

## **Logistics News: Card Check Appears Dead for Now, but Coming Back in Another Guise that May Lead to Same Result**

### **Distribution Centers May Still Require Secret Ballot to Organize, but Other Provisions Opposed by Business Likely to Return in Passable Bill**

**Cliff Holste, Materials Handling Editor**

The controversial "card check" legislation as originally proposed seems to be dead for now, as six Democratic Senators signaled their opposition last week. However, distribution managers can't breathe too big of a sigh of relief, as it appears negotiations are under way to introduce a bill that keeps the secret ballot for unionization, but adds several other provisions aggressively sought by labor that may lead to the same outcomes.

The Employee Free Choice Act (EFCA) was originally written to enable a place of employment (distribution center, factory, or retail store) to form a union if more than 50% of employees signed a card indicating their support for organizing, replacing the secret ballot that has previously been required. Business groups have objected that this would lead to peer and other pressure that would cause workers against unionization to sign the cards anyways.

Business lobbying against the bill has been fierce. With the prospect of the original bill's passage, many companies fearing a card check drive at their distribution centers have hired consultants to prepare for anti-union counterefforts – and also started to ponder moves such as outsourcing distribution and/or increasing their level of DC automation. (See [Is Your Distribution Management Team Preparing for Card Check Law Potential?](#))

Last week, however, The New York Times reported that six Democrats, led by Iowa Sen. Tom Harkin, agreed to scrap the so-called card-check provision in the bill to win a filibuster-proof 60 votes from moderate members of their own party.

While eliminating the direct card check unionization

***While eliminating the direct card check unionization provision, employers should not think their concerns are over. The price for this compromise may also be steep.***

---

provision, employers should not think their concerns are over. The price for this compromise may also be steep.

One change being considered would slash the time for an organizing vote, requiring that it be held within five or 10 days after 30% of workers had signed cards asking for a union. The median time for such a vote today is 38 days, and in practice several months often pass before a vote is held. Labor wants to accelerate the time for a vote because support for a union tends to decline as companies have more time to conduct an education program – programs unions argue are unfair.

The Times says other changes may include requiring employers to give union organizers access to company property, and barring employers from requiring workers to attend anti-union sessions, as they can do currently.

The latter provision could be especially powerful, as, like card check, it would involve a public manifestation of sorts of an employee's support for the union or not. Many who may actually want to go to the "educational" sessions may not if there is

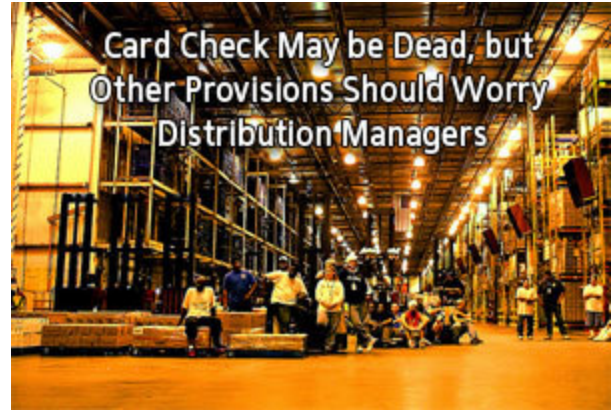
## Logistics News: Card Check Appears Dead for Now, but Coming Back in Another Guise that May Lead to Same Result (Con't)

strong pressure from organizers or peers to avoid the meetings.

Finally, it appears a revised bill would maintain another provision that is anathema to business – the potential for binding federal arbitration to impose a contract on both sides if a contract cannot be reached after 90 of a union being formed.

Today, the process can often drag on for months and years. According to Cornell University labor researcher **Kate Bronfenbrenner**, one-third of new unions still lack a contract one year after organizing.

The elimination of the “secret ballot” was a touchstone issue that caused many Democrats



to balk at voting for the EFCA. If that element is removed, the bill is likely to move forward – the question then becomes what the impact the revised EFCA would really have in the workplace.