

Anti-union intimidation is real

SARA SLINN - Financial Post

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Last week, commentators from the Fraser Institute took unions to task for supporting what they described as “undemocratic rules” for determining whether a union will be certified to represent a group of workers (Unions’ democracy talk is hot air, Jason Clemens and Keith Godin, Nov. 29). They argued against card-based certification and in favour of mandatory representation votes.

Unions strongly agree with the commentators’ view that it is important for employees to be able to decide, free from coercion, whether or not to be represented by a union. The disagreement arises over how this is to be done: through card-signing or mandatory votes.

Canadian labour legislation includes two certification procedures intended to measure employee support for unionization: card-based and mandatory vote procedures. The first step is the same for both: Employee support for unionizing is measured by tallying the number of union membership cards signed by employees. Under the card procedure (applying to employees under the federal jurisdiction, and in Saskatchewan, Manitoba, Quebec, New Brunswick and Prince Edward Island), the union is generally certified without a vote if it produces signed cards from a statutorily defined minimum proportion of the employees (ranging from 50% plus one to 65%).

Under the mandatory vote procedure (applying in British Columbia, Alberta, Ontario, Nova Scotia and Newfoundland) cards are used to determine whether there is enough employee support for a representation vote to be held. If the statutory minimum is met (ranging from 25% to 50% plus one), the union will usually be certified if a majority of employees casting ballots vote for the union.

Both procedures have strengths. Both also have weaknesses. The question of whether the card-based or mandatory vote procedure is “better” is really a question of which more accurately reflects employees’ true wishes about union representation.

The commentators suggested that mandatory representation elections are the solution to determining true employee wishes about unionization. Instead, votes simply introduce different problems than do cards. Votes are not secret or anonymous, and they encourage employers to interfere with employee free choice.

Too much can be made of what the commentators describe as “secret ballot voting in an anonymous manner.” Employees are not free from the scrutiny of the employer, other employees, or the union during representation votes. These votes are held in the workplace, with the employer and union present. Results, including the number of ballots cast for and against the union, are made public. Particularly in smaller workplaces, not only is it apparent who voted, but employers and others can draw conclusions (correct or not) about how an employee voted. Therefore, the secrecy or anonymity of a “secret ballot” should not be overstated.

The commentators argued that the card procedure gives unions an unfair advantage: Employees may feel uncomfortable declining when asked to sign a card. This is a well-recognized weakness of the card procedure.

The strength of the card procedure is that, because it happens so quickly, it provides less opportunity for employer interference and coercion of employees than does the vote procedure. Votes provide a period of

several days, between the cards being submitted and the election, for employers to try to discourage employees from voting for the union. This is a near-irresistible opportunity for employers, which invites interference.

Most academic studies find that employer anti-union tactics are both widespread and effective. A survey of managers at Canadian workplaces where union organizing had recently occurred found 94% used anti-union tactics, and 12% admitted to using what they believed to be illegal, unfair labour practices to discourage employees from unionizing.

The commentators cited academic research showing that introduction of mandatory vote procedures significantly reduce the probability of certification. They suggested that mandatory votes remove this imbalance, and thus fewer certifications result. The commentators implied this was because of a weakness of the card system. However, we must be very careful about making such an assumption.

Academic research, including one of the studies referred to by the commentators, suggests a different explanation. It suggests that the explanation lies in the advantage votes give to employer anti-union efforts. Unionization is less likely under mandatory votes because employers are encouraged to resist unionization and research shows that these union-avoidance efforts (legal and illegal) are more effective under the vote than card system.

In sum, the choice of certification procedure is complicated and often subject to heated ideological argument, rather than rational debate. The real debate should be about how to design a better procedure to achieve our common goal: allowing employees to freely choose whether to have union representation.

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