns" against high-profile employers. Corporate campaigns pose a particular threat to many franchise businesses because these businesses

frequently represent prominent national brands. The pernicious tactics are a form of "total war" that can often include things such as organizing consumer boycotts, rallies or picket lines; an Internet-based public relations campaign, legislative initiatives at the state or federal level; serious accusations of violations labor (or other) laws and pressure campaigns from prominent public figures or religious leaders. Wal-Mart has long been a target of such a comprehensive corporate campaign, and unions have deployed all of these tactics against the nation's largest retailer in their efforts to weaken Wal-Mart's resolve. In another prominent campaign, Sutter Health Care has been the focus of efforts by Local 250 of the Service Employees International Union for almost 10 years. Over the course of that period, the company has faced orchestrated inquiries from the IRS, the Department of Defense, the Department of Health and Human Services, the Health Care Finance Administration, the Federal Trade Commission and the National Labor Relations Board (multiple unfair labor practice claims), as well as many more at the state and local level.

## Neutrality Agreements.

Unions seek neutrality agreements because the tactic allows them to persuade employees to endorse a union without tangible opposition from employers. Neutrality agreements can take many forms. Frequently, an employer will simply make a commitment to accept a majority of signed cards in place of a secret ballot election; but these arrangements can also include many other provisions that make it easier for the union to succeed. These additional accommodations often come at the expense of employees' rights, and they can include such things as providing the union with a list of names and addresses of employees; granting the union access to the worksite to distribute materials and speak with employees; and restrictions on employer dialogue with employees about the union. Experience has also shown that organizing efforts are much more successful when a card-check campaign is combined with a neutrality agreement. ■

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likely, it is fair to expect that Congress would consider these bills early in the next session if pro-labor candidates take control of the House and Senate in the November elections.

## IFA Endorses Norwood Bill

The International Franchise Association has endorsed a competing bill which will strengthen employee protections by requiring secret ballot elections before a union can be recognized. This bill, the Secret Ballot Protection Act, has been introduced by Rep. Charlie Norwood (R-Ga.), chairman of the Workforce Protections Subcommittee of the House Committee on Education and the Workforce. H.R. 874 would make it an unfair labor practice for an employer to recognize a union without the use of a secret-ballot election. The Norwood bill has been endorsed by more than 80

members of Congress, and IFA and a coalition of trade groups are working to educate the House and Senate about the need to protect employee rights through the secret ballot.

For franchised businesses, this is an issue to watch closely. Not only are franchised businesses much more common in the service sector, but these businesses typically represent highly-visible national brands. These businesses have also been among the hardest for unions to organize, but as these new aggressive tactics demonstrate, the battlefield may be shifting. ■

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## WHAT THE MEDIA IS SAYING

### Orange County Register

## Economic Census to cover franchising

"While the number of businesses that use franchising as a method of distributing their products and services has steadily increased since the 1950s, there has been very little broad-scale economic research about this phenomenon," said International Franchise Association President Matthew Shay. ■

### Sacramento Business Journal

## Census sense:

The International Franchise Association says the U.S. Bureau of the Census is on the brink of adding questions about franchising for the bureau's next Census of Business, in 2007. ■