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# Understanding Card-Check Organizing: The Public Sector Experience

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## **Understanding Card-Check Organizing: The Public Sector Experience**

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## Understanding Card-Check Organizing: The Public Sector Experience

RAFAEL GELY\* and TIMOTHY CHANDLER\*\*

### ABSTRACT

*The use of “card checks” as a method of union organizing has recently garnered considerable attention, much of it surrounding the proposed Employee Free Choice Act. The proposed legislation seeks to amend the National Labor Relations Act by requiring employers to recognize a union when the employer is presented with evidence of majority support for union recognition via card checks. Despite this recent interest in card checks, there is little empirical research on the topic due, in part, to the lack of available data. Although card-check organizing in the private sector is not rare, such organizing is voluntary, and does not require government approval. Thus, there is little data chronicling the frequency of such events. However, card-check legislation has become increasingly common among public employees at the state and local levels. In this article, we draw upon the public sector experience to help fill the gap in our understanding of card-check organizing. In particular, the article explores card-check organizing by public sector employees in Illinois which has allowed card-check organizing since 1983, but which in 2003 amended its statute to require employers to recognize unions on the basis of card checks, and Ohio which also has allowed card-check recognition to occur since 1983, but has not passed legislation requiring card-check recognition. An analysis of public sector organizing activity in Illinois before and after the law was changed, allows us to identify the effects of changes in the law and to explore the possible implications in other contexts. Moreover, by comparing the Illinois’ experience to that of Ohio, we can more fully understand the extent to which both the presence and absence of card check legislation may have affected organizing activity. The experience of these two states provides us with a natural experiment on the effects of public sector card check legislation on organizing activity.*

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*We use data collected from state labor relations agencies in Illinois and Ohio to examine the overall levels and patterns of organizing activity in both states during the period under study (1998-2008), as well as specific contextual conditions associated with organizing activity in the two states. Our data show that in Ohio, where card-check recognition is voluntary, elections run by the state labor agency have been the predominant means of organizing new members. That was also the case in Illinois until 2003, when mandatory card-check legislation was enacted. Since then, the overwhelming majority of organizing has occurred via the mandatory card-check provision. Moreover, cross-sectional (i.e., Illinois and Ohio) and time-series (i.e., pre and post card check legislation in Illinois) comparisons of various contextual characteristics associated with organizing activity provide a more complete picture of the effects of the Illinois' legislation. For part of our analysis, we use a methodological technique known as Qualitative Comparative Analysis ("QCA") to identify combinations of conditions that are distinctively associated with the use of either card-checks or elections. We find that the Illinois' legislation not only facilitated the ability of unions to organize, but also that unions responded by shifting to card checks as their primary means of organizing under certain contextual conditions and by expanding their organizing activity into different contexts.*

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## I. INTRODUCTION

Union organizing via card-check recognition has garnered considerable attention, much of it surrounding the proposed Employee Free Choice Act (“EFCA”).<sup>1</sup> If passed into law, the EFCA will amend the National Labor Relations Act (“NLRA”)<sup>2</sup> by requiring employers to recognize a union when the employer is presented with evidence of majority support for union recognition via card check.<sup>3</sup> The EFCA represents a significant departure from the NLRA, which currently allows for card-check organizing based only on voluntary acquiescence of the employer, an unlikely event given the strident opposition to unions by U.S. employers.<sup>4</sup> Proponents of the legislation contend that the current system, which relies on organizing via elections conducted by the National Labor

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<sup>1</sup> For the most recent version of the EFCA see H.R. 1409, 111<sup>th</sup> Cong. (2009) and S. 560, 111<sup>th</sup> Cong. (2009). Similar bills had been introduced in three previous congressional sessions. See Bruno, et al., *Majority Authorizations and Union Organizing in the Public Sector: A Four-State Perspective* (May 14, 2009). Available at: <http://www.ler.illinois.edu/labor/images/Multi-State%20EFCA%20Report.pdf> (last visited Dec. 15, 2009).

<sup>2</sup> Pub. L. No. 74-198, 49 Stat. 449 (1935) (codified as amended at 29 U.S.C. §§ 151-169 (2000)).

<sup>3</sup> H.R. 1409, 111<sup>th</sup> Cong. § 2 (2009) and S. 560, 111<sup>th</sup> Cong. § 2 (2009). The EFCA requires the NLRB to develop model authorization language and procedures for establishing the validity of signed authorization cards. The EFCA also provides stronger penalties for employers’ violations occurring while employees are attempting to form a union or attain a first contract. H.R. 1409, 111<sup>th</sup> Cong. §§ 10, 12 (2009) and S. 560, 111<sup>th</sup> Cong. § 10, 12 (2009). The proposed amendments provide for civil fines up to \$20,000 per violation against employers found to have willfully or repeatedly violated employees’ rights during an organizing campaign or first contract drive. The EFCA also increases the amount an employer is required to pay when an employee is discharged or discriminated against during an organizing campaign or first contract drive to three times back pay. Finally, the EFCA requires the Board to seek a federal court injunction against an employer whenever there is reasonable cause to believe the employer has discharged or discriminated against employees, threatened to discharge or discriminate against employees, or engaged in conduct that significantly interferes with employee rights during an organizing or first contract drive. H.R. 1409, 111<sup>th</sup> Cong. § 3 (2009) and S. 560, 111<sup>th</sup> Cong. § 3 (2009).

<sup>4</sup> See Thomas A. Kochan et al., *The Effects of Corporate Strategy and Workplace Innovations on Union Representation*, 39 INDUS. & LAB. REL. REV. 487 (1986) (noting that a significant percentage of employers considered being nonunion their major labor relations goal).

Relations Board (“NLRB”), fails to protect employees’ rights to organize.<sup>5</sup> They note that the current system results in undue delays, fails to deter employers’ illegal practices, and ultimately makes it harder for employees who would prefer to be represented collectively by a union to do so.<sup>6</sup> In contrast, opponents of the bill describe card-check organizing as anathema to basic democratic principles. They argue that card-check organizing will allow unions to coerce employees into unwanted union representation and, thus, that such a system will not protect employees who wish to exercise their true will regarding union representation.<sup>7</sup>

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<sup>5</sup> See Adrienne Eaton & Jill Kriesky, *American Rights At Work, Fact Over Fiction: Opposition to Card Check Doesn’t Add Up* (Mar. 2006) *available at*

<http://www.americanrightsatwork.org/dmdocuments/ARAWReports/IBFactOverFictFinal.pdf> (examining the validity of claims by anti-union groups that card check campaigns leave employees more vulnerable to union pressure than during National Labor Relations Board elections); *see also* Gordon Lafer, *American Rights At Work, Free and Fair?: How Labor Law Fails U.S. Democratic Election Standards* (June 2005) *available at* <http://www.americanrightsatwork.org/dmdocuments/ARAWReports/FreeandFair%20FINAL.pdf> (assessing the extent to which National Labor Relation Board elections embody democratic principles).

<sup>6</sup> Indeed, the labor movement in the United States has long been dissatisfied with the legal framework under which unions operate. *See* Paul F. Clark et al., *Private-Sector Collective Bargaining: Is This the End or a New Beginning?*, in *COLLECTIVE BARGAINING IN THE PRIVATE SECTOR* 1, 8-9 (Paul F. Clark et al., eds. 2002) (discussing the complaints unions have voiced about the current legal framework regulating the collective bargaining process); *see also* Thomas Geoghehan, *WHICH SIDE ARE YOU ON?* 252-56 (1991) (discussing various unions’ concerns regarding existing labor laws). This frustration was illustrated by American Federation of Labor and Congress of Industrial Organizations (“AFL-CIO”) President Lane Kirkland’s statement in the early 1980s suggesting that the National Labor Relations Act (“NLRA”) be repealed, thereby allowing unions and employers to operate within the “law of the jungle.” *See* Cathy Trost & Leonard M. Apcar, *AFL-CIO Chief Calls Labor Laws a ‘Dead Letter’—Kirkland Says the Federation Would ‘Seriously’ Study Repeal of All But the Basic*, *WALL ST. J.*, Aug. 16, 1984, at 8 (noting Kirkland’s frustration with President Reagan’s administration of the NLRA).

<sup>7</sup> *See* Steven Greenhouse, *Employers Sharply Criticize Shift in Unionizing Method to Cards From Elections*, *N.Y. TIMES*, Mar. 11, 2006, at A9 (describing employers’ opposition to the card check process). *See generally* Carl F. Horowitz, *Why Union Card Checks Are Coercive*, Nat’l Legal & Pol’y Center, <http://www.nlpc.org/view.asp?action=viewArticle&aid=1638> (last visited Jan. 02, 2008); James Sherk, *How Union Card Checks Block Workers’ Free Choice*, *Heritage Found.*, Feb. 21, 2007, <http://www.heritage.org/Research/Labor/wm1366.cfm>.

Notwithstanding the increased interest surrounding organizing via card checks, neither the use of card checks, nor legislation granting its use is new to the United States.<sup>8</sup> In the years immediately following the enactment of the NLRA, the Board frequently certified unions on the basis of card-check agreements.<sup>9</sup> During these early years, Board-supervised elections were used primarily in situations where the employer questioned the status of the union as the majority bargaining representative, while the card-check process was the default recognition method.<sup>10</sup> In the mid 1940s, and due to issues of institutional legitimacy,<sup>11</sup> the Board began showing a preference for elections as the primary means of union certification.<sup>12</sup> The shift towards a preference for elections was further solidified when Congress amended the NLRA in 1947.<sup>13</sup> Secret ballot elections became the primary way for the Board to certify a union as the exclusive bargaining representative of a group of employees.<sup>14</sup>

Despite the move toward NLRB supervised elections, card-check recognition has continued to occur when voluntarily approved by employers and there is growing evidence of its popularity in recent years.

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<sup>8</sup> Card check use has been the subject of several recent articles, among them are: James J. Brudney, *Neutrality Agreements and Card Check Recognition: Prospects for Changing Paradigms*, 90 IOWA L. REV. 819, 828-30 (2005); Adrienne E. Eaton & Jill Kriesky, *Union Organizing Under Neutrality and Card Check Agreements*, 55 INDUS. & LAB. REL. REV. 42 (2001) [hereinafter Eaton & Kriesky, *Union Organizing*]; Jennifer Dillard & Joel Dillard, *Fetishizing the Electoral Process: The NLRB's Problematic Embrace of Electoral Formalism* (Working Paper Series, Aug. 24, 2007), available at <http://ssrn.com/abstract=1009636>; Raja Raghunath, *Stacking the Deck: Privileging "Employer Free Choice" Over Industrial Democracy in the Card-Check Debate*, 87 NEB. L. REV. 329 (2008); Benjamin I. Sachs, *Enabling Employee Choice: A Structural Approach to the Rules of Union Organizing*, 123 HARV. L. REV. 655 (2010).

<sup>9</sup> See Brudney, *supra* note 8, at 828-30; Dillard & Dillard, *supra* note 8, at 11.

<sup>10</sup> See Dillard & Dillard, *supra* note 8, at 14.

<sup>11</sup> *Id.* at 16 (arguing that the Board's shift towards preference for secret ballot elections was a move taken in response to challenges to the Board's impartiality and institutional validity).

<sup>12</sup> See *In re Cudahy Packing*, 13 N.L.R.B. 526, 531-32 (1939) (indicating a preference for elections where two unions claimed majority status).

<sup>13</sup> Among the amendments to the NLRA Congress adopted in 1947 was section 9(c)(1)(b) providing that "[i]f the Board finds upon the records of such hearing that such a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof." 29 U.S.C.A. § 159 (c)(1)(b) (West 2000).

<sup>14</sup> See Dillard & Dillard, *supra* note 8, at 18.



Card checks have become a common organizing method, particularly for employees covered under the NLRA.<sup>15</sup> Using reports published by the AFL-CIO, a recent survey finds that between 1998 and 2005 the election process remained the most common method for organizing employees, and that card checks are used most frequently to target employees that fall under the jurisdiction of the NLRA.<sup>16</sup>

In addition to the long established, albeit intermittent, use of card checks in the private sector, card-check organizing has been used for years in the public sector. In New York, card-check organizing has been mandated since 1947.<sup>17</sup> In the last ten years or so a growing number of states have adopted similar provisions either as part of their public sector collective bargaining laws, or by means of executive orders.<sup>18</sup> As of 2009, 9 states mandate recognition via card check for at least some of their employees.<sup>19</sup>

In this article, we draw upon the public sector experience to help fill the gap in our understanding of card-check organizing. In particular, the article explores card-check organizing by public sector employees in Illinois which has allowed card-check organizing since 1983, but which in 2003 amended its statute to require employers to recognize unions on the basis of card checks, and Ohio which also has allowed card-check recognition to occur since 1983, but has not passed legislation requiring card check recognition. An analysis of the Illinois' experience, particularly public sector organizing activity before and after the law was changed, allows us to identify the effects of changes in the law and to explore the possible implications in other contexts. Moreover, by comparing the Illinois' experience to that of Ohio, we can more fully understand the extent to which both the presence and absence of card check legislation may have affected organizing activity. The experience of these two states provides us with a natural experiment on the effects of public sector card check legislation on organizing activity.

This article should be of interest to those seeking to understand not only the dynamics of card-check organizing among public sector employees but, more broadly, the effect of laws pertaining to public sector

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<sup>15</sup> See Rafael Gely & Timothy Chandler, *Card Check Recognition: New House Rules for Union Organizing*, 35 *FORDHAM URBAN L. REV.* 247 (2008).

<sup>16</sup> *Id.*

<sup>17</sup> See William A. Herbert, *The Development and Administration of Non-electoral Labor Certifications in New York*, available at [http://works.bepress.com/william\\_herbert/15/](http://works.bepress.com/william_herbert/15/).

<sup>18</sup> See *infra* note 50 to 61 and accompanying text.

