

UNION RECERTIFICATION

Workplace democracy for less than the price of a cup of coffee

F. Vincent Vernuccio

UNION RECERTIFICATION – GIVING WORKERS A CHOICE

Most union members have never had a say in which union represents them in their workplace. This is because once a union is certified, it normally maintains that certification indefinitely. When new employees start on the job, they are simply given a union card and told which union is representing them – they have no voice in the matter.

Research from James Sherk, research fellow in labor economics at The Heritage Foundation, shows that the vast majority of union members have never voted for which union would represent them in the workplace. Only 7 percent of private sector union members were employed when their union was organized. The other 93 percent simply “inherited” their unions.

Even fewer public sector union members have had a say in which union represents them. Since most government unions organized in the 1960s and ‘70s, few, if any, of the public employees who voted for those unions are still on the job. In Florida and Michigan, for example, just 1 percent of teachers in the 10 largest school districts were employed when their union was organized.

In the Ann Arbor, Detroit and Grand Rapids school districts there are likely no current teachers who voted for the unions that operate there, since these unions were organized in 1965. Further, if the age distribution of teachers in these districts mirrors that of the state as a whole, nearly 75 percent of the teachers working in these districts would not have even been born when the union in their workplace was certified.

To improve workers’ ability to choose the best representative at their workplace, unionized employees should be empowered to choose on a regular basis which union, if any, should be granted the privilege to represent them. This would require unions to hold annual or biennial certification elections.

Wisconsin recently enacted legislation to this effect: Many public sector employees get to vote for their union representation every year. According to John Wright, a labor policy researcher at the Show-Me Institute in Missouri, the cost of Wisconsin’s annual recertification process averages just \$1.50 per voter. The cost is paid by the union via filing fees; it costs taxpayers nothing. For less than the price of a cup of coffee, Wisconsin has given union members a meaningful voice.

RECOMMENDATIONS:

- Give unionized workers (members and nonmembers) the right to regularly vote on which union will be their representative, either every year or every other year.
- Use a secret ballot or similarly private voting process to protect both workers’ privacy and the integrity of the election.
- Require that unions win support from a majority of all the workers in the bargaining unit to remain the exclusive representative in the workplace, not simply a majority of those voting.

FREQUENTLY ASKED QUESTIONS

HOW WOULD THE PROCESS WORK?

Wisconsin provides a guide here. The following is an example of how recertification works in Wisconsin. The 2011 Budget Repair Bill laid the ground work for recertification, but much of the process was created by administrative regulations. However, the entire process could be codified into statute.

- Workers have the right to annually recertify their union.
- The process is contracted to the American Arbitration Association and overseen by the Wisconsin Employment Relations Commission.
- Voting takes place via telephone over a 20-day period.
- To win re-election the union must receive votes from a majority of the bargaining unit (not just those voting in the election). This includes all workers covered by the contract, not just union members.
- If the union fails to obtain votes from a majority of the unit, the commission decertifies the union and the same union or a “substantially similar collective bargaining unit” cannot try to organize the workers for another 12 months.

HOW MUCH WILL IT COST?

Workplace democracy costs less than the price of a cup of coffee and costs taxpayers nothing. In Wisconsin the cost is about \$1.50 per voter, which is paid for by unions. The cost varies depending on the size of the union – smaller unions pay less

per voter, because the state’s filing fee is based on a sliding scale. In the Show-Me Institute’s “The Low Cost of Labor Reform,” labor policy researcher John Wright provides recommendations that could reduce the cost to as little as 9 cents per vote.

WHY DO WORKERS IN RIGHT-TO-WORK STATES NEED REGULAR RECERTIFICATION ELECTIONS?

Workers in right-to-work states do not need to pay a union as a condition of employment. But because unions have a monopoly on worker representation, they speak for every employee, regardless of membership status in the union. This means workers who opt out of union membership are still forced to accept representation from a union they almost certainly did not elect.

Unionized employees should have the power to pick who gets the privilege of representing them. Requiring unions to hold regular certification elections provides all employees a voice in deciding who is best-suited to represent their interests.

DON'T UNION MEMBERS ALREADY ELECT THEIR UNION OFFICERS? ISN'T THAT ENOUGH DEMOCRATIC ACCOUNTABILITY?

Union members do vote for their officers, but in many cases, the election is a forgone conclusion by the time members actually vote. Take for example the “election” of UAW officers. No UAW president has been elected since 1970 who was not endorsed by the union’s powerful Reuther Caucus. In fact, TIME magazine describes UAW officials as being “picked” rather than elected.

