Issue Brief

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The Silent War:

The Assault on Workers' Freedom to Choose a Union and Bargain Collectively in the United States

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Introduction

THE FREEDOM OF WORKERS TO JOIN TOGETHER in unions and bargain collectively is a fundamental human right that U.S. labor law guarantees in principle. But when America's workers seek to exercise this right today, they nearly always run into a buzz saw of employer threats, intimidation, coercion and outright warfare. The experiences of the workers quoted in this report, sad to say, are typical.

These employer tactics are designed to suppress workers' freedom to organize a union, which they do with devastating effectiveness. The law, which is supposed to uphold and defend the right to form unions, has become a Catch-22 of ineffective enforcement and interminable delay. Millions of America's workers completely lack legal protection of their right to make a free choice to form or join a union.

Workers in particular and society as a whole pay a huge price for the widespread denial of the freedom to form unions. This price is measured, in part, by the suppression of wages, enormous and widening gaps in the distribution of income and wealth, weakening of the safety net, decline in civic and political participation, unchecked corporate power and harm to the quality of life. The worst casualty is democracy, in the workplace and the entire society.

America's workers cannot and must not accept this state of affairs. We are determined to fight back. To learn how, read on.

Employer Interference by the Numbers

(Private-Sector Employers)

Employers that illegally fire at least one worker for union activity during organizing campaigns:	**25%**
Employers that hire consultants or union-busters to help them fight union organizing drives:	**75%**
Employers that force employees to attend one-on-one meetings with their own supervisors against the union:	**78%**
Employers that force employees to attend mandatory, closed-door meetings against the union:	**92%**
Employers that threaten to call the U.S. Citizenship and Immigration Services during organizing drives that include undocumented employees:	**52%**
Companies that threaten to close the plant if the union wins the election:	**51%**
Companies that actually close their plants after a successful union election:	**1%**
Workers in 2003 who received back pay because of illegal employer discrimination for activities legally protected under the National Labor Relations Act:	**23,144**
Percentage of unions newly formed by workers whose employers do not agree to a first contract within two years:	**45%**
Proportion of public that says laws protecting the freedom to join unions are important:	**73%**
Proportion of public who knows what happens in America's workplaces when workers try to form unions:	**33%**

If employers allowed a fair process for choosing a voice, millions more workers would have a voice on the job today.

Nonunion workers who say they want to join a union:	**57 million**
Percentage of U.S. workers that belongs to unions:	**12.5%**
Percentage of U.S. workers that would be in unions if workers could choose freely:	**59%**

Sources: Kate Bronfenbrenner, *Uneasy Terrain: The Impact of Capital Mobility on Workers, Wages and Union Organizing,* Cornell University, Sept. 6, 2000; Human Rights Watch, *Unfair Advantage: Workers' Freedom of Association in the United States Under International Human Rights Standards, 2000*; Membership survey for the AFL-CIO, Peter D. Hart Research Associates, 2005; National Labor Relations Board annual reports; Federal Mediation & Conciliation Service annual report, 2004.

Suppression of Workers' Freedom to Form Unions is Widespread in the United States

IN SEPTEMBER 2000, Human Rights Watch, one of the world's most respected human rights organizations, published a historic, book-length report on workers' freedom to form unions and bargain collectively in the United States, after an 18-month survey.[1] Human Rights Watch Executive Director Kenneth Roth summarized the report's findings:

"Our findings are disturbing, to say the least. Loophole-ridden laws, paralyzing delays, and feeble enforcement have led to a culture of impunity in many areas of U.S. labor law and practice. Legal obstacles tilt the playing field so steeply against workers' freedom of association that the United States is in violation of international human rights standards for workers."[2]

So stark a conclusion from an unimpeachable source about the sorry state of workers' freedom to choose union membership in the largest economy and most powerful nation on Earth should be a wake-up call to us all.

Human Rights Watch found that a large proportion of the U.S. workforce has no legally protected right to join together in unions whatsoever, including most agricultural workers, independent contractors, household workers and supervisors, many federal employees and state and local government employees in the 23 states in which collective bargaining laws are nonexistent or weak. There is no justification in human rights terms, according to Human Rights Watch, for these enormous gaps in legal protection.

According to the Government Accountability Office (GAO), 32 million U.S. workers lack legal protection of the fundamental right to form unions and bargain collectively.[3]

Since Sept. 11, 2001—despite the heroism of hundreds of union Fire Fighters and other first responders who perished in the line of duty that day—the situation has gotten even worse. The Bush administration has stripped more than 200,000 federal workers of collective bargaining rights; the National Labor Relations Board (staffed by a Bush-appointed majority) has watered down coverage in the private sector (especially for graduate student, disabled and temporary agency employees); and the Republican governors of Indiana and Missouri have issued executive orders rescinding collective bargaining—and even, in the case of Kentucky, a much weaker "meet and confer" obligation—for state employees.[4]

Moreover, workers who in theory enjoy legal protection of the freedom to form unions barely are better off. According to National Labor Relations Board (NLRB) records cited by Human Rights Watch, illegal reprisals against employees attempting to exercise their legal rights under the National Labor Relations Act have reached epidemic proportions. These illegal reprisals numbered fewer than 1,000 per year in the 1950s. That figure has grown exponentially by the decade, reaching more than 23,000 in 2003.[5] As American Rights at Work puts it, "Something is wrong when a worker is fired or discriminated against every 23 minutes in this country for exercising their freedom of association."[6] When employer illegality reaches such a level, Human Rights Watch's conclusion that the law is too weak and is enforced inadequately seems inescapable. While employers are the main perpetrators, the report emphasizes that government bears ultimate responsibility for protecting workers' freedom of association.

Equally if not more potent in suppressing workers' freedom of association, according to Human Rights Watch, is an array of employer tactics legal under U.S. law. Examples include mandatory captive-audience meetings, during which a one-sided, anti-union message is presented and veiled threats are made that the workplace will be moved or closed should the workers vote to form a union.

Justice Delayed is Justice Denied

If these and other strong-arm tactics are not enough, employers can and do avail themselves of interminable administrative and procedural delays. According to Human Rights Watch, these "long delays in the U.S. labor law system confound workers' exercise of the right to freedom of association."[7]

■ There can be long delays between the filing of a petition and the holding of an election.

■ Employer maneuvering over which employees should be allowed to vote in the election frequently causes further long delays.

■ Post-election employer objections introduce another element of delay, first at the NLRB and then in the courts if the NLRB rules against the employer.

■ Post-election refusals to bargain by employers can deny justice to workers for years—or permanently.

■ Unfair labor practice charge cases, including illegal discharge cases, can be tied up in the courts by employers for years, during which workers are denied reinstatement despite having been awarded it by the NLRB.

In one case documented by American Rights at Work, a woman illegally discharged in 1992 still was waiting for justice 12 years later in 2004—at the age of 72.[8] Though this case is extreme, long delays are commonplace: **In 50 percent of the decisions issued by the NLRB in 2002 in unfair labor practice charge cases, workers waited more than 889 days for the NLRB to reach a decision.[9] Employers then can appeal decisions to a federal court, adding even more delay.**

The Human Rights Watch report's longest chapter is a compelling presentation of case studies of violations of workers' freedom of association. The workers' own words are far more powerful than any NLRB statistic.

Human Rights Watch researchers interviewed "apple pickers and computer programmers in Washington State; hotel workers in California; nursing home workers in Florida; steelworkers in Colorado; shipyard workers in Louisiana; factory workers in Michigan, Illinois and Maryland; farm workers and hog processing workers in North Carolina; sweatshop workers in New York; and more."[10]

A mosaic of pervasive suppression of workers' freedom to choose a union emerges from these case studies. In the United States today, unfortunately, the fine rhetoric of the 1935 National Labor Relations Act (NLRA)—according to which, "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other mutual aid or protection"—has become a false promise for most workers.

Human Rights Watch's findings are reinforced by Dr. Kate Bronfenbrenner's analysis of more than 400 union representation election campaigns during 1998 and 1999.[11] A partial list of employer tactics tabulated by Bronfenbrenner includes:

■ Mandatory captive-audience meetings, in which workers are forced to sit through one-sided, anti-union presentations;

■ Repeated closed-door, one-on-one meetings with supervisors, during which workers are interrogated about their views of unions and pro-union workers are advised to change their minds;

■ Employer assistance to anti-union workplace committees;

■ Widespread threats that the workplace will close or move should the workers vote to form a union; and

■ Illegal discharge of workers who support forming a union.

A **captive-audience meeting** is a meeting on company time during which a strong, one-sided, anti-union message is presented.