<sup>19</sup> *Id.*

bargaining on the behavior of unions and employers. Over the years, there has been a long running normative debate regarding the desirability of allowing public sector employees to organize and to bargain collectively.<sup>20</sup> That debate has in turn generated an extensive academic literature on the issue of how the legal framework in which public sector unions operate affects their behavior.<sup>21</sup> In this tradition, a study of card-check organizing provides an opportunity to explore how a state's legal framework regarding card-check organizing affects the levels and types of organizing activity among their public sector labor force. For instance, one can explore the extent to which card-check organizing preceded the enactment of legislation mandating public employers to recognize a union on the

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<sup>20</sup> See e.g., Clyde Summers, *Public Employee Bargaining: A Political Perspective*, 83 YALE L. J. 1156 (1973-74); Leo Troy, *Are Municipal Collective Bargaining and Municipal Governance Compatible?*, 5 U. PA. J. LAB. & EMP. L. 453 (2002-03); Martin H. Malin, *The Paradox of Public Sector Labor Law*, 84 IND. L. J. 1369 (2009).

<sup>21</sup> For example, scholars have debated the issue of whether the enactment of comprehensive public sector bargaining laws (i.e., laws protecting public employees to organize and to bargain collectively) are a cause or an effect of high levels of public sector unionism. See Hugh D. Hindman and David B. Patton, *Unionism in State and Local Governments: Ohio and Illinois, 1982-1987*, 33 IND. REL. 106 (1994). On the one hand, one would expect that the enactment of enabling legislation protecting public employees' rights to organize and bargain collectively will be an antecedent of organizing activity. See Gregory Saltzman, *Public Sector Bargaining Laws Really Matter: Evidence From Ohio and Illinois*, in Richard Freeman and Casey Ichniowski (eds.), *WHEN PUBLIC SECTOR WORKERS UNIONIZE*, 41 (1988). On the other hand, unionization among public employees occurred in many jurisdictions prior to the enactment of comprehensive legislation, suggesting that perhaps a necessary condition for the enactment of such laws is the presence of an already unionized body of public employees. See John Burton and Terry Thomasson, *The Extent of Collective Bargaining in the Public Sector*, in Benjamin Aaron, et. al., (eds.), *PUBLIC SECTOR BARGAINING*, 1 (1988).

A similar debate has developed regarding the extent to which the specific content of various public sector bargaining laws affects the behavior of public sector unions and employers. A feature of public sector bargaining laws which varies significantly across, and even within, states is their structures for solving disputes between employers and employees. Some states allow public employees the right to strike, while other states, either ban this right altogether, or do so with respect to some of their employees. See Robert Hebdon, *Public Sector Dispute Resolution in Transition*, in Dale Belman, et. al., *PUBLIC SECTOR EMPLOYMENT IN A TIME OF TRANSITION*, 85 (1996). In some instances, states that prohibit public employee strikes provide for other forms of dispute resolution, such as arbitration, fact finding and mediation. Research has found that prohibitions against strikes by public employees have not completely eliminated strike activity and, in fact, that laws allowing public employees to strike do not appear to have a significant effect on strike incidence. *Id.* at 93.

basis of a showing of majority support through card checks. And one can also examine how the levels, rates, targets and types of organizing activity were affected by the enactment of such legislation. For example, one would likely expect the enactment of card-check legislation to increase the use of card check organizing among labor organizations. However, should the expected increase be equally spread among various types of public sector employers (e.g., city, county and state) and among different types of employees (e.g., clerical, fire, police)? These are some of the issues we address in this article.

This article is also relevant to the debate surrounding the enactment of the EFCA. While there are clearly major differences between the public and private sectors which caution against assuming that the experience in one sector will be replicated in the other, at a very basic level card-check organizing in both sectors involves some similar dynamics. Thus, the developments that follow the enactment of public sector card check legislation might be instructive for those interested in understanding the possible effects of the EFCA.

We proceed as follows. In section II, we briefly describe the legal landscape surrounding public sector bargaining laws, as well as what the various state laws provide with respect to card-check organizing, particularly in Illinois and Ohio.<sup>22</sup>

In the remainder of the article we explore the effects of the Illinois' card-check statute. In section III, and relying on existing theoretical work on the structuring of labor law policy,<sup>23</sup> we identify the likely effects of a card-check statute on the behavior of labor unions.<sup>24</sup> In particular, we expect that the Illinois' card-check statute will result in: an increase in overall organizing activity; increased reliance on card checks as an organizing technique; and an increased ability on the part of unions to expand their organizing targets.

In section IV, we use data collected from state labor relations agencies in Illinois and Ohio to examine the overall levels of organizing activity in both states during the period under study (1998-2008), as well as the extent to which organizing activity was driven by elections as opposed to card check activity. Consistent with prior research, our data show that in Ohio, where card-check recognition is voluntary, elections run by the state labor agency have been the predominant means of organizing new members. That was also the case in Illinois until 2003, when mandatory

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<sup>22</sup> See *infra* notes 32 to 90 and accompanying text.

<sup>23</sup> See Sachs *supra* note 8.

<sup>24</sup> See *infra* notes 91 to 111 and accompanying text.

card-check legislation was enacted. Since then, the overwhelming majority of organizing has occurred via the mandatory card-check provision.<sup>25</sup>

Section V further explores changes in organizing activity resulting from the enactment of card-check legislation in Illinois by comparing organizing activity in Illinois to activity in Ohio before and after the passage of mandatory card-check legislation in Illinois.<sup>26</sup> The cross-sectional (i.e., Illinois and Ohio) and time-series (i.e., pre and post card check legislation in Illinois) comparisons allow a more complete picture of the effects of the Illinois' legislation on the organizing activities of public sector employees. Our objective in this section is to identify the changes that occur in organizing behavior, and also to explore the nature of those changes. For part of our analysis, we use a methodological technique known as Qualitative Comparative Analysis ("QCA").<sup>27</sup> QCA relies on the algebra of logic and sets and can be used to identify combinations of conditions that are distinctively associated with an outcome. In section VI, we briefly describe this methodology and the results we obtained from applying QCA to our data.<sup>28</sup> Several interesting findings emerge from this analysis. For example, we find that the Illinois' legislation not only facilitated the ability of unions to organize, but also that unions responded by expanding their organizing activity into different contexts.<sup>29</sup>

Section VII discusses the implications of our findings for understanding card-check organizing, both among public and private sector employees.<sup>30</sup> Section VIII concludes the article.<sup>31</sup>

## II. THE LEGAL ENVIRONMENT

### A. *State Level Organizing and Collective Bargaining Laws*

The enactment of collective bargaining laws for public sector employees is a fairly recent phenomenon. Before 1965, there were only a few states which had enacted statutes safeguarding the rights of public

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<sup>25</sup> See *infra* notes 112 to 115 and accompanying text.

<sup>26</sup> See *infra* notes 116 to 122 and accompanying text.

<sup>27</sup> See Charles Ragin, *The Comparative Method: Moving Beyond Qualitative and Quantitative Strategies*. Berkeley, CA: University of California Press, 1987.

<sup>28</sup> See *infra* notes 123 to 134 and accompanying text.

<sup>29</sup> See *infra* notes 135 to 141 and accompanying text.

<sup>30</sup> See *infra* notes 142 to 157 and accompanying text.

<sup>31</sup> See *infra* note 158 and accompanying text.

sector employees to organize and bargain collectively.<sup>32</sup> By the end of that decade, however, twenty-one states had adopted legislation granting organizing and bargaining rights to at least some of their public employees.<sup>33</sup> Over the next several decades various other states, including Illinois and Ohio, enacted comprehensive bargaining laws.

The legal environment covering state and local employees has been described as a “crazy-quilt patchwork of state and local laws, regulations, executive orders, court decisions, and attorney general opinions”.<sup>34</sup> For example, states differ significantly in terms of the type of employees covered. Twenty-four states (and the District of Columbia) have laws covering all major occupational groups (police, fire, education, state and municipal employees).<sup>35</sup> Six states have enacted legislation covering police, fire and education employees only,<sup>36</sup> while another eight states have laws protecting at least one of these major occupational groups.<sup>37</sup>

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<sup>32</sup> In 1955, New Hampshire and Minnesota enacted legislation providing for some limited collective bargaining rights for some public employees. In 1959 Wisconsin enacted legislation granting municipal employees organizational, representational and bargaining rights. See Grodin et al., PUBLIC SECTOR EMPLOYMENT: CASES AND MATERIALS, 81 (2004).

<sup>33</sup> *Id.*

<sup>34</sup> See John Lund & Cheryl L. Maranto, *Public Sector Labor Law: An Update*, 21, in Dale Belman, et. al., PUBLIC SECTOR EMPLOYMENT IN A TIME OF TRANSITION, (1996). See also, James T. Bennett & Marick F. Masters, *The Future of Public Sector Labor-Management Relations*, 24 J. OF LAB. RES. 533, 535 (2003).

<sup>35</sup> See Bennett & Masters, *supra* note 34, at 536.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* The fact that the state does not have a bargaining law does not necessarily imply the absence of labor organizations and of collective bargaining agreements. For example, in Missouri there is a meet and confer statute which allows for the organization of some bargaining employees and for negotiations of collective agreements. Similarly, in Missouri the state constitution guarantees employees “the right to organize and to bargain collectively through representatives of their own choosing.” MISSOURI CONST. ART. I, § 29. The rights to bargain collectively in Missouri were recently strengthened by a decision of the Missouri Supreme Court, reversing prior decisions and finding that the Missouri Constitution protects the rights of public employees to collective bargaining. *Independence-National Education Ass’n v. Independence School District*, 223 S.W.3d 131 (Mo. 2007) (en banc). Following the 2007 *Independence School District* decision, school districts and the associations representing their employees, have begun to experiment with various approaches

The remaining twelve states have not enacted comprehensive bargaining laws, but among these states there are significant differences with regard to the rights of public employees to organize and bargain collectively. At one end, some states make public sector bargaining illegal by, for example, making agreements between public employers and labor organizations representing public employees “illegal, unlawfully void and of no effect”,<sup>38</sup> or by limiting the authority of public employers to recognize, bargain with or enter into agreements with any organization representing public sector employees.<sup>39</sup> At the other end, a handful of states have constitutions that include general provisions protecting the right to organize and/or bargain collectively.<sup>40</sup> For example, Utah’s constitution protects the rights of employees to bargain collectively,<sup>41</sup> which has led the state’s courts to uphold a limited right to collective bargaining for some employees.<sup>42</sup>

Not only do state level bargaining laws differ in the types of employees covered, but there is also significant variance in rights provided to employees that are covered by legislation.<sup>43</sup> For example, differences exist regarding the types of employee activities protected under the various statutes;<sup>44</sup> on the factors used to determine the appropriate

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to implement the state’s Supreme Court decision. See e.g., *Springfield National Education Ass’n v. School District of Springfield*, (2009).

<sup>38</sup> N.C. GEN. STAT. §§ 95-98.

<sup>39</sup> VA. CODE ANN. §§ 40.1-57.2.

<sup>40</sup> These states include: Florida, FLORIDA CONST. ART. 1 § 6; Hawai’i, HAWAI’I CONST. ART. 13 § 2; Missouri, MISSOURI CONST. ART. I, § 29; New Jersey, N.J. CONST. ART. 1 ¶ 19; New York, MC’KINNEY’S CONST. ART. 1 § 17; Utah, UTAH CONST. ART. XV, §§ 34-19-1 et seq. In most of these states, except Missouri and Utah, the state legislature has enacted comprehensive bargaining laws.

<sup>41</sup> UTAH CONST. ART. XV, §§ 34-19-1 et seq.

<sup>42</sup> *Park City Education Ass’n v. Bd. Of Education of the Park City School District*, 879 P.2d 267 (Utah, App. 1994), cert. den. 890 P.2d 1034.

<sup>43</sup> For a review of the differences among state collective bargaining statutes see, Grodin, et al, *supra* note 32 at 92-93; 134-136; 213-220; 316-317.

<sup>44</sup> Some states define the types of employees’ activities covered under the bargaining laws narrowly. For example, in Oregon public employees have “the right to form, join and participate in the activities of labor organizations of their own choosing for the purpose of representation and collective bargaining with their public employers on matters concerning employment relations.” OR. REV.

bargaining unit;<sup>45</sup> and, the inclusion of supervisors and managers in the definition of the term “employee”.<sup>46</sup>

There are also a wide variety of approaches among the states in their treatment of card check activity – the subject of this paper. Some states closely follow the approach taken under the National Labor Relations Act for private sector employees. Bargaining laws in these states provide for the certification of a union as the exclusive bargaining representative based on the results of a certification election conducted by the appropriate state agency in charge of enforcing the law, while allowing either explicitly or implicitly public employers to voluntarily recognize the union. The Alaska collective bargaining statute, for example, states that no other provision in the statute “prohibits the recognition of an organization as the exclusive representative by a public agency by mutual consent.”<sup>47</sup> Similarly, New Mexico’s statute allows a public employer and a labor organization “with a reasonable basis for claiming to represent a majority of the employees in an appropriate unit” to establish “an alternative procedure for determining majority status.”<sup>48</sup>

A small group of states’ statutes appear to prohibit the use of voluntary recognition, and instead require that an election is held. For example, Kansas’ statute granting bargaining rights to most public employees provides in part, “Recognition shall be granted only to an employee organization that has been selected as a representative of an appropriate unit, in a secret election, by a majority of the employees in an appropriate unit who voted at such election.”<sup>49</sup>

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STAT. § 243.662. Other states protect, more expansively, the same types of activities protected under the National Labor Relations Act for private sector employees. For example, the Delaware statute protects employees’ rights to “(1) Organize, form, join or assist any employee organization” ... “(2) Negotiate collectively or grieve through representative of their own choosing” “(3) Engage in other concerted activities for the purpose of collective bargaining or other mutual air or protection ...”. 19 DEL. CODE ANN. § 1303.

<sup>45</sup> See Grodin, et al, *supra* note 32 at 134-136.

<sup>46</sup> *Id.* at 140, 152.

<sup>47</sup> ALASKA STAT. § 23.40.100 (d).

<sup>48</sup> N.M. Stat. § 10-7E-14(D) (1978).

<sup>49</sup> KAN. STAT. ANN. § 75-4327 (d). Compare this language to the language found in Kansas’ statute applicable to teachers. The statute provides that “any professional employees’ organization may file a request with the board of education alleging that a majority of the professional employees in an appropriate negotiating unit wish to be represented for such purpose by such

At the other end of the spectrum, a growing number of states require employers to recognize a union that has secured majority support by card checks or other appropriate means.<sup>50</sup> New York, for example, has provided for certification based on a showing of majority support without an election since 1967. New York's public sector collective bargaining law mandates the New York Public Employee Relations Board to: "ascertain the public employees' choice of employee organization as their representative choice ... on the basis of dues deduction authorization or other evidence, or, if necessary, by conducting an election."<sup>51</sup> More recently a number of states have followed New York's lead by enacting similar legislation, including: California,<sup>52</sup> Illinois,<sup>53</sup> Massachusetts,<sup>54</sup>

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organization and asking the board of education to recognize it as the exclusive representative..." The next section then provides: "A request for recognition under subsection (a) shall be granted by the board of education unless: (1) The board of education has a good faith doubt as to the accuracy or validity of the evidence demonstrating majority support..." 72-5416 (a), (b).

