Majority Voting Rules and the Union Success Rate in National Labor Relations Board Representation Elections

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This paper simulates how the union success rate in representation elections would be affected if the NLRB reverted from its current simple-majority voting rule to its original majority-in-unit voting rule. Such a rule change would have altered 21 percent of decertification and 16 percent of certification victories over the period 1977-81, resulting in the loss of 180,400 actual or potential bargaining unit members for the union movement. Abstentions play an important role in election outcomes. Under the present voting rule unions have no clear advantage to "get out the vote" in decertification elections, but a clear disadvantage in certification elections. Under a majority-in-unit rule unions hold an advantage when they "get out the vote" in all representation elections.

I. Introduction

Legislative changes can have a significant impact on the growth of union membership. During the 1930s, a surge of union growth followed the enactment of the Norris-LaGuardia Act (1932), which ended the injunction as a primary anti-union legal weapon, and the Wagner Act (1935), which encouraged and aided union organizing by placing various restrictions on employers (Davey, Bognanno, and Estenson, 1982; Gregory and Katz, 1979). In contrast, the Taft-Hartley Act (1947) is often considered "the prime deterrent to labor's efforts to maintain [in the post-war era] the growth patterns . . . of the first half of the twentieth century" (Spielman, 1962). Section 7 of the Act gave employees the right to refrain from forming and joining unions, and Section 14(b) gave state right-to-work laws exempt status from the general rule of federal pre-emption in regulating labor relations. Recent studies, however, have found that the effects of right-to-work laws on membership growth are insignificant (Wessels, 1981) and that the economic behavior of local trade unions is independent of right-to-work laws (Bennett and Johnson, 1980).

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It has also been argued that the Landrum-Griffin Act (1959) ushered in increased internal union democracy, which led some rank-and-file members to exercise their new-found independence by decertifying their bargaining agent (Anderson, O'Reilly, and Busman, 1980). Ahlburg and Dworkin (1984), however, found no statistical support for this argument.

Recently, Pegnetter (1980) looked at another aspect of labor legislation; namely, the impact of a majority-in-unit voting rule on certification election outcomes. He found no evidence that a change in the Iowa Public Employment Relations Act (1975-76), which replaced a simple majority-vote with a majority-in-unit voting regulation, had a negative effect on union election success. The majority-in-unit rule was originally employed by the National Labor Relations Board (NLRB), and the simple majority-vote rule is currently used. This paper focuses on the application of a majority-in-unit voting rule to private sector representation elections and arrives at the opposite conclusion: a majority-in-unit voting rule significantly increases the union loss rate.

II. Evolution of the Majority Concept

Section 9(a) of the National Labor Relations Act states that "representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes shall be the exclusive representatives of all the employees in such a unit for the purposes of collective bargaining..." (emphasis added). The NLRB originally interpreted the Act as requiring a majority of all eligible voters in a unit for certification. On July 1, 1936, however, the Fourth U.S. Circuit Court of Appeals in Virginia Railway Co. v. System Federation No. 40, ruled that a majority of votes cast in an election, provided that a majority of eligible voters participated, was sufficient for certification. The NLRB quickly adopted this interpretation as being "fair and just to all parties... and prevents the breaking down of the plan of collective bargaining which it was the purpose of the Act to set up."

This interpretation stood for only a short time. In the Matter of RCA Manufacturing Company, the Board adopted a third definition of majority: "the organization receiving a majority of votes cast is to be certified as the exclusive representative" (emphasis added). The Board adopted this interpretation at least partly because, under the first two rules, minority organizations could keep enough employees from participating in the election to thwart certification either