We have experienced first-hand many tactics used by management to discourage organizing and suppress the freedom to form our union. Management required multiple one-on-one meetings with supervisors, during which we were questioned about our views of the union and what our co-workers' views were. We were subjected to widespread prediction that the hospital would close. The hospital's anti-union message was obvious: intentional creation of turmoil and disruption in the workplace.

—Lori Gay, health care worker at Salt Lake Regional Medical Center, Utah

Workers can be fired for refusing to attend. Workers who support the union can be forbidden to attend. No equal time—or, indeed, any time—is allowed during working hours for workers seeking union representation to make their case. According to Bronfenbrenner's research, private-sector employers use captive-audience meetings as a tactic to suppress workers' freedom to form unions during 92 percent of union organizing drives. On average, these employers hold 11 captive-audience meetings during an NLRB representation election campaign—up from 5.5 in the mid-1980s, as employers have turned up the heat in their anti-union campaigns.

Seventy-eight percent of private-sector employers force employees to attend one-on-one anti-union meetings with managers during NLRB representation election campaigns. In two-thirds of representation elections, these one-on-one meetings take place at least once a week during the campaign.

Fifty-five percent of private-sector employers force workers to watch anti-union videos during NLRB representation election campaigns. Seventy percent send anti-union letters to workers' homes; an average of 6.5 such letters are sent to each worker's home by these employers during a typical campaign—up from 4.5 in the mid-1980s. Three-quarters of private-sector employers distribute anti-union leaflets to workers during NLRB representation election campaigns; on average, 13 separate anti-union leaflets are distributed by these employers during a campaign.

Bronfenbrenner's report focused on threats made by employers during organizing campaigns to close or move the workplace if the workers vote for a union. She found employers made such threats during 51 percent of the 407 organizing campaigns she analyzed in 1998 and 1999. In mobile industries, the proportion of threats to close or move is even higher. For example, such threats were made during 71 percent of the manufacturing-sector organizing campaigns in her sample. With increased globalization and capital mobility, especially since the passage of the North America Free Trade Agreement (NAFTA), employer threats to close or move have become much more common features of organizing campaigns. The prevalence of employer threats to close or move rose from 29 percent during organizing campaigns in 1986–1987 to the 51 percent recorded for 1998–1999.

Though threats to close or move if the workers vote to form unions are illegal, employers have become adept at wording them instead as legal "predictions." Penalties for making threats, furthermore, are so trivial that they are not a deterrent—the harshest punishment an employer can receive is a requirement to post a notice in the workplace, months or even years after the damage from his illegal threat, that he will not do it again.

Employer threats to close or move are associated strongly with election outcomes. Workers voted to form unions in 51 percent of representation election campaigns during which the employer did not threaten to close or move. By contrast, workers voted for a union in only 38 percent of elections when employers did threaten to close or move, and in only 24 percent of elections when employers threatened to move to another country. Similarly, workers won their unions at far higher

rates in the least mobile industries, such as health care (60 percent), than in manufacturing (28 percent).

Bronfenbrenner finds that one out of every four employers illegally fires workers for union activity during organizing campaigns. On average, these employers fire four workers during an NLRB representation election campaign. Illegal discharges have a chilling effect on the entire workforce. Penalties for illegal discharge for union activity are miniscule, making it extremely cheap for an employer to illegally suppress the right to organize by firing union supporters. As American Rights at Work explains it, "Employers who illegally fire workers for union activity are only required to pay back wages minus what the worker has earned in the meantime."[12] In 2003, the average back pay award for a worker was $3,800.[13] According to Human Rights Watch, this is a "small price to pay to destroy a workers' organizing effort by firing its leaders." Penalties are so weak that many consultants routinely advise employers to violate the law and view the penalties as a cost of doing business. It can be years before workers receive even these modest sums. According to American Rights at Work, "it takes the NLRB a median of 5½ years to resolve its 'highest priority' unfair labor practice cases resulting in back pay awards."[14]

In workplaces with high proportions of undocumented workers, during more than half of all NLRB representation election campaigns the employer threatens to call the U.S. Citizenship and Immigration Services if workers vote for a union. A 2002 5–4 Supreme Court decision—*Hoffman Plastics*—has made matters even worse by denying back pay awards to undocumented workers who are victims of illegal, anti-union discrimination.

This is just a partial sample of the tactics commonly used by U.S. employers to suppress workers' freedom to choose a union. Bronfenbrenner found that employers increasingly use large numbers of these tactics, often 10 of them or more, as building blocks of aggressive, comprehensive campaigns designed to frustrate workers who seek nothing more than to exercise their fundamental human right to join together in a union. As Bronfenbrenner put it in earlier work done with Tom Juravich:

"…the overwhelming majority of employers use a broad range of aggressive legal and illegal anti-union tactics, including discharging workers for union activity, giving workers illegal wage increases and imposing unilateral changes in benefits, conducting one-on-one supervisor meetings with employees, offering bribes, supporting anti-union committees, holding captive-audience meetings, establishing employee involvement programs, holding social events and mailing letters and distributing leaflets...most of these tactics are associated with significantly lower win rates…."

The probability of workers winning their union declines 7 percent for each additional anti-union tactic the employer uses "when the influence of election environment, bargaining unit demographics, and union tactics were controlled for."[15]

Bronfenbrenner's findings reinforce the conclusion that the suppression of workers' basic freedom to join a union and engage in collective bargaining has reached epidemic proportions in the United States.

An Entire Industry Devoted to Suppressing Workers' Rights

During three-fourths of all NLRB representation election campaigns, employers hire experienced, professional anti-union consultants—union-busters—to advise them on strategy and tactics and to coordinate their anti-union campaigns. There is an entire industry in the United States of anti-union consultants whose sole objective is to suppress the freedom of workers to join unions—that is, to snuff out a fundamental human right.[16] As labor historian John Logan puts it, this is an industry:

"…whose entire purpose is to enable employers to 'circumvent the intent' of the National Labor Relations Act (NLRA) through a stunning array

of union-busting tactics, implemented before the union arrives and continuing until after it is defeated or decertified, tactics that are designed, at every step of the way, to undermine employees' right to select bargaining representatives free from management interference."

One union-buster is so confident that he recently offered prospective clients this money-back guarantee: "If your organization purchases an LRI Guaranteed Winner Package and the union becomes certified, Labor Relations Institute will refund the full cost of the package."[17]

Logan describes the "stunning array" of tactics routinely deployed by anti-union consultants and the employers who hire them when workers try to form unions:[18]

■ Consultants advise employers to respond hard and fast to undermine workers' desire to form a union. "Prior to a certification election, the union is required to submit to the NLRB authorization cards signed by at least 30 percent of the eligible bargaining unit. Consultants encourage employers to act quickly and aggressively against card drives because 'no company has ever lost an election that wasn't held.' The tougher you are at the outset, the consultants advise, the better….Before the union files the cards, consultants emphasize their critical importance, cautioning employees that signing an authorization card is akin to 'signing over power of attorney to the union' or 'signing a blank check.' One consultant distributed anti-union leaflets stating that authorization cards are 'legally binding contracts….You are now obligated to abide by all the union's rules and regulations….You could be fined. If you refuse to pay the fine, the union can sue you to collect payment.' "

■ If workers have signed authorization cards but the union has not filed them yet with the NLRB, workers are told they should ask the union to give back their cards. To encourage this, workers frequently are given form letters, written by the consultant, that ask the union to return their signed cards. Similar letters are addressed to the NLRB, with envelopes provided.

■ "After the union has submitted the authorization cards to the NLRB, management stresses the lack of importance of the cards, reassuring employees that 'even if you signed a card, you can, and should, *vote no* in the forthcoming election. No one will know how you vote.'" Consultants advise management never to agree to the union's request to examine authorization cards. If, however, the union makes the mistake of presenting the employer with original signed cards, consultants tell the employer to "destroy them immediately because the union is required to supply the labor board with originals."

Employers Turn Law Into Deathtrap for Workers' Rights

Consultants advise management how to skirt the employer's legal requirement, once signed authorization cards have been filed with the NLRB, to supply the union with employees' names and contact information. Employers, according to John Logan, are counseled to provide an "incomplete, outdated, and misleading list…at the last minute permitted by law."

■ Consultants counsel employers to utilize NLRB procedures to manipulate the definition of the bargaining unit to frustrate workers' efforts to form unions. "Consultants advise employers on how to object to both the size and make-up of the bargaining unit, how to pack units with anti-union employees, exclude pro-union employees and reduce the number of employees eligible for collective bargaining." This commonly used tactic reduces the proportion of pro-union workers who will be eligible to vote in the representation election, divides the workforce and introduces lengthy delays that frustrate workers' freedom to join unions.