<sup>50</sup> For a detailed description of some of these statutes see Mark Hoffman, *The Debate in Congress Over Card Check and the Employee Free Choice Act: Federal Questions and State Answers*, on file with the authors.

<sup>51</sup> NY CIV. SERV. §207.2. The New York Public Employee Relations Board's rules implementing the statute provide that where only one labor organization is seeking to represent the employees, "the employee organization involved will be certified without an election if a majority of the employees within the unit have indicated their choice by the execution of dues deduction authorization cards which are current, or by individual designation cards which have been executed within six months prior to the date of the director's decision recommending certification without an election." 4 NYCRR §201.9(g). For a detailed account of the history and development of New York's card check legislation see, Herbert, *supra* note 17.

<sup>52</sup> "A public agency shall grant exclusive or majority recognition to an employee organization based on a signed petition, authorization cards, or union membership cards showing that a majority of the employees in an appropriate bargaining unit desire the representation, unless another labor organization has previously been lawfully recognized as exclusive or majority representative of all or part of the same unit." CAL. GOV'T CODE § 3507.1(c). Similar provisions are also applicable to the state's K-12 (CAL. GOV'T CODE §§ 3544.1 and 3544.7), secondary educational employees (CAL. GOV'T CODE 3574, 3577), court interpreters (CAL. GOV'T CODE §71823(a)(5)(A)), and other trial employees (CAL. GOV'T CODE §§ 3513 et seq.).

<sup>53</sup> "The Board shall designate an exclusive representative for purposes of collective bargaining when the representative demonstrates a showing of majority interest by employees in the unit." ILL. COMP. STAT. TIT. 5, § 315/9 a-5). A similar provision covers educational employees. ILL. COMP. STAT. TIT. 115, § 7(b).



New Hampshire,<sup>55</sup> New Jersey,<sup>56</sup> and Oregon.<sup>57</sup> These states mandate card-check recognition for all employees covered under their public sector collective bargaining laws. A few other states mandate card check recognition for some of their public sector employees, but not for others. For example, the statutes in Kansas,<sup>58</sup> and Maryland,<sup>59</sup> mandate card check recognition for teachers only, and in Oklahoma only municipal

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<sup>54</sup> “Notwithstanding any other provision of this section, the commission shall certify and the public employer shall recognize as the exclusive representative for the purpose of collective bargaining of all the employees in the bargaining unit an employee organization which has received a written majority authorization ...” MASS. GEN. LAWS ANN. CH. 150E, § 4.

<sup>55</sup> “Notwithstanding any other provision of this section, the board shall certify and the public employer shall recognize as the exclusive representative an employee organization which has received a written majority authorization for the purpose of collective bargaining of all the employees in the bargaining unit.” N.H. REV. STAT. ANN. § 273-A:10, IX.

<sup>56</sup> “Representatives designated or selected by public employees for the purposes of collective negotiation by the majority of the employees in a unit appropriate for such purposes, by the majority of the employees voting in an election conducted by the commission as authorized by this act or, at the option of the representative in a case in which the commission finds that only one representative is seeking to be the majority representative, by a majority of the employees in the unit signing authorization cards indicating their preference for that representative, shall be the exclusive representatives for collective negotiation concerning negotiations concerning the terms and conditions of employment.” N.J. STAT. ANN. § 34:13 A-5.3.

<sup>57</sup> “Notwithstanding subsection (1) of this section, when an employee, group of employees or labor organization acting on behalf of the employees files a petition alleging that a majority of employees in a unit appropriate for the purpose of collective bargaining wish to be represented by a labor organization for that purpose, the board shall investigate the petition. If the board finds that a majority of the employees in a unit appropriate for bargaining have signed authorizations designating the labor organization specified in the petition as the employees’ bargaining representative and that no other labor organization is currently certified or recognized as the exclusive representative of any of the employees in the unit, the board may not conduct an election but shall certify the labor organization as the exclusive representative unless a petition for a representation election is filed as provided in subsection (3) of this section.” OR. REV. STAT. § 243.682 (2)(a).

<sup>58</sup> KAN. STAT ANN. §72-5416 (a), (b).

<sup>59</sup> MD. CODE ANN., [Education] § 6-402 (LexisNexis 1978).

employees are covered.<sup>60</sup> In Iowa, a recent executive order mandates card check recognition for child care providers.<sup>61</sup>

### B. *Collective Bargaining Laws in Illinois and Ohio*

The history and development of public sector collective bargaining in Illinois and Ohio stand in, somewhat, stark contrast to the “crazy-quilt patch work” of the developments in other states.<sup>62</sup> The two states share remarkably similar histories regarding the development of their collective bargaining laws and, to a large extent, their collective bargaining statutes are also quite similar.

In both states, collective bargaining was fairly well-established before the enactment of their comprehensive bargaining laws.<sup>63</sup> In Illinois, for example, there was a strong tradition of collective bargaining among state government employees and among K-12 school teachers.<sup>64</sup> In fact, opposition by labor in 1967 led to defeat of a comprehensive law which the unions considered to be too weak and thus less preferable than the

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<sup>60</sup> OKL. STAT. TIT. 11, § 51-211(B). In the state of Washington card check recognition (referred to as “cross-checks”) is allowed for some employees, if the union demonstrates the support of 70% of the employees in the appropriate bargaining unit. WASH. REV. CODE §391-25-410 (16).

<sup>61</sup> IOWA’S GOVERNOR EXEC. OR. NO. 45 (2006). Notice that the situation in Iowa is different from the situation of the other states that have adopted some form of card-check framework in several respects. First, unlike the other states, the card-check provision was enacted via executive order. Second, the child-care providers organized under the executive order are entitled only to meet and confer rights, as opposed to full collective bargaining rights. Finally, the child-care providers are not technically public employees, but instead they are considered to be independent providers who are deemed employees for purposes of the executive order.

<sup>62</sup> See Gregory M. Saltzman, *Public Sector Bargaining Laws Really Matter: Evidence from Ohio and Illinois* in Richard Freeman & Casey Ichniowski, *When Public Sector Workers Unionize*, 41 (1988); James T. O’Reilly, *More Magic with Less Smoke: A Ten Year Retrospective on Ohio’s Collective Bargaining Law*, 19 U. Dayton L. Rev. 1 (1993); Hindman & Patton, *supra* note 21 at 107-108; Ann C. Hodges, *Lessons from the Laboratory: The Polar Opposites on the Public Sector Law Spectrum*, 18 Cornell J.L. & Pub. Pol’y 735 (2009).

<sup>63</sup> See Hindman & Patton, *supra* note 21, at 107.

<sup>64</sup> *Id.*

absence of a bill.<sup>65</sup> Ohio also enjoyed a strong tradition of public sector unionism among school employees, as well as municipal employees. As in Illinois, the enactment of bargaining laws occurred relatively late even though support for the legislation was fairly broad. Early attempts to enact comprehensive bargaining laws in Ohio were impeded by Republican control of the governor's office.<sup>66</sup> The election of Governor Richard Celeste, a Democrat, in 1982, paved the way for the enactment of the comprehensive bargaining law, which previously had been vetoed twice by a republican governor.<sup>67</sup>

In 1983, both Illinois and Ohio enacted comprehensive bargaining laws.<sup>68</sup> Both acts are modeled after the NLRA, and thus share similar features.<sup>69</sup> The statutes in both states, however, are broader than the NLRA in many respects, and also broader than other public sector bargaining laws. For instance, the Illinois' statutes define the term supervisor more narrowly than how the term is defined under the NLRA, thereby broadening coverage of the acts.<sup>70</sup> Like the NLRA, both the Illinois' statute applicable to state and local government employees, the Illinois Public Sector Relations Act ("ILPRA"), and the statute applicable to educational employees, the Illinois Educational Labor Relations Act ("IELRA"), define the term "supervisor" by listing a series of activities which an individual must have the authority to conduct for that individual to be considered a supervisor.<sup>71</sup> However, unlike the NLRA, the ILPRA

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<sup>65</sup> See Hodges, *supra* note 62 at 736; Hindman & Patton, *supra* note 21, at 107.

<sup>66</sup> See Hindman & Patton, *supra* note 21, at 107.

<sup>67</sup> *Id.*

<sup>68</sup> Illinois enacted two different statutes: the Illinois Educational Labor Relations Act ("IELRA"), covering educational employees, ILL. COMP. STAT. TIT. 5, §§ 315/1-315/27 (2006); and, the Illinois Public Sector Relations Act ("IPLRA"), covering state and local government employees. ILL. COMP. STAT. TIT. 115, 5/1/-5/21 (2006).

<sup>69</sup> See Hodges, *supra* note 62 at 738; T. Merritt Bumpass and Keith A. Ashmus, *Public Sector Bargaining in a Democracy – An Assessment of the Ohio Public Employee Collective Bargaining Law*, 33 CLEV. ST. L. REV. 593, 610 (1984/1985).

<sup>70</sup> See Hodges *supra* note 62, at 738.

<sup>71</sup> ILL. COMP. STAT. TIT. 115, § 5/2 (g) (2006) (defining supervisor as "any individual having the authority in the interests of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, reward or discipline other employees within the appropriate bargaining unit and adjust their grievances ...");

and the IELRA require that the individual must devote a “preponderance of their employment time” to exercising such authority.<sup>72</sup> Since individuals who are considered supervisors are not considered “employees” and thus are not entitled to the rights guaranteed under the acts, a narrower definition of the term “supervisor” results in broader coverage.<sup>73</sup>

The Ohio public sector bargaining law is also broader than the NLRA in some significant respects.<sup>74</sup> In some occupational groups, for example, the “supervisor” definition has been made inapplicable. The Ohio statute provides that no one other than the police and fire chiefs are to be considered a supervisor, regardless of their duties.<sup>75</sup> Another example of the broader nature of the Ohio law is found in the definition of the type of conduct that qualifies as an unfair labor practice. Unlike the NLRA, the Ohio statute makes employer lockouts an unfair labor practice.<sup>76</sup>

Similarly, there are aspects of the public sector bargaining laws in Illinois and Ohio that make them broader than other public sector bargaining statutes. For example, the various bargaining statutes in Illinois and Ohio protect the rights of most non-safety related public employees to strike unlike the majority of public sector bargaining statutes in other states. Illinois protects the right of all employees to strike,

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ILL. COMP. STAT. TIT. 5, § 315/3(r) (2006) (defining supervisors as “an employee whose principal work is substantially different from that of his or her subordinates and who has authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, direct, reward, or discipline employees, to adjust their grievances, or to effectively recommend any of those actions ...”). This language is substantially the same as that used in section 2(11) of the NLRA.

<sup>72</sup> ILL. COMP. STAT. TIT. 115, § 5/2 (g) (2006) (adding that the term supervisor “includes only those individuals who devote a preponderance of their employment time to such exercising of authority); ILL. COMP. STAT. TIT. 5, § 315/3(r) (2006) (adding that “Except with respect to police employment, the term “supervisor” includes only those individuals who devote a preponderance of their employment time to exercising that authority ...”).

<sup>73</sup> See Hodges, *supra* note 62, at 739-740 for a more detailed comparison of the Illinois’ statutes and the NLRA.

<sup>74</sup> See Bumpass & Ashmus, *supra* note 69, at 616-651 (comparing the various provisions of the Ohio statute to the NLRA).

<sup>75</sup> OHIO REV. CODE ANN. § 4117.01(F)(2) (providing that “With respect to members of a police or fire department, no person shall be deemed a supervisor except the chief of the department or those individuals who, in the absence of the chief, are authorized to exercise the authority and perform the duties of the chief of the department”).

<sup>76</sup> OHIO REV. CODE ANN. § 4117 (11) (A) (7).

excluding police officers, firefighters, paramedics and security personnel.<sup>77</sup> A similar protection is included in the Ohio bargaining statute.<sup>78</sup>

Despite these similarities, there is an important difference between the Ohio and Illinois statutes. Since 2004, Illinois mandates certification of union representation on the basis of authorization cards or other similar evidence. The IPLRA requires the agency in charge of enforcing the statutes to “designate an exclusive bargaining representative for purposes of collective bargaining when the representative demonstrates a showing of majority interest by employees in the unit.”<sup>79</sup> The section then states that: “the Board shall ascertain the employees’ choice of employee organization, on the basis of dues deduction authorization and other evidence ...”.<sup>80</sup> The IELRA achieves the same objective using a slightly different statutory language. Section 7(b) provides that “An educational employer shall voluntarily recognize a labor organization for collective bargaining purposes if that organization appears to represent a majority of employees in the unit.”<sup>81</sup>

These sections have been interpreted by the corresponding enforcement agencies, the Illinois Labor Relations Board for the ILPRA and the Illinois Educational Labor Relations Board for the IELRA, as requiring the union to file a “majority interest petition”, that is, a representation petition “accompanied by a showing of interest evidencing that a majority of the employees in the petitioned-for bargaining unit wish to be represented by the labor organization.”<sup>82</sup> Under the regulations, the showing of interest in support of the majority interest petition “may consist of authorization cards, petitions, or any other evidence that demonstrates that a majority of the employees wish to be represented by the union for the purposes of collective bargaining.”<sup>83</sup> Following the filing

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<sup>77</sup> See Hodges, *supra* note 62 at 738.

<sup>78</sup> OHIO REV. CODE ANN. §4117.14 (D) (2). For a detailed comparison of the strike provisions in Illinois and Ohio see Martin H. Malin, *Public Employees’ Right to Strike: Law and Experience*, 26 U. MICH. J. L REFORM 313, 336-348 (1992-1993)

<sup>79</sup> ILL. COMP. STAT. TIT. 5, § 315/9 a-5.

<sup>80</sup> *Id.*

<sup>81</sup> ILL. COMP. STAT. TIT. 115, § 7(b).

