May 2009

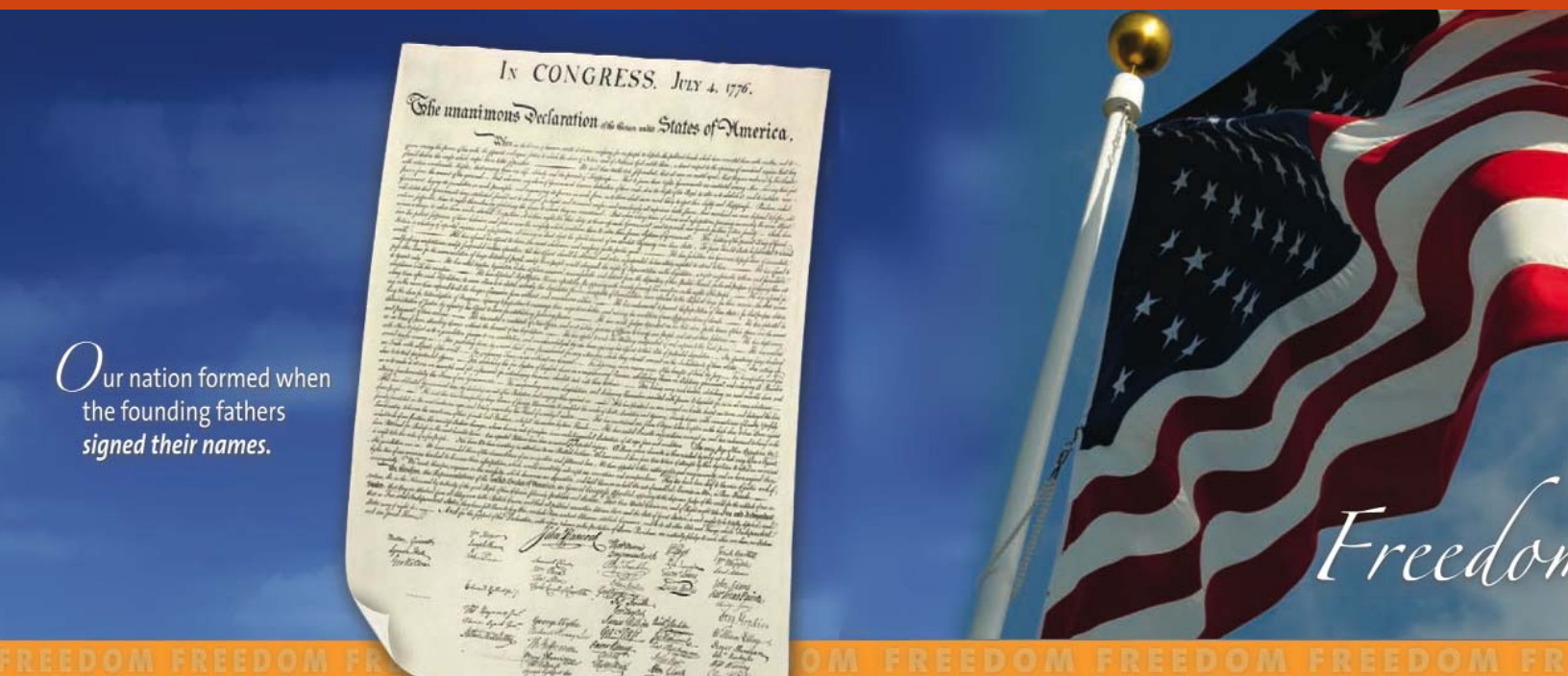
Academics on Employee Free Choice

Multidisciplinary Approaches to Labor Law Reform

edited by John Logan

UC Berkeley Center for Labor Research and Education

with an introduction by Robert B. Reich



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INTRODUCTION

Why We Need the Employee Free Choice Act

by Robert B. Reich

Why is the current recession so deep, and what can be done to reverse it?

Hint: Go back about 50 years, when America's middle class was expanding and the economy was soaring. Paychecks were big enough to allow us to buy all the goods and services we produced. It was a virtuous circle. Good pay meant more purchases, and more purchases meant more jobs.

At the center of this virtuous circle were unions. In 1955, more than a third of working Americans belonged to one. Unions gave them the bargaining leverage they needed to get the paychecks that kept the economy going. So many Americans were unionized that wage agreements spilled over to non-unionized workplaces as well. Employers knew they had to match union wages to compete for workers and recruit the best ones.

Fast forward to a new century. Now, fewer than 8 percent of private-sector workers are unionized. Corporate opponents argue that Americans no longer want unions. But public opinion surveys, such as a comprehensive poll that Peter D. Hart Research Associates conducted in 2006, suggest that a majority of workers would like to have a union to bargain for better wages, benefits, and working conditions. So there must be some other reason for this dramatic decline.

But put that question aside for a moment. One point is clear: Smaller numbers of unionized workers mean less bargaining power, and less bargaining power results in lower wages.

It's no wonder middle-class incomes were dropping even before the recession. As our economy grew between 2001 and the start of 2007, most Americans didn't share in the prosperity. By the time the recession began last year, according to an Economic Policy Institute study, the median income of households headed by those under age 65 was below what it was in 2000.

Typical families kept buying only by going into debt. This was possible as long as the housing bubble expanded. Home-equity loans and refinancing made up for declining paychecks. But that's over. American families no longer have the purchasing power to keep the economy going. Lower paychecks, or no paychecks at all, mean fewer purchases, and fewer purchases mean fewer jobs.

The way to get the economy back on track is to boost the purchasing power of the middle class. One major way to do this is to expand the percentage of working Americans in unions.

Bank bailouts won't work. Businesses won't borrow to expand without consumers to buy their goods and services. And Americans themselves can't borrow when they're losing their jobs and their incomes are dropping.

Tax cuts for working families can do more to help, because they extend over time. But only higher wages and benefits for the middle class will have a lasting effect.

Unions matter in this equation. According to the Department of Labor, workers in unions earn 30 percent higher wages—taking home $863 a week, compared with $663 for the typical non-union worker—and are 59 percent more likely to have employer-provided health insurance than their non-union counterparts.

Examples abound. In 2007, nearly 12,000 janitors in Providence, R.I., New Hampshire and Boston, represented by the Service Employees International Union, won a contract that raised their wages to $16 an hour, guaranteed more work hours, and provided family health insurance. In an industry typically staffed by part-time workers with a high turnover rate, a union contract provided janitors with full-time, sustainable jobs that they could count on to raise their families'—and their communities'—standard of living.

In August 2008, 65,000 Verizon workers, represented by the Communications Workers of America, won wage increases totaling nearly 11 percent and converted temporary jobs to full-time status. Not only did the settlement preserve fully paid health-care premiums for all active and retired unionized employees, but Verizon also agreed to provide $2 million a year to fund a collaborative campaign with its unions to achieve meaningful national health-care reform.

Although America and its economy need unions, it's become nearly impossible for employees to form one. The Hart poll I cited earlier tells us that 57 million workers would want to be in a union if they could have one. But those who try to form a union, according to researchers at M.I.T., have only about a one in five chance of successfully doing so.

The reason? Most of the time, employees who want to form a union are threatened and intimidated by their employers. And all too often, if they don't heed the warnings, they're fired, even though that's illegal. I saw this when I was Secretary of Labor more than a

decade ago. We tried to penalize employers that broke the law, but the fines are minuscule. Too many employers consider them a cost of doing business.

This isn't right. The most important feature of the Employee Free Choice Act, which will be considered by the recently seated 111th Congress, toughens penalties against companies that violate their workers' rights.

The sooner it's enacted, the better—for U.S. workers and for the U.S. economy.

The American middle class isn't looking for a bailout or a handout. Most people just want a chance to share in the success of the companies they help to prosper. Making it easier for all Americans to form unions would give the middle class the bargaining power it needs to attain better wages and benefits. And a strong and prosperous middle class is necessary if our economy is to succeed.

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David Fairris
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The Employee Free Choice Act and Its Impact on Workers and the Economy

Why the Employee Free Choice Act Will Help Increase Unionization

The Employee Free Choice Act would change the process through which workers can establish a union in three ways. First, it would allow unions to be certified by the National Labor Relations Board as long as the NLRB finds that a majority of employees signed cards authorizing the union to act as their representative in collective bargaining. Currently, the law requires that unions be elected by a majority of employees in a lengthy campaign for representation, providing employers greater opportunity to organize an anti-union campaign. Second, the act would set a 90-day time limit for employers and unions to reach an agreement in bargaining on their first contract, after which the dispute would be referred to mediation by the Federal Mediation and Conciliation Service. If no agreement is made after 30 days of federal mediation, the dispute would be referred to arbitration and the arbitrators' decision would be binding on both parties for two years. Currently, employers are required to bargain in good faith but are under no obligation to reach an agreement. According to recent research, about one-third of all unions are unable to obtain a first contract after winning their first election. Third, the act stiffens the penalties on employers that intimidate, unfairly discharge, or otherwise violate employees' rights during a union election (Office of the Committee on Education and Labor Democrats, 2007). In these ways, the Employee Free Choice Act would make it easier for workers to form unions and obtain their first contracts and make it harder for employers to frustrate their efforts.

The following story of an employer's union-busting campaign helps to illustrate how this act will help U.S. workers to form a union. In 1998, the Communications Workers of America (CWA) joined the Association of Community Organizations for Reform Now (ACORN) in an innovative organizing partnership to unionize welfare-to-work participants

in Milwaukee. Because recipients of Wisconsin Works (W-2) were required to participate in work assignments and welfare-to-work activities, ACORN sought to organize them around their labor and employment rights as well as their welfare rights. According to the arrangement they made with CWA, organizers would sign up W-2 participants as both ACORN members and "associate members" of CWA (ACORN and CWA, 1998). Union officials viewed the campaign as an opportunity to fulfill their mission to organize low-income workers and they assigned one of their organizers to work full-time on the campaign. The site that was selected for the joint campaign was the Product Development Corporation (an Ameritech contractor). The company, which produced telephone directories and sold ads in them, employed about 55 workers. Nearly all the employees were women and about 40 of them received W-2. The campaign sought to organize both W-2 workers and regular workers into a single bargaining unit.[1]

Initially, the campaign went very well. An ACORN member who worked for the company quickly collected membership cards from about 44 out of 54 of her W-2 coworkers. Workers filed their membership cards and their petition for a union election at the NLRB office during ACORN's national convention in Milwaukee after a march and rally with ACORN members and supporters (United States of ACORN, 1998).

Afterward, the company began an aggressive anti-union campaign. They used many traditional union-busting tactics observed in other union election campaigns, especially in the private sector (Bronfenbrenner, Friedman, Hurd, Oswald, & Seeber, 1998; Hurd & Uehlein, 1994; Beaumont, 1992, p. 46; Johnston, 1994). They offered bribes to workers who agreed to vote against the union. For example, one worker was told that she could have health insurance if she voted "no" in the union election. The employers also held mandatory "one-on-one" meetings and small group meetings with workers to persuade them to reject the union. The company strategically divided the workers for these meetings. As the CWA organizer assigned to the campaign explained, "They put the strong ones … in with some mouthy people that were against the union and then the weaker ones, they would really lay in on them" (CWA organizer, 1999). The company and anti-union workers warned employees that the company would move and eliminate their jobs if they voted for the union. They also distributed anti-union flyers, buttons, and t-shirts. As the organizer put it, "They intimidated them. They had them running scared" (CWA organizer, 1999).

The employers took advantage of the workers' needs as single working mothers to punish and intimidate union supporters. Before the union campaign, the company allowed workers to leave early to pick up their children from school. During the unionization campaign, however, the company suddenly became inflexible. According to the union organizer,

> They intimidated them terribly. Like before, the women who had kids, they said 'I have to go early today, 15 to 20 minutes early to go pick up my child.' 'Oh go right ahead. No problem.' … But then they started to make examples. … If you left 15 to 20 minutes early, they would mark you absent for the whole day.

The use of attendance records to intimidate pro-union workers became a central problem for their campaign in the fall: "That was a key issue. We were winning all the way up until the time that school started." Managers told workers that they would overlook their attendance problems if they voted against the union. They also fired several union supporters because of their attendance. In response to these firings, ACORN and the Communications Workers of America organized a lunchtime rally. About 50 people participated, including union leaders (CWA organizer, 1999).

Despite organizers' efforts to maintain support among the workers, the company's bribery and intimidation were effective. As the union organizer put it, the workers' "voices became smaller because they were scared." Eventually, the union lost the election campaign. Whereas at least 40 out of 55 employees signed union membership cards, only 14 voted in favor of the union (CWA staff supervisor, 2002; CWA organizer, 1999; ACORN national staff, 1999). As the union organizer explained, "It was unbelievable the support we had, and then they really came in.… That did take a lot of wind out of the sails."

Had the Employee Free Choice Act been law when the ACORN/CWA organizing drive took place, the workers would not have had to endure the kind of union-busting campaign that occurred after they filed their union cards with the NLRB. Their union would have been authorized. With stiffer penalties in place for intimidating workers during a union organizing campaign, the company might have also been more reluctant to threaten and intimidate their pro-union employees. By providing greater protections for workers to organize and allowing them to unionize through a majority sign-up, the Employee Free Choice Act will undoubtedly help to increase unionization among U.S. workers.

Will the Employee Free Choice Act Improve Economic Efficiency?

What would the likely impact of EFCA be on economic efficiency—the size of the economic pie and the extent to which it grows over time? Most of the research on this topic focuses on the productive efficiency of union versus non-union firms. Two aspects of firm operation have received the greatest attention—the impact of unions on employee turnover and on labor productivity.