■ A potent tactic frequently recommended by consultants is to claim that workers seeking a union perform supervisory duties and therefore lack the legally protected right to organize under the NLRA. Frequently the job

duties of the workers in question have little if anything to do with supervision. "Consultants often attempt to persuade the labor board that union activists are, in fact, supervisors, thereby removing them from the union campaign and leading to possible charges that supervisors have unlawfully assisted an organizing drive. By reclassifying ordinary employees as supervisors…or as 'independent contractors'—none of whom are covered by the NLRA—employers can reduce significantly the number of employees who are eligible for unionization."

■ Intentional fostering of delay is another poison arrow in the consultants' quiver. "Consultants have…developed a host of complex legal maneuvers designed to delay NLRB proceedings. They stress that time is on the side of the employer and teach managers how to file frivolous complaints with the labor board….Delays extend the duration and effectiveness of the employer campaign and undermine employee confidence in the effectiveness of both the union and the labor board." According to American Rights at Work, "When challenges or objections are raised in union elections, the NLRB frequently takes more than 8 months to resolve the matter."[19] Indeed, delays of years are all too common, making a mockery of legal protections for workers' rights.

In negotiations with Comcast, they decided to break us up into seven different groups, to negotiate seven different contracts on seven different days. This led to a long, drawn-out, ongoing process that has already lasted more than three years. We still have no contract. Yet, during the same time Comcast couldn't reach an agreement with its own workers, they were able to negotiate multibillion-dollar mergers three times in the last three years with other corporations.

—John Pezzana, head-end technician for Comcast, Pittsburgh

Consultants Operate in the Shadows, Hidden from View

Because a frequent consultant tactic is to portray the union as an "outsider," consultants often go to great lengths to conceal their involvement in the campaign from the workers. Because another frequent tactic is to attack the "lavish" salaries of union officials, consultants go to great lengths to conceal the fees being paid to them by the employer. As John Logan explains, "in most counter-organizing campaigns, consultants work surreptitiously and employees rarely see the firm's chief campaign strategist. Indeed, in many campaigns, employees are blissfully unaware of the consultant's presence in the workplace. This allows the consultant to…avoid becoming the focus of union attacks, and sidestep the reporting requirements of the LMRDA [Labor-Management Reporting and Disclosure Act]."

■ Consultants advise employers to use frontline supervisors as the primary foot soldiers in the campaign to suppress workers' freedom to form a union. "Consultants gain the cooperation of supervisors by warning that unionization will be a personal calamity for them because a union contract will undermine their authority on the shop floor and advise that, as part of management, supervisors can be terminated for refusing to participate in anti-union campaigns….[20] Supervisors are made to believe their future and entire worth at the company is dependent on how many 'no' votes they deliver in the election."[21]

■ If supervisors are the foot soldiers, consultants are the generals. In a typical campaign to suppress workers' freedom of choice about union membership, consultants meet frequently with supervisors and use these meetings to orchestrate the employer's campaign. "Supervisors… serve as 'precinct captains' during counter-organizing campaigns, and consultants advise having a minimum of one supervisor to every 10–20 employees. Consultants hold regular meetings with individual supervisors to follow what is happening in

every section of the facility. They require supervisors to talk daily to employees on a one-to-one basis and record their reactions to the conversations. These meetings become more frequent and consultant pressure on supervisors and supervisor pressure on employees intensifies as the campaign progresses…. Towards the end of the campaign, supervisors report to the consultants on a daily basis or even more frequently. Based on information obtained from the supervisors' reports, consultants compile detailed lists of pro-union, anti-union and undecided workers, thereby allowing managers and supervisors to target more effectively undecided workers."

■ Consultants frequently advise employers to discriminate against workers who favor forming a union, and since such discrimination technically is illegal they further advise employers how to cover it up. "Pro-union workers are given unfavorable evaluations, transferred to undesirable jobs and physically isolated within the workplace—moved to areas where they have little opportunity to influence undecided workers—while supervisors psychologically isolate activists by spreading malicious rumors designed to undermine their credibility."

■ "Vote no" committees have become an increasingly common weapon in the consultants' arsenal. Though such committees frequently appear to form spontaneously during NLRB representation election campaigns, in reality their formation is often anything but spontaneous. "Consultants teach supervisors how to identify and organize anti-union employees into 'vote no' committees…to put pressure on undecided employees, even though direct management involvement in such groups is illegal."

■ Consultants advise employers, in detail, about the nature, content and timing of their communications to workers throughout the NLRB representation election campaign. "Consultants try to persuade employees that the company, not the union, is the sole source of credible information. Designed to create an atmosphere of fear, intimidation and confusion within the workplace, most employer communications stress familiar themes—strikes, violence, insecurity and disruption. Large consulting firms frequently boast of their extensive files of counter-organizing literature….Consultants' anti-union propaganda includes predictions of violent strikes and permanent replacements, restrictive clauses of the union constitution, salaries of union officials, union dues, allegations of corruption, charges that employees will surrender their right to deal directly with management and warnings about the difficulty in decertifying unwanted unions."

■ The sowing of misinformation, disinformation and fear is a common feature of consultant-designed employer communications strategy. "Consultants write or help employers to write anti-union letters signed by senior management that are delivered to employees on the job by supervisors….Consultant-scripted letters predict job losses, plant closures or relocations in the event of a union victory, and stress the general 'futility' of unionization—employers are not required to agree to the union's demands or even to sign a contract and management hostility will continue long after the election campaign. Consultants recommend that management organize 'going out of business' discussions—especially in manufacturing plants, where the threat of closure or relocation is greatest."

Employer 'Predictions,' Threats Now Commonplace

Employers and their consultants frequently predict or threaten that the workplace will close or move if the workers vote to form a union, John Logan notes. Such "predictions" have become especially common since passage of the North American Free Trade Agreement (NAFTA), particularly in sectors of the economy like manufacturing that are especially susceptible to plant closings and relocations. "Management in 'mobile' sectors of the economy can easily get its relocation message across to employees without violating the law—for example, by placing maps of Mexico around the workplace."

■ Consultants use scare tactics to persuade workers that if they vote for a union, collective bargaining with their employer will be futile or worse. "The consultant warns employees about the potentially disastrous consequences of collective bargaining. If the union were to win, employees are told, the company would be forced to abandon its flexible attitude to work rules, negotiations would 'start from scratch,' management would bargain 'hard' and employees may lose, rather than gain, as a result of the bargaining process." Even though strikes are extremely rare in the United States today, "employer communications frequently imply that strikes are all-but-inevitable if the union wins the election and warn that during strikes, employees lose not only wages but health insurance, face the threat of permanent replacement and have no automatic right to unemployment insurance benefits."

■ The imagination of consultants knows few bounds in conveying a message of fear and intimidation to workers. "Consultants utilize gimmicks such as anti-union comic books, cartoons, competitions and 'vote no' T-shirts and buttons. Competitions typically include the 'Longest Union Strike Contest' (the correct answer being the greatest of three possible choices) or 'true or false' quizzes….Consultants try to schedule NLRB elections to coincide with paydays, holiday periods, immediately after annual pay increases or at other 'feel good' times."

■ Unlike political elections, access to the voters is almost completely one-sided in union representation elections. "Aside from its superior financial resources, consultants stress that management's greatest advantage during an organizing campaign lies with its exclusive and unlimited access to employees at the workplace." Workers who favor forming unions, by contrast, are limited to contacting their colleagues outside the workplace or during nonworking time.

■ Intentional creation of turmoil and disruption in the workplace is another common consultant tactic during NLRB representation election campaigns. "Consultants deliberately create an atmosphere of divisiveness in the workplace, especially when the workforce consists of white-collar or professional employees. They believe that confrontation and disruption are more effective than fear and intimidation in turning professional employees, such as health care workers, against the union. In these campaigns, employer communications stress that unionization is incompatible with the employees' professional identity and that collective bargaining would create an 'adversarial' and hostile relationship between management and employees….The consultant's intention is to disrupt the customary functioning of the firm and create the impression that the union is responsible for this unwanted upheaval. But if the employees were to reject the union, they are assured, the atmosphere in the workplace would return to normal."[22]

■ Consultants advise employers on how to time their NLRB representation election campaigns for maximum impact. "The consultant times the employer campaign to ensure that anti-union sentiment peaks just before the election. Management organizes a final captive meeting 24 hours prior to the election (speeches during the final day are illegal), stressing that it recognizes that it has made mistakes, that it has 'heard' the employees' complaints and intends to introduce improvements and asks that it be given 'another chance.' "

Weak, Poorly Enforced Law Routinely is Violated

The law is so weak and so poorly enforced that many consultants routinely advise employers to violate it. "The most ruthless consultants have advised their clients to take illegal actions to counteract union campaigns, especially if the outcome of the election is in any doubt. Some consultants tell employers to fire a few union activists, if possible, for 'just cause,' and teach them how to make these terminations appear legitimate. Consultants assure employ-

ers they are unlikely to get caught, that the penalties for violating the law are weak, that the NLRB takes months to reinstate sacked workers and that the 'chilling effect' created by sacking activists can stop a union campaign in its tracks, as employees' fear of reprisal for union activity immediately loses all of its vagueness."