<sup>82</sup> ILL. ADM. CODE TIT. 80, § 1210.80(b).

<sup>83</sup> ILL. ADM. CODE TIT. 80, § 1210.80(d)(2)(A); ILL. ADM. CODE TIT. 80, § 1110.105. The validity of this rule has been the subject of litigation. In *County of Du Page v. Illinois Labor Relations Board*, 231 Ill. 2d 593 (Ill. 2008), the Illinois Supreme Court held that the word “and,” as used in the phrase “dues deduction authorization and other evidence,” was intended by the legislature to

of a majority interest petition, the employer is required to post a notice informing employees that a petition has been filed with the appropriate agency and informing employees of the intervention procedures provided under the specific statute.<sup>84</sup> The employer is then required to provide the enforcing agency with “a list containing the full names and titles of the employees in the proposed bargaining unit, along with signature exemplars.”<sup>85</sup> The regulations then require the Board to certify a union that enjoys majority support, absent clear and convincing evidence of fraud or coercion, or other unit appropriateness or exclusion issues.<sup>86</sup>

Ohio, on the other hand, allows but does not mandate recognition on the basis of card checks. Under the Ohio statute and the corresponding regulations, the state agency is required to certify the union as the exclusive representative unless, before the twenty-second day after a petition for recognition is filed with the Board and served upon the employer, any of the following events occur: the employer files a petition for election; the state employment relations board receives substantial evidence that a majority of employees in the proposed unit do not wish to be represented by the employee organization that filed the recognition request; another labor organization demonstrates support from at least ten percent of the employees in the proposed unit; or the state board receives substantial evidence that the proposed unit is not appropriate.<sup>87</sup>

Consequently, in Ohio the union will be certified unless either the employer affirmatively responds to the petition for recognition, or unless substantial evidence is presented indicating a lack of support or the inappropriateness of the bargaining unit.<sup>88</sup> Although this process allows the employer to fairly easily avoid having the union certified through the

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mean “or.” Accordingly, found the court, the state board can proceed to certify a union that otherwise satisfies the requirements of the statute on the basis of authorization cards only, or of some other evidence.

<sup>84</sup> ILL. ADM. CODE TIT. 80, § 1210.100(b)(1); ILL. ADM. CODE TIT. 80, § 1110-90.

<sup>85</sup> *Id.*

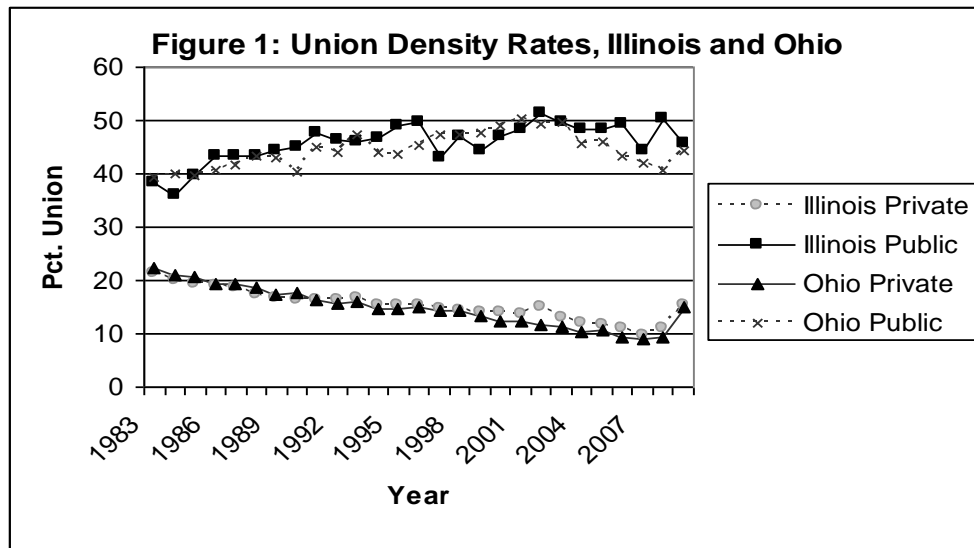
<sup>86</sup> ILL. ADM. CODE TIT. 80, § 1210.100(b)(5), (7); ILL. ADM. CODE TIT. 80, § 1110.105(e).

<sup>87</sup> OHIO ADM. CODE § 4117-05.

<sup>88</sup> In the Matter of Ohio Ass’n of Public School Employees, Ohio SERB HO, 1996-HO-004 (1996) (noting that a party who objects to the employee organization’s petitioned-for unit has the burden to show by substantial evidence that the objectionable unit is inappropriate, but where the employer files a petition for a representation election in response to a union request for recognition the Board will not certify the unit without first conducting an election, even if the petitioned-for unit is found appropriate).

use of card checks by just filing a petition for an election, it still places a burden on the employer to take action to prevent the state employment board from certifying the union without an election.<sup>89</sup> In the absence of some other party raising an objection, failure by the employer to petition for an election will result in card check recognition. Thus, while the Ohio statute does not mandate card check recognition, it establishes a process under which, following a union petition for recognition, the card check process becomes almost a default process absent action by the employer to the contrary.

Given their similar histories regarding public sector collective bargaining, it is not surprising that Illinois and Ohio also have very similar levels and trends in unionization rates. This is clearly illustrated in Figure 1 for the 25 year period from 1983 through 2008.



At the time their collective bargaining laws were passed, Illinois and Ohio had public sector union density rates that ranked them 20<sup>th</sup> and 18<sup>th</sup> respectively relative to other states. But in the years since their laws were passed, both experienced moderate gains in public sector unionization. Today, Illinois and Ohio have public sector union density rates that rank 14<sup>th</sup> and 18<sup>th</sup> among other states. It is also noteworthy that the trend lines in Figure 1 suggest that from 2004 to 2008 the level of public sector union

<sup>89</sup> Soon after the Ohio statute was enacted there was some commentary and case law suggesting that if there was no question regarding the appropriateness of the bargaining unit, the state board was mandated to recognize the union unless the employer provided substantial evidence that the majority of employees did not want representation. See Bumpass & Ashmus, *supra* note 69 at 628-29. Later case law rejects this view. See *In the Matter of Ohio Ass'n of Public School Employees*, Ohio SERB HO, 1996-HO-004 (1996).

organizing activity in Illinois was consistently higher than in Ohio, a fact that is confirmed in Figures 2 and 3.<sup>90</sup> Of course, this period corresponds to the years following the enactment of the Illinois' card-check legislation.

### III. THEORETICAL CONSIDERATIONS

#### A. A “Structural Approach” to Union Organizing Rules

In a recent article in the *Harvard Law Review*, Professor Benjamin Sachs develops what he refers to, as a “structural approach” to understanding union organizing rules.<sup>91</sup> Professor Sachs starts by noting that the debate regarding the proposed EFCA in particular, and the question of union organizing rules more generally, can be understood as a situation where a decision-maker (e.g., a legislature or a court) has to choose a default rule related to the union/nonunion status of the workplace. In making this choice, the decision-maker seeks to maximize “the satisfaction of some relevant preference set”.<sup>92</sup>

Relying on theories of statutory interpretation and corporate law, Professor Sachs notes that in situations where a decision-maker knows with certainty which default rule (i.e., policy) will maximize public satisfaction, the decision-maker ought to choose that policy. However, where there is uncertainty as to the default rule that will maximize the preferences of the public, a decision-maker must then consider the extent to which, once enacted, those affected by the policy are able to opt out of the default rule and choose instead a non-default alternative.<sup>93</sup> The opting out option is important, as it is conducive to preference maximization.

Professor Sachs identifies two ways in which a decision-maker could maximize “the good sought” by a default rule.<sup>94</sup> A decision-maker could choose the default rule which can be more easily circumvented by the parties – a “reference-eliciting” or “reversible” default rule.<sup>95</sup> Such a rule, notes Professor Sachs, is appropriate in situations where there is uncertainty regarding the preferences of those affected by the rule, and where there is “asymmetric ability to depart from the default rule.”<sup>96</sup> Alternatively, if practical or political considerations made it difficult to change the default rule, a decision-maker could instead adopt what

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<sup>90</sup> See *infra* note 113 and accompanying text.

<sup>91</sup> See Sachs *supra* note 8.

<sup>92</sup> *Id.* at 658.

<sup>93</sup> *Id.* at 672-79.

<sup>94</sup> *Id.* at 673.

<sup>95</sup> *Id.* at 659.

<sup>96</sup> *Id.* at 680.



Professor Sachs coins an “asymmetry-correcting altering rule”<sup>97</sup> - a rule which alters the process by which the parties can depart from the default rule, making it easy to avoid the default rule.<sup>98</sup>

In the labor law context, the basic policy choice is that of deciding whether, as a default rule workplaces will be unionized or non-unionized.<sup>99</sup> The existing labor law regime in the United States is based on a nonunion type of default rule. That is, under U.S. labor law, employees operate under a nonunion environment, unless they decide to organize collectively. Professor Sachs argues, however, that it is not clear that a nonunion default rule is preference maximizing. Professor Sachs acknowledges that it is true that there is ex-ante uncertainty about whether employees in general prefer union representation, and thus that either rule, a union or a nonunion default rule, is initially justifiable. When there is uncertainty as to which default rule is preferred, one should identify the rule which can more easily be opted out of by the parties. That is, is it easier for employees to opt out of a nonunion representation default rule (as is currently the case), or a union representation default rule? Professor Sachs argues that there exist some structural barriers, such as a variety of collective action problems and strong managerial opposition to union representation, which make it very hard for employees to opt out of a nonunion representation default rule. The same structural barriers, however, do not necessarily affect the ability of employees to opt out of union representation. Therefore, concludes Professor Sachs, a default rule that requires union representation makes utility maximizing sense.<sup>100</sup>

The question then becomes “how to structure the rules governing organizing campaigns in a manner that maximizes the satisfaction of employee preferences on the union question.”<sup>101</sup> Professor Sachs advances two approaches. First, the labor law default rule could be changed from a nonunion to a union representation default.<sup>102</sup> Although Professor Sachs appears to be sympathetic to this approach, he ultimately rejects it as both more complex and politically unlikely.<sup>103</sup> Alternatively,

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<sup>97</sup> *Id.* at 679.

<sup>98</sup> *Id.* at 659.

<sup>99</sup> *Id.*

<sup>100</sup> *Id.* at 680.

<sup>101</sup> *Id.*

<sup>102</sup> More precisely, the choices are between a change in the default rule and an accompanying adoption of an altering rule, on the one hand, or staying with the existing default rule, and adopting an altering rule, on the other hand. *Id.* at 694.

<sup>103</sup> *Id.* at 695-96.

labor law could leave the default rule unchanged, but instead adopt a new “asymmetry correcting altering rule”. The goal of such a rule would be to facilitate the process by which parties affected by the default rule, in this case a nonunion workplace, can opt out of the default. In the context of union organizing, notes Professor Sachs, such a rule should have the goal of minimizing management’s ability to intervene in the employee organizing process.<sup>104</sup>

Professor Sachs then evaluates various alternative organizing technologies - rapid elections,<sup>105</sup> confidential phone or internet voting,<sup>106</sup> and continuous early voting<sup>107</sup> - concluding that the later two preserve secrecy, while at the same time “enabling employees to minimize managerial intervention in the union organizing process.”<sup>108</sup>

### B. *Implications of the Structural Model*

Professor Sachs’ structural model provides a framework that allows us to identify how a card-check statute, such as the one enacted in Illinois, is likely to affect unionization activity among public employees.<sup>109</sup> Three specific implications flow from his model.

First, the Illinois’ card-check statute implements what Professor Sachs refers to as an asymmetry-correcting altering rule that intends to better enable employees to opt out of the nonunion default rule. Accordingly, we should expect the Illinois’ statute to facilitate union organizing and, thus, result in higher levels of organizing activity.

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<sup>104</sup> *Id.* at 693.

<sup>105</sup> *Id.* at 718-720.

<sup>106</sup> *Id.* at 720-723.

<sup>107</sup> *Id.* at 723-727

<sup>108</sup> *Id.* at 728.

<sup>109</sup> To be sure, Professor Sachs develops his model in the private sector context, where employers have actively opposed union organizing efforts. Professor Sachs’ model is partially based on the argument that a different default rule is needed as a way of responding to the strong anti-union stance of private sector employers. Given that public sector employers have been less likely to oppose union organizing efforts, one could question the need to change the default rule (from a non-union to a union rule) or the need to adopt asymmetry correcting altering rules (such as card checks). Our claim here, however, is not that the structural model provides a justification for adopting card-check legislation in the public sector. Instead, we look at the structural model to provide some guidance regarding the effects that such legislation is likely to have once it is adopted.

Second, while not explored by Professor Sachs, the adoption of altering rules, such as card-check legislation, should impact labor unions' choices of organizing methods. One would expect that unions will gravitate towards "organizing technologies"<sup>110</sup> which facilitate the organizing process. Thus, the enactment of the card-check statute should have prompted public sector unions in Illinois to shift their organizing strategies towards the use of card checks rather than elections.

Finally, Professor Sachs' structural model suggests that in the existing regime (i.e., a nonunion default rule, with no asymmetry-correcting altering rule), workplaces where workers might prefer union representation might not yet be organized. That is, in the absence of a union-representation default rule, and in the absence of an altering rule that facilitates opting out of the nonunion default rule, one would expect there to be workplaces where employees might prefer union representation, but where such representation has not been achieved – that is, workplaces where there is a representation gap. One might also expect those workplaces to share some similar characteristics, which perhaps explains the inability of certain types of employees to have previously achieved union representation.<sup>111</sup> If this is the case, following the adoption of a card-check statute, one would likely observe unions organizing not only new workplaces, but also new types of workplaces.

#### IV. OVERVIEW OF PUBLIC SECTOR UNION ORGANIZING IN ILLINOIS AND OHIO

##### A. *Overview*

We begin our analysis by describing the levels of public sector organizing activity in Illinois and Ohio over the ten year period from 1999 through 2008. Data on organizing events were collected from annual reports of the Illinois Labor Relations Board and the Ohio State Employment Relations Board, respectively.<sup>112</sup> These reports provide fairly detailed information on union organizing events, including data on the governmental unit being organized, the types of bargaining units (i.e., the type of employees who are the target of the organizing campaign), the number of employees in each bargaining unit, the union(s) seeking

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<sup>110</sup> *Id.* at 671.