We now possess incontrovertible evidence showing that unions reduce labor turnover. The higher union wages and benefits, but also the greater degree of respect from

management and better working conditions, discourage workers from leaving unionized jobs. That said, there has been very little analysis of whether this is a good thing for economic efficiency. After all, there is much to be said for the ease of labor mobility—it allows for better worker–firm matches and for labor to flow to its highest valued use, all contributing positively to economic efficiency. Is turnover in unionized firms suboptimal compared to non-union firms?

Both historical and contemporary evidence suggests the answer is *no*. In the 1910s and 1920s, prior to the wave of industrial unionization in the U.S., it was common for non-union firms to experience turnover rates above 100 percent; indeed, in the early days of auto production, auto plants could experience rates of turnover nearing 400 percent—that is, the workforce turned over, on average, four times during the year. Even today, in non-union meat processing plants and many service-sector operations, turnover rates nearing 100 percent are not uncommon.

Turnover rates of this sort are surely economically inefficient—bad for labor and for society as a whole. Indeed, some progressive employers, both then and now, view turnover rates of this magnitude as bad for firms as well. However, high turnover rates can be part of a "low-road" strategy—high turnover, low pay, no opportunities for internal advancement, and an absence of unions (it is more difficult to organize a highly mobile workforce). The union impact on turnover is quite likely a positive contribution to economic efficiency.

There has been a great deal of empirical work on the impact of unions on firm productivity as well, although the results are far less consistent than in the case of turnover. The unanswered question in this analysis is whether productivity is a good measure of productive efficiency and therefore something to be held in such high regard. Productivity measures output per labor input (measured typically in hours); but, this measure ignores the conditions under which workers work—aspects of production such as the intensity of labor effort and the hazards to life and limb.

All too often we forget just how bad working conditions can be for workers, and how important the demand for better working conditions can be in union organizing drives. The auto workers and steelworkers of the 1930s as well as the janitors and hotel workers of the past few years were spurred to unionize in no small part in order to achieve an acceptable pace of work and improvements in health and safety, not to mention greater dignity in their treatment by management.

The only motivation for non-union employers to attend to workers' concerns for better working conditions is if they are forced to pay higher wages when working conditions are poor due to the scarcity of labor. In theory, competition for scarce workers is supposed to impose compensating payments on firms with poor work environments. However, the empirical evidence is now very clear that such payments are nonexistent in non-union firms.

Government regulation of health and safety has had some impact on the quality of the workplace, but it leaves out workers' concerns over pace and arbitrary treatment by management, and its reach into non-union firms is limited because non-union workers do not feel sufficiently empowered to report workplace hazards to regulators.

Thus, there is much evidence to suggest that output per labor input, once properly conditioned on the level of worker exhaustion or danger to life and limb, is worse in non-union firms. Unions respond to the conditions under which workers toil better than do the labor market forces of supply and demand. In short, there is good reason to believe that by increasing unionization, the Employee Free Choice Act may actually help to make the U.S. economy more efficient, not less efficient as its opponents suggest.

The Employee Free Choice Act is Likely to Reduce Income Inequality

Unions not only affect economic efficiency (the size of the economic pie), but they also have important impacts on the distribution of income in the economy (how the pie is sliced). Over the last 100 years, the introduction of institutions from the progressive income tax to Social Security to Medicare demonstrates that voters are not satisfied with the distribution of income produced by the market. While government welfare programs may help to even out the distribution of income, so can a unionized labor force. Labor reforms such as the Employee Free Choice Act that make it easier for workers to unionize can thus play a key role in reducing income inequality.

Academic research has produced strong evidence that unions do indeed even out the income distribution. Workers at the bottom of the income distribution are more likely to be unionized than workers at the top of the income distribution. By raising the wages of these low-skilled workers, unions are able to reduce the pay gap between these two groups of workers. Moreover, unions make more equal the pay structure in plants and industries, bargaining for greater pay increases for less-skilled workers (Acemoglu, 2002; Aidt & Tzannatos, 2002; Card, 1996; Dinardo, Fortin, & Lemieux, 1996; Fairris, 2003; Freeman, 1991; Panagides & Patrinos, 1994).

Among the key findings in this literature are the following: (1) decreased unionization can explain between 15 and 20 percent of the increased wage dispersion between 1979 and 1988 in the U.S. (Dinardo, Fortin, & Lemieux, 1996); (2) nearly 50 percent of the increase in the pay gap between blue-collar and white-collar workers can be explained by declining rates of unionization (Freeman, 1991); (3) unions decrease wage dispersion at all points in the income distribution (Card, 1996); (4) unions have an important role in decreasing income inequality by increasing the wages of traditionally disadvantaged groups in the labor market—for example, the union impact on wages is greater for Mexican-born individuals in the U.S. (Chen, 2009); and (5) there exists less discrimination in the unionized sector (Panagides & Patrinos, 1994; Aidt & Tzannatos, 2002; Fairris, 2003).

Which Workers are Most Likely to Unionize under the Employee Free Choice Act?

While it is very informative to describe how unions affect the income distribution in general, it is also important to consider whether the impact of unions through EFCA might be even greater than the *average* effect of unions on the income distribution. To do this, we need to know something about what types of workers are likely to form unions if the Employee Free Choice Act passes. One window into this question is to ask which workers *almost* formed unions without EFCA. As it happens, there is a very straightforward way to do this: the National Labor Relations Board makes publicly available the results from all union certification elections. In order to become certified, a union must win more than 50 percent of the vote in the election. This means that elections where *almost* 50 percent of the vote was cast in favor of forming a union should inform us as to what types of workers are most likely to become unionized if EFCA were to become law.

Ideally, our analysis would be based on the characteristics of the workers that actually voted in union certification elections. While this data is not available, we do have information about the industry of the bargaining units where union certification elections took place, the outcomes of those elections, and the characteristics of workers employed in those industries. In order to learn something about who would unionize due to EFCA or similar legislation, we use labor market survey data to compare the characteristics of workers in industries where workers almost unionized to the characteristics of workers in industries that did unionize.

The table below presents summary statistics on several demographic characteristics of workers. Using data from the 2008 Current Population Survey, the last two columns display the characteristics for individuals in both the union and non-union sectors (i.e., they represent the characteristics of the stock of workers in each sector). The first four columns give some information about the *flow* of workers into the union sector. These columns give

Demographics by share voting for union, characteristics for current union members

	0%–25%	25%–50%	50%–75%	75%–100%	Union Members	Non-Union Members
% High School Drop Outs	15.55	14.21	11.31	12.65	4.22	9.00
% Female	28.72	32.00	45.34	39.50	46.00	47.35
% African American	8.62	9.82	11.93	11.54	10.32	10.77
% Latino	21.65	20.23	17.12	18.70	9.24	15.67
% Immigrant	21.86	21.00	19.42	20.35	11.24	17.29
% 2nd Generation Immigrant	6.12	6.12	6.22	6.19	7.35	6.95
Average Age	39.82	40.45	40.92	40.72	44.69	40.72
Average Income	$43,118.93	$44,525.86	$43,888.54	$43,716.08	$50,389.67	$46,660.89

the average characteristics of workers in industries that had NLRB elections in 2008. These columns are broken down by the share of votes in favor of certification. Thus, the first two columns represent the characteristics of workers in industries where there was a failed union election, while the second two columns represent the characteristics of workers in industries in which there was a successful certification election.

A number of things stand out in the table. We see that industries that have a higher proportion of high school dropouts, Latinos, and younger workers are less likely to have union wins in certification elections. This suggests that the workers most likely to unionize under the Employee Free Choice Act are some of the most disadvantaged workers in the labor market. On the other hand, industries with larger shares of females and African Americans are more likely to have certification elections that end in favor of forming a union. This latter finding is probably partly due to their increased concentration in the public sector, where union busting is less extensive.

We also employ more sophisticated methods to determine whether, holding the other factors constant, any of these demographic characteristics is correlated with unsuccessful certification elections. For example, we notice that both female workers and African-American workers are more concentrated in industries where elections were won. But if African-American women have higher labor force participation rates than other women, it is hard isolate the effects of the number of African-American workers and female workers in an industry on successful campaigns. Using regression analysis, we are able to examine the true effect of one factor in the table by "holding constant" all other factors. In other words, we can answer the question: is an industry that is more highly African American more or less likely to have a successful unionization campaign than another industry which is equally female, educated, aged, etc., but slightly less African American?

The only factor that appears to be statistically significant is the share of the workforce that is Latino. This may be consistent with employer intimidation of undocumented immigrants, and is illustrative of the issues motivating the need for the Employee Free Choice Act or similar legislation.

Conclusion

By changing the rules for unionization and establishing unions' first contracts, the Employee Free Choice Act will make it easier for workers to form a union, increase the financial risks of union busting among employers, and make it easier for unionized workers to win their first contract. Evidence on the workforce characteristics in the industries where union elections were narrowly defeated suggests that the workers that are most likely to unionize under EFCA include some of the most disadvantaged workers in the U.S.: Latino workers, younger workers, and less educated workers. This is what one would expect given

that efforts by employers to intimidate organizing workers tend to be especially effective when workers are vulnerable, such as when they risk deportation, lack human capital, or when they are desperate for work, as the defeat of ACORN–CWA's unionization campaign among welfare-to-work participants helped to illustrate. How is increased unionization under the Employee Free Choice Act likely to affect our economy? Numerous studies suggest that it will be an antidote to the rising wage inequality of the past quarter century and that it may help to make our economy more efficient by improving working conditions and reducing worker turnover.

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Endnotes

[1] ACORN and CWA staff worked together to identify job sites for a union organizing drive using ACORN's membership list, communicating with W-2 participants outside of W-2 agencies, and by consulting an outdated list of job sites provided by the county's W-2 task force. See ACORN and CWA, 1998; CWA organizer, 1999.

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David Brody

Interrogating the Great Depression

Ever since September's financial meltdown, the Great Depression has been on everybody's mind. Suddenly, we're all historians. Scholars have long pondered why the Great Depression was so prolonged. The right has an answer: It was the New Deal! A choice example is a recent *New York Times* column by the economist Tyler Cowen. The only things FDR really got right, Cowen suggests, were his monetary and banking policies, although Cowen allows also for Social Security. Everything else was a mistake (and never mind why FDR did what he did) that made things worse. So the lesson for President Obama is that "we should restrict extraordinary measures to the financial sector and resist the temptation to 'do something' for its own sake."

One of those things is making it easier for workers to unionize. More than anything else, the Employee Free Choice Act has put a buzz in the right-wing bonnet. Writing in the *Times*, of course, conservative commentators tend to be circumspect, not like the screaming articles in the *Wall Street Journal* editorial pages, the *National Review*, and such. Cowen himself is quite ingenious about it. He lumps New Deal labor policy with two of FDR's undoubted failures, industry cartelization and agricultural subsidies, and suggests, in a kind of guilt by association, an equivalent economic failure. While there's not much more to it than that, Cowen is not shy about concluding that if President Obama accedes to "pressures to make unionization easier," he is "likely to worsen the recession for many Americans."

So let's talk a little history. The charge is that by strengthening unions, the New Deal fostered wage rigidity and thereby retarded recovery. The indicator of wage rigidity in a declining cycle is a rise in real hourly earnings; and by that measure, the Great Depression did indeed see astounding wage rigidity—a rise in real hourly earnings of 30 percent over the decade. The question is: How much of this is ascribable to New Deal-induced collective bargaining?

The biggest jump in real hourly earnings, nearly 15 percent, came between 1929 and 1931, at a time of union impotence and, of course, long before the New Deal. Three interlocking factors explain what happened: first, the emergence of internal labor markets at large firms; second, in an age of welfare capitalism, a paternalistic reluctance to cut wages; third, and most important, the widely held view that economic downturns could be resisted by corporate stabilization. Indeed, right after the Great Crash, President Hoover called in the nation's leading magnates and secured from them a pledge to hold the line on wages. Voluntary stabilization lasted until mid-1931 (during which time wage rates scarcely budged) and then it collapsed—only to be resurrected with a vengeance by the New Deal, which cast aside the antitrust laws and invoked cartelization under the National Recovery Administration as a means of stabilizing the economy. Only in a few industries, most notably the needle trades and coal mining, did labor unions have any say about the wage standards set by the NRA codes of fair competition. This first New Deal attempt at industrial recovery did spark a wave of strikes that probably helped spur the upward surge of real hourly earnings in 1934, but this was industry's doing, for purposes of warding off the unions and not because there was substantial collective bargaining.

Collective bargaining became a New Deal policy only in 1935 with the National Labor Relations Act, and it took another two years, while the Supreme Court weighed its constitutionality, for the law to go into effect. By then the industrial unions were already making headway, and 1937 saw the first round of collective bargaining of the Great Depression. And that was it. The severe recession of 1937–38 arrived—for reasons, economists agree, having nothing to do with labor—and collective bargaining froze. When it resumed in 1939, the economy was coming out of the depression and only thereafter, in an environment of wartime full-employment and post-war prosperity, did union power really kick in.

If you're looking for the economic effects of collective bargaining, here's where you'll find those effects: in the Great Compression of the 1940s when modern America came as blissfully close as it's ever gotten (or likely to get) to income equality, and in the succeeding high-performing economy of the 1950s and 1960s when blue-collar America first became middle class.

But if the Great Depression is our model, drawing the lesson that the Employee Free Choice Act would retard recovery is simply an abuse of history. There is another way, however, in which the Great Depression does speak to us. In a related argument, the employer side says that a crisis like ours is no time to be fooling with a destabilizing scheme like employee free choice. It's a big question—the relationship between crisis and reform—but here I confine myself to how that relationship played out in the labor law.