■ Consultant advice to break the law goes beyond counseling employers to fire workers who support forming a union. "Consultants…tutor management and supervisors on how to engage in unlawful activities—such as surveillance, interrogation, unscheduled pay increases and threats of dismissal—without fear of facing ULP [unfair labor practice] charges."[23]

First Contracts Denied

Workers' freedom to bargain collectively often is not respected even after they vote to form a union. According to Federal Mediation & Conciliation Service records, employers fail to reach initial collective bargaining agreements within two years with 45 percent of newly certified and newly recognized unions.[24] In most cases, the failure to reach agreement results from employer delaying tactics and unwillingness to bargain in good faith. There is no real remedy under current law for this serious abuse of workers' rights. As with union representation elections, experienced anti-union consultants often are retained to orchestrate employers' anti-first contract campaigns. According to Logan:

"During the mid-1980s, unions were able to negotiate first contracts after only two-thirds of representation victories; with continuing employer opposition, that figure fell to just over half three years after a union election victory. In negotiations involving consultant activity, unions were 2.5 times less likely to secure a first contract than in cases when consultants were not used.…

"After a union victory, consultants continue to advise management on anti-union hiring practices. With the termination of pro-union employees, high labor turnover and the recruitment of carefully selected anti-union employees, the company can engineer a sea change in the union sentiment of the workforce. Consultants advise management on how to stall or prolong the bargaining process, almost indefinitely—'bargaining to the point of boredom,' in consultant parlance. Delays in bargaining allow more time for labor turnover, create employee dissatisfaction with the union and prevent the signing of a contract. Without a contract, the union is unable to improve working conditions, negotiate wage increases or represent the workers effectively with grievances; and by exhausting every conceivable legal maneuver, certain firms have successfully avoided signing contracts with certified unions for several decades."

NLRB Election Process Kills Workers' Aspirations

The situation has gotten so bad that the NLRB representation election process has become a deathtrap for workers' aspirations, a parody of democracy and little more than a platform for employer coercion. As political scientist Gordon Lafer recently concluded:

"At every step of the way, from the beginning to the end of a union election, NLRB procedures fail to live up to the standards of U.S. democracy. Apart from the use of secret ballots, there is not a single aspect of the NLRB process that does not violate the norms we hold sacred for political elections. The unequal access to voter lists; the absence of financial controls; monopoly control of both media and campaigning within the workplace; the use of economic power to force participation in political meetings; the tolerance of thinly disguised threats; the location of voting booths on partisan grounds; open-ended delays in implementing the results of an election; and the absence of meaningful enforcement measures—every one of these constitutes a profound departure from the norms that have governed U.S. democracy since its inception."[25]

One way out of the NLRB representation election deathtrap is for employers to recognize unions when a majority of workers indicate in writing their desire to form a union. This method of forming a union is called majority sign-up or "card-check." Union recognition based on signed petitions or authorization cards has a long history in the United States and was the primary method by which workers formed unions prior to and in the years immediately after passage of the Wagner Act. It continues to be widely used to this day—but the catch is, under the National Labor Relations Act as interpreted and administered today, the decision about whether to recognize a union on this basis is entirely up to the employer. Employers have been granted the legal right to refuse to recognize their workers' unions even when 100 percent of their employees have expressed in writing their desire to form a union. Employers can and in most cases do insist that they will not respect their employees' desire to form a union without first putting them through the meat grinder of the NLRB representation election process—and all of the coercion, misinformation, intimidation and delay that this process entails.

NLRB Representation Election Process Makes a Mockery of Democracy

	Democratic Election	NLRB Election
All parties have equal access to voter list and voters.	Yes.	No. Employer has full access; union has limited access to list and voters.
Voters cannot be intimidated or threatened.	Yes.	No. Employer harasses and even fires supporters.
Voters can be forced to listen to one side only.	No.	Yes. Employer holds voters captive to message.
One side can delay election and outcome.	No.	Yes. Employer can delay both almost indefinitely.
Election is conducted at campaign headquarters.	No.	Yes. Election occurs on company property.

Union Advantage by the Numbers

Union workers' median weekly earnings	$781
Nonunion workers' median weekly earnings	$612
Union wage advantage	**28%**
Union women's median weekly earnings	$723
Nonunion women's median weekly earnings	$541
Union wage advantage for women	**34%**
African American union workers' median weekly earnings	$656
African American nonunion workers' median weekly earnings	$507
Union wage advantage for African Americans	**29%**
Latino union workers' median weekly earnings	$679
Latino nonunion workers' median weekly earnings	$428
Union wage advantage for Latinos	**59%**
Asian American union workers' median weekly earnings	$765
Asian American nonunion workers' median weekly earnings	$691
Union wage advantage for Asian Americans	**11%**
Union workers with access to guaranteed (defined-benefit) pension	73%
Nonunion workers with access to guaranteed (defined-benefit) pension	16%
Union pension advantage	**356%**
Union workers whose jobs provide access to health insurance	92%
Nonunion workers whose jobs provide access to health insurance	68%
Union health insurance advantage	**35%**
Union workers without health insurance coverage	2.5%
Nonunion workers without health insurance coverage	15%
Union advantage	**500%**
Union workers' average days of paid vacation	15 days
Nonunion workers' average days of paid vacation days	11.75
Union paid vacation advantage	**28%**

Sources: U.S. Department of Labor, Bureau of Labor Statistics, *Union Members in 2004,* Jan. 27, 2005; U.S. Department of Labor, Bureau of Labor Statistics, *National Compensation Survey: Employee Benefits in Private Industry in the United States,* March 2005; Economic Policy Institute; Employee Benefits Research Institute, May 2005.

The High Cost of Suppressing Workers' Freedom to Form a Union

EMPLOYER INTERFERENCE has a devastating impact on workers' freedom to choose a union. According to a February 2005 Peter D. Hart Research Associates poll, 53 percent of America's nonunion workers—in other words, 57 million workers—want a union in their workplace.[26] By contrast, only 80,000 workers succeeded in forming a union last year through the National Labor Relations Board representation election process—little more than one-tenth of 1 percent of those who say they want a union. While many factors contribute to this massive suppression of workers' freedom to form unions, the most serious of these is employer interference, coupled with a legal system that fails miserably to protect workers' rights. As Richard Freeman put it, "The National Labor Relations Act…has institutionalized a process that effectively gives management near veto power over whether or not workers become organized."[27]

The consequences of failing to protect the freedom of workers to organize go way beyond the loss of wages, benefits and respect on the job, serious though these are. They also include the silencing of workers' voices in the political process and the weakening of the counterweight against corporate power that is so essential to the preservation of democracy.

Unions raise wages for all workers, as the fact sheet "The Union Advantage by the Numbers" (see page 13) makes clear—but they raise them the most for members of excluded and disadvantaged groups.[28] Overall, union members earn 28 percent more per week than nonunion workers. The union difference is even greater for members of traditionally excluded groups. Female union members earn 34 percent more per week than nonunion female workers, and the union wage advantage is also greater for African Americans (29 percent) and Latinos (59 percent).

Union members also enjoy a substantial advantage in paid time off. They have an average of 15 days of paid vacation per year, compared with 11.75 days for nonunion workers—a union advantage of 28 percent.[29]

The wage and benefit improvements that union members achieve through collective bargaining also benefit nonunion workers by putting upward pressure on their wages and benefits. According to Lawrence Mishel of the Economic Policy Institute, wage gains negotiated by union workers through collective bargaining often spill over, in part, to nonunion workers.[30] Many of the workplace benefits and protections that have become widespread for all workers owe their existence to struggles of union workers and collective bargaining. As one bumper sticker puts it: "Unions—The Folks Who Brought You the Weekend."

The freedom to choose a union is especially important to low-wage workers. Millions of nonunion workers toil at jobs paying wages so low that they and their families live in poverty, despite working full-time and year-round. As the following chart shows, union membership is the ticket out of poverty for workers in many low-wage occupations. For example, union cashiers earn 30 percent more than nonunion cashiers, union dining room and cafeteria attendants earn 49 percent more than nonunion dining room and cafeteria attendants, and union janitors earn 31 percent more than nonunion janitors.[31] Collective bargaining probably is the most potent anti-poverty program available in a capitalist economy.

