



**TESTIMONY OF  
CONNECTICUT HOSPITAL ASSOCIATION  
SUBMITTED TO THE  
LABOR AND PUBLIC EMPLOYEES COMMITTEE  
Tuesday, March 3, 2009**

**HB 6534, An Act Concerning Labor Union Authorization Card Checks**

The Connecticut Hospital Association (CHA) appreciates the opportunity to submit testimony on **HB 6534, An Act Concerning Labor Union Authorization Card Checks.**

HB 6534 would require employers to recognize a union if it can demonstrate majority support through authorization cards verified by an agent of the Connecticut State Board of Labor Relations (the board), as long as the board has provided the parties with an opportunity to file briefs regarding the certification and it has conducted a hearing. Failure to bargain with a union certified pursuant to HB 6534 would be an unfair labor practice under section 31-105 of the Connecticut General Statutes.

If passed, HB 6534 would be preempted, and therefore invalid, because it would establish standards inconsistent with the substantive requirements of the National Labor Relations Act (NLRA). The NLRA provides for a formal process for employees to select and reject their bargaining representatives through secret ballot elections conducted by the National Labor Relations Board (NLHB). The NLRA also provides the NLHB with the authority to address unfair labor practices, including union organizers' access to private property and any disputes arising out of interference with an employee's exercise of his or her right to determine union representation. Not only does HB 6534 seek to eviscerate federal labor relations policy by denying employees a secret ballot election, which has been the hallmark of federal labor relations policy for nearly seven decades, it impermissibly attempts to grab federal jurisdiction from the NLHB and give it to the board. If HB 6534 is enacted, it will no doubt be challenged, injunctive relief will be granted, lengthy and costly litigation will follow, and it will be thrown out.

Further, HB 6534 would effectively ban secret ballot elections for a system that would not adequately protect employees' right to choose or reject union representation freely and without coercion. Workers sometimes sign union authorization cards, not because they intend to vote for the union in an election, but to avoid offending the person who asks them to sign, often a fellow worker, or simply to get the person off their back. In fact, one study found that 18 % of workers signing authorization cards did not want union representation at the time they signed, which means that sometimes a union that does not truly enjoy majority support may be certified. Moreover, in some instances it may take a union over a year to collect cards supporting its claim of majority, and during such an extended period of time workers can and do change their minds about union representation. Thus, it is unquestionable that secret ballot elections supervised by the federal government are superior to a system relying solely on the legitimacy of cards that are signed in the presence of an interested party – generally a pro-union worker or a union organizer. Indeed, the Supreme Court of the United States has expressed its view that a card check is an inferior process to secret ballot elections, and the NLHB and the many federal appellate courts that have examined the issue share this view.

There are very few decisions that an employee makes about his or her job that are more important than whether to be represented by a union, and employees should have the right to be informed. Because card signing can occur quickly and secretly, it is possible that a union will achieve the 51% necessary for recognition before the employer or employees opposed to unionization have an opportunity to communicate meaningfully with their employees and co-workers about unionization on issues such as a union's history on strikes, dues, fees, fines, assessments, and other obligations of membership. Further, because there would be no reason for card signing to continue after recognition has been achieved at 51%, it is probable that a large percentage of affected employees, possibly as high as 49% percent (and certainly those employees perceived by the union as disinterested or pro-company), would never be given the opportunity to express a personal choice one way or the other before being compelled to accept union representation.

Stated simply, it is wrong and unfair to take employers out of the mix and deprive them of their right to communicate with their employees, a right protected by Section 8(c) of the NLRA. Imagine if the challenger in a political election could campaign and poll the electorate without the incumbent's knowledge, wait until the polls show that the challenger has majority support, and then demand the office without an election. HB 6534 would do a very similar thing.

Also, there is no need to bypass the NLHB, as this bill attempts to do, because the NLHB is not ineffective as unions argue. For fiscal year 2008, there were 2,085 NLHB elections held; unions won approximately 63% of these elections, which has been a fairly consistent number over the last 40 years. For fiscal year 2008, 95.1% of all initial representation elections were conducted within 56 days, with a median time period of 38 days from the filing of the petition until the election, four days less than the NLHB's target median of 42 days.

It is important to note that mandatory recognition through card checks is something that unions want, but is not universally supported by their members. In June 2004, Zogby International conducted interviews with 703 union members chosen at random from a Zogby database of self-identified union households nationwide. The margin of error is  $\pm 3.8$  percentage points. When asked whether workers should have the right to vote on whether they wish to belong to a union, 84% said yes. When asked whether the current secret-ballot process is fair, 71% said it was. When asked whether Congress should keep the existing secret-ballot election process for union membership, or whether Congress should replace it with another process that is less private, 78% said Congress should keep the secret-ballot election.

More recently, in March 2008, the Polling Company, Inc. conducted a nationwide survey of 1,000 adults, and found that 79% of the American people support a worker's right to a federally supervised secret ballot election when deciding whether to organize a union. The margin of error is  $\pm 3.1$  percentage points. Furthermore, because union recognition based on card verification is less desirable than secret ballot union elections, the California Governor vetoed a card check bill in October 2007, and the Hawaii Governor did the same in April 2008.

Some critics of the NLRA have said it should be amended. If they are right, this would be a job for Congress, not the state legislature. In fact, Congress is expected to again consider the Employee Free Choice Act this year, after the Senate did not give the bill final consideration in June 2007, despite the fact that the House had approved the bill in March 2007. HB 6534 should not be enacted to avoid conflicts with whatever card check bill Congress may enact.

Finally, at a time when Connecticut businesses face a dire economic situation, it is simply the wrong time for Connecticut to send an anti-business message that would, with virtual certainty, lead to an even greater loss of jobs.

Thank you for your consideration. For additional information, contact CHA Government Relations at (203) 294-7310.