New Deal labor policy really did break with the past, repudiating a long-held tenet that the courts alone made trade-union law. It's a remarkable fact that—save for the

railroads—there was literally no labor legislation on the books in 1929. In defiance of that tradition, the Norris–La Guardia Act cast aside the worst excesses of judge-made law—the labor injunction and enforceable yellow-dog contracts—and beyond that, laid the doctrinal basis for New Deal labor law. This was in 1932, by a Republican Congress, in the depths of the depression. The next year, amid FDR's chaotic "Hundred Days," the industrial recovery legislation that the New Deal crafted mandated that every NRA code of fair competition include Section 7a, asserting the right of workers to organize and engage in collective bargaining. Section 7a itself proved ineffectual, but the wave of violent strikes it provoked drove the legislative battle that led to the National Labor Relations Act of 1935. At every step of the way, New Deal labor policy was the *product* of crisis.

And so, in its fashion, is the Employee Free Choice Act. The essential purpose of the labor law (which the Employee Free Choice Act amends) was to end the endemic strife that poisoned our labor relations—strife caused by the refusal of employers to deal with unions. The bitterest strikes in our history—in 1934 and for decades earlier—were strikes for recognition. So the New Deal law put into place a process, with majority rule as the test, that imposed the duty to bargain on employers—one that, in effect, replaced equations of power with the rule of law. Now we are reverting to pre-1935 industrial warfare because the labor law is failing.

Recent M.I.T. research (by John-Paul Ferguson and Thomas Kochan) reveals this failure all too starkly. To start the process leading to National Labor Relations Board (NLRB) certification as a bargaining agent, a union has to show support, via signed cards, from 30 percent of the workers. A union never petitions for an election without a far greater show of support. Yet with 60 to 75 percent going in, a union has only a 20 percent chance of ever getting a first contract. If the employer commits an unfair labor practice along the way, the union's chances fall to 9 percent.

I'm skipping over the coercive and delaying tactics that employers use to bring this result about, and likewise the nonsense they spew out about their devotion to the secret ballot. Let's just say that employers are doing what they've always done, which is their damnedest to avoid collective bargaining. The result is the collapse of the NLRB system. The number of representation elections has dropped by half in the past decade. The NLRB reported that elections in 2007 produced collective-bargaining rights for 58,000 workers. Of these—if we apply the M.I.T. findings—about 30,000 actually got first contracts, trivial in an economy of America's size.

The great majority of newly unionized workers do not, in fact, get collective bargaining through NLRB elections. The law also allows for voluntary recognition, in which an employer enters collective bargaining directly on being provided with proof (via signed cards) of a union's majority. "Voluntary" is not quite the right word, because rare is the

employer who takes this route except under duress. And that's where the corporate campaign, so-called, comes in. The master practitioner, SEIU's Andy Stern, likes to speak of "the power of persuasion and the persuasion of power." Using a bit of both, SEIU has expanded to nearly 2 million members. If the Employee Free Choice Act succeeds, SEIU will dispense with corporate campaigns: the NLRB representation process will have been reopened. If it fails, organized labor will have no other path than Andy Stern's, and we can anticipate the revival of a bastardized version of the economic warfare that once engulfed this country. In these worst of times, the Employee Free Choice Act will then indeed be a source of instability—only in answer to a question no one seems to have asked: Not the question "What happens if the bill passes?" but "What happens if it doesn't?"

At the moment, the administration is not showing its cards. As Senator, Barack Obama co-sponsored the Employee Free Choice Act, he spoke for it during the campaign, and he owes a lot to the unions. But where the labor law stands on his agenda is unclear. So here's one last historical nugget from the Great Depression. The National Labor Relations Act wasn't high on the New Deal's agenda either. FDR was, in fact, cool to it because he was busy currying business support for his cartelist NRA program. The labor law's champion was not FDR but, from first to last, one of the great unsung heroes of American liberalism, Senator Robert F. Wagner. By the time Wagner's bill came up in 1935, after being sidetracked the previous session, the New Deal had gone from its corporatist to its Keynesian phase, and collective bargaining became a priority on FDR's agenda.

This time around, we can hope for a similar dynamic in quick time. Conservative commentators have been congratulating themselves on Obama's centrist economic team, who know, says Bush's first economic adviser Lawrence B. Lindsey, that unionization "will make the economy less competitive and delay recovery." Not so fast. Lindsey's counterpart on the Obama team, Larry Summers, regards the galloping income gap of recent vintage to be "the defining issue of our times." To return to where we were in the late 1970s, says Summers, every household in the upper 1 percent would have to hand back $800,000 and every household in the bottom 80 percent receive a $10,000 check from the proceeds. That sounds outlandish, but it wouldn't be so outlandish—and it *would* be a lot healthier for all concerned—if we got the Employee Free Choice Act and gave working Americans the power to wrest back that $10,000 at the bargaining table.

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The Business Case for Employee Free Choice

A wide range of views on unions and the Employee Free Choice Act (EFCA) have been expressed in the business community. For the main part, these views reflect deep hostility to unions that in turn explains hostility to EFCA. This essay explains why, from a business perspective, this hostility is wrong-headed. It also addresses why this attitude is so common and what can be done about it.

The Business Community's Hostility to Unions and the Employee Free Choice Act is Wrong-Headed

Business scholars have advanced three families of theory and research that argue in favor of unionization and, by implication, in favor of measures, such as EFCA, that facilitate unionization: stakeholder, sustainability, and economic. The sections below review them in turn.

Stakeholder Arguments

Almost every business school has a required course that examines the relationship between business and society. And almost every such course employs the stakeholder model as the foundation upon which an understanding of the relationship between business and society is built. According to the stakeholder model (Freeman, 1984), the firm should serve its investors, but not only its investors. The firm should also serve a multiplicity of stakeholder groups inside and outside the firm. All business organizations enjoy certain freedoms and privileges by virtue of their incorporation by the government acting on behalf of the public. In return, they incur obligations to safeguard the interests, not just of their investors, but also of the public at whose pleasure they operate. The idea that firms must serve a wider constituency than their investors is particularly valid with respect to public corporations.

After all, it is only by virtue of the charters that are bestowed upon them by the public that these corporate citizens have the right to function as legal individuals and thus to enjoy many of the same rights as human citizens.

In the stakeholder view, union representation is a wise business policy, and measures like the Employee Free Choice Act should be supported on the grounds that they facilitate union representation. There are at least three families of stakeholder-based arguments for this position.

First, there are normative or moral arguments. The first of these proceeds from a widely shared commitment to the freedom of association. Indeed, it is under this rubric that the right to form a union is an internationally acknowledged human right (endorsed by the United States' vote for the Universal Declaration of Human Rights at the United Nations in 1948).

The second normative argument expresses an equally widely shared ethical commitment to the norm of reciprocity. Rarely are employees merely transitory, casual suppliers of unskilled labor services. Far more often their ties to a firm are longer-lasting and consummate (that is, their jobs are meaningful to the workers above and beyond the instrumental income the jobs provide); workers typically make costly investments in firm-specific skills; and they usually go over and above the strict minimum requirements of their employment contract in order to assure an organization's success (see, e.g., Blair, 1995). If a business benefits from such behaviors, a moral obligation of reciprocity is thereby created, and specifically an obligation to give these workers real voice in the governance of the firm. A union is the means by which workers express such voice. Relative to non-union forms of voice, unions have the crucial advantage of giving workers the power to command attention.

The second stakeholder argument in favor of unionization is an instrumental one. If management does not recognize the moral obligations described above, workers withhold their goodwill and their willingness to make firm-specific investments. Even if workers lose out as a result of this tit-for-tat retaliation, common sense tells us and research confirms that people are often willing to forgo personal gains to stop unfair treatment (Heinrich et al., 2004). The inevitable result is a kind of ongoing but covert go-slow strike in which a business's productivity and quality suffers. With unions in place, this passive aggressive stance loses its appeal—and everyone benefits.

Third, there is a political argument, based on a widely shared commitment to democratic values. Owners, workers, and management are among a firm's most important constituencies. They are the source of crucial resources (capital, labor, and coordination and control), and a firm's actions often have a direct and immediate impact on them. Capital and management are naturally well organized (to the extent that they are relatively concentrated) and well represented (because they have legal rights of voice) in the firm. But

workers are neither. They require an independent organization in order to represent themselves in the operation of the firm. Unions are vehicles that facilitate worker organization and representation.

Insofar as the Employee Free Choice Act facilitates the recognition of unions, these three factors—moral, instrumental, and political—suggest that it deserves broad support.

Sustainability Arguments

Over the last decade, management researchers and businesses have become aware that in order for a firm to behave socially responsibly, it must operate in a "sustainable" fashion. Perhaps most obviously, it must operate in a way that sustains the natural environment. All firms rely on the natural environment for material inputs of one kind or another. And when firms degrade the natural environment, they risk losing access to those inputs. Similarly, firms depend on the social environment for inputs of one kind or another, and, when firms degrade the social environment, they risk losing access to these inputs too. For these reasons, management scholars believe that firms need to focus on the "triple bottom line:" people, planet, and profit (Elkington, 1994).

So far, the focus on social sustainability has led to a concern about diversity. However, firms seeking to operate in a sustainable fashion must also take into account the extent to which their policies preserve and enrich their workers' capabilities. This is partly a matter of allowing workers opportunities to develop their cognitive, social, and manual skills; it is also a matter of giving workers the opportunity to self-organize and to participate in the firm's governance. Again, employee free choice facilitates this.

Unionization has benefits far beyond the individual workers and the firms that employ them. When the lowest-paid workers are assured higher wage levels and greater employment security, the families of these workers, and most importantly their children, live better, more economically secure lives. Additionally, our communities are freed of the health and social costs generated by economic distress.

Economic Arguments

While stakeholder and sustainability arguments lead some business scholars to support unionization and by extension the Employee Free Choice Act, economic arguments lead other business scholars to oppose both. These economic arguments against EFCA are simplistic and misguided, and there is, in fact, a strong economic case for unions and the Employee Free Choice Act.

First, consider wages and jobs. Some economists argue that unions distort the market process, creating a monopoly whereby unionized workers can extract a rent from businesses on top of their legitimate wages. If unions raise wages, the result, according to this

argument, is inevitably lower employment levels. This argument is simplistic, because it ignores the fact that businesses typically function as monopsonies (Manning, 2003). The reality behind this technical term is commonplace: the overwhelming majority of employees find that they need their job far more than their employer needs them: most employees suffer more losing their job than firms suffer in losing that employee. This puts the employer in a position to bargain down the wages of employees below their economically optimal level. In this context, union monopolies serve an economically valuable function in counterbalancing preexisting business monopsonies.

Moreover, this union monopoly effect has important countervailing benefits for firms and productivity. While union wages are higher than non-union wages for comparable jobs, these union wages enable firms to exercise greater selectivity in the workers they hire, so the firms end up with a higher-quality workforce. The higher wages lead to lower turnover, which allows the businesses to avoid huge wasteful expenses in recruiting, selecting, and training people to replace departed workers. The lower turnover in turn makes it economically rational for a firm to invest in worker training, which makes the workforce more productive. These productivity benefits come at some expense to the profits of the individual firm, but, in practice, this happens rarely unless the firm is enjoying super-profits coming from economic or monopoly rents; unions are, in effect, grabbing a share of these rents. Empirical studies confirm that the survival rate of firms is not affected by their union status (see review by Hirsch, 2003). Moreover, looking beyond individual firms, when unions raise the lowest wages, this considerably increases savings and reduces income inequality, which in turn has beneficial effects on economic growth, community health, and social cohesion (Molotch, 1976).

Second, consider flexibility. Unions can limit management's ability to lay off workers when business slows, and some economists argue that this has negative effects on the economic sustainability of individual businesses and slows economic adjustment and growth. This argument is also simplistic. It ignores (a) the counterbalancing macroeconomic advantage of slowing the downward spiral of economic recessions by maintaining consumer demand, and (b) the huge health and social costs of unemployment (including dramatically increased likelihood of suicide—see Kposowa, 2001[1]). It is true that in the longer run, our economies will be more efficient (and workers will be better off) if firms can adjust employment more smoothly to economic conditions; but the best way to achieve this flexibility is through a social compact in which unions trade increased employment flexibility for stronger labor market institutions and unemployment insurance (such as are found in Denmark—see Madsen, 1999).

Finally, consider work practices. The anti-union position highlights the possibility that union work rules will limit the ability of managers to implement the most productive

forms of work organization. However, the research literature shows that the presence of unions, far more often than not, supports exactly the high-performance work systems recommended by management scholars and consultants, and implemented by many of America's most competitive firms (Eaton & Voos, 1992; Gittell, von Nordenflycht, & Kochan, 2004). Not all unions, of course, have been willing to engage with management in the search for superior forms of work organization: some are just too skeptical of management's goodwill. But the primary stumbling block here has been the hostility of the business community, which continues to deny workers the ability to organize and continues to deny unions the legitimacy they need to engage in these efforts to improve work organization.[2]

Why Do Managers Resist Unions (and therefore the Employee Free Choice Act)?

If, as we argue, unions and EFCA are so beneficial to society and firms, why are managers so opposed to these policies and practices? Studying business organizations and teaching aspiring and practicing managers can lead to the following explanation of why so many in the business community resist unionization so energetically.

First, middle managers are often put under great pressure and offered significant inducements by top management to take a strongly anti-union position (Eaton & Kriesky, 2006; Freeman and Kleiner, 1990). Middle managers are often threatened with grim career consequences if a union organizing drive were to succeed on their watch.

Why this systematic opposition by top management? In some cases, pressure and inducements are at work here too. Many top managers who are willing to recognize and collaborate with unions are threatened with ostracism by their business community peers if they do so (Eaton & Kriesky, 2006). Why, then, this opposition to unions among the inner circles of the business community? The primary reason is simple enough: they do not want to share power, and, over the past few decades, they have seen less and less reason to accommodate themselves to any such power-sharing demand.