Not surprisingly, then, suppressing the freedom to form a union has contributed to one of the nation's most serious social and economic ills, namely increased inequality in the distribution of income.[32] Suppressing the freedom to choose a union also has contributed to declining medical insurance coverage[33] and declining pension coverage.[34] According to the Bureau of Labor Statistics, in March 2005 some 92 percent of union workers in the private sector had access to medical insurance through their jobs, compared with 68 percent of nonunion workers.[35] According to the Employee Benefits Research Institute (EBRI), in 2003 nonunion workers were six times more likely to be uninsured than union members (15 percent, compared

How Unions Bring Low-Wage Workers Out of Poverty

Pay of union and nonunion workers in selected occupations—2004

Selected Occupations	Average Hourly Wage Union	Average Hourly Wage Nonunion	Yearly Wage Union	Yearly Wage Nonunion	Union Difference (%)	Union Difference ($)
Bakers	$15.76	$11.14	$32,781	$23,171	**41%**	**$9,610**
Butchers and other meat, poultry and fish-processing workers	$16.12	$11.50	$33,530	$23,920	**40%**	**$9,610**
Cashiers	$11.22	$8.63	$23,338	$17,950	**30%**	**$5,387**
Child care workers	$11.19	$8.83	$23,275	$18,366	**27%**	**$4,909**
Cleaners of vehicles and equipment	$16.02	$10.05	$33,322	$20,904	**59%**	**$12,418**
Combined food prep and serving workers, including fast food	$11.96	$7.69	$24,877	$15,995	**56%**	**$8,882**
Cooks	$11.64	$9.05	$24,211	$18,824	**29%**	**$5,387**
Dining room and cafeteria attendants and bartender helpers	$12.68	$8.52	$26,374	$17,722	**49%**	**$8,653**
Dishwashers	$10.52	$7.99	$21,882	$16,619	**32%**	**$5,262**
Grounds maintenance workers	$15.40	$10.43	$32,032	$21,694	**48%**	**$10,338**
Janitors and building cleaners	$13.71	$10.43	$28,517	$21,694	**31%**	**$6,822**
Library assistants	$13.64	$9.90	$28,371	$20,592	**38%**	**$7,779**
Maids and housekeeping cleaners	$11.67	$9.19	$24,274	$19,115	**27%**	**$5,158**
Miscellaneous assemblers and fabricators	$17.71	$11.98	$36,837	$24,918	**48%**	**$11,918**
Packaging and filling machine operators and tenders	$15.99	$9.78	$33,259	$20,342	**63%**	**$12,917**
Hand packers and packagers	$11.76	$9.33	$24,461	$19,406	**26%**	**$5,054**
Receptionists and information clerks	$14.02	$11.47	$29,162	$23,858	**22%**	**$5,304**
Refuse and recyclable material collectors	$15.24	$11.78	$31,699	$24,502	**29%**	**$7,197**
Telephone operators	$19.85	$11.86	$41,288	$24,669	**67%**	**$16,619**
Poverty Threshold for Family of Four* **Assumes full-time, full-year work*				**Hourly $9.28**		**Annual $19,307**

Sources: U.S. Census; *Union Membership and Earnings Data Book,* Barry T. Hirsch and David A. Macpherson, Bureau of National Affairs, 2005.

with 2.5 percent).[36] EBRI concluded that "further erosion of unionization is likely to coincide with an overall erosion in the percentage of workers with employment-based health benefits." In the area of retirement income security, the difference is even more stark: 73 percent of union workers in the private sector have access to a guaranteed (defined-benefit) retirement plan through their jobs, compared with only 16 percent of nonunion workers.[37] There also are large union/nonunion gaps in access to other important job-related benefits, such as education and training, disability benefits and life insurance.

Justice in the workplace suffers from the denial of workers' freedom to form a union. In virtually all unionized workplaces, workers only can be discharged for "just cause."[38] By contrast, in virtually all nonunion workplaces in the private sector, workers are "employees at will" who can be discharged for almost any reason, good or bad—or for no reason—by their employer.

All workers, union and nonunion alike, have suffered from suppression of the freedom to form a union—because access to benefits and protections under a variety of existing laws depends on union membership and a strong union movement.[39] Examples include workplace health and safety, unemployment insurance and workers' compensation. With the strength and expertise of their union backing them up, research shows that union members are better able than nonunion workers to access the protections of these and other safety net programs.

Further evidence of how and why strong unions are important to all workers, union and nonunion alike—and indeed all of society—can be found in the fact sheet, "The Benefits of Protecting Freedom to Form Unions" (see page 17). This fact sheet compares the 10 states where unions are strongest, as measured by union density (the proportion of the workforce that is unionized), with the 10 states where unions are weakest. According to this fact sheet, wages and incomes are higher in states where unions are strong than in states where unions are weak, for all workers—not just for union members. The pay gap between women and men is smaller in states where unions are stronger, for all workers—not just for union members. Such safety net programs as workers' compensation and unemployment insurance are better in states where unions are strong than in states where unions are weak, for all workers—not just for union members. Health care is better in the stronger union states: a smaller percentage of people lack medical insurance, there are more physicians in relation to population, infant mortality rates and age-adjusted death rates are lower. The percentage of people who are in poverty is lower in the states where unions are stronger, and by various measures education is better, including the percentage of the population that has graduated from high school. Crime rates are lower in the stronger union states.

Of particular importance is the fact that unions mobilize their members to participate in the political process: to become informed on the issues, to register and to vote. This conclusion is borne out by political science research, according to which the decline in unionization is a major cause of the long-term decline in voter participation in the United States.[40]Thus protecting the freedom to form unions holds an important key to unlocking greater civic participation by working Americans. The future of democracy may be at stake. As Dr. Martin Luther King Jr. noted, "The labor movement was the principal force that transformed misery and despair into hope and progress. Those who would destroy or further limit the rights of organized labor…do a disservice to the cause of democracy."

Even American employers pay a heavy price for systematically denying workers' rights to organize a union, and for the incredibly conflict-ridden and acrimonious path that they—and the anti-union consultants they hire—have made virtually the only path to union recognition. The high-performance work organization methods that may hold the key to future economic success work best in workplaces in which the freedom to form a union is respected.[41] As Karl Klare puts it, "wise managers know…(that) when employees feel secure, fairly treated, and welcomed as partners with a genuine voice in the enterprise, they contribute enormously to productivity, product innovation, and flexible adaptation to changing markets."[42]

The Benefits of Protecting Freedom to Form Unions

Wages and Incomes	10 States Where Unions are Strongest	10 States Where Unions are Weakest
Average hourly earnings, 2004*	$16.26	$14.41
Average annual pay, 2003	$40,176	$31,686
Household income, 2003**	$48,877	$40,333
Per capita disposable income, 2003	$29,935	$24,818

**Production workers—manufacturing payrolls*
***Averaged median household incomes*

Workplace Fatalities	10 States Where Unions are Strongest	10 States Where Unions are Weakest
Workplace fatalities rate per 100,000 employees, 2003[43]	3.6	5.7

Worker Safety Net Programs	10 States Where Unions are Strongest	10 States Where Unions are Weakest
Unemployment insurance—maximum weekly benefit, 1st quarter 2005[44]	$295.81	$230.86
Workers' compensation—average weekly benefit, 2002	$482.50	$292.20
Number of states with minimum wage higher than federal minimum, 2005[45]	Nine* states	One state

**New Jersey's minimum wage rate will rise above the federal minimum wage on Oct. 1, 2005.*

Health Care	10 States Where Unions are Strongest	10 States Where Unions are Weakest
Percent of population without health insurance, 2003[46]	13.6%	16.6%
Percent of children without health Insurance, 2003[47]	8.8 %	11.9%
Physicians per 100,000 population, 2003	319	245
Low-birthweight births as a percent of all births, 2003	7.5%	8.4%
Infant mortality rate, 2002*[48]	6.4%	7.6%
Infant mortality rate—whites, 2002[49]	5.3%	5.9%
Infant mortality rate—blacks, 2002[50]	13.3%	14.5%
Age-adjusted deaths per 100,000 population, 2002	787.4	871.3
Percent of people under age 65 with employment-based health insurance, 2003[51]	66.7 %	61.2 %
Percent of private-sector firms offering employee health insurance, 2002[52]	60.9%	49.9%