<sup>111</sup> For example, these workplaces might be ones where employers tend to be more resistant to union organizing efforts, or where collective action problems (of the kind described by Professor Sachs) tend to be more acute.

<sup>112</sup> Illinois State Labor Relations Board and Illinois Local Labor Relations Board, ANNUAL REPORTS (various years); State Employment Relations Board, SERB QUARTERLY (various years).

representation rights, the event type (election vs. card check), and voter turnout (Ohio only).<sup>113</sup>

### B. *Trends and Levels of Public Sector Organizing Activity*

As shown in Table 1, there were 1265 organizing events in Illinois and 865 in Ohio from 1999 through 2008. Table 1 shows more card check events (666) than elections (599) in Illinois. In contrast, there were more than two and a half times as many elections (623) as card checks (242) in Ohio. In both states, union win rates in representation elections were very high, approximately 90% for elections.

**Table 1**  
**Levels of Elections and Card Checks and Union Win Rates, 1999-2008**

	<i>Illinois</i>	<i>Ohio</i>
<b>Organizing Events</b>	1265	865
<b>Elections</b>	599	623
Union Win Rate (%)	87.6	89.4
<b>Card Checks</b>	666	242
Union Win Rate (%)	100	100

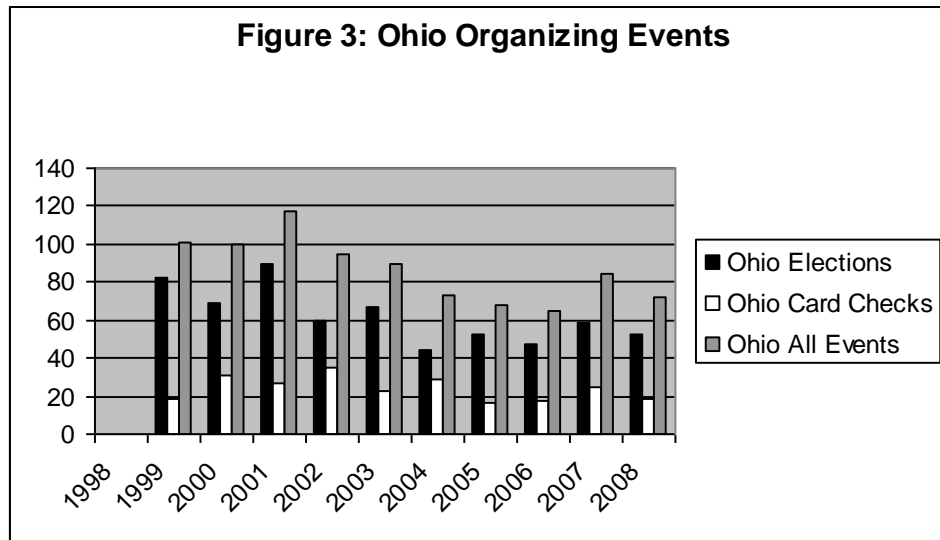
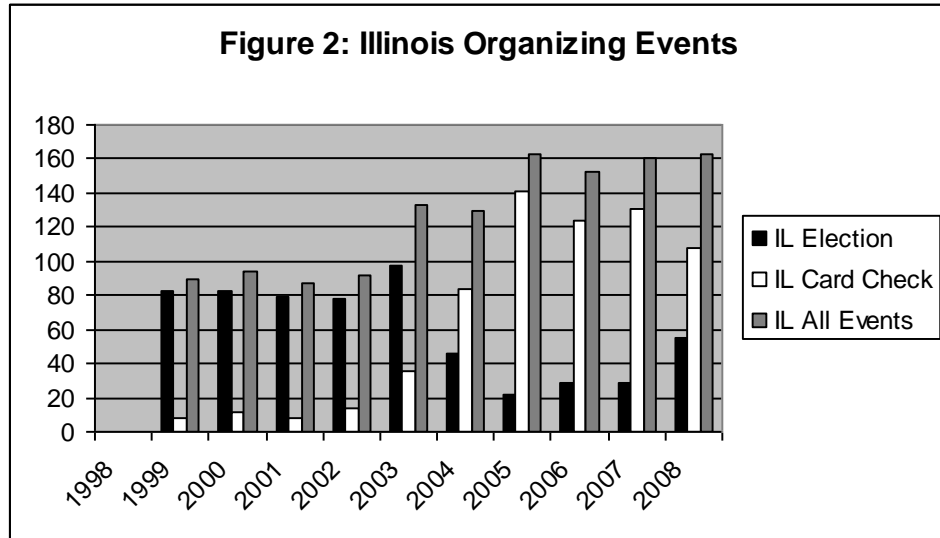
In Figures 2 and 3, we show trends in representation elections and card check organizing events involving public sector employees in Illinois and Ohio for years 1999 through 2008.<sup>114</sup> The most obvious difference across the two states is the dramatic change in organizing events in Illinois following the enactment of card check legislation.<sup>115</sup> Of the 1265 reported

<sup>113</sup> Below we confine our discussion to organizing events, namely elections and card checks, involving non-educational public sector employees.

<sup>114</sup> Our data also allow us to identify the labor organizations most actively involved in organizing campaigns during this period. Three of the top 5 unions in terms of elections and card check organizing were the same for Illinois and Ohio—namely the American Federation of State, County and Municipal Employees (“AFSCME”) which is the largest union representing public sector workers in the United States, the Fraternal Order of Police (“FOP”) which is a major police union in the nation, and the International Brotherhood of Teamsters (“IBT”), a union which has increasingly expanded its organizing activity outside its historic focus on the trucking industry. Since we only observe events that were reported by each states’ employee relations board, we do not know whether these unions initiated union organizing within the states or were involved because of the types of employees who actively sought union representation (e.g., when protective service employees want to unionize a protective service union is involved).

<sup>115</sup> In 2005 Illinois also enacted legislation that reduced the number of employees an employer must have to be covered by the IPLRA from 35 to 5. P.A. 93-1080, § 5, eff. June 1, 2005. While this change would seem to open many new organizing opportunities for unions which might also explain the recent increase in organizing activity among Illinois’ public employees, analyses

events, 732 (58%) occurred after 2003. The vast majority of these events (588) were card-check authorizations; in fact, approximately 88% of the 666 card check organizing events in Illinois occurred after the passage of card-check legislation. In contrast, the distribution between elections and card check organizing in Ohio changed only slightly over time (Figure 3). Pre-2004 card check organizing constituted 27% of all organizing events compared to 30% after 2003. The trends in Ohio show slight overall decreases in the numbers of elections and card check organizing events over time.



of our data show no significant differences between bargaining unit sizes in Illinois pre- and post-2005.

## V. MEASURING THE IMPACT OF CARD CHECK LEGISLATION

The data described in the prior section indicate some clear differences in both the levels and the types of organizing activity in Illinois and Ohio. As noted earlier, the passage of Illinois' card check legislation gave public sector workers the right to union representation via card-check authorization. The most obvious impact of this legislation is an increase in union organizing activity and a redistribution of organizing events from elections to card checks. These findings suggest that it may have become easier to achieve representation rights after the card check law was passed, and unions responded by increasing their organizing efforts through card-check authorization attempts. In this section we provide a more in-depth comparison of Illinois and Ohio before and after the implementation of card check legislation in Illinois in 2004.

The impact of the Illinois' card check legislation is examined using two key comparisons: a time-series and a cross-sectional comparison. To show how the legislation altered the organizing landscape in Illinois, we compare public sector union organizing events across two time periods, the five years prior to the enactment of the Illinois card check legislation (1999-2003) and the five years after the legislation was enacted (2004-2008).<sup>116</sup> In particular, we examine the government levels at which the organizing events occurred, the types of employees who were the target of union organizing (i.e., the bargaining units), and the numbers of employees involved in the organizing events. In addition to this time-series comparison we also compare the Illinois' experience to the experience in Ohio during the same two time periods. As described above,<sup>117</sup> Ohio's public sector bargaining law was enacted at the same time as Illinois, and for most of their existence shared very similar provisions. One would thus expect that, absent any significant differences in the legal frameworks in the two states, union organizing activity in both states might also be similar. Indeed, that is what we find prior to 2004. The cross-sectional comparison to Ohio, thus, serves as a baseline with which to evaluate the effects of the Illinois' legislation.

### A. *A Comparison of Organizing Events in Illinois and Ohio, Pre-2004*

Table 2 shows the distribution of organizing events across various levels of government for Illinois and Ohio from 1999 through 2003,<sup>118</sup>

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<sup>116</sup>The tables used for these analyses include only cases for which there were no missing data on the variables of interest. This resulted in the loss of some election and card check observations included in table 1 and figures 2 and 3.

<sup>117</sup>See *supra* notes 62 to 89 and accompanying text.

<sup>118</sup>We distinguish between three levels of government: state, county and city. We rely on the employer name, as reported in the various reports, to classify the governmental level.

while Table 3 shows the distribution of organizing events by type of public employees.<sup>119</sup> In general, the results indicate that during the period preceding Illinois' card check statute, both states were fairly similar in terms of their public sector union organizing experiences.

The top panel in Table 2 shows that between 1999 and 2003 there were very similar numbers of organizing events in each state, 438 in Illinois versus 447 in Ohio. In both states, the majority of events occurred at the city level. In fact, the percentages of city level organizing for the two states were not significantly different (61% in Illinois and 56.4% in Ohio). Table 2 also shows that elections were the most common form of union organizing for public sector employees at all levels of government in both states (84% and 78.5% of all organizing events were elections in Illinois and Ohio respectively). However, significantly different rates of election activity occurred at the city, county and state levels. With regard to card checks, Table 2 indicates that during the five years prior to the enactment of card check legislation in Illinois, Ohio had nearly 40 percent more card check events than Illinois (96 versus 70). This appears to have been largely driven by significantly higher rates of card check activity at the city level in Ohio. In fact, card checks represented a significantly higher percentage of state level organizing events in Illinois than in Ohio, although the total number of such events was quite small in both states.

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<sup>119</sup> We distinguish between five types of bargaining units: "White Collar"; "Blue Collar"; "Firefighters"; "Safety"; "Multi-Employee". "White Collar" includes administrative and clerical employees, social workers, court personnel, health care workers. "Blue Collar" includes custodial employees, public works employees, laborers, maintenance employees. "Firefighters" and "Security" include employees in fire and police departments respectively. "Multi-Employee" includes bargaining units of employees in mixed job categories. The reports of the various agencies in Illinois and Ohio provided information as to the type of employees involved. We used that information to create the various categories.

**Table 2**  
**Comparing Organizing Events by Level of Government, 1999-2003**

	<i>Illinois</i>	<i>Ohio</i>
<b>Organizing Events</b>	438	447
City	267 (61.0)	252 (56.4)
County	128 (29.2)	177 (39.6)*
State	43 (9.8)	18 (4.0%)*
<b>Card Checks</b>	70 (16.0)	96 (21.5%)*
City	45 (10.3)	73 (16.3)*
County	15 (3.4)	21 (4.7)
State	10 (2.3)	2 (.4)*
<b>Elections</b>	368 (84.0)	351 (78.5)*
City	222 (50.7)	179 (40.0)*
County	113 (25.8)	156 (34.9)*
State	33 (7.5)	16 (3.6)*

\* Significant at  $p < .05$ . Numbers in parenthesis represent percentage out of the total number of organizing events in each state.

As for the types of employees who were organized during this period, data presented in Table 3 provide further evidence of similarities between the two states. For example, in both states safety employees were the most frequent participants in organizing events, but the percentage of organizing events involving safety employees was significantly higher in Ohio than Illinois. No significant differences in the proportions of organizing events were detected for three of the remaining four categories of bargaining unit types (firefighters, blue collar, and units including different types of employees). However, there is a large and significant difference between Illinois and Ohio in the percentage of organizing events involving white collar employees--white collar workers were the target of more than two times as many organizing events in Illinois than in Ohio.

For all types of employees, elections were the most common type of organizing method.<sup>120</sup> As was true for organizing events in general, significant differences between the states were observed for elections involving white collar employees (more prevalent in Illinois) and safety workers (more prevalent in Ohio). Card check events, though relatively rare for all types of public employees, represented a significantly higher percentage of organizing events for white collar employees in Illinois compared to Ohio, and a significantly higher percentage for safety and firefighter personnel in Ohio compared to Illinois.

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<sup>120</sup> Interestingly, the percentages of elections and card checks for Ohio firefighters were nearly the same. For all other employee groups, elections constitute a much higher percentage of organizing events than card checks in both states.



Finally, data in Table 3 show the numbers of employees organized in each state from 1999 to 2003 and the numbers organized through elections and card checks. While many more employees were organized in Ohio than Illinois, the difference is largely the result of one very large unit of state employees in Ohio (32,246). If that one observation is omitted, the numbers of employees are similar, 13,795 for Illinois and 13,581 for Ohio. In fact, none of the states' differences in the numbers of employees organized per event are statistically significant.

**Table 3**  
**Comparing Organizing Events by Types of Public Sector**  
**Employees, 1999-2003**

	<i>Illinois</i>	<i>Ohio</i>
<b>Organizing Events</b>	438	447
White Collar	122 (27.8)	52 (11.6)*
Firefighter	48 (11.0)	55 (13.8)
Safety	163 (37.2)	235 (52.6)*
Blue Collar	79 (18.0)	75 (16.8)
Multi-Employee	26 (5.9)	30 (6.7)
Number of Employees	13,795	45,827 [13,581]
	31.5 per event	103.4 [30.4] per event
<b>Card Checks</b>	70 (16.0)	96 (21.5)*
White Collar	30 (6.8)	13 (2.9)*
Firefighter	9 (2.0)	24 (5.4)*
Safety	10 (2.3)	44 (9.8)*
Blue Collar	16 (3.6)	9 (2.0)
Multi-Employee	5 (1.1)	6 (1.3)
Number of Employees	1,093	34,130 [1,884]
	15.6 per card check	355.5 [19.8] per card check
<b>Elections</b>	368 (84.0)	351 (78.5)*
White Collar	92 (21)	39 (8.7)*
Firefighter	39 (8.9)	31 (6.9)
Safety	153 (34.9)	191 (42.7)*
Blue Collar	63 (14.4)	66 (14.8)
Multi-Employee	21 (4.8)	24 (5.4)
Number of Employees	12,702	11,697
	34.5 per election	33.3 per election

\* Significant at  $p < .05$ . Numbers in parenthesis represent percentage out of the total number of organizing events in each state; numbers in brackets were calculated without the large Ohio bargaining unit.