Indeed, once union density starts declining and passes a critical threshold, as has been the case in recent decades in the United States, a downward spiral is created. Many top executives would be comfortable working with union counterparts if unions were simply part of the institutional fabric of industry. Such was the situation in many industries in the 1950s and 1960s (and it is commonly the case in Europe and Japan). Since then, however, the accelerating decline of unions has meant that there is little incentive to strike a deal with a partner today knowing that tomorrow this partner is very likely to be in an even weaker bargaining position. Moreover, within the business community, the share of executives who have found a productive *modus vivendi* with unions has fallen to such a low level that few of their colleagues have first-hand familiarity with unions. In this context, well-organized disinformation campaigns can easily amplify fear, and the unions' downward trajectory thus becomes a vicious, self-reinforcing cycle.

Business schools have been complicit in this. The curriculum and the research output from business schools have been in great preponderance disdainful of unions. Many business scholars have embraced the simplistic economic theories criticized earlier in this paper. Management research has given progressively less attention to the human outcomes of business and more to the profitability outcomes (Walsh, Weber, & Margolis, 2003). Many MBA programs simply omit any discussion of unions, leaving graduates woefully unprepared to embrace the challenges of finding a constructive engagement with unions when they encounter them. Many business scholars have embraced the idea that a firm is simply the vehicle for expanding investors' wealth (Ferraro, Pfeffer, & Sutton, 2005); this toxic doctrine encourages business students—future managers—to disdain the countervailing demands by workers and unions for freedom of association.

In sum, management's hostility to unions reflects the same "short-term" bias that has brought us today to the brink of worldwide depression. Just as the focus on short-term gains pushed financial institutions to abandon traditional limits on leverage and common sense, short-term thinking in regards to labor-management relations has led us to the disintegration of union voice, stagnant real wages, growing income inequality, and an eviscerated middle class.

The Employee Free Choice Act and Concerns about Intimidation

Some managers offer a more principled objection to EFCA: they think it can lead to worker intimidation. EFCA would enable unions to seek recognition as workers' bargaining representatives as soon as 50 percent of workers sign cards requesting that representation. Many in the business community have expressed concern about the possibility that union organizers might intimidate workers into signing such cards. Intimidation by union organizers is a possibility that must surely be considered (see HR Policy Association website for sources: http://www.hrpolicy.org/).

The risks of union intimidation, however, must be laid alongside the reality that managers have often abused delays in the recognition process by intimidating workers (Eaton & Kriesky, 2009). In practice, unfair labor practices by employers massively outnumber those by unions. Threats of plant shutdowns are common (see, e.g., Bronfenbrenner, 1997), and there is a flourishing industry of union-avoidance consultants who specialize in orchestrating such management intimidation. Further, it is a practical fact that firms almost always have greater resources to wage electoral battles than do unions. The idea that elections for union representation are level playing fields, while appealing in the abstract, is false in the everyday reality of business. The practicalities of organizing a secret ballot inevitably create a delay that invites management intimidation.

More fundamentally, the idea that workers' demand for representation is only legitimate if sanctioned by a secret ballot overlooks the purpose of union organization. It is

true that our society often relies on secret ballots when it is a matter of deciding which of several candidates should be empowered to use the institutional machinery of an established organization. But what is at stake in union recognition is very different—it is the creation de novo of a new organization. It is a decision on whether to create a means of representation where none was previously available. The creation of a union opens the way for workers to vote on many issues that previously workers had no voice in. As political scientists warn us (Lafer, 2008), it is a sure sign of despotism when people are asked to vote on whether they agree to give up their future right to vote.

The core problem is simply that democratic elections will not produce fair outcomes when one party has vastly superior resources. In general, management has a great resource advantage over unions in the workplace, the courts, the media, and the political arena. The business community has thus had a disproportionate influence in setting the rules of this game, and managers enjoy relative impunity when they choose to break those rules.

For these reasons, the formation of unions is something that the law should actively facilitate, rather than a policy on which the law should assume a neutral position. Such was the original vision of the Wagner Act, which sought a measure of democracy in our economic sphere as the natural extension of democracy in our political sphere. This may frighten managers whose authority rests on intimidation, but managers who value employee engagement should welcome it.

What Is to Be Done: The Key Role of Government, Law, and Policy

Our labor laws should allow workers to bargain collectively over their employment conditions—but the system is broken. Under the current arrangements, workers petition for an election when a majority of the workers involved sign up; but only 20 percent of the cases ever reach a contract (Ferguson, 2008). Management intimidation and unfair labor practices substantially reduce the chances of getting from petition to election, further reduce chances of winning the election, and further again reduce chances of getting from certification to contract. Where management resistance to union organizing efforts is so intense as to generate unfair labor practice charges, unions have less than a 10 percent chance of making it all the way from an initial showing of majority worker support to a first collective bargaining contract. Little wonder Human Rights Watch regards the U.S. as violating our signature of the 1948 Universal Declaration of Human Rights, which includes the right to unionize as a basic human right (Human Rights Watch, 2000).

The institutions of union representation are what economists call a "public good," and, like other public goods, they are underprovided by competitive markets. Once unions are radically weakened, the spontaneous workings of the market will not give rise to any countervailing effects that would encourage the re-emergence of unions. The whole economy slides to a lower-level equilibrium in which workers earn less and have less influence in

the workplace, in which firms pay less for labor but get less qualified and less committed workers, and in which, as a result, society gets less output from its available resources.

The only escape from this low-level equilibrium is via government action. Historically, such government action has been forthcoming only in the face of large-scale conflict. Threatened by conflict, the less enlightened elements of the business community are drawn toward a confrontational strategy; but the more forward-looking elements see their long-term interests better served by legislation that facilitates union recognition and influence. Buttressed by the support of these latter interests, governments then feel empowered to change the legal and regulatory framework.

A forward-looking government could anticipate this chain of events and make the necessary institutional changes in advance of the emergence of social conflict. A forward-looking government would enact the Employee Free Choice Act, more fully incorporate labor into the country's economic fabric, and thereby secure a healthier social, political, and economic future for the next generation.

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Endnotes

[1] Kposowa summarizes the results of this study thus: After three years of follow-up, unemployed men were a little over twice as likely to commit suicide as their employed counterparts. Among men, the lower the socioeconomic status, the higher the suicide risk. Among women, in each year of follow-up, the unemployed had a much higher suicide risk than the employed. After nine years of follow-up, unemployed women were more than three times more likely to kill themselves than their employed counterparts.

[2] Sean Stafford (2009) tells a story that illustrates the point most poignantly, in analyzing the different fates of Youngstown and Allentown—two comparable rust belt cities, the former of which has failed to weather deindustrialization and the latter of which has succeeded. Both cities were heavily unionized. In Allentown, corporate leaders had developed a shop floor partnership with workers and when deindustrialization hit, corporate leaders worked with unions to upgrade workers' skills, implement flexible production techniques, etc. In Youngstown, corporate leaders had adopted a combative shop floor approach, and when

deindustrialization hit, they pressed the unions for concessions and eventually moved production out of the city to non-union locales. The lesson is generalizable: unions are not inherently inflexible; rather they can become inflexible when capital responds to them in a combative way.

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Chris Benner

Regional Equity, Worker Voice, and Growth in 21st Century Regional Economies

The stark disparities that characterize the U.S. labor market weaken the economy and levy—much like an onerous tax—high costs on our entire society. Building an economy in which everyone participates and prospers is not merely a matter of altruism or social justice, but rather a crucial step towards building a dynamic 21st century economy. The connections between equity and economic growth are particularly evident when examining economic dynamics at a regional scale, as the evidence grows that equity matters for economic growth. More importantly for our current economic climate, the relationship between equity and growth is *stronger* in slow growing regions, suggesting that promoting equity in our current economic downturn may be even *more* important than in times of economic growth.

Promoting improved worker voice and representation in the workplace and the broader labor market is one critical element of promoting improved equity. Processes of globalization, technological change, and deregulation of the economy over the past 30 years have resulted in dramatically increasing inequality and insecurity. There is an urgent need for workers' interests and voices to be heard more directly and forcefully in the workplace and the broader labor market. The Employee Free Choice Act is one valuable step in promoting this rebalancing of our labor market policies and institutions. To be sure, the Employee Free Choice Act is only one component, albeit an important component, of what must be a comprehensive effort to update our labor market institutions and policies to address the challenges of a 21st century economy—much more needs to be done. But passing the Employee Free Choice Act is one critical step in increasing workers' voices, and, by helping to rebalance labor market policy and promote greater equity, passing the Employee Free Choice Act can also contribute directly to long term economic growth as well.

Why Does Equity Matter for Economic Growth?

Why is disparity in income and employment opportunities a problem for the economy? Inequity imposes high economic costs on virtually every actor in the economy: investors, government agencies, business managers, homeowners, renters, the rich and the poor, the idle, and workers alike. These costs are particularly evident when inequity is examined at a regional scale. Sharp regional disparities stifle growth, slow momentum, and eat away at the sense of community that historically binds neighbors—and communities—together. This, in turn, often leads to "white flight" and shrinking public investments in human capital such as when families flee public school systems and grow increasingly reluctant to contribute their tax dollars to the broader community's educational effort. Internecine political squabbles, often pitting suburbs against central cities over subsidies, parks, and other public resources, frequently become commonplace. The resulting infrastructure decline, social conflict, and stagnant economic opportunities increase the general desire, particularly among younger workers who are so important to future economic prosperity, to jump the regional ship in favor of less problematic areas.

In a global economy that relies more on technological skills and know-how than strong backs and natural resources, urban areas are not commercially viable when a large segment of the population doesn't have the skills or training to contribute to the region's economic output. Cities, suburbs, and businesses all gain a competitive edge by investing in educated, creative, and healthy workers who can add value to products and deliver services.

Promoting equity is more than a gesture of kindness. The hard numbers show that equity and inclusion are directly tied to a region's economic health. Studies indicate that rising incomes and falling levels of poverty improve metropolitan economic performance (Muro & Puentes, 2004). And what's more, across the United States, income gains in central cities between 1970 and 1990 had a positive impact on suburban incomes, population growth, and home values (Voith, 1998). One late 1990s study of 74 urban areas found a positive relationship between the reduction of poverty in core cities and overall metropolitan growth (Pastor, Dreier, Grigsby, & López-Garza, 2000).

Essentially, the less segregated and divided the region, the stronger the economy. In a recent analysis of 118 metropolitan areas, researchers at the Federal Reserve Bank of Ohio concluded that racial inclusion and income equality are associated with strong regional economic growth (Eberts, Erickcek, & Kleinhez, 2006). In that study, researchers condensed a wide range of variables into a list of just nine indicators, each encompassing several key variables. Of the nine, "racial inclusion and income equality" is the *only indicator* that had a high correlation with all four of the researchers' measures for economic growth (per capita income, employment, gross metropolitan output, and productivity) (Austrian, Yamoah, &

Lendel, 2008). In fact, this indicator—as calculated by a complex formula based on the community's percentage of African Americans and indexes measuring their segregation from the broader population and levels of income inequality[1]—had the strongest or second strongest correlation with three of the four economic growth measures used: employment growth, productivity, and change in real output (Eberts, Erickcek, & Kleinhez, 2006, p. 20).

Pastor and Benner's (2008) recent research confirmed these findings that inequity causes urban economies to "drag." Perhaps more importantly, we found that the effect of concentrated poverty, income inequality, and racial segregation was actually significantly *stronger* in regions with a "weak-market" center city than in rapidly growing regions. "The overall pattern suggests that paying attention to equity is entirely consistent with promoting growth," we wrote, "and may in fact be even more important in areas that have experienced economic decline (Pastor & Benner, 2008, p. 100).

Voice and Representation in the Workplace and Labor Market

In the past 30 years, the economy has been dramatically restructured through a variety of processes, including most prominently the rapid development and diffusion of information technologies and rapid economic globalization (see Benner, 2002; Castells, 1996; Burton-Jones, 1999). As a result of these changes, U.S. labor markets today are significantly different from those that dominated in the past. Up until the mid-1970s, the single most defining feature of labor markets was the importance of long-term stable employment relationships in vertically integrated large firms operating in mass production industries. Today, a large and growing portion of the labor force faces not just declining wages, but also high levels of contingent employment, complex contract and outsourcing relationships between firms, insecure employment, and high levels of turnover.

Unions have been an essential component of the institutional landscape shaping work and employment practices for at least the last 100 years in the U.S. Since the passage of the National Labor Relations Act in 1935, balancing the needs of firms and workers was seen as not only an important social goal, but critical for economic growth. This principle was embedded in our national policy, and practiced in thousands of workplaces across the country.

Over the last 30 years, the percentage of the workforce represented by unions has been declining, with unions now representing less than 8 percent of the private sector workforce in the U.S. It is clear, however, that this decline in unionization is *not* the result of workers' having less desire for representation in the workplace and broader labor market. Workers at all levels of the labor force have been pursuing a variety of innovative strategies for having their interests represented, from organizing community-based workers' centers that advocate for their rights (Fine, 2006), to developing occupationally-based guilds to

strengthen training and career opportunities (Benner, 2003), to organizing regionally-based organizing and policy institutes to promote economic concerns ranging from living wage campaigns to universal health coverage (Pastor, Benner, & Matsuoka, 2009; Dean & Reynolds, 2008). Yet without legally protected collective bargaining agreements, these innovative institutions and organizing efforts face daunting challenges in effectively addressing the growing inequality and insecurity that face large sectors of the workforce.