** Infant deaths within first year of life per 1,000 live births.*

Poverty	10 States Where Unions are Strongest	10 States Where Unions are Weakest
Percent of population in poverty, 2003[53]	11.0%	13.4%
Percent of children in poverty, 2003	14.6%	18.3%
Percent of seniors in poverty, 2003	8.3%	11.2%
Percent of families in poverty, 2003	8.2%	10.5%

Economy	10 States Where Unions are Strongest	10 States Where Unions are Weakest
Gross state product per capita, 2002	$40,974	$32,777

Education	10 States Where Unions are Strongest	10 States Where Unions are Weakest
Public education spending per pupil, 2004	$9,296	$6,561
Average teacher salary, 2004	$51,357	$39,921
Percent of population graduated from high school, 2003	86.6%	84.0%

Civic Participation	10 States Where Unions are Strongest	10 States Where Unions are Weakest
Percent of eligible voters who voted in presidential election, 2004[54]	59.7%	56.1%

Public Safety	10 States Where Unions are Strongest	10 States Where Unions are Weakest
Crimes per 100,000 population—2003	3,890	4,124

10 States with Highest Union Density	10 States with Lowest Union Density
New York	North Carolina
Hawaii	South Carolina
Michigan	Arkansas
Alaska	Mississippi
New Jersey	Texas
Washington	Virginia
Minnesota	Idaho
Illinois	Utah
California	Florida
Rhode Island	South Dakota

Source: Except as otherwise noted, all data are from Kathleen O'Leary Morgan and Scott Morgan, *State Rankings 2005,* Morgan Quitno Press, 2005.

Freedom to Choose a Union is a Fundamental Human Right

NOT ONLY ARE AMERICAN WORKERS and all of society paying a heavy price, but the suppression of workers' freedom to form a union constitutes a serious violation of human rights. Many people, including many trade unionists, are surprised initially to learn that the freedom to form a union is a fundamental human right. Yet support for this proposition is overwhelming, both from secular and religious sources.[55] As the 1948 *Universal Declaration of Human Rights* makes clear, "Everyone has the right to form and to join trade unions for the protection of his interests." Particularly noteworthy is the International Labor Organization's 1998 *Declaration on Fundamental Principles and Rights at Work*. This declaration was adopted at the instigation of the United States, and enjoyed unanimous support by all U.S. delegates to the ILO, including the employer representatives. According to the 1998 *Declaration*, all ILO member countries have an obligation "to respect, to promote, and to realize…fundamental rights (including)…freedom of association and the effective recognition of the right to collective bargaining."

Why Freedom to Choose a Union is a Fundamental Human Right

The notion that freedom to form a union and bargain collectively is a fundamental human right follows directly from the concept that every human being has value and should be treated with respect and dignity. If human beings have value and should be treated with respect and dignity, they are entitled to participate in important decisions affecting their lives, such as determination of the terms and conditions of their employment. Denying any person the right to participate in these decisions is an affront to human dignity.

So-called "individual bargaining," touted by some apologists of the suppression of workers' rights as an acceptable alternative to collective bargaining, fails miserably in human rights terms.[56] In the modern workplace, most terms and conditions of employment are set as a matter of policy for the entire workforce. It is hard to imagine, for example, how there could be individual bargaining over workplace health and safety policies. Even pay usually is set in accordance with workplace-wide job evaluation policies. For most workers in most workplaces, therefore, the only practical alternatives are employer fiat or collective bargaining. The difference between these two alternatives in human rights terms could not be clearer. In the words of Karl Klare, "only autonomous organization enables workers to protect their interests, achieve dignity and respect, and participate effectively in decisions affecting their lives."[57]

Consequences of Freedom to Choose a Union Being a Human Right

The consequences of workers' freedom to form a union and bargain collectively being a fundamental human right are far-reaching and profound. Calling something a fundamental human right "means that it is a moral right that prevails over considerations of convenience or efficiency, and gives way only to other moral rights."[58] If something is a fundamental human right, according to Hoyt Wheeler, "then it trumps mere economic interests of employers or the public."

If workers' freedom to form a union and bargain collectively is a fundamental human right, suppressing that right is morally equivalent to suppressing other such basic freedoms as the freedom of religion or the right to be free from discrimination based on race, gender or sexual orientation. If freedom to choose a union and bargain collectively is a fundamental human right, then it is a right "that all governments have a responsibility to uphold and promote, and which all individuals and employers have a responsibility to respect."[59]

Religious and Secular Support: Workers' Rights ARE Human Rights

Everyone has the right to form and to join trade unions for the protection of his interests.

—Universal Declaration of Human Rights, U.N. General Assembly (1948)

Workers…without distinction whatsoever shall have the right to establish and…join organizations of their own choosing.

—International Labor Organization (a United Nations agency), Convention No. 87

Workers shall enjoy adequate protection against acts of anti-union discrimination.

—International Labor Organization, Convention No. 98

All member countries have an obligation…to respect, to promote, and to realize the principles concerning the fundamental rights which are the subject of those Conventions, namely: (a) freedom of association and the effective recognition of the right to collective bargaining….

—International Labor Organization, 1998 Declaration on Fundamental Principles and Rights at Work (adopted with unanimous support of all U.S. delegates, including employer representatives)

The Church fully supports the right of workers to form unions…to secure their rights to fair wages and working conditions....No one may deny the right to organize without attacking human dignity.

—National Conference of Catholic Bishops
(1986 pastoral letter on Catholic social teaching and the U.S. economy)

We support the right of…employees…to organize for collective bargaining into unions.

—Social Principles of the United Methodist Church

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other mutual aid or protection.

—National Labor Relations Act (passed by Congress in 1935)

The reality of NLRA enforcement falls far short of its goals. Many workers who try to form and join trade unions…are spied on, harassed, pressured, threatened, suspended, fired, deported or otherwise victimized…labor law enforcement efforts often fail to deter unlawful conduct…enervating delays and weak remedies invite continued violations. Any employer intent on resisting workers' self-organization can drag out legal proceedings for years.

—Human Rights Watch (August 2000)

Overcoming the Crisis

WORKERS FORM TRADE UNIONS to aggregate their power and deal collectively with employers. If you ever worked for a living, you know about the inequality of power between employers and employees. Constitutional protections that Americans hold dear often stop at the workplace door. Inside that door, the employer's word is law unless there is a countervailing force. The employer hires and fires, and apart from governmental regulations that are relatively minimal in the United States, the employer sets the terms and conditions of employment. Employees can quit, but often this imposes heavy personal costs and carries no guarantee that the situation will be better at the next place of employment.

When workers have strong unions, employers no longer set the terms and conditions of employment unilaterally. Instead, these critical decisions are made via collective bargaining between workers' democratically elected union representatives and employers. Workplace democracy replaces workplace autocracy.

As we have seen, denial of workers' freedom to join a union has reached epidemic proportions, imposing huge costs on workers and on all of society, and harming the quality of life for the vast majority of Americans. Solutions to this crisis are urgently needed and long overdue. The U.S. government must meet its obligation to protect workers' fundamental human right to join together in a union and bargain collectively.

This will require changing the law to recognize that the right of workers to form unions is a fundamental human right analogous to freedom of speech, freedom of religion and the right to be free from racial or sexual discrimination—and deserving of the same kind of protection as these other fundamental rights.

The law must prevent employers from suppressing workers' freedom to form a union and bargain collectively. To achieve this goal, employers must be taken out of the decision making process about whether or not workers want to join together in a union. As Karl Klare explains it, "the employer has no rightful claim in moral or democratic theory to participate in and contest an election among employees as to how they wish to deal with the employer. The employer has no more right to do so than the Democrats have to participate in selecting the Republican candidates they will oppose in political elections (or vice versa)."[60]

Workers who choose to be represented by a union must have a meaningful right to collective bargaining that ultimately results in a contract on fair terms.

Employers who break the law must be held accountable, with punishment that "fits the crime" and is severe enough to deter violations.

Against this backdrop, on April 19, 2005, Sen. Edward Kennedy (D-Mass.), Sen. Arlen Specter (R-Pa.), Rep. George Miller (D-Calif.) and Rep. Peter King (R-N.Y.) reintroduced the Employee Free Choice Act (S. 842 and H.R. 1696) into the 109th Congress. This landmark bipartisan bill, when passed, will improve greatly legal protections for the fundamental human right of America's workers to join unions and negotiate first contracts without employer interference.

These and other needed changes in the law will not come quickly or easily, but without them American workers, the economy and our society will continue to pay a very heavy price. This price is measured, in part, by the suppression of wages, enormous and widening gaps in the distribution of income and wealth, weakening of the safety net, decline in civic and political participation, unchecked corporate power and harm to the quality of life. Even more serious is the affront to human dignity.