Thus, the results in Tables 2 and 3 indicate that from 1999 to 2003, a period during which the two states operated under similar collective bargaining statutes, Illinois and Ohio shared many similarities in their experiences with union organizing activity. Unions were very successful in their organizing drives; they did not differ much in their overall levels of organizing activity; elections were more common than card checks; and

safety employees were the most frequently organized employee group. However, some significant differences were observed between the two states in the distribution of organizing activity across various levels of government and types of employees. Perhaps most germane for our purposes is the finding that card-check organizing was significantly more common in Ohio than in Illinois.

B. *A Comparison of Organizing Events in Illinois and Ohio, Post-2003*

Having established some of the similarities and differences exhibited between Illinois and Ohio in their public sector organizing experiences during the five year period preceding the enactment of the Illinois' card-check statute, this section explores the effects of the legislation. Two comparisons can be made using data from Illinois and Ohio post-2003. Namely, it is possible to identify changes that occurred within the two states relative to the prior five year period, as well as to examine differences across the states after 2003. Because our primary interest is to explore the effects of the Illinois' mandatory card-check statute, we will focus primarily on the former, although differences between Illinois and Ohio for the post-2003 period are also highlighted.

Comparing Tables 4 and 2, several interesting changes are evident within each state. First, the number of organizing events in Illinois increased by 55% relative to the prior five year period (from 438 to 681). This, combined with a decline in organizing events in Ohio (from 447 to 320), led to dramatic differences between the two states in their overall numbers of organizing events. In fact, as seen in Table 4, the number of organizing events in Illinois exceeded Ohio's across all levels of government. However, the basic pattern seen in Table 2 remains; most organizing events occurred at the city level in both states and notable differences between the two states were observed in the percentage of all organizing events that occurred at the county and state levels.

The post-2003 developments are clearly driven by the dramatic increase in card check organizing in Illinois. After 2003, Ohio no longer led Illinois in public sector card check organizing activity and the change was overwhelming. From 2004 to 2008 there were more than seven times as many card check events in Illinois than in Ohio and significant differences are observed at all levels of government. Card check organizing now accounted for nearly 76% of all Illinois organizing events compared to 16% for 1999-2003.<sup>121</sup> For Ohio the distribution of

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<sup>121</sup> The dramatic increase in card-check activity in Illinois is particularly interesting given that for about 16 months (from August 2007 to December 2008) the validity of the card-check statute was subject to a court challenge. In August of 2007, the Illinois' Appellate Court found the state agency's rules regarding the type of evidence that needed to be submitted supporting a card-check request to

organizing events between card checks and elections remained virtually unchanged across the two time periods.

Data in Table 4 also provide evidence that in Illinois there was a shift in the preferred method of organizing public employees, rather than simply the addition of card check organizing to the more traditional reliance on election outcomes. In Illinois only 44% as many elections occurred in 2004-2008 compared to 1999-2003. In contrast, the decline in organizing activity in Ohio was relatively equal for both card checks and elections. These trends explain why the percentage of organizing events that were elections is significantly higher in Ohio compared to Illinois at all levels of government while the opposite is true for card checks.

**Table 4**  
**Comparing Organizing Events by Level of Government, 2004-2008**

	<i>Illinois</i>	<i>Ohio</i>
<b>Organizing Events</b>	681	320
City	385 (56.7)	181 (56.6)
County	133 (19.5)	115 (35.9)*
State	163 (23.9)	24 (7.5)*
<b>Card Checks</b>	518 (76.1)	70 (21.9)*
City	292 (42.8)	43 (13.4)*
County	88 (12.9)	27 (8.4)*
State	138 (20.3)	0 (0%)*
<b>Elections</b>	163 (23.9)	250 (78.1)*
City	93 (13.6)	138 (43.1)*
County	45 (6.6)	88 (27.5)*
State	25 (3.7)	24 (7.5)*

\* Significant at  $p < .05$ . Numbers in parenthesis represent percentage out of the total number of organizing events in each state.

When examining Table 5, we see more significant differences between Illinois and Ohio in the distribution of organizing events across public employee groups for 2004-2008 than we did for the prior five year period. Also, while a comparison of Tables 5 and 3 show organizing activity in Ohio declined for nearly all public employee types (except

be invalid. The Appellate Court found that both evidence of “dues deduction authorization and other evidence” needed to be submitted in support of a card-check request. County of DuPage, Illinois Labor Relations Board, 874 N.E.2d 319 (2007), rev’d 231 Ill. 2d 593 (Ill. 2008). Although the Appellate Court was ultimately reversed by the Illinois Supreme Court in December of 2008, during the period preceding the reversal by the state Supreme Court, the Appellate Court’s decision made it more burdensome for unions to utilize the card-check process. Absent the type of legal challenge raised in the County of DuPage case, unions might have been even more inclined to use the card-check process.

multi-unit which increased slightly), in Illinois organizing increased for nearly all public employee types (except multi-employee which decreased).

**Table 5**  
**Comparing Organizing Events by Types of Public Sector Employees,**  
**2004-2008**

	<i>Illinois</i>	<i>Ohio</i>
<b>Organizing Events</b>	681	320
White Collar	283 (41.6)	45 (14.1)*
Firefighter	52 (7.6)	31 (9.7)
Safety	213 (31.3)	160 (50.0)*
Blue Collar	119 (17.5)	46 (14.4)
Multi-Employee	14 (2.1)	38 (11.9)*
Number of Employees	21,881	16,027
	32.1 per event	50.1 per event
<b>Card Checks</b>	518 (76.1%)	70 (21.9)*
White Collar	235 (34.5)	9 (2.8)*
Firefighter	38 (5.6)	17 (5.3)
Safety	134 (19.7)	30 (9.4)*
Blue Collar	100 (14.7)	8 (2.5)*
Multi-Employee	11 (2.1)	6 (1.9)
Number of Employees	10,839	2,689
	20.9 per card check	38.4 per card check*
<b>Elections</b>	163	250
White Collar	48 (7.0)	36 (11.3)*
Firefighter	14 (2.1)	14 (4.4)
Safety	79 (11.6)	130 (40.6)*
Blue Collar	19 (2.8)	38 (11.9)*
Multi-Employee	3 (4)	32 (10.0)*
Number of Employees	11,042	13,338
	67.7 per election	53.4 per election

\* Significant at  $p < .05$ . Numbers in parenthesis represent percentage out of the total number of organizing events in each state.

A comparison of Tables 5 and 3 further reveals dramatic increases in card checks for all public employee types in Illinois and declining numbers of elections for all public employee types. Less dramatic changes were observed over time for Ohio, but the general trend was declines in both elections and card checks for each of the various public employee groups. Consequently, card checks comprised a significantly larger percentage of organizing events for all public employee types in Illinois, except firefighters and multi-employee, compared to Ohio. In fact, firefighters are the only employee group for which significant differences between the states are not observed.

As for the numbers of employees organized, the numbers in Illinois exceeded that in Ohio for card checks but not elections. However, the average number of employees per card check event was significantly

higher in Ohio compared to Illinois. Comparing the results across time shows that nearly ten times as many Illinois public sector employees were organized via card check in 2004-2008 than in 1999-2003. And Illinois experienced nearly a 13% decrease in the number of employees participating in elections. In Ohio, if we exclude the one very large unit from the 1999-2003 data, we find about a 50% increase in the number of employees who were organized via card check and a modest increase in the number of employees who participated in representation elections.<sup>122</sup>

## VI. A QUALITATIVE COMPARATIVE ANALYSIS OF PUBLIC SECTOR UNION ORGANIZING CAMPAIGNS

### A. *Overview*

The results in the prior section comparing organizing activity across time and across states clearly indicate Illinois' card-check statute significantly influenced the amount and type of organizing activities in the state across a number of different contextual factors. Not only did the card-check law result in more organizing activity, primarily through card-checks, the data also show that increases in organizing activity occurred at different levels of government and among different types of employees.

In this section, we further explore the effects of the Illinois' statute by examining whether the changes identified above follow particular patterns. For instance, our prior analysis shows that following the enactment of the card-check statute, Illinois experienced more card-check organizing at all levels of government and among most types of employees. However, the prior analysis does not reveal how these changes occur in combination with one another. For example, did increases in city level card-check organizing tend to occur in combination with increases in card-check organizing among white collar employees? In this section, we explore this issue using an empirical technique which has become popular in research examining a variety of social phenomena – Qualitative Comparative Analysis (“QCA”). The next subsection provides a brief explanation of QCA. We then present and discuss the results derived from applying this analytical technique.

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<sup>122</sup> The results in tables 3 and 5 also show that in both states unions were organizing more employees per organizing event. For example, from 1999 to 2003, in Illinois the average number of employees per election event was 34.5, while in the later period that number was 67.7. In Ohio the average number of employees involved in elections went from 33.3 to 53.4.

### B. A Brief QCA Primer

QCA is an analytical technique that uses logical case comparisons to identify combinations of factors that relate to an outcome of interest.<sup>123</sup> QCA is based on the assumption that the influence of explanatory variables must be analyzed in combination, rather than in isolation from one another.<sup>124</sup> Because QCA explores the effect that variables exert in combination with other variables, its focus is on identifying combinations which parsimoniously explain particular outcomes, rather than the effect of a particular variable on that outcome.<sup>125</sup> As compared to more traditional quantitative techniques (e.g., regression analysis), which focus on identifying the effect of variables in isolation from one another, QCA allows for both “causal complexity and inductive sensitivity”.<sup>126</sup> Furthermore, unlike more traditional qualitative approaches (e.g., case studies), QCA provides more rigorous methodological discipline.<sup>127</sup>

QCA has been used to analyze a variety of phenomena. For example, it has been used to identify the combination of factors associated with decisions by police officers regarding which sexual assault complaints to investigate;<sup>128</sup> employers’ decisions on promotions to supervisory positions;<sup>129</sup> and workers’ decisions to engage in forms of worker resistance.<sup>130</sup> QCA has also been used to identify the conditions that facilitated or inhibited legislative action (i.e., legislature’s decision to enact a law).<sup>131</sup>

For this study, we are interested in identifying the contextual characteristics surrounding public sector union organizing campaigns.

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<sup>123</sup> See Danielle Soulliere, *Pathways to Attrition: A Qualitative Comparative Analysis of Justifications for Police Designations of Sexual Assault Complaints*. THE QUALITATIVE REPORT 10:3, pp. 416-438, 423 (2005); Michael c. Musheno, et. al., *Court Management of AIDS Disputes: A Sociological Analysis*, 16 LAW & SOC. INQUIRY 737, 753 (1991).

<sup>124</sup> See Soulliere, *supra* note 123 at 423.

<sup>125</sup> See Musheno, et. al., *supra* note 123 at 752.

<sup>126</sup> See Soulliere, *supra* note 123 at 424

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

<sup>129</sup> Charles Ragin, Susan E. Mayer and Kriss A. Drass, *Assessing Discrimination: A Boolean Approach*, 49 AM. SOC. REV. 221 (1984).

<sup>130</sup> Vincent, Roscigno and Randy Hodson, *The Organizational and Social Foundations of Worker Resistance*, 69 AM. SOC. REV. 14 (2004).

<sup>131</sup> Steven Harkreader & Allen Imershein, *The Conditions for State Action in Florida’s Health-care Market*, 40 J. HEALTH & SOC. BEHAV. 159 (1999).

Given complexities in the organizing process that give rise to the use of either elections or card checks to determine union representation, it is quite likely that the use of card check authorization versus elections depends on the presence of several conditions in combination. Applying QCA to our data allows us to explore the combinations of conditions that are present when one or the other organizing processes was used in Illinois and Ohio for the years 1999 to 2008.

While application of QCA varies in different contexts, in general two essential steps are required. First, one selects the outcome of interest and the relevant causal conditions (or factors) associated with that outcome.<sup>132</sup> Second, a “truth table” is constructed which lists all unique combinations of the various explanatory factors found in the data, as well as the outcome associated with that combination.<sup>133</sup> From the information provided in the truth table, one can identify the frequency with which the various combinations occur and the extent to which those combinations are associated with unique outcomes.<sup>134</sup>

### C. *Analysis*

We start by identifying the contextual factors contained in our data, as well as our outcome of interest. Our objective is to identify the various combinations of contextual factors that are associated with either card checks or elections. Thus, our outcome of interest is the type of organizing event. The contextual factors used for the QCA are the same characteristics (i.e., variables) discussed above, namely level of government (city, county, state), and type of public employees (white collar, safety, firefighters, blue collar, multi-employee). In addition, we account for the organizing unit size;<sup>135</sup> the state where the organizing event occurred;<sup>136</sup> and whether the organizing event occurred after 2003 (the year Illinois passed its mandatory card check legislation).

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<sup>132</sup> See Soulliere, *supra* note 123 at 425.

<sup>133</sup> See Musheno, et. al., *supra* note 123 at 753.

<sup>134</sup> At this point, QCA allows the researcher a number of options, depending on the research objectives. As described in the next subsection, we utilize the results of the truth table to classify the various combinations present in our data in terms of whether they tended to be related to card-check or election activities.

<sup>135</sup> Because QCA requires the use of dichotomous variables, data on the average number of employees in an organizing event are used to create the variable Unit-Size which equals 1 if the organizing unit is larger than the average unit size for Illinois or Ohio and zero otherwise

<sup>136</sup> This variable is coded as “1” if the event occurred in Illinois and as “0” otherwise.

Having identified the factors and outcome of interest, we proceed to create the truth table. As it relates to this study, the truth table (Appendix, Table A) shows the different kinds of organizing event cases that are represented in the data. Each row in the truth table represents a combination of contextual factors. In addition, we provide information on the number of times each combination appeared, and what percentage of that total number of cases involved either card checks or elections.

A casual examination of the truth table illustrates both the complexity and contextual richness of our data. For instance, of the 120 combinations possible in our analysis,<sup>137</sup> 98 different combinations are observed in our data. Further, the truth table reveals that a particular combination of factors is rarely associated with only one type of organizing event. In fact, that occurs only 31 times in our data and most of these involved very few cases.<sup>138</sup> Instead, we find that the majority of combinations (i.e., the rows in the truth table) result in a mixture of card checks and elections. This indicates that both types of organizing events (card checks and elections) occur under similar conditions and thus is suggestive of the complexity of the outcome under analysis.