There is clearly a need for substantial labor law reform. The economy and labor market of the 21st century is dramatically different from the economy of the mid-20th century, and yet our labor law hasn't been substantially updated for some 50 years. There are a range of labor law reforms that need to be addressed, including at a minimum: mechanisms for minority representation of workers who want union representation in the absence of majority representation in a worksite, enhancing employee participation and broadening workplace communication; systems for promoting multi-employer bargaining units within industry sectors, to facilitate strategic training approaches and career advancement; broader approaches for determining joint employer status for dealing with subcontracting and leasing arrangements; and efforts to expand the definition of 'employee' under the NLRA to include the estimated 43 percent of the workforce that is currently excluded either by statute or by case law, including domestic workers, supervisors, managers, self-employed workers, and certain categories of professional workers (Friedman, Hurd, Oswald, & Seeber, 1994; Wial, 1993; Stone, 2004).

The Employee Free Choice Act alone won't address all the problems workers face in our contemporary economy. But it is a necessary step in the effort to rebalance labor market policy so the interests and voices of workers are more effectively heard in the workplace and in developing broader labor market policy. By helping to address the growing inequity, promoting more unionization is also a critical step in promoting economic growth as well.

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Endnotes

[1] The dissimilarity index measures the extent to which blacks and non-blacks live in different neighborhoods or areas. It can be interpreted as the fraction of blacks who would have to move to achieve an even racial distribution. The isolation index measures the extent of black contact with non-blacks, since if blacks are concentrated in certain areas, they may still have extensive contact with whites within those areas. For more information, see http://trinity.aas.duke.edu/~jvigdor/segregation/usrguide.html

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Catherine Fisk

Interest Arbitration in the Employee Free Choice Act:

A Time-Honored and Tested Method to Ensure Good-Faith Bargaining

One of the most acute regulatory failures of federal labor relations is in the area of bad faith bargaining. Although section 8(a)(5) of the National Labor Relations Act (NLRA) imposes a duty to bargain in good faith, the Supreme Court long ago decided that the National Labor Relations Board (NLRB) lacks the authority to force a recalcitrant (even an illegally recalcitrant) party to reach agreement.[1] Nor will the Board impose monetary remedies to compensate for an employer's illegal refusal to bargain, even when it is quite clear what the monetary harms were. All it will do is to order the party who bargained in bad faith to bargain more, and to do so in good faith.[2]

The evidence shows that the failure of the Board and the courts to develop remedies for bad faith bargaining has dramatically undermined the policy of the National Labor Relations Act to support the mutual determination of wages and working conditions through collective bargaining. During the last decade, *nearly half* of all newly certified unions failed to reach a collective bargaining agreement.[3] That means that the workers who exercised their right to select union representation never got what the law guarantees them, which is collective representation in the determination of wages and working conditions. Moreover, the problem has gotten worse in the last decade; in the early 1990s, approximately one-third of newly unionized employees failed to secure a first contract.[4] What that means is that now the law allows employers to defy the law with impunity and thus deprive nearly half of all newly unionized employees of their right to bargain collectively.

There is a near consensus among scholars, Board members, and judges that the weakness of the remedies for illegal failures to bargain thwarts the purpose of the law. A law that protects the freedom to choose a union has been undermined by the failure to adequately prevent illegal anti-union conduct after the union is certified, because employers determined to thwart unionization can bargain endlessly without ever reaching

agreement. Former Attorney General and Harvard Law Professor Archibald Cox described the problem in 1958: "As long as there are unions weak enough to be talked to death, there will be employers who are tempted to engage in the forms of bargaining without the substance. The concept of 'good faith' was brought into the law of collective bargaining as a solution to this problem."[5] The problem is that neither the NLRB nor the courts have been willing to impose injunctive or monetary remedies to stop the illegal behavior or to compensate employees for the harm they suffer as a consequence of an employer's refusal to bargain. The unavailability of make-whole or other remedies for illegal failures to bargain has been controversial ever since a narrowly divided Board declined to assert such power in 1970.[6] While this crabbed interpretation of the scope of the Board's regulatory authority is not compelled by the statutory language,[7] decades of scholarly criticism have proved fruitless.

One provision of the Employee Free Choice Act would rectify the problem described above by providing for interest arbitration in the case of a failure to bargain to a first contract.[8] Neutral third-party involvement in resolution of bargaining disputes has a long and illustrious history in American labor relations, for good reason. There are three ways that disputes over working conditions can be resolved, and all are used in our economy in various circumstances. One is by the government dictating conditions. The federal Fair Labor Standards Act, enacted in 1938 as part of an economic stimulus to address unemployment and low wages during the Depression, sets minimum terms of employment. A second method of settling disputes is by allowing whichever party has greater economic or political force to extract whatever bargain it can get. This is the approach used when there is no union and under the current law governing union relationships. The third is by allowing some third party to assist the negotiators in agreeing to terms. This is the approach that has long been used to resolve negotiating disputes in the public sector and salary disputes in Major League Baseball.

Before discussing the advantages of interest arbitration in bargaining to a first contract, it is important to recall the alternatives. In the private sector, the alternative to arbitration is a strike or a lockout. Whether interest arbitration is preferable to economic warfare as a method of dispute resolution is a matter on which companies have changed their views over the years. While companies today do not generally fear resolution of bargaining disputes through economic warfare, it is important to remember that companies sometimes prefer third-party involvement to economic force. Some will recall the bargaining dispute that shut down the West Coast ports in 2002. As the lockout dragged on while the union refused to accede to the employer's bargaining demands, the line of ships waiting to dock stretched miles into the Pacific Ocean. Companies complained bitterly then about the harm to the U.S. economy of resolving bargaining disputes through economic force, and

President Bush sought and obtained an injunction against the labor dispute, which then triggered third-party involvement in negotiating a settlement. The argument then favored by the Chamber of Commerce was that the use of economic force to resolve negotiating disputes endangered the health of the economy by disrupting the flow of commerce and endangered national security by tying up the principal arteries of commerce.

None of the current criticisms of the Employee Free Choice Act's provision to incorporate interest arbitration into the regime of labor-management relations has merit. One argument advanced by the Chamber of Commerce against arbitration is that it is "a time-consuming, expensive process."[9] It is odd to see companies objecting so strongly to arbitration as a "time-consuming, expensive process" ill-suited to employment, inasmuch as they have insisted for years that arbitration is a speedy, affordable, and flexible way to resolve disputes involving individual employment. A second argument advanced by the Chamber of Commerce is that the arbitrator may choose a resolution that is not in a company's interest. This is entirely speculative, of course. There is no factual basis for believing that arbitrators chosen to resolve bargaining disputes will not understand the company's business or will choose a resolution that harms the company's business. That would all depend on who the arbitrator was and whether the company and the union provided enough information during the bargaining process to enable the arbitrator to understand the issues. Inasmuch as federal labor law already requires employers to provide some information to substantiate their claims in bargaining,[10] it would not dramatically change the situation for the employer to provide enough information to enable an arbitrator to make an informed choice.

The most substantive objection to interest arbitration is that it will undermine the negotiating process by prompting either management or the union to make unreasonable demands in bargaining in the hopes of the arbitrator choosing their side. There is a simple expedient to address this problem, one that is used in baseball salary arbitration: require the arbitrator to choose one of the parties' final offers. This forces the parties to make reasonable offers in the hopes that, if the other side does not agree, the arbitrator will choose theirs. Thus, any employer negotiating with a union after the enactment of the Employee Free Choice Act would need only to make a reasonable offer to the union. The union would either agree to it or, if the dispute ended up in arbitration, the arbitrator could adopt it. And if a union made unreasonable demands in bargaining, the employer's reasonable offer would stand a much greater likelihood of adoption by an arbitrator.

In sum, the interest arbitration provision of the Employee Free Choice Act will fill a glaring hole in the current labor law by ending the process by which employers can flout the duty to bargain, talk a union to death, and thus act with total impunity in defeating the employees' choice of unionization. It will have no effect on law-abiding employers who

negotiate in good faith to reach an agreement with their employees. It will only affect those employers who violate the law, and it will do so by adopting a time-honored and tested arbitration process.

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Endnotes

[1] H. K. Porter Co. v. NLRB, 397 U.S. 99 (1970); see also NLRB v. American Ins. Co., 343 U.S. 395, 404 (1952) ("the Board may not, either directly or indirectly, compel concessions or otherwise sit in judgment upon the substantive terms of collective bargaining agreements").

[2] See, e.g., Hunsicker, Jr., J. F., Kane, J., & Walther, Jr., P. D. (1986). *NLRB remedies for unfair labor practices.* Philadelphia: Industrial Research Unit, Wharton School, University of Pennsylvania.

[3] Ferguson, J. (2008). The eyes of the needles: A sequential model of union organizing drives, 1999–2004. *Industrial and Labor Relations Review, 62*(1), pp. 3–21.

[4] Dunlop Commission on the Future of Worker-Management Relations—Final Report. 1994.

[5] See, e.g., Dunlop Commission on the Future of Worker-Management Relations—Final Report. 1994; Morris, C. J. (1977). The role of the NLRB and the courts in the collective bargaining process: A fresh look at the conventional wisdom and unconventional remedies. *Vanderbilt Law Review, 30*(4), pp. 661–687; St. Antoine, T. (1968). A touchstone for labor board remedies. *Wayne Law Review, 14,* pp. 1039–58.

[6] In Ex-Cell-O Corp., 185 NLRB 107 (1970), the Board split 3-2 on the question whether the Board could issue compensatory remedies for failures to bargain in good faith. As scholars have pointed out, ample data based on the employer's contracts at other unionized plants enabled relatively precise calculation of the economic harms caused to employees by the employer's illegal conduct, and state labor boards do issue compensatory remedies in failure to bargain cases. George Arakelian Farms, Inc. v. ALRB, 783 P.2d 749 (Cal. 1989).

[7] Section 8(d) of the NLRA, added as part of Taft–Hartley, defines the duty to bargain in general terms with the proviso that "such obligation does not compel either party to agree to a proposal or require the making of a concession." Scholars, courts, and Board members have debated for decades whether this language compels the conclusion that no remedy can be imposed that would have the effect of preventing a strong employer from, as one scholar put it, talking a union to death. See Cox, A. (1958). The duty to bargain in good faith. *Harvard Law Review, 71,* pp. 1401, 1412–13.

[8] Employee Free Choice Act, H.R. 1409, S. 560 111th Cong. 1st Sess. (introduced March 10, 2009).

9 Seyfarth Shaw LLP, letter to Senator Edward M. Kennedy, Senator Michael B. Enzi, Congressman George Miller, and Congressman Howard P. McKeon regarding Interest Arbitration Provisions of the Employee Free Choice Act. February 13, 2009. Retrieved from http://www.seyfarth.com/dir_docs/news_item/a7d92558-1dd9-46ba-adeb-86a61be186b6_documentupload.pdf

[10] NLRB v. Truitt Mfg. Co., 351 U.S. 149 (1956).

Katherine V. W. Stone

Four Questions and Answers about the Employee Free Choice Act

Will the enactment of the Employee Free Choice Act (EFCA) increase unionization in the United States? There is widespread agreement that it will. It seems obvious that the provision in EFCA that would give unions representation rights if they obtain a majority of cards would make it easier for workers to organize, and make it more difficult for employers to intimidate workers during organizing drives. Workers could engage in card solicitation before employers even knew a union drive was going on. Under the current practice, the employer is notified of a union campaign quite early in the process and is given a lot of time and latitude to turn workers against the union. Employers have been very inventive in finding legal and illegal means to "persuade" workers to vote no. Under the Employee Free Choice Act, employers would have less opportunity to saturate a workplace with anti-union propaganda or engage in other coercive practices. Thus it is indisputable that EFCA would change the dynamics of organizing.

EFCA would also have another more subtle but powerful effect on organizing. By permitting unions to be certified on the basis of a majority card showing, it would give unions legitimacy in their organizing efforts and delegitimize employer efforts to stymie them. For decades, U.S. labor law has been interpreted to give employers a role in the organizing process by treating them as "parties" to the campaign. As "parties," employers are entitled to campaign vigorously, to require attendance at anti-union speeches, and to use videos, images, sound systems, and other props to communicate their point of view. However, there is no language in the statute that requires such an expansive interpretation of employer rights. Indeed, there is a good argument to be made that whether or not workers decide to form a voluntary association is not the employer's legitimate concern. The Employee Free Choice Act would not remove the employer's role in unionization efforts altogether, but it would confine the employer to a marginal role. That is because even if the

employer knew of the campaign and chose to weigh in, EFCA's majority card check rule would convey a message that workers' decision whether or not to unionize is their decision alone. This message would be a powerful antidote to whatever anti-union propaganda an employer disseminates.

Does the Employee Free Choice Act authorize an undemocratic process? Not necessarily. Even with EFCA, there is still a role for elections in two situations. First, there can be an election if employees want one. Unions could make this option readily available under EFCA. Currently, some unions organize by using dual-signature cards in which workers are presented with a two-part form that has two signatures lines. One part states that the worker would like an election be held and the other states that the worker wants to be represented by the particular union. The worker is given a choice of signing one part of the form, both parts, or neither part. If unions utilize this type of form under the Employee Free Choice Act, it would preserve the election option when a majority of workers wanted one, and would eliminate later claims that workers had been mislead when they signed cards.

Second, under EFCA, employees or an employer can request a decertification election after the union has had a chance to establish itself. In this sense, EFCA permits elections but sets a different default rule. Under EFCA, an election takes place after the union is certified, and the choice then is whether to keep the unionized status quo or reject it for a non-union workplace. In contrast, the existing rule makes the default status quo no union and requires an election to alter it. Because default rules matter, EFCA would affect outcomes but would not necessarily be less democratic.

