



# Basic NLRB Procedures Governing Union Organizing\*

Under current federal law, union organizing is governed by the National Labor Relations Act (NLRA) or Taft-Hartley Act. A lot could change in 2009 if the so-called Employee Free Choice Act (EFCA), or “Card Check” bill, is enacted by Congress. This outline summarizes the current law and explains how the Card Check bill could dramatically change the rules of union organizing.

## UNION ORGANIZING UNDER CURRENT LAW

Under current law, a union is entitled to recognition as the employees’ bargaining representative only when it has been designated by a majority of the employees in an “appropriate bargaining unit.” Once the union obtains this right to recognition, the employer is required to bargain in good faith with the union over the wages, benefits and all other working conditions of the employees in that bargaining unit.

The following are ways in which the union can achieve recognition of an employer’s workers:

### Voluntary Recognition

#### How Can it Happen?

Voluntary recognition of a union as the bargaining representative of employees can occur if an employer intentionally or unintentionally accepts evidence that a majority of the employees have signed union authorization cards or have in some other way indicated they want the union to be their bargaining representative.

#### What Is the Effect?

Once the employer voluntarily recognizes a union as the collective bargaining representative of its employees, the employer is bound by that act and cannot later refuse to bargain in good faith with the union.



For more information, go to [www.abc.org/cardcheck](http://www.abc.org/cardcheck)

\* Not legal advice or opinion. Employers should obtain such advice based upon individual facts before communicating with employees on issues relating to unions.

## **Must an Employer Recognize a Union That Offers Evidence That a Majority of the Employees Have Signed Cards?**

No. Under current law, an employer is not required by law to voluntarily recognize a union, even if the union offers to submit evidence that the majority of employees want it to be their representative. The employer can refuse to look at such evidence and insist that it has a “good faith doubt” about whether the majority of its employees want the union. In that case, so long as the employer does not engage in serious unfair labor practices the union’s only alternative is to seek a secret ballot election conducted by the National Labor Relations Board (NLRB.)

(This election process is discussed below.)

## **What is a “Pre-Hire” Agreement in the Construction Industry?**

Under Section 8(f) of the NLRA, construction industry employers are allowed to voluntarily recognize unions regardless of whether the union represents a majority of the employer’s employees, or even before any employees are hired. Under this type of arrangement, an employer is bound to the “pre-hire” agreement signed with a union for the length of the agreement only, and can repudiate the agreement and the bargaining relationship at the end of the agreement’s term.

## **Formal NLRB Election Proceedings**

As stated above, under current law, even if the union has obtained authorization cards from a majority of the employees designating the union as their bargaining representative, the employer may nevertheless refuse to recognize the union. While the union could then try to pressure the employer to recognize it without an election, through recognitional picketing or calling the employees out on strike, this rarely happens. In most cases, the union will seek a secret ballot election conducted by the NLRB.

## **How Does the Union Get an NLRB Election Under Current Law?**

If the union wants the NLRB to hold a secret ballot election among the employees to prove its majority status, the union must file a petition with the NLRB. In order to file a petition, the union must provide the NLRB with union authorization cards or other evidence that at least 30% of the employees have indicated they want the union to represent them. (As a practical matter, union organizers usually do not file petitions with the NLRB until they have a majority of the employees signed up. The general thinking on their part is that they ought to have a “solid” base of support as evidenced by signatures from a majority of unit employees before going to the NLRB.)

## **Does the Union Always Get an Election if It Files a Petition?**

The union will not automatically obtain an election just by filing a petition with the NLRB. There may be legal issues concerning the right of the union to have an election at all concerning who is eligible to vote in the election (i.e., what is the “appropriate unit of employees”). If such issues exist, a formal hearing generally will be held on these questions. You should meet with your labor counsel as soon as possible after receipt of a petition for an election in order to identify all legal issues that should be resolved through the formal hearing process if necessary.

## When, Where and How Are These Elections Held?

Assuming the NLRB does not find a basis for dismissing the union petition, it will direct that a secret ballot election among the employees in the “appropriate unit” be held at a specified time and place—usually at the employer’s place of business. The NLRB will officiate the election.

Normally, there will be at least 42 days between the date the union petition is filed with the NLRB and the date of the election. There may be much more time between petition and election if substantial legal issues are raised during a formal NLRB hearing on the petition. Employers that wish to maintain their non-union status should use this time to try to convince the employees that they do not need a union.

## How Many Votes Does the Union Have to Get to Win the Election?

In order to win the election, the union must obtain the votes of a simple majority of the eligible voters who cast ballots. Either the union or the employer can exercise the right to object to the results of the election on the grounds that it was not conducted fairly or that unlawful activity by the victor occurred before or during the election.

## What Are the Advantages of an NLRB Election?

The secret ballot election has the advantage of providing employers with time to tell employees about the other side of the “union label,” and it ensures that employee choices will be made in an atmosphere free of the type of coercion that typically occurs when the union attempts to get employees to sign union authorization cards. Employees frequently sign these authorization cards just to get rid of bothersome or bullying union organizers. Statistics show, moreover, that unions that have secured a showing of interest through signed union authorization cards—even from as many as 50% or more of the employees—very often lose secret ballot elections when the employees have a free secret choice and the employer has taken the time to show employees the “other side of the union label.”

## What Happens if the Union Wins the NLRB Election?

Assuming no objections are filed to the conduct of the election, a union that wins an NLRB election wins the right to bargain in good faith with the employer. Nothing more. In particular, the current law is clear that no employer can be forced by the government to accept any particular union demand. The employer must bargain in good faith, however, in a sincere effort to reach agreement.



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