To help make sense of this complexity we use probabilistic methods to determine whether a particular combination of factors is usually sufficient for card check organizing (or representation elections) to occur. We do that by specifying a benchmark or threshold that must be met to classify combinations. The benchmark we apply for this purpose is .65; that is, if the proportion of organizing events that were card checks (or elections) for a given combination of case characteristics is significantly greater than .65 we can say the combination is usually sufficient for a card check (or election) organizing event to occur. For this analysis, we examine only those combinations that appear in the data at least 7 times. This frequency threshold is chosen because no fewer than 7 consistent cases (e.g., all card checks or all elections) are needed to pass a probabilistic test of significance at  $p < .05$  when using a benchmark of .65.

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<sup>137</sup> The total number of combinations depends on the outcome variable (a dichotomous variable in our case) and the number of contextual factors. We have 5 contextual factors: state where event occurred (Illinois or Ohio); time period (before or after enactment of card-check law); level of government (city, county, state); type of employees involved (white collar, firefighters, safety, blue collar, multi-employee unit); and bargaining unit size (big or small). To calculate the total number of possible combinations one would multiply the number of options for each of the factors. In our case that is  $2 * 2 * 3 * 5 * 2$ , for a total of 120.

<sup>138</sup> Twenty four of those involved combinations of 6 or fewer cases, 19 were associated with elections only, and 5 were associated with card checks only.



Applying this probabilistic benchmark and sorting the data by state and time period (before and after the Illinois legislation), we show the combinations that are significantly associated with a specific type of organizing event and also explore the extent to which those combinations changed between the two relevant time periods. Table 6 provides the results of this analysis and also includes information from the truth table, such as the number of organizing events that shared that combination of characteristics, and columns showing the percentages of organizing events that were card checks and elections, respectively.

**Table 6**  
**Organizing Events Patterns**

<i>State and Time Period</i>	<i>Level of Gov't</i>	<i>Employee Type</i>	<i>Unit Size</i>	<i>Organizing Events</i>	<i>Pct. Card Checks</i>	<i>Pct. Elections</i>
<b>Illinois, Pre-2004</b>	City	Safety	Small	88	9.1	90.9*
	City	Safety	Big	15	6.7	93.3*
	City	Blue Collar	Small	54	20.4	79.6*
	City	Fire	Small	41	19.5	80.5*
	County	Safety	Small	42	2.4	97.6*
	County	Safety	Big	14	0	100*
	County	White Collar	Big	12	8.3	91.7*
<b>Illinois, Post-2003</b>	City	Safety	Small	158	72.1*	27.8
	City	Blue Collar	Small	77	83.1*	16.9
	City	White Collar	Small	65	87.7*	12.3
	City	Multi-Employee	Small	7	100*	0
	County	White Collar	Small	64	78.1*	21.9
	County	Blue Collar	Small	17	94.1*	5.9
	State	White Collar	Small	100	92*	8.0
	State	Blue Collar	Small	8	100*	0
<b>Ohio, Pre-2004</b>	City	Safety	Small	132	21.2	78.8*
	City	Blue Collar	Small	32	18.7	81.3*
	County	Safety	Small	67	14.9	85.1*
	County	Blue Collar	Small	23	0	100*
	County	Safety	Big	26	11.5	88.5*
	County	White Collar	Big	12	8.3	91.7*
	County	Multi-Employee	Small	8	0	100*
<b>Ohio, Post-2003</b>	City	Safety	Small	86	15.1	84.9*
	City	Safety	Big	8	0	100*
	County	Blue Collar	Small	9	0	100*
	State	Safety	Small	8	0	100*

\* Illustrates whether the combination is significantly associated with card checks or elections using the .65 threshold and .05 level of significance as described in the text.

The Table 6 results confirm our earlier findings. First, before 2004 Illinois and Ohio experienced very similar organizing activity among their public sector employees. During the 1999 to 2003 time period, card checks were never the dominant form of organizing in any context in either state.<sup>139</sup> However, there were several contexts in which elections dominated organizing events. Prior to 2004, in Ohio we see that among the contexts where there were organizing events, elections were significantly likely to occur if the organizing events involved either small units of city safety employees, small units of city or county blue collar employees, small or big units of county safety employees, big units of county white collar employees, or small multi-employee groups of county employees. What is most obvious from this analysis is the dominance of elections in organizing events involving various types of county employees.

Similarly, in Illinois prior to 2004, there were several contexts where elections were significantly likely to occur but none where card checks dominated organizing activity. Elections were significantly likely to occur in organizing events involving either small or big units of city safety employees, small units of city blue collar employees, small units of city fire employees, small or big units of county safety employees, or big units of county white collar employees. The prevalence of elections for city and county safety employees is the dominant finding here. It is also interesting to note that five of the seven contexts significantly associated with election activity in Illinois are the same as Ohio's before 2004, further reinforcing similarities in organizing activity between the states during the 1999 to 2003 time period.

Major differences across the two states, however, become apparent when we look at the post-2003 results. In Ohio, elections continued to be the only dominant form of organizing, although there were fewer contexts dominated by elections.<sup>140</sup> With one exception, all involved small numbers of organizing events. In Illinois one can clearly see the effect of the 2003 card check legislation on union organizing. After 2003 two of the

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<sup>139</sup> In fact, the results also show that for Ohio card checks were never the dominant form of organizing in any context during either time period.

<sup>140</sup> In the Pre-2004 period there were seven contexts dominated by elections as compared to only four in the post-2003 period. Post-2003 elections were significantly likely to dominate when the organizing event involved small or big units of city safety employees, small units of county blue collar employees, or small units of state safety employees. The fact that there were fewer contexts where elections constituted the dominant form of organizing suggests that there were more contexts where card-checks and elections occurred at a more balance rate.

contexts that were significantly associated with election activity in Illinois shifted to reliance on card checks—small units of city safety employees and small units of city blue collar employees. Moreover, the increase in card check organizing in other contexts shifted the balance toward card checks as the dominant form of organizing activity. After 2003 card check organizing in Illinois was significantly likely to occur for organizing events involving either small units of white collar workers at all levels of government (city, county, and state); small units of blue collar workers at all levels of government (city, county, and state); small units of city safety workers; or small units of city multi-employee groups of employees.

In short, the Table 6 results indicate that following the enactment of the Illinois' statute, card checks became the dominant form of organizing in some of the same contexts where elections had been the dominant form. And the results also show that card checks became the dominant organizing method in several new contexts (i.e., environments where up to that point card checks might have occurred, but not as the dominant form of organizing activity). These results suggest that the Illinois' legislation not only led unions to shift their organizing methods toward card-checks, but also to expand their organizing efforts to other contexts. In particular, the most dramatic changes in organizing activity resulting from the passage of card check legislation appear to have involved small units of blue collar or white collar workers at all levels of government.

## VII. IMPLICATIONS

The findings from our research confirm expectations regarding the potential impact of card-check legislation on union organizing as it relates to changes in the organizing process. In our current labor law regime, nonunion representation is the default rule. In the absence of card-check authorization legislation, the parties most directly involved in the union organizing process, unions and employers, often have the option of relying on an election to determine union representation or agreeing to use signatures on union authorization cards. Under these conditions, the use of card checks depends on voluntary agreement between the union seeking representation rights and the employer whose employees are the target of the organizing campaign. Given the historical opposition of employers to union representation,<sup>141</sup> employers are unlikely to acquiesce to a request

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<sup>141</sup> See William T. Dickens, *The Effect of Company Campaigns on Certification Elections: Law and Reality Once Again*, 36 INDUS. & LAB. REL. REV. 560, 563-67 (1983) (analyzing the effect of employer tactics in organizing election outcomes); John J. Lawler, *The Influence of Management Consultants on the Outcome of Union Certification Elections*, 38 INDUS. & LAB. REL. REV. 38, 38-39 (1984) (describing the effects of the use of management consultants on union organizing elections); Kate Bronfenbrenner, *The Role of Union Strategies in NLRB Elections*, 50 INDUS. & LAB. REL. REV. 195, 201-205 (1997) (listing

for voluntary recognition.<sup>142</sup> In fact, these same concerns were expressed in the Illinois' legislature by supporters of the card-check statute. Supporters of the card-check bill described the existing law as requiring workers to go "through a difficult process to form a union."<sup>143</sup> The election process was described as "lengthy and cumbersome", giving the employer "time to scare workers into voting against a union" even if the workers wanted one.<sup>144</sup>

Implied in the concerns voiced by supporters of the Illinois' card-check statute was the expectation that unions, if given the opportunity, will prefer to organize via card checks, and that the new legislation would result in an increase in organizing activity, specifically card-check organizing. In fact, this is the effect one would expect to occur from the adoption of an asymmetry-correcting altering rule such as card-check legislation under Professor Sachs' model. When card check authorization legislation is present, voluntary compliance by the employer is no longer needed—with some restrictions the choice belongs to the union. Predictably, mandated card-check recognition benefits union organizing efforts.

Our analyses show that in both Illinois and Ohio public sector union density was stable or slightly increasing from 1983 to 2008. Yet our data also indicate that in recent years organizing activity in Illinois has been higher than in Ohio. In addition, our data show that public employees were organized through a mix of elections and card check authorizations, union success rates in organizing events were quite high, and organizing

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several tactics commonly used by employers in the course of organizing campaigns).

<sup>142</sup> See Eaton & Kriesky, *supra* note 8 at 158. Employers, however, might be willing to agree to card checks in order to avoid the costs associated with mounting a vigorous anti-union campaign. These costs could include: hiring the consultant; running the campaign; lost work time; and, legal expenses. For those employers that have an existing bargaining relationship, an additional cost is the potential harm to the labor-management relationship associated with an anti-union campaign. The decision by employers to agree to a card check procedure can be motivated as well by the desire to avoid the negative business consequences associated with a union led corporate campaign. See Eaton & Kriesky *supra* note 8 at 48-51. See also, Adrienne E. Eaton & Jill Kriesky, *Dancing with the Smoke Monster: Employer Motivations for Negotiating Neutrality and Card Check Agreements*, in JUSTICE ON THE JOB: PERSPECTIVES ON THE EROSION OF COLLECTIVE BARGAINING IN THE UNITED STATES. 139, 147-50 (Richard N. Block et al., eds., 2006)

<sup>143</sup> II Senate Transcript, 93rd Gen. Assembly, May 21, 2003 (statement by Sen. Sandoval).

<sup>144</sup> *Id.*

events occurred at all levels of government and tended to involve traditionally organized groups of public employees.

Consistent with the implications of the structural model, our results indicate that adoption of card check legislation in Illinois (2003) altered the organizing landscape for public sector unions and employers. New organizing opportunities for unions led to increases in organizing activity, more newly organized employees, and a shift in the types of employers and employees that were the target of organizing campaigns. A comparison of the types of organizing events between the two states clearly indicates that most of the organizing in Illinois after 2003 was through card checks. In Ohio, on the other hand, card-check organizing remained fairly stable across the two periods under study.

We are confident these findings can be generalized to other public sector environments. Thus, one would expect that the various other states that have enacted card-check laws (e.g., Massachusetts,<sup>145</sup> New Hampshire,<sup>146</sup> New Jersey,<sup>147</sup> and Oregon<sup>148</sup>), likely experienced growth in organizing activity among public employees and that most of that organizing activity was through card checks.

We also believe that our results are instructive with regard to the debate surrounding enactment of the EFCA. To be sure, the dynamics of the two sectors are different enough to warn against wholesale adoption of the lessons that either sector might have for the other.<sup>149</sup> Thus, we share these observations with that caveat in mind.

For our purposes, perhaps the major difference between the public and private sector organizing environments is the relatively more favorable organizing environment for public sector unions. For over three decades,

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<sup>145</sup> MASS. GEN. LAWS ANN. CH. 150E, § 4.

<sup>146</sup> N.H. REV. STAT. ANN. § 273-A:10, IX.

<sup>147</sup> N.J. STAT. ANN. § 34:13 A-5.3.

<sup>148</sup> OR. REV. STAT. § 243.682 (2)(a).

<sup>149</sup> See Clyde W. Summers, *Public Employee Bargaining: A Political Perspective*, 83 YALE L. J. 1156 (1973-74) (identifying the main differences between public and private employment); *Public Sector Bargaining: Problems of Governmental Decisionmaking*, 44 U. CIN. L. REV. 669 (1975) (same); *Principles and Politics, Bargaining in the Government's Business: Principles and Politics*, 18 U. TOL. L. R. 265, 281 (1987) (same); and, *Public Sector Bargaining, A Different Animal*, 5 U. PA. J. LAB. & EMP. L. 441 (2002-2003) (same).

unionization rates in the public sector have been about three times those of the private sector.<sup>150</sup> Because public employers' budgets are not dependent on profits (as is the case for employers in the private sector), public employers are less likely to see unions as a threat to their economic survival.<sup>151</sup> In fact, to the extent public employers are interested in maximizing their chances of staying in office and public employees represent an important component of the electorate, public employers might even be hesitant to aggressively oppose unions which are actively organizing public employees.<sup>152</sup>

Given the reduced incentives for employer opposition to unions in the public sector, one would expect public sector unions to be less concerned about facing an election and therefore less eager to shift towards card-check organizing. Similarly, given that union density rates are higher in the public sector, one would also expect there to be less pent up demand for union representation available for release after passage of a mandatory card-check law. And yet, our results show that even in this relatively favorable environment, when faced with the opportunity to engage in card-check organizing, public sector unions in Illinois took advantage of that opportunity.

If card check legislation leads to more union organizing and subsequent membership growth in the public sector, there should be similar, perhaps even greater, advantages to unions in the private sector where unions often confront vehement opposition by profit-minded managements. Private sector unions will have a stronger incentive to pursue card-check organizing in order to avoid some of the aggressive employer opposition they often encounter in election campaigns. And because union density rates in the private sector have been much lower than in the public sector, there may be more ripe organizing targets for unions to pursue. In short, mandatory card-check legislation for private sector employees would appear to provide an opportunity for significant increases in union organizing activity and union growth.