Support the Employee Free Choice Act

How You Can Help Workers Win the Freedom to Form Unions

The **Employee Free Choice Act** guarantees employees free choice through democratic majority sign-up procedures, facilitates initial labor agreements through mediation and arbitration and provides more effective remedies for workers when employers violate the law.

Democratic majority sign-up: The freedom of association is a fundamental right of Americans. People can join most organizations, whether they are religious denominations, book clubs or amateur sports teams, simply by signing up. The Employee Free Choice Act provides for the certification of a union when a majority of the employees at a workplace has signed written authorizations stating they wish to be represented by a union. Workers no longer would be forced into the meat grinder of the National Labor Relations Board election process—which exposes them to weeks and months of employer threats, surveillance, coercion, firings and intimidation, orchestrated by professional anti-union consultants—in order to exercise their fundamental human right to form a union.

First-contract arbitration: Even after workers jump through all the hoops under current law and succeed in forming a union, employers refuse to agree to initial collective bargaining contracts nearly half the time. In most cases, the failure to reach agreement results from employers' delaying tactics and unwillingness to bargain in good faith. There is no real remedy under current law for this serious abuse of workers' rights. The Employee Free Choice Act would address this problem by giving both parties access to mediation and, if necessary, binding arbitration in order to reach an initial collective bargaining agreement on a timely basis.

Remedies: Under current law, penalties for illegal employer conduct are so negligible that employers routinely violate workers' rights. As a result, employer misconduct has skyrocketed: according to the National Labor Relations Board, between 2002 and 2004 more than 20,000 workers per year were illegally disciplined or fired for engaging in legally protected union activity, up from 6,000 in 1969 and fewer than 1,000 per year in the 1950s. The Employee Free Choice Act would stiffen penalties for illegal employer conduct.

Here's what you can do: Ask your senators and representative whether they are co-sponsoring the Employee Free Choice Act. If they are, thank them. **If they aren't, urge them to become a co-sponsor TODAY!**

The Fight is On!

Resources and Readings on Protecting the Freedom to Form Unions

For the latest information about the Employee Free Choice Act, including fact sheets, questions and answers and current co-sponsors, check out the AFL-CIO's website at: http://www.aflcio.org/joinaunion/voiceatwork/efca/.

American Rights at Work is a national organization devoted to the struggle for workers' rights—especially the freedom to form unions and bargain collectively. For fact sheets, research reports, workers' stories and more, check out the ARAW website at www.americanrightsatwork.org.

There are many excellent reports, articles and books—most of which are freely downloadable from the Internet—that provide useful information about the important issues facing America's workers and the virulent assault on the right to union representation. We recommend the following:

Human Rights Watch, *Unfair Advantage: Workers' Freedom of Association in the United States Under International Human Rights Standards,* available at www.hrw.org/reports/2000/uslabor.

Human Rights Watch, *Blood, Sweat and Fear—Workers' Rights in U.S. Meat and Poultry Plants,* available at http://www.hrw.org/reports/2005/usa0105/usa0105.pdf.

James J. Brudney, "Neutrality Agreements and Card Check Recognition: Prospects for Changing Paradigms," *Iowa Law Review,* Vol. 90, 2005, available at http://ssrn.com/abstract=625383.

Gordan Lafer, "Free and Fair? How Labor Law Fails U.S. Democratic Election Standards," June 2005, available at http://www.araw.org/docUploads/FreeandFair%20FINAL.pdf.

John Logan, "Consultants, Lawyers, and the 'Union Free' Movement in the USA Since the 1970s," *Industrial Relations Journal,* Vol. 33, Issue 3, pp. 197–214, August 2002, available at www.americanrightsatwork.org/docUploads/Logan-Consultants.pdf.

Lawrence Mishel and Matthew Walters, Economic Policy Institute Briefing Paper, "How Unions Help all Workers," available at www.epinet.org/content.cfm/briefingpapers_bp143.

Bruce Nissen and Mary Beth Maxwell, "Some of Them Are Brave," American Rights at Work report, available at www.americanrightsatwork.org/docUploads/Some%20of%20them%20Are%20Brave.pdf.

Harley Shaiken, "The High Road to a Competitive Economy: A Labor Law Strategy," Center for American Progress Report, available at www.americanprogress.org/atf/cf/{E9245FE4-9A2B-43C7-A521-5D6FF2E06E03}/unionpaper.pdf.

"The Employee Free Choice Act," policy brief by Americans for Democratic Action, available at http://www.adaction.org/EFCA.pdf.

"This is America," a look at employers' hidden war on workers—and the difference a union makes for workers, available at http://www.aflcio.org/joinaunion/why/uniondifference/upload/this_is_america.pdf.

Endnotes:

[1] Human Rights Watch, *Unfair Advantage: Workers' Freedom of Association in the United States under International Human Rights Standards,* Washington, D.C., 2000, www.hrw.org/reports/2000/uslabor/.

[2] Kenneth Roth, "Workers' Rights in the United States," Industrial Relations Research Association, 2001, *Perspectives on Work,* Vol. 5, No. 1, pp. 19–20. See also testimony of Kenneth Roth before the Senate Committee on Health, Education, Labor and Pensions, June 20, 2002, hearing on "Workers' Freedom of Association: Obstacle to Forming Unions."

[3] Government Accountability Office, "Collective Bargaining Rights: Information on the Number of Workers With and Without Bargaining Rights," September 2002, GAO-02-835.

[4] The Bush NLRB has been the most anti-worker NLRB in history. See AFL-CIO Executive Council statement, "The Bush NLRB's Attack on Workers' Rights," Aug. 11, 2004, http://www.aflcio.org /aboutus/thisistheaflcio/ecouncil/ec08112004a.cfm.

[5] The fiscal year 2003 figure was 23,144, according to the 2003 NLRB annual report, Table 4, www.nlrb.gov /nlrb/shared_files/brochures/Annual%20Reports /Entire2003AnnualReportreduced.pdf.

[6] American Rights at Work, http://action.american rightsatwork.org/campaign/humanrights.

[7] Human Rights Watch, p. 23.

[8] American Rights at Work, http://araw.org /workersrights/verna.cfm.

[9] American Rights at Work, http://araw.org /workersrights/eye5_2004.cfm.

[10] Kenneth Roth, "Workers' Rights in the United States," Industrial Relations Research Association, 2001, *Perspectives on Work*, Vol. 5, No. 1, pp. 19–20.

[11] Dr. Kate Bronfenbrenner, *Uneasy Terrain: The Impact of Capital Mobility on Workers, Wages and Union Organizing,* U.S. Trade Deficit Review Commission, 2000. To access the report on the Web, go to http://gov info.library.unt.edu/tdrc/research/bronfenbrenner.pdf. Her findings are summarized in the fact sheet on page 2, "Employer Interference by the Numbers."

[12] American Rights at Work, http://araw.org /takeaction/efca/penaltysummary.cfm.

[13] Sixty-eighth Annual Report of the National Labor Relations Board, 2003, as quoted by American Rights at Work, http://araw.org/resources/facts/remedies.cfm.

[14] Freedom of Information Act request submitted to the National Labor Relations Board by American Rights at Work on Oct. 27, 2004. Of the 1,222 "highest priority" cases in 2003 in which an employer owed back pay to an employee or employees, more than half took more than 2,008 days to be resolved from the time the case was filed. http://araw.org /workersrights/eye4_2005.cfm#highprios.

[15] Kate Bronfenbrenner and Tom Juravich, "It Takes More Than House Calls: Organizing to Win with a Comprehensive Union-Building Strategy," in Kate Bronfenbrenner, et al. (eds.), *Organizing to Win: New Research on Union Strategies,* Cornell Press, 1998, p. 32; and Table 1.2, p. 30.

[16] For an excellent account of the activities of these anti-union consultants, see John Logan, "Consultants, Lawyers and the 'Union Free' Movement in the USA, 1970–2000," *Industrial Relations Journal,* Vol. 33, Issue 3, pp. 197–214, August 2002.

[17] http://www.lrionline.com/Products/Guaranteed Winner.html.

[18] See John Logan, op.cit.

[19] American Rights at Work, Eye on the NLRB—June 2004, "No Guarantee of Timely Union Election Process for U.S. Workers," http://araw.org /workersrights/eye6_2004.cfm.