There is another sense in which the Employee Free Choice Act is not necessarily undemocratic. At present, the National Labor Relations Board (NLRB) takes the position that elections are a more reliable indicator of employee choice than cards, but it has never rejected the use of cards altogether. The NLRB's job is to ascertain employee free choice in order to decide whether to certify a union as a representative of a bargaining unit. Because there is a structural disparity of power between an employer and employees, and because employees are economically dependent on their employer, the Board has long recognized the danger of coercion in the election process. When an employer engages in egregious unfair labor practices during an organizing campaign that are so poisonous to the election environment that free choice becomes impossible, the Board has historically permitted a card majority to substitute for an election as a mechanism to determine the presence of majority support. That is, the Board has used card majority certification to counteract the impact of coercion. In 1969, in a case called *NLRB v. Gissel Packing*, the Supreme Court approved this use of cards. In doing so, the Court reasoned that cards are not inherently unreliable, nor are they undemocratic.

Indeed, in one important respect, the Labor Board's own election rules are structured to make a card majority a more reliable indicator of majority sentiment than elections. Under long-standing NLRB doctrine, an election can only be won if a majority of those voting support a union. This does not guarantee that the union has a mathematical majority. On the other hand, to win a majority with cards, a union must have a mathematical majority of the entire workplace. The disparity in treatment of cards and elections makes cards a better barometer of majority sentiment.

Why then has the NLRB historically preferred elections? I believe it is because the notion of *majority* in the statute means more than a simple mathematical majority—it is a symbolic affirmation of the legitimacy of the outcome of the exercise of employees' choice. With EFCA, a card majority would similarly signify not only a symbolic, but also an actual, exercise of employee choice.

Is the Employee Free Choice Act good social policy? I would say definitely yes. Unions have historically been a major force for progressive social policies. Unions have been key members in the political coalitions that have promoted civil rights, health-care reform, food stamp programs, pension protection, minimum wages, affordable housing, and other valuable social programs. As the largest voluntary organizations in the country, unions are *the* voice of the working and disadvantaged populations in the national political arena. Without unions, those important parts of the population would be silenced.

Union density has declined in the United States to historically low levels, especially in the private sector. While there are many causes, one important cause is the nature of U.S. labor laws. Over the past three decades, numerous interpretations of U.S. labor laws have made it increasingly difficult for unions to organize, and have bogged down the election process with crushing delays. Thus the Employee Free Choice Act represents a crucial measure to turn the tide and enable unions to regain their rightful place in American workplaces and American society.

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John Logan

Union Recognition and Collective Bargaining: How Does the United States Compare with Other Democracies?

The Employee Free Choice Act (EFCA) is undoubtedly one of the most significant and controversial bills facing the 111th Congress. Its opponents have attempted to portray the bill as a radical, undemocratic, and dangerous piece of legislation that would disenfranchise millions of American workers and damage an already fragile economy. One of the country's largest management law firms, Jackson Lewis, states that it "calls for revolutionary changes to labor law," while another opponent has attacked its "radical approach to first contract bargaining."[1] In reality, the Employee Free Choice Act is a modest piece of legislation that would establish recognition and bargaining rights for U.S. workers weaker than those enjoyed by workers in most other developed democracies.

How does the United States measure up to other democracies when it comes to recognition and bargaining? First, let us look at the usual suspects. Collective bargaining coverage in every nation in continental Europe is several times higher than it is in the United States. (I exclude Central and Eastern Europe, which will be considered shortly.) While union density has fallen in several European countries, collective bargaining coverage has remained high and relatively stable. Union density in Western Europe ranges from below 10 percent in France to almost 80 percent in Sweden; but collective bargaining coverage is over 80 percent in all but Germany, where it is over 60 percent. Several factors have contributed to a more supportive environment for collective bargaining: centralized labor market regulation, union involvement in unemployment insurance in certain countries, and union-friendly legal frameworks.

U.S.-style systems of majority recognition do not exist in continental Europe. In most of continental Europe, aggressive opposition to bargaining is relatively uncommon; thus, many countries do not have specific legislation addressing the issue. Statutory or constitutional provisions on freedom of association are in some countries interpreted as entailing

bargaining rights, and national laws in certain countries contain a legal obligation to bargain. In Austria (and Slovenia), for example, compulsory membership in employers' organizations results in almost 100 percent bargaining coverage. Even in those countries in which multi-employer bargaining is voluntary, strong state sponsorship for bargaining without statutory backing is common. Under mandatory extension laws—which extend collective agreements to cover non-union workers in Germany, France, and Holland—bargaining coverage has remained high, even as union density has declined.

It is not simply the "usual suspects" that have bargaining coverage higher than the United States. Even in Central and Eastern Europe—where unions are weaker and often operate under unfavorable macroeconomic conditions—coverage is, on average, significantly higher than in the United States (see Table below).

Collective bargaining coverage in Central and Eastern Europe

Year 2006	Collective bargaining coverage (in %)
Czech Republic	35
Hungary	42
Poland	35
Slovakia	50
Estonia	22
Latvia	20
Lithuania	15
Slovenia	100
EU-25 average	66

Sources: European Industrial Relations Observatory Online (2007) and European Foundation for the Improvement of Living and Working Conditions, Industrial Relations Developments in Europe (2006 and 2007).

Europe is, of course, no paradise for workers. European unions face many of the same challenges as their U.S. counterparts—heightened international competition and relocations to countries with cheaper labor costs and fewer legal protections, increasing employer demands for decentralization in bargaining and company-specific flexibility, the challenge of maintaining stable organizations among low-paid, dispersed, and transient service sector

workers, and more hostile national governments. But few European employers campaign against bargaining coverage and threaten workers' careers or predict job losses through relocation or closure if workers choose to bargain collectively. Organizing typically means internal recruitment, as workers are already covered by a collective agreement. In the United States, organizing involves both an adversarial campaign for the right to bargaining rights with a specific employer and a union membership campaign. This explains why we find higher bargaining coverage in Europe and why BMW and Mercedes-Benz workers, among others, have bargaining coverage in Germany but not in South Carolina or Alabama.

Collective Bargaining in New Democracies

Recent developments in certain emerging economies illustrate just how far the United States lags behind other democracies when it comes to the protection of recognition and bargaining rights. Despite inhospitable environments—unfavorable macroeconomic conditions, widespread privatizations, and enormous informal sectors—collective bargaining coverage has risen in several new democracies over the past few decades. In South Africa, for example, bargaining coverage has risen from around 10 percent to over 40 percent since the 1980s. In Brazil, Argentina, Peru, and Uruguay, left-of-center governments have strengthened recognition and bargaining rights and coverage has risen. Bargaining coverage has also increased in Taiwan and Korea. Workers in these nations can gain bargaining coverage without having to endure management-dominated representation elections and bargaining campaigns, as they must do in the United States. While one should not minimize the obstacles faced by workers in these countries, their experience demonstrates that, even under adverse circumstances, a decline in bargaining coverage is not inevitable, pressures associated with economic globalization are not irresistible, and governmental policies do matter. Having trailed other Organization for Economic Co-operation and Development (OECD) nations for years, U.S. bargaining coverage has now fallen below that found in several new democracies.

Other Advanced Anglophone Countries—Canada and the United Kingdom

What about those countries whose labor laws most resemble U.S. law? First, let's consider the United Kingdom. Among developed democracies, the United States is alone in having a sophisticated industry worth hundreds of millions of dollars per year devoted entirely to helping management resist collective bargaining. But several U.S. union avoidance firms have recently sought overseas markets for their expertise. When Britain introduced its new union recognition law in 1999, one U.S. firm wrote, "Sixty-five years' U.S. experience with union organizational experience provides valuable parallels from which

U.K. employers can learn how to stay union free. It is clear from U.S. experience that worthy U.K. employers ... will be able to defeat union organizing efforts."[2] Former Trades Union Congress General Secretary and current European Trade Union Confederation General Secretary John Monks criticized the firm for promoting a "dubious approach" to bargaining that was "far more suited to the aggressive nature of U.S. industrial relations."[3] But other consulting firms soon followed in its path. One large U.S. union avoidance firm that operates in Canada, Mexico, South America, the United Kingdom, Belgium, France, and Germany—telling clients that it enjoys an international reputation for "eliminating union incursions"—has conducted several high profile union avoidance campaigns in the United Kingdom with considerable effect.[4] When confronted by U.S.-style anti-union tactics, U.K. unions spend more time and resources on campaigns and are much less likely to win recognition. If this behavior were to become the norm in the United Kingdom, it would likely have disastrous consequences for British workers.

Employer opposition in the United Kingdom still pales in comparison with that found in the United States, partly as a result of the fundamental differences between the union recognition law in the United States and United Kingdom. Britain has a "hybrid" system of union recognition: employers can recognize the union without a demonstration of majority support, or, if the employer refuses voluntary recognition, the Central Arbitration Committee (CAC) can recognize the union on the basis of documentary evidence of union membership or by holding an election. Since the law was introduced a decade ago, the vast majority of new recognition agreements have resulted from voluntary recognitions, and the CAC has held relatively few contested representation elections. As a result of these differences in law and employer behavior—a significant proportion of British employers still cooperate with unions and view bargaining positively—United Kingdom bargaining coverage, though it has fallen by almost half since the early 1980s, is still more than double that of the United States.

Recognition and Bargaining in Canada: Lessons for the United States

The Canadian system of industrial relations is broadly similar to that of the United States, and labor laws in several Canadian provinces have or had provisions similar to those of the Employee Free Choice Act. However, Canadian labor law differs from its U.S. counterpart in two critical respects. First, it is decentralized, with only about 10 percent of employees covered by federal labor law—most of the remaining 90 percent are covered by 10 different provincial laws. U.S. law, in contrast, is highly centralized, with a broad and rigid federal preemption doctrine curtailing all but the most marginal policy experimentation at the state and local levels during the past several decades. Second, Canadian labor law is

more responsive to political realignments than its U.S. counterpart—that is, when there is change in provincial government, we often see significant reform in the province's labor law. In the United States, the need to gain a supermajority of 60 votes in the Senate to overcome a filibuster has presented a formidable obstacle in the path of labor law reform proposals in recent decades.

Canadian labor law also provides an interesting comparison with the United States because, while the labor policy issues are very similar to those in the United States, the policy debate is very different. For the most part, labor law reform in Canada is not accompanied by contentious debate about the need to protect the sanctity of the "secret ballot," but simply a recognition that, even in Canada—with its quick elections (usually between 5–10 days) and strict adherence to these deadlines, restrictions on employer electioneering, and tougher penalties for unfair management practices—majority sign-up makes organizing easier for workers, while contested representation elections makes organizing more difficult. Thus, with a left-of-center government, we see the adoption of majority sign-up and other reforms, but when the political pendulum swings in the opposite direction, contested elections are reintroduced. Currently, five Canadian jurisdictions have laws that include majority sign-up processes: the federal jurisdiction, Quebec, Manitoba, New Brunswick, and Prince Edward Island.[5]

Have EFCA-Style Provisions Been Discredited in Canada?

Opponents of the Employee Free Choice Act in the United States have repeatedly pointed to Canada as a country in which, as a direct result of their experience with majority sign-up, lawmakers now recognize the superiority of mandatory elections. Nine out of ten Canadian provinces used majority sign-up in the late 1980s, they point out, while only four out of ten use it today. Two decades ago, majority sign-up covered over 90 percent of Canadian employees; today, these same provisions cover about 40 percent of Canadian employees. But claims that majority sign-up has been discredited in Canada and replaced by U.S.-style elections are misleading. First, as mentioned previously, union elections in Canada are very different from management-dominated National Labor Relations Board (NLRB) elections. Second, five Canadian jurisdictions—including large and influential ones such as the federal jurisdiction and Quebec—still have majority sign-up. Finally, the policy situation is far from static, and Canadian laws are much more malleable than their U.S. counterpart—provinces that have moved from majority sign-up to elections could still move back in the opposite direction. In May 2008, for example, the Ontario legislature considered a bill to reintroduce majority sign-up. Thus, majority sign-up could, once again, become the norm in Canada.

Canada's experience with majority sign-up is relevant to the current U.S. debate in a more direct way. The principal refrain of employer groups opposed to majority sign-up is that it will expose employees to coercion and intimidation by unscrupulous union organizers. What does the Canadian experience suggest? Until the Conservative Harris government did away with majority sign-up in 1995, this system of union recognition had operated in Ontario—Canada's most populous province—for almost half a century. Yet the preeminent scholar of Canadian labor law, Professor Harry Arthurs, recently stated that he did not know of a single case in which the employer had complained that the union had illegally coerced workers into joining a union.[6] Not one case in 50 years, compared to over 20,000 cases of employer coercion per year under the National Labor Relations Act for the past two decades.

Opponents of EFCA have also used the Canadian comparison to attack one of the bill's other main provisions—first contract arbitration (FCA). Writing in the *San Francisco Chronicle*, for example, Jackson Lewis Lawyer Michael J. Lotito recently (and erroneously) wrote, "A quick review of history shows why [FCA] is a bad idea. In Canada, all ten provinces once operated under a law similar to the EFCA. Today, that law has been abolished in all but four provinces."[7] Ten versus four refers not to FCA provisions, as Lotito implies, but to majority sign-up. In fact, seven Canadian provinces have first contract arbitration provisions in their laws, while three (Alberta, Nova Scotia, and New Brunswick) have never had it. No Canadian jurisdiction has had FCA and then decided to get rid of it. In contrast with the contention that the Canadian experience illustrates the pitfalls of FCA, academic research suggests the opposite—it has reduced first contract disputes and encouraged bargaining, and arbitrators rarely impose settlements. Professor Susan Johnson, an economist at Wilfred Laurier University, reports that FCA "supports and encourages the collective bargaining process and is not a substitute for it."[8] Thus, the lessons from the Canadian experience with majority sign-up (little or no evidence of union coercion) and first contract arbitration (encourages collective bargaining and reduces first contract disputes by half) support the case for reform in the United States. And as a result of its stronger protection for recognition and bargaining rights, bargaining coverage in Canada is over double the U.S. level: about 31.5 percent overall, ranging from over 39 percent in Quebec (the nation's second most populous province) to under 25 percent in Alberta.