However, union optimism about life with the EFCA should be tempered. After all, private sector employers appear prepared to respond aggressively to card-check organizing efforts. Mandating that employers recognize a union on the basis of card checks will not lessen the incentives employers have for opposing unions. Consequently, a change in the law

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<sup>150</sup> See Bennett & Masters, *supra* note 34, at 535-37.

<sup>151</sup> See Richard B. Freeman, *Unionism Comes to the Public Sector*, 24 J. ECON. LIT. 41, 61 (1986).

<sup>152</sup> See James A. Craft, *Future Directions in Public Sector Labor Relations: A 2020 Perspective*, 24 J. LAB. RES. 545, 548 (2003).

may simply shift the timing at which employers will initiate their anti-union campaigns.

Private employers, who lack incentives to agree to card check agreements under existing labor law, could adopt preemptive tactics designed to reduce the likelihood of a union organizing campaign. As is true of tactics that employers currently use during election campaigns, some of these tactics might prove to be legal and some illegal. For example, employers might adopt positive/proactive measures intended to eliminate employees' perceived need for union representation, such as establishing an adequate and equitable compensation system; developing positive supervisory-employee relations; establishing open channels of communication; adopting some form of alternative dispute resolution system to deal with employees' concerns, among others.<sup>153</sup> Employers could also adopt negative/proactive tactics, such as aggressively screening out pro-union job candidates during the hiring process by questioning job applicants about their union sentiments.<sup>154</sup> While asking such questions directly is illegal,<sup>155</sup> various observers have noted that companies sometimes use indirect methods to achieve the same objective.<sup>156</sup> For example, employers in an industry with traditionally high unionization rates might seek to hire employees with no prior work experience in the industry, on the assumption those employees are less likely to have belonged to a union.<sup>157</sup> Of course, as frequently occurs in conjunction with many organizing campaigns, employers might continue to rely on reactive strategies to counteract any unionization efforts. It has been amply documented that employers facing unionization campaigns are very likely to hire consultants to run vigorous anti-union campaigns.<sup>158</sup> Anti-union campaigns have become rather sophisticated affairs including a variety of

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<sup>153</sup> See Terry L. Leap, COLLECTIVE BARGAINING & LABOR RELATIONS 146-48 (2d ed. 1995).

<sup>154</sup> *Id.* at 148.

<sup>155</sup> See e.g., *Center Construction Company, Inc.*, 2004 WL 2138582 (2004) (finding questions concerning union sympathies in the context of job application interviews to be inherently coercive); *Rochester Cadet Cleaners, Inc.*, 205 N.L.R.B. 773 (1973) (finding that the employer violated the Act by asking a job applicant whether her former employers were unionized and whether she had belonged to a union).

<sup>156</sup> See Gregory M. Saltzman, *Job Applicant Screening by a Japanese Transplant: A Union-Avoidance Tactic*, 49 INDUS. & LAB. REL. REV. 88, 91 (1995) (discussing some of the tactics used by Japanese automobile plants operating the United States to screen out union sympathizers).

<sup>157</sup> *Id.*

<sup>158</sup> See John Lawler & Robin West, *Impact of Union-Avoidance Strategy in Representation Elections*, 23 IND. REL. 406 (1985).

tactics including both legal (e.g., letter writing, captive audience speeches) and illegal activities (e.g., dismissals).<sup>159</sup>

Thus, the proposed amendments to the NLRA, which are intended to facilitate card-check recognition, raise the possibility of increased union avoidance behavior by employers at pre- or very early-organizing stages of an organizing campaign. Whether such a reaction by employers will be effective in countering the likely increase in union organizing activity associated with mandatory card-check legislation depends on what actions unions take in response.

#### VIII. CONCLUSION

Research on union organizing has increasingly focused on the use of card check authorization as a means of achieving union representation. While much of the published work has been commentaries on the pros and cons of mandated card-check recognition, our paper examines the impact of such legislation on union organizing activity and outcomes using data on public sector organizing at the state and local levels in Illinois and Ohio.

We find that, not surprisingly, the Illinois' card-check statute has allowed public sector unions to reduce their reliance on elections as the primary form of organizing activity. We also find that the card-check legislation appears to allow or encourage public sector unions in Illinois to organize in environments where they had not organized as extensively before.

Our findings should be of interests to researchers exploring the effects of public sector labor laws on organizing activity among public employees. Given that various states have recently adopted legislation similar to the Illinois' statute,<sup>160</sup> tracking the impact of these laws should be of interest to those wanting to understand their impact on labor relations outcomes. Our findings might also be relevant to the debate surrounding the EFCA. While significant differences exist between the public and private employment sectors, our results provide some evidence of the potential effects the EFCA could have on private sector union organizing activity.

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<sup>159</sup> See Kate Bronfenbrenner & Tom Juravich, *The Impact of Employer Opposition on Union Certification Win Rates: A Private/Public Sector Comparison*, Working Paper No. 113, Economic Policy Institute.

<sup>160</sup> See *supra* notes 50 to 61 and accompanying text.



**Appendix  
Truth Table**

State	Period	City Level	County Level	State Level	White Collar	Fire-fighter	Safety	Blue Collar	Multi-Employee	Unit Size	Frequency	% Card Checks	% Elections	
0	1	1	0	0	0	0	0	1	0	0	0	158	72.15	27.85
1	0	1	0	0	0	0	0	1	0	0	0	132	21.21	78.79
0	1	0	0	1	1	0	0	0	0	0	0	100	92	8
0	0	1	0	0	0	0	0	1	0	0	0	88	9.09	90.91
1	1	1	0	0	0	0	0	1	0	0	0	86	15.12	84.88
0	1	1	0	0	0	0	0	0	1	0	0	77	83.12	16.88
1	0	0	1	0	0	0	0	1	0	0	0	67	14.93	85.07
0	1	1	0	0	1	0	0	0	0	0	0	65	87.69	12.31
0	1	0	1	0	1	0	0	0	0	0	0	64	78.13	21.88
0	0	1	0	0	0	0	0	0	1	0	0	54	20.37	79.63
1	0	1	0	0	0	0	1	0	0	0	0	46	47.83	52.17
0	0	0	1	0	0	0	0	1	0	0	0	42	2.38	97.62
0	0	1	0	0	0	0	1	0	0	0	0	41	19.51	80.49
0	1	1	0	0	0	0	1	0	0	0	0	41	70.73	29.27
1	1	0	1	0	0	0	0	1	0	0	0	38	34.21	65.79
0	0	1	0	0	1	0	0	0	0	0	0	36	33.33	66.67
0	1	0	0	1	1	0	0	0	0	0	1	35	71.43	28.57
0	0	0	1	0	1	0	0	0	0	0	0	33	21.21	78.79
1	0	1	0	0	0	0	0	0	1	0	0	32	18.75	81.25
0	0	0	0	1	1	0	0	0	0	0	0	26	26.92	73.08
1	0	0	1	0	0	0	0	1	0	0	1	26	11.54	88.46
1	1	1	0	0	0	0	0	0	1	0	0	25	28	72
1	0	0	1	0	1	0	0	0	0	0	0	24	25	75
1	0	0	1	0	0	0	0	0	1	0	0	23	0	100
1	1	1	0	0	0	0	1	0	0	0	0	22	59.09	40.91
0	1	0	1	0	0	0	0	1	0	0	0	20	30	70

State	Period	City Level	County Level	State Level	White Collar	Fire-fighter	Safety	Blue Collar	Multi-Employee	Unit Size	Frequency	% Card Checks	% Elections
0	1	0	1	0	0	0	0	1	0	0	17	94.12	5.88
0	1	0	1	0	1	0	0	0	0	1	16	62.5	37.5
1	1	0	1	0	0	0	1	0	0	1	16	25	75
1	1	0	1	0	1	0	0	0	0	0	15	26.67	73.33
0	0	1	0	0	0	0	0	1	0	1	15	6.67	93.33
1	1	1	0	0	1	0	0	0	0	0	14	14.29	85.71
0	0	0	1	0	0	0	0	1	0	1	14	0	100
0	0	0	1	0	0	0	0	0	0	1	12	16.67	83.33
0	0	0	1	0	0	0	0	0	1	0	12	33.33	66.67
0	1	0	0	1	0	0	0	1	0	0	12	66.67	33.33
1	0	1	0	0	1	0	0	0	0	0	12	41.67	58.33
0	0	0	1	0	1	0	0	0	0	1	12	8.33	91.67
1	0	0	1	0	1	0	0	0	0	1	12	8.33	91.67
1	1	0	1	0	0	0	0	0	0	1	11	9.09	90.91
0	1	1	0	0	0	0	0	0	1	1	11	72.3	27.27
1	1	0	1	0	0	0	0	0	0	1	11	18.18	81.82
1	1	1	0	0	0	0	0	0	0	1	10	10	90
0	0	0	0	1	1	0	0	0	0	1	10	30	70
0	0	1	0	0	0	0	0	0	1	1	10	10	90
0	1	1	0	0	0	0	0	1	0	1	10	30	70
1	0	0	1	0	0	0	0	0	0	1	10	10	90
1	1	0	1	0	0	0	0	0	1	0	9	0	100
0	1	0	1	0	0	0	0	1	0	1	9	22.22	77.78
1	0	1	0	0	0	0	0	0	1	1	9	33.33	66.67
0	0	1	0	0	0	0	0	0	0	1	8	25	75
0	1	0	0	1	0	0	0	0	1	0	8	100	0
1	0	0	1	0	0	0	0	0	0	1	8	0	100
1	1	0	0	1	0	0	0	1	0	0	8	0	100

State	Period	City Level	County Level	State Level	White Collar	Fire-fighter	Safety	Blue Collar	Multi-Employee	Unit Size	Frequency	% Card Checks	% Elections
0	1	1	0	0	0	1	0	0	0	1	8	75	25
1	1	1	0	0	0	0	1	0	0	1	8	0	100
0	1	1	0	0	0	0	0	0	1	0	7	100	0
1	0	1	0	0	0	0	0	0	1	0	7	42.86	57.14
0	0	1	0	0	0	1	0	0	0	1	6	16.67	83.33
1	0	1	0	0	0	0	1	0	0	1	6	50	50
1	1	0	1	0	0	1	0	0	0	0	5	20	80
0	0	1	0	0	1	0	0	0	0	1	5	0	100
0	1	1	0	0	0	0	0	0	1	1	5	60	40
1	0	0	1	0	0	0	0	1	0	1	5	0	100
1	1	0	0	1	1	0	0	0	0	1	5	0	100
1	1	0	1	0	0	0	0	1	0	1	5	0	100
1	1	0	1	0	1	0	0	0	0	1	5	40	60
1	1	1	0	0	0	0	0	1	0	1	5	20	80
1	0	0	0	1	0	0	1	0	0	0	4	0	100
0	0	1	0	0	0	0	0	0	1	1	4	25	75
0	1	0	0	1	0	0	0	1	0	1	4	100	0
0	1	0	0	1	0	0	1	0	0	1	4	25	75
1	0	0	0	1	0	0	0	1	0	1	4	0	100
1	0	0	0	1	1	0	0	0	0	1	4	25	75
1	0	1	0	0	0	0	0	0	1	1	4	25	75
1	0	1	0	0	0	1	0	0	0	1	4	50	50
1	1	0	0	1	0	0	1	0	0	1	4	0	100
1	1	1	0	0	0	0	0	0	1	1	4	50	50
1	1	1	0	0	0	1	0	0	0	1	4	75	25
0	0	0	0	1	0	0	0	1	0	0	3	0	100
0	0	0	0	1	0	0	1	0	0	0	3	0	100
1	1	0	0	1	1	0	0	0	0	0	3	0	100

State	Period	City Level	County Level	State Level	White Collar	Fire-fighter	Safety	Blue Collar	Multi-Employee	Unit Size	Frequency	% Card Checks	% Elections
0	1	1	0	0	1	0	0	0	0	1	3	33.33	66.67
1	0	0	0	1	0	1	0	0	0	1	3	0	100
1	1	1	0	0	1	0	0	0	0	1	3	33.33	66.67
0	1	0	1	0	0	0	0	0	0	1	2	50	50
1	0	0	0	1	0	0	0	0	1	0	2	0	100
0	0	0	1	0	0	0	0	0	0	1	2	0	100
0	1	0	1	0	0	0	0	1	0	1	2	0	100
0	1	0	1	0	0	1	0	0	0	1	2	100	0
1	0	0	1	0	0	1	0	0	0	1	2	0	100
1	1	0	0	1	0	0	0	0	0	1	2	0	100
1	1	0	0	1	0	0	0	1	0	1	2	0	100
0	0	0	1	0	0	1	0	0	0	0	1	0	100
0	1	0	1	0	0	1	0	0	0	0	1	100	0
0	0	0	0	1	0	0	1	0	0	1	1	0	100
1	0	0	0	1	0	0	0	0	0	1	1	100	0

## Notes:

- State:** 1= Organizing event occurred in Illinois; 0= Organizing event occurred in Ohio
- Period:** 1= Organizing event occurred after 2003; 0= Organizing event occurred before 2004
- City Level:** 1= Organizing event involved city level; 0= Organizing event did not involve city level
- County Level:** 1= Organizing event involved county level; 0= Organizing event did not involve county level
- State Level:** 1= Organizing event involved state level; 0= Organizing event did not involve state level
- White Collar:** 1= Organizing event involved white collar employees; 0= Organizing event did not involve white collar employees
- Firefighter:** 1= Organizing event involved firefighters; 0= Organizing event did not involve firefighters
- Safety:** 1=Organizing event involved safety employees; 0= Organizing event did not involve safety employees
- Blue Collar:** 1=Organizing event involved blue collar employees; 0= Organizing event did not involve blue collar employees
- Multi-Employee:** 1= Organizing event involved employees of various types of jobs; 0= Organizing event did not involve employees with different job descriptions

- Unit Size:** 1=Organizing event involved a bargaining unit that was larger than the mean for all bargaining units in that state (i.e., 32 for Illinois; 31 for Ohio); 0=Organizing event involved a bargaining unit that was equal to or smaller than the mean for all bargaining units in that state
- Frequency:** Number of events involving that specific combination of characteristics
- % Card Check:** Percentage of events involving that specific combination of characteristics that resulted in card checks
- % Elections:** Percentage of events involving that specific combination of characteristics that resulted in elections