[20] Other researchers have found this is more than an idle threat. According to Richard B. Freeman and Morris Kleiner, "managers whose establishments faced or lost organizing drives were more likely than other managers to suffer setbacks to their careers (firing, reassignment, retraining or failure to be promoted). Richard B. Freeman and Morris Kleiner, "Employer Behavior in the Face of Union Organizing Drives," *Industrial and Labor Relations Review,* Vol. 43, No. 4 (April 1990), pp. 351–356. For a powerful and compelling recent account of a supervisor who was fired for failing to comply fully with her employer's campaign to suppress workers' freedom to form a union, see the testimony of Sherri Buffkin, former supervisor, Smithfield Packing Co., Tar Heel, N.C., to the U.S. Senate Committee on Health, Education, Labor and Pensions hearing on "Workers' Freedom of Association: Obstacles to Forming Unions," June 20, 2002. Buffkin's testimony is available on the Web at http://www.ufcw.org/issues_and_actions/justice_at _smithfield/bufkintestimony.cfm#testimony.

[21] Other scholars also stress the potency of anti-union campaigning by supervisors. For example, according to Richard B. Freeman and Morris Kleiner, "the most effective 'hard-nosed' company tactic was to have supervisors campaign intensely against the union." See Richard B. Freeman and Morris Kleiner, op. cit., p. 361. According to the management attorneys interviewed by Kaufman and Stephan, "effectively marshaling the cooperation and support of the supervisors was the single most critical ingredient to defeating the union." See Bruce E. Kaufman and Paula E. Stephan, "The Role of Management Attorneys in Union Organizing Campaigns," *Journal of Labor Research,* Vol. XVI, No. 4, Fall 1995, p. 447.

[22] Support for this point can be found in Larry Cohen and Richard W. Hurd, "Fear, Conflict and Union Organizing," in Kate Bronfenbrenner, et al. (eds.), *Organizing to Win: New Research on Union Strategies,* Cornell Press, 1998, pp. 181–196.

[23] See also Sheldon Friedman, Richard W. Hurd, Rudolph A. Oswald and Ronald L. Seeber (eds.), *Restoring the Promise of American Labor Law,* ILR Press, 1994. The editors noted in their introduction to this volume: "Management consultants have become so bold and so contemptuous of the weakness of the labor law that repeat violations are common, even after their clients are found guilty of unfair labor practices and required to post 'cease and desist' orders. In one particularly egregious but telling case, a union-busting consultant was ordered to post a cease and desist order seven years after a representation election was found to be tainted by his extensive unfair labor practices; he posted the notice on the seat of his employees' toilet."

[24] FMCS 2004 annual report, Table B, p. 19, www.fmcs.gov/assets/files/annual%20reports/FY04_AnnualReport_FINAL113004.doc.

[25] Gordon Lafer, "Free and Fair? How Labor Law Fails U.S. Democratic Standards," American Rights at Work, Washington, D.C., 2005, www.araw.org/docUploads/FreeandFair%20FINAL%2Epdf.

[26] Peter D. Hart Research Associates, Study No. 7518, AFL-CIO Union Message Survey, February 2005 (unpublished).

[27] Richard Freeman, "Searching Outside the Box: The Road to Union Renascence and Worker Well-Being in the U.S.," in Julius G. Getman and Ray Marshall (eds.), *The Future of Labor Unions: Organized Labor in the 21st Century,* Austin, University of Texas Press, 2004, p. 75.

[28] Detailed information about the impact of unions on workers' wages and benefits can be found on the AFL-CIO website at http://www.aflcio.org/issues/factsstats/index.cfm#uniondifference.

[29] Lawrence Mishel with Matthew Walters, Economic Policy Institute Briefing Paper, "How Unions Help All Workers," 2003, available at www.epinet.org/content.cfm/briefingpapers_bp143.

[30] Ibid.

[31] For an excellent study of the impact of unionization on cashiers and other workers in the retail food industry, especially women and single mothers, see Institute for Women's Policy Research, "The Benefits of Unionization for Workers in the Retail Food Industry," IWPR Publication No. C351, February 2002.

[32] David Card, "The Effect of Unions on the Structure of Wages: A Longitudinal Analysis," *Econometrica,* Vol. 64, No. 4 (July 1996): p. 957–979, and "Falling Union Membership and Rising Wage Inequality," National Bureau of Economic Research, Working Paper 6520, April 1998.

[33] Thomas C. Buchmeuller, John DiNardo and Robert G. Valletta, "Union Effects on Health Insurance Provision and Coverage in the United States," working paper, December 1999.

[34] William J. Wiatrowski, "Factors Affecting Retirement Income," *Monthly Labor Review,* March 1993, p. 25–35, and "Employee Benefits for Union and Nonunion Workers," *Monthly Labor Review,* February 1994, p. 34–38.

[35] U.S. Department of Labor, Bureau of Labor Statistics, *National Compensation Survey: Employee Benefits in Private Industry in the United States,* March 2005, http://www.bls.gov/ncs/ebs/sp/ebsm0003.pdf.

[36] EBRI Notes, May 2005, Vol. 26, No. 5, p. 1.

[37] U.S. Department of Labor, *National Compensation Survey,* March 2005, http://www.bls.gov/ncs/ebs/sp/ebsm0003.pdf.

[38] See Basic Patterns in Union Contracts, p. 37, Bureau of National Affairs, 14th ed., 1995.

[39] See, for example, Barry T. Hirsch, David A Macpherson and J. Michael Dumond, "Workers' Compensation Recipiency in Union and Nonunion Workplaces," *Industrial Labor Relations Review,* Vol. 50, No. 2, January 1997, p. 213–236; David Weil, "Enforcing OSHA: The Role of Labor Unions," *Industrial Relations,* Vol. 30, No. 1, Winter 1991, p. 2036; and John

W. Budd and Brian P. McCall, "The Effect of Unions on the Receipt of Unemployment Insurance Benefits," *Industrial and Labor Relations Review,* Vol. 50, No. 3, April 1997, p. 478–492.

[40] See Benjamin Radcliff, "Organized Labor and Electoral Participation in American National Elections," *Journal of Labor Research*, Spring 2001.

[41] Sandra E. Black and Lisa M. Lynch, "How to Compete: The Impact of Workplace Practices and Information Technology on Productivity," National Bureau of Economic Research Working Paper, No. W6120, August 1997.

[42] Karl Klare, "The Right to Organize: A Basic Civil Right," unpublished paper, 2002, p. 1.

[43] U.S. Department of Labor, Bureau of Labor Statistics, Census of Fatal Occupational Injuries (2003).

[44] U.S. Department of Labor, Employment and Training Administration.

[45] U.S. Department of Labor, Employment Standards Administration, Minimum Wage and Overtime Premium Pay Standards Applicable to Nonsupervisory, Non-Farm, Private-Sector Employment Under State and Federal Laws, Jan. 1, 2005; Economic Policy Institute; New Jersey Department of Labor and Workforce Development, "Laws Administered by the Division of Wage and Hour Compliance"; Minnesota Department of Labor and Industry.

[46] U.S. Census Bureau, Historical Health Insurance Tables, "Table HI-4. Health Insurance Coverage Status and Type of Coverage by State, All People: 1987 to 2003."

[47] U.S. Census Bureau, Historical Health Insurance Tables, "Table H1-5. Health Insurance Coverage Status and Type of Coverage by State—Children Under 18: 1987 to 2003."

[48] Centers for Disease Control and Prevention, National Center for Health Statistics, www.cdc.gov/nchs/data/nvsr/nvsr53/nvsr53_05.pdf.

[49] Ibid.

[50] Ibid.

[51] U.S. Census Bureau, Historical Health Insurance Tables, "Table HI-6. Health Insurance Coverage Status and Type of Coverage by State—People Under 65: 1987 to 2003."

[52] Kaiser Family Foundation, www.statehealthfacts.org. Data source: Agency for Healthcare Research and Quality, Center for Cost and Financing Studies. 2002 Medical Expenditure Panel Survey—Insurance Component. Table II.A.2.

[53] U.S. Census Bureau, "Table 21. Number of Poor and Poverty Rate, By State: 1980 to 2003."

[54] Center for the Study of the American Electorate, www.fairvote.org/reports/CSAE2004electionreport.pdf.

[55] For a sampling of these sources, see box, page 20.

[56] See Roy Adams, "Labor Rights are Human Rights," Working USA, July/August 1999.

[57] Karl Klare, "The Right to Organize: A Basic Civil Right," unpublished paper, 2002, p. 1.

[58] Hoyt Wheeler, "Viewpoint: Collective Bargaining is a Fundamental Human Right," *Industrial Relations,* July 2000.

[59] Roy Adams and Sheldon Friedman, "The Emerging International Consensus on Human Rights in Employment," *Perspectives on Work,* Vol. 2, No. 2, 1998.

[60] Karl Klare, "The Right to Organize: A Basic Civil Right," unpublished paper, 2002, p. 7.