Additionally, workers who have opted out of union membership are not allowed to vote in officer elections or for their contracts. These workers have no say in who is going to run the unions that they are required to accept representation from.

WHY CAN'T UNION MEMBERS VOTE OUT AN UNWANTED UNION?

This requires decertifying a union, and although it is possible, the deck is severely stacked against union members who want to pursue this option. In order to decertify a union, workers must get at least one-third of their coworkers to sign a petition to hold an election, and then the workers must receive a majority of the votes to decertify.

This process is not as easy as it sounds. Workers typically can only exercise this option during a narrow 30-day window after the union contract has expired or every three years, whichever comes first. The employer may not help the workers with this process at all, but unions can and often do spend large sums of money to squash the effort. The union brings years of organizing experience and legal resources to bolster their effort, creating a David versus Goliath affair. The union can even levy fines or bring other disciplinary actions against union members who attempt to decertify.

WILL UNIONS BENEFIT FROM RECERTIFICATION?

Yes, union recertification will force unions to compete and possibly enable less-established unions to gain new members.

Competition between firms yields better products and services for consumers. When unions compete, workers will be the beneficiaries of better representation and service. Union recertification will also help level the playing field for new or smaller unions that may be able to provide better representation, but rarely get the chance to organize a new workplace.

CAN UNION RECERTIFICATION APPLY TO BOTH PUBLIC AND PRIVATE SECTOR UNIONS?

Because of federal pre-emption, state Legislatures only have control over unionization policies in

the public sector. Right-to-work is an exception because federal law gives states the ability to establish that right for private sector employees. Therefore, state legislators can only give public employees the right to regular recertification elections. Congress would need to pass federal legislation, such as the Employee Rights Act, to provide the same right to private sector union members.



F. Vincent Vernuccio is labor policy director at the Mackinac Center for Public Policy. He is a graduate of the Ave Maria School of Law and has served as a special assistant in the U.S. Department of Labor. He has published op-eds in such newspapers as *The Wall Street Journal*, *Investor's Business Daily*, *National Review* and *The American Spectator*, and has appeared on state and national television news programs regarding labor issues.

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UNION RECERTIFICATION MODEL LEGISLATION

No existing **[collective bargaining representative/exclusive representative]** as defined in **[labor statute]** shall continue to represent **[public employees]** in a unit without the concurrence of a majority of all **[public employees]** in the unit.

1. The **[board/commission]** shall direct a secret ballot election to certify the existing **[collective bargaining representative/exclusive representative]** retains support of a majority of all **[public employees]** in the unit.
 - a. The **[board/commission]** shall promulgate rules to preserve the purity of elections and to preserve the secrecy of the ballot.
 - i. The **[board/commission]** shall determine whether elections shall be conducted in person, by mail, by telephone, by internet-based systems or by any other means determined by the **[board/commission]** to be fair, confidential and reliable. The board shall allow represented **[public employees]** to cast ballots for a period of **[seven days/time prescribed in labor statute.]**
 - ii. The **[board/commission]** may establish a fee schedule from **[collective bargaining representative/exclusive representative]** participating in elections conducted under this section for the purpose of funding the elections.
 - b. Should the existing **[collective bargaining representative/exclusive representative]** receive votes from a majority of all **[public employees]** in the unit, the pre-existing certification shall continue. If the existing

[collective bargaining representative/exclusive representative] fails to receive votes from a majority of all **[public employees]** in the unit, the **[board/commission]** shall decertify the **[collective bargaining representative/exclusive representative]** and the **[public employees]** shall be unrepresented.

- c. In the event of a termination of certification, the terms of any pre-existing contract between the **[collective bargaining representative/exclusive representative]** and the **[public employer]** shall continue and remain in effect for the remaining contract term except for any provisions involving, in any manner, the **[collective bargaining representative/exclusive representative]**, including but not limited to, union security, dues and fees, and grievance and arbitration.
2. **[Public employees]** may certify a new **[collective bargaining representative/exclusive representative]** in accordance with **[labor statute]** so long as the **[public employees]** are not included with a substantially similar or affiliated **[labor organization or bargaining representative]** to the decertified **[labor organization or bargaining representative]** for 12 months from the date of decertification.
3. The **[board/commission]** shall start directing elections to certify majority support of existing **[collective bargaining representative/exclusive representative]** not less than two and not more than three years after the effective date of this act and every even numbered year thereafter; elections shall occur no earlier than August 1 and no later than December 1.