In January 2009, unions from 45 different countries pledged support for the Employee Free Choice Act. Given its moderate provisions, it is not surprising that labor unions from other democracies support the legislation. Workers in their countries already enjoy recognition and bargaining rights at least as strong as those provided for by the bill. It is time to inject some reality into the debate over the Employee Free Choice Act—a bill that would be considered a modest proposal in any other developed democracy—and reject the

hyperbolic rhetoric about "radical" and "revolutionary" reform. A systematic comparison of recognition and bargaining in developed democracies can help promote a more realistic and sensible debate.

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Nelson Lichtenstein

Why Wal-Mart Workers Need an Employee Free Choice Act

Now that liberal Democrats and their labor supporters have introduced the Employee Free Choice Act into Congress, opposition from corporations and business trade associations is sure to reach a fever pitch. The main line of attack zeroes in on EFCA's "card check" provision, which would give union advocates the option of avoiding a contentious and often employer-dominated National Labor Relations Board election, and instead enroll a majority of workers in any given workplace via a simple card signing.

A typical corporate response came earlier this year from Wal-Mart, the nation's largest company. The proposed labor law would "effectively eliminate freedom of choice and the right to a secret-ballot election," said Daphne Moore, a spokeswoman for Wal-Mart Stores, Inc. "We believe every associate or employee should have the right to make a private and informed decision regarding union representation."

So Wal-Mart champions worker freedom. To get a sense of that company's Orwellian definition of the concept it is useful to revisit the scene of a union organizing effort at Wal-Mart's Kingman, Arizona, discount store. One might well look at dozens of other failed organizing attempts at Wal-Mart, but this campaign in the late summer of 2000 was exceptionally well documented. The account that follows is based not only on National Labor Relations Board (NLRB) reports and opinions, but also on an authoritative Human Rights Watch report and on internal company documents that were put in the public domain after litigation before the labor board and the federal courts.

Summers are hot in Arizona, and the young men who work in Wal-Mart's Tire and Lube Express (TLE) department get their hands dirty, have few prospects for promotion, and are well aware that similar blue-collar jobs in garages and car dealerships pay a lot more. Such was the case in the Kingman store, where an otherwise humane manager, under corporate pressure to keep labor and maintenance costs down, refused to spend the $200

needed to repair an air cooling system essential in the 110 degree heat. So the TLE workers got in touch with the United Food and Commercial Workers, which on August 28, 2000, filed a petition with the nearby Phoenix office of the NLRB to represent as many as 18 automotive service technicians.[1]

The reaction from Wal-Mart managers, both at the Kingman store and at corporate headquarters in Bentonville, Arkansas, was virtually instantaneous. Within 24 hours a Bentonville-based "labor team" had flown into Kingman, where they joined a growing cadre of district and regional managers from Arizona and Nevada. In all more than 20 outside executives flooded the store. Wal-Mart replaced the Tire and Lube department's manager with a high-level personnel executive, untutored in changing oil or tires, but well versed in the corporation's union avoidance program. Loss Prevention—the shoplifting police—got busy as well, training a new set of cameras on work areas in the tire and lube shop. "I had so many bosses around me, I couldn't believe it," remembered Larry Adams, a union supporter who worked in the TLE at that time. "They weren't there to help me. They were there to bug me. It was very intimidating."[2]

The key labor team figures were Vicky Dodson, a 13-year veteran in Wal-Mart's People division, and Kirk Williams, a young law school graduate from Chicago that Wal-Mart had hired just a few months before. Dodson was a pro, a forceful and controlling "pistol," remembered one of the assistant managers who came under her authority; "an intelligent, articulate, sophisticated individual" in the more judicious words of an NLRB administrative law judge.[3] Williams, who had worked his way through Kent State as a Wal-Mart assistant store manager, including a stint in Loss Prevention, was a coldly ambitious functionary who would soon spend enormous amounts of time on the corporate jet putting out union fires throughout the company's retail empire.[4]

Most people in the store, management and worker alike, called the Bentonville labor team the "union busters," or the "Nazi SS." Not unexpectedly, Dodson and Williams were contemptuous of the existing store management, whose maladroit handing of layoffs and scheduling issues they blamed for precipitating the union uprising. "They took us out of the store for a couple of days," remembered Assistant Manager Tony Kuc, "took us to a hotel, telling us how to handle the union, how to stop them from coming in … what to say, what not to say." Within a few weeks the store manager had been transferred and demoted, his two assistant managers marked for dismissal, and the TLE district manager fired outright.[5]

Within less than a week Dodson and her confederates met with 95 percent of all workers eligible to participate in the NLRB certification vote. Meanwhile, the labor team held daily meetings at 8 a.m. with all the salaried managers, as well as the hourly department heads, who they falsely claimed were part of the store "management" and were therefore ineligible to take part in an NLRB certification election. "We were basically spies, spies for the

store, spies for the company," remembered a disenchanted associate. "We had to run our departments, do everything normally, and then be spies for them. The stress level was so high."[6] Unionists complained, at Kingman and elsewhere, that "Wal-Mart has tricked hourly department managers into thinking they were part of the management team and therefore obligated to report any signs of union activity," even though the NLRB ruled repeatedly against the company about the status of these hourly employees. Observed Michael Leonard, a UFCW official at the time, "Wal-Mart's M.O. is to test the limits of the law, and to only change its prepackaged anti-union program when it is forced to … ."[7]

The labor team screened one of five different anti-union videos every day. "Wal-Mart Under Attack" was a lurid depiction of union thuggishness and disruption directed at a company that was portrayed as merely trying to provide inexpensive goods for ordinary working people. "Sign Now, Pay Later" urged Wal-Mart workers to resist the siren song of the union organizers, who would do and say anything to win another signature on a union card, all the while ensnaring the hapless retail worker in a world of burdensome dues and serf-like subservience to an alien, boss-ridden organization. These videos, always followed by a Q and A with a member of the labor team, were highly effective. A worker later interviewed by Human Rights Watch remembered, "I actually had fears after seeing videos of Molotov cocktails and rocks, pelting rock, hurling bottles." Another said, "After those meetings, minds started changing" as one-time union supporters turned against the UFCW.[8]

Dodson, Williams, and other top managers from the Southwest stayed in Kingman for nearly two months. This was the period during which the local NLRB held hearings to determine the size and composition of the TLE unit, and during which both the UFCW and the Wal-Mart labor team marshaled their forces for the certification election itself. In minutely detailed reports back to Bentonville, labor team members described every instance of possible union talk, every wavering worker, and every meeting. Dodson kept track of the workers who wore union pins and the ones who took them off, what comments were made at the captive meetings, and the degree of union sentiment in various departments of the store. The labor team authorized raises for 85 percent of all workers, fixed the TLE cooling system, and repaired other equipment in that same department.[9] On October 9, Wal-Mart senior executive Tom Coughlin jetted into Kingman to tell a group of TLE workers that the Wal-Mart "Open Door," not the UFCW, was the solution to their problems. This was a clear violation of the spirit, if not the letter, of the existing labor law, which forbad management efforts to bribe, promise, or cajole employees in the midst of an organizing effort. "If you have any questions or problems," Coughlin told his grease-stained listeners, "don't hesitate to call me, and I will get you some results. I can override anybody."[10]

Given all this, it is hardly surprising that the UFCW organizing drive collapsed in inglorious defeat. Although the labor board ruled that the TLE was an appropriate

bargaining unit, the union lost key supporters there within weeks of the labor team's arrival in town. Union partisans had virtually no opportunity to counter the propaganda barrage unleashed by the Bentonville labor team. If they sought the telephone number of undecided associates, this violated Wal-Mart's "no solicitation" rule; if they distributed leaflets in the parking lot or break room in the store, managers immediately called Loss Prevention and then patrolled the facility to pick up any stray literature. And when UFCW organizers made evening house calls, Wal-Mart denounced this tactic as harassment and intimidation. So on October 24, UFCW lawyers filed a broad set of Unfair Labor Practice complaints against Wal-Mart, thus postponing indefinitely the NLRB election scheduled for just a few days later. Working life for the remaining pro-union people in the Kingman store became increasingly intolerable. Within little more than a year virtually all would be fired, forced to quit, or simply leave in disgust.

The labor board eventually ruled, at Kingman and elsewhere, that Wal-Mart had systematically harassed and spied upon numerous workers, that it had threatened employees with a loss of benefits and raises if they supported the union, and that the company had fired outright key labor partisans. But none of this had any real impact on Wal-Mart's anti-union operation, if only because the penalties were so trivial: a few thousand dollars in back pay for a few unjustly fired employees, plus a formal notice briefly posted in the break room pledging to obey the labor law. In its authoritative report on Wal-Mart, *Discounting Rights: Wal-Mart's Violation of US Workers' Right to Freedom of Association*, Human Rights Watch concluded that the company "has translated its hostility towards union formation into an unabashed, sophisticated, and aggressive strategy to derail worker organizing at its U.S. stores that violates workers' internationally recognized right to freedom of association."[11]

The events at Kingman took place more than eight years ago, but there is no evidence that Wal-Mart has altered its internal anti-union policies in the slightest. Wal-Mart workers, all 1.4 million of them in the United States, need an Employee Free Choice Act.

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Endnotes

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[6] Kirk Williams voicemail transcript, September 6, 2000; Human Rights Watch, p. 153.

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[9] Vicky Dodson and Kirk Williams voicemail transcripts, September 6, 13, 25, 28 and October 2, 3, 7, 9, 11, 2000. In all, the labor team made 84 reports to Bentonville, all within less than two months.

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Teresa Sharpe

Employer Opposition at Blue Diamond

In September of 2004, Randy Reyes and Eugene Chavez from the Blue Diamond almond processing plant in Sacramento, California, called the local branch of the International Longshore and Warehouse Union (ILWU) to talk about unionizing their workplace. Workers at Blue Diamond had not had a substantial raise in over a decade, health-care co-pays had increased dramatically, and unsafe working conditions were contributing to a rash of workplace injuries. Disrespectful managers were commonplace and employee morale was low. Not surprisingly, support for unionization spread rapidly throughout the plant, and soon 58 employees had formed a public "organizing committee" tasked with leading the effort to bring in a union. Tanya Monarque, a seasonal worker at Blue Diamond for nine years and a member of the organizing committee, summed up her frustration with her employer by explaining that "we have a body and a mind and a mouth to speak, and they treat us like equipment" (Lamb, 2005).

As soon as management got wind of the workers' intention to try to unionize, Monarque and her coworkers were subjected to anti-union fliers warning of the dangers of unionization. Over a three-month period, management posted 35 of these leaflets around the plant and even sent them out to employees' homes. This marked the beginning of an intense and illegal campaign against the union and the employees who supported the union. Managers unjustly fired and harassed union supporters and bombarded the entire workforce with threats of lost wages, plant closure, and the elimination of the pension plan. Given the egregiousness and longevity of employer actions against the union—actions Jay Pollack of the National Labor Relations Board (NLRB) ultimately ruled as illegal—it is no wonder that employees voted down the union in fall 2008. A close look at what unfolded between 2004 and 2008 shows that it would have taken a super-human effort to effectively

combat the campaign of harassment that Blue Diamond subjected workers to as they attempted to exercise their federal right to unionize.

Blue Diamond Growers is a 100-year old farmers' cooperative of about 3,000 California almond growers. By any measure, Blue Diamond is doing well. As much as 80 percent of the world's almonds are grown in California's fertile Central Valley, and Blue Diamond processes a third of them. Almond prices remain high. In 2007, Blue Diamond reported sales of $658 million, and sales rose to $711 million in 2008 (Downing, 2008). Furthermore, Blue Diamond was the beneficiary of generous city funding close to a decade earlier. In 1995, after Blue Diamond threatened to leave Sacramento, the city offered the company a $21-million incentive package to keep its plant open and stay in town. In exchange, Blue Diamond promised to keep 700 full-time jobs in Sacramento until 2010. Despite this promise, by the time the union campaign began in 2004, Blue Diamond employed about half the number of full-time workers as it did when the company accepted the bargain with the city, having reduced its full-time workforce to 620. This broken promise to the city was the backdrop of the 2004 union campaign.

During the first several months of the union organizing effort, Augustin Ramirez of the ILWU along with workers Randy Reyes and Eugene Chavez started meeting with other workers about the possibility of a union campaign at Blue Diamond, and a core group of leaders within the plant began to form. Blue Diamond started firing union supporters soon after the group of leaders went public, beginning with Ivo Camilo. A machine operator at Blue Diamond for 35 years, Camilo had an "excellent" work record but was one of the most vocal supporters of the union and a member of the organizing committee (NLRB Case 20-CA-32583, p. 7). On April 18, 2005, Camilo cut his hand on a scale used to weigh almonds. Management accused him of willfully contaminating the almonds with blood from the one-eighth inch cut. Despite his many years at the plant, "I was escorted out of the plant like a common criminal," Camilo said (AFL-CIO, 2008). His termination sent a clear message to his coworkers left behind: if you support the union, you risk losing your job. "By firing me, a 35-year employee, they sent a message to everyone else," Camilo said. "My sister has worked there for 42 years, but she's afraid to let them know she's for the union" (AFL-CIO, 2008). Although The National Labor Relations Board eventually ruled that Camilo's firing was illegal and ordered Blue Diamond to rehire him and pay lost wages, the damage was already done. Workers like Camilo's sister became fearful of what might happen to them if they came out publicly for the union.

And they had real reasons to be scared. In June 2005, shortly after Camilo lost his job, Mike Flores was fired for avoiding work and "hiding" from his supervisor; and Alma Orozco, a 30-year veteran of Blue Diamond who had never before faced any disciplinary action, was disciplined by management for singing a union song during her May 2nd morning stretch

(NLRB Case 20-CA-32583, pp 8–9). Like Camilo, both Flores and Orozco were members of the organizing committee and had gone public in their support for the union earlier in the year when they marched with the entire committee in Sacramento's annual César Chávez parade.[1]

Unfortunately, it is not uncommon for employers to fire or unfairly discipline union supporters in order to intimidate other employees from supporting the union. In fact, by firing vocal union supporters, employers often can deal a swift death blow to a union campaign. "The prompt firing of a vocal union supporter stands a good chance of nipping the drive in the bud," said John-Paul Ferguson in a recent paper in the *Industrial and Labor Relations Review* (2008, p. 8). Furthermore, union supporters run a real risk of being fired. John Scmidt and Ben Zipperer (2007) analyzed NLRB data to estimate the probability that a pro-union employee would lose his or her job during a union election campaign and found that a union activist faces a 15- to 20-percent chance of being fired. Employers have included firings in their anti-union arsenal since the 1970s, and the widespread use of the practice has been on the rise since 2000.

Blue Diamond also made threats as to what would happen if the company unionized. Managers threatened that pensions would be eliminated, wages would go down, or the plant would close. In numerous conversations with workers, and in one flyer, managers warned that unionized workers would no longer be able to collect pensions. In the NLRB decision censuring Blue Diamond, Judge Jay Pollack wrote that "Supervisor Kathy Manzer testified that she told employees during a meeting in February [2005] that 'employees who were members of a collective bargaining agreement would not be able to participate in the pension plan'" (NLRB Case 20-CA-32583, p. 5). Workers were also told that wages and any other benefits they now had could disappear because "if the union came in, negotiations start, and everything starts from zero" (NLRB Case 20-CA-32583, p. 6). After the union campaign started in 2004, management promised workers a raise in September of the following year; they then announced that workers would not get the scheduled September raise with a union, because the raise would be considered a bribe under labor law (NLRB Case 20-CA-32583, pp. 10–11). The raise itself was suspicious; wages had not increased by more than a couple of dollars in over a decade. Raises are commonplace during organizing campaigns as employers attempt to show that they can make changes and respond to worker complaints. In a carrot-and-stick approach, raises are the carrot: "see," management will say, "you don't need a union to get what you want."

Blue Diamond managers also brought up the familiar and chilling specter of plant closure, telling workers that a union would drive growers from the collective and force the entire plant to shut down (NLRB Case 20-CA-32583, pp. 5–6, 14). In one incident, a supervisor asked two workers why they were wearing union t-shirts and then warned them, "You

know, if the union comes in, they have a right to fold up or shut the plant and relocate" (NLRB Case 20-CA-32583, p. 5). Like firing pro-union workers, threatening to shut down the plant or offshore production is commonplace in union campaigns. Kate Bronfenbrenner of Cornell University found that in mobile industries where relocation is an option, employers threaten to close the plant in 62 percent of all union certification elections (Bronfenbrenner, 2007, pp. 8–14).

After Blue Diamond subjected the workforce to months of heavy-handed anti-union propaganda, and after Ivo Camilo was fired, the company filed a petition for a union election with the NLRB on April 28, 2005. Even though the union had never indicated that it wanted to seek an election at that time, Blue Diamond claimed that the union had picketed for "recognition" and argued to the labor board that the company was within its rights to call for an election. In the eyes of Blue Diamond, this was a perfect time for an election: pro-union leadership in the plant was emerging but not yet strong enough to withstand an intense employer anti-union campaign; Blue Diamond had bombarded workers with flyers containing false warnings about unionization; and one of the strongest union supporters had been humiliated and fired. The ILWU was able to get the petition for an election dismissed, but in exchange it had to agree not to ask Blue Diamond for union recognition within the next six months.

Blue Diamond wracked up plenty of unfair labor practices. In January 2006, Administrative Law Judge Jay Pollack held a four-day hearing to examine complaints against Blue Diamond, and in March he ruled that Blue Diamond was guilty of more than 20 labor law violations of Section 8(a)(1) of the National Labor Relations Act. In addition to finding Blue Diamond guilty of illegal firings, disciplinary actions, and threats of pension, wages, job, and benefits loss, the judge found that supervisors at Blue Diamond had also illegally "interrogated" employees about the union. Supervisors had asked workers for their views on the union and about any union activities in which they or their coworkers might have participated.

Although the NLRB ruling was a victory for the employees impacted by these violations, Blue Diamond had in some ways already won. Blue Diamond knew that breaking the law would help them ward off the threat of unionization. Research on the anti-union tactics employers regularly use bears this out. When threats of plant closure are combined with other anti-union tactics—tactics such as firing workers, distributing anti-union leaflets, and holding mandatory meetings—unions are much less likely to win certification elections. Kate Bronfenbrenner found that win rates were "lower in units where plant-closing threats were combined with other anti-union tactics, in some cases as much as 10 percentage points lower. Individually and in combination, these tactics were extremely effective in reducing union election win rates. The union election win rate drops from 40 percent to 34 percent for

units where employers used more than five anti-union tactics and to 28 percent where they used more than ten tactics" (Bronfenbrenner, 2007, pp. 8–14).

Even with an NLRB ruling against them, Blue Diamond faced minimal consequences for its illegal actions. The NLRB required that Blue Diamond rehire Ivo Camilo and Mike Flores, pay the two men back wages plus interest, and amend the personnel files of Camilo, Flores, and Orozco to reflect their innocence. More generally, the company was ordered to "cease and desist" interrogating workers and making illegal threats and promises related to the union. But if we assume that the illegal tactics for which they were indicted ultimately helped defeat the union—and research like the piece cited above shows that they often do—then why *wouldn't* employers like Blue Diamond simply opt to break the law? With no substantial penalties for breaking the law, what do they have to lose?

Even when employers eschew illegal anti-union tactics, pro-union employees are at a disadvantage in getting their message across in union organizing campaigns, and this disadvantage affects their ability to win elections. This was true at Blue Diamond. Management had unlimited access to employees during the years it was fighting the union. Supervisors initiated conversations about the union, held mandatory employee meetings to present the anti-union viewpoint, posted anti-union literature in any part of the workplace, and generally had the power to make sure employees constantly heard an anti-union message. Pro-union workers, on the other hand, were forced to talk about the union in break areas or find workers off-site—something that is very hard to do when by law management is not required to share a list of employees until 30 days before a scheduled NLRB election. Besides firing or disciplining employees in a formal write-up, there are also myriad ways that employers can economically retaliate against union supporters. Union supporters often find their hours changed or reduced, their scheduled promotions denied, or their work schedule suddenly changed. According to Augustin Ramirez, the union organizer from the ILWU, this happened at Blue Diamond as well.

Despite the setbacks and abuses, pro-union workers persevered. With the history of unfair labor practices, the union pushed for a "free and fair election," or an election where management would agree not to intimidate employees or break the law. After following Blue Diamond's aggressive actions toward employees, the mayor of Sacramento and the majority of city council members passed a resolution to form a committee that would work with pro-union workers and Blue Diamond to set up a fair election process. But Blue Diamond refused to agree to any terms that would limit their ability to intimidate workers. Eventually, with pro-union workers worn out from the seemingly endless effort to bring in a union, but support for the union still strong in the plant, the ILWU filed for an NLRB election on September 28, 2008. It had been four years since Randy Reyes and Eugene Chavez first called the union.

Ten days after the ILWU filed for an election, anti-union consultants appeared on site, and from then until the election, there were four or five consultants at the plant at all times. An "anti-union committee" of employees suddenly sprung up—likely at the urging of the consultants and aided by Blue Diamond—and this committee produced anti-union flyers that went up around the workplace. Then, two days before the scheduled election, management called workers into mandatory department meetings and once again brought up the possibility of farmers leaving the cooperative and the plant closing down if the union came in. Managers also warned employees that the union could take them out on strike, and if this happened, managers would have no other choice but to hire strikebreakers. Using the news of the worsening economy to their advantage, managers reminded workers that people were losing their jobs all over the country. To drive home the message, management copied newspaper articles about companies laying off large numbers of workers and distributed them to employees. Managers also warned workers that the union would prohibit the hiring of temporary workers—a threat aimed directly at Blue Diamond's temporary workforce. (Blue Diamond employs 50 to 80 temporary workers at any given time.) Two days after these meetings, employees voted on the union.

In the end, the union lost the election in a vote of 142 to 353. It is likely that there were employees who, independent of the actions of Blue Diamond, simply did not want a union at their workplace, and their votes reflected this. But given Blue Diamond's response to the threat of unionization, it is fair to say that it is also likely that workers were simply unable to endure the bombardment of a well-funded and intense employer anti-union campaign. Looked at this way, the secret-ballot election overseen by the NLRB wasn't truly a "free" election. Free elections happen under conditions where the two sides engage in fair debate with resources more evenly matched. In an analysis comparing the principals of free elections in states with union elections under U.S. labor law, Political Scientist Gordon Lafer of the University of Oregon wrote that, "In our system, a secret ballot by itself is not enough to guarantee that elections are free and fair. Everything that precedes and leads up to the act of voting … must also meet clear standards to render an election legitimate. Indeed, our government has often declared other countries' elections illegitimate—even when there was no dispute about the fact that they ended in a secret ballot—because they failed to establish such safeguards in the campaign leading up to the vote" (Lafer, 2005, p. 11).

The ILWU filed objections to the election with the NLRB, arguing that Blue Diamond once again broke the law in the months leading up to the election. The hearing for this charge was scheduled to begin in San Francisco on March 25, 2009. Regardless of the outcome, what is clear is that ensuring that employees have a free right to choose a union should not be as difficult as it was at Blue Diamond. What happened at Blue Diamond is all

too common. Employers break the law and are awarded with exactly what they want: a union-free workplace. As Ivo Camilo said when testifying in support of the Employee Free Choice Act on February 8, 2009, "Getting a union shouldn't be so hard. We shouldn't have to pay such a high price in hardship when our employers break the law."

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Endnotes

[1] Blue Diamond fired two other organizing committee members. In September 2005, Leo Esparaza, a 20-year Blue Diamond veteran, was fired for taking a broken weed-whacker and a piece of a broken wooden broom out of a Blue Diamond dumpster and putting it in his car. In May 2006, Blue Diamond fired Ludmila Stoliarova for taking two cardboard boxes that were headed to the recycling bin home with her. Like Ivo Camilo and Mike Flores, Esparza and Stoliarova publicly supported the union and wore the requisite union t-shirt once a week. On May 21, 2007, the NLRB ruled that there was insufficient evidence to show that these firings were retaliatory. ILWU Local 17 appealed and is awaiting a decision.

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Victor Narro

Los Angeles Carwash Worker Profiles: The Reality for Workers Who Stand Up for Justice

The CLEAN Carwash Campaign is an effort by community, labor, and environmental groups to secure basic workplace protections for carwash workers and to address the serious environmental and safety hazards in the Los Angeles carwash industry. Here are the stories of some of the carwash workers who are involved with the campaign and the hardships they face trying to improve their working conditions under current U.S. labor law.

Bosbely Reyna

Bosbely Reyna worked at Vermont Hand Wash for nearly two years. In the carwash, he was a dryer and detailer. Reyna and many of his coworkers suffered health effects from using acids and other toxic chemicals without any protective gear, such as goggles or gloves.

Reyna reported the dangerous working conditions at the carwash to Cal/OSHA and answered questions from the press when other workers were afraid to. He also joined his coworkers in taking legal action against the owners of the carwash for not paying minimum wage or overtime pay, and not allowing workers to take meal and rest breaks.

Reyna was one of the most outspoken union supporters in the carwash, and took great personal risks to try and improve conditions for all workers there. In October 2008, he was fired by the Vermont Hand Wash management.

Israel Jimenez

Israel Jimenez worked at Vermont Hand Wash as a soaper and dryer for nearly four years. He supported his wife and children with his job at the carwash. Jimenez was one of the workers involved in a Cal/OSHA complaint about the dangerous working conditions at Vermont Hand Wash.

Jimenez, a strong union supporter, had his work hours cut by management. When he complained, one of the managers showed him a combat knife and a machete that the manager kept in his car, parked inside the carwash. On another occasion, the same manager held out a handful of .38 caliber bullets and told Jimenez that he kept a gun in his car "just in case." After suffering intense intimidation and harassment, Jimenez was fired from the carwash this past November.

Pedro Guzman

Pedro Guzman has worked at Vermont Hand Wash for 5 ½ years, and has worked in the carwash industry in Los Angeles for ten years. He works primarily as a dryer, though he has worked at many of the other positions in the carwash as well. Guzman supports a son and several other family members with his wages.

Guzman decided to organize for better conditions and to help form a union after becoming fed up with the low wages and lack of respect at the carwash. He said that managers would often berate him in front of customers and that workers often suffered humiliating and discriminatory treatment.

After managers learned that Guzman was a union supporter, he was harassed at work and made to work in a less desirable position. He has also been asked by his supervisor to hold an anti-union banner during protests by community supporters, which is a violation of federal labor law. Guzman stood up for his rights and refused to hold the banner, though he fears that his union support will cost him his job.

Jose Torres

Jose Torres had worked at Vermont Hand Wash for four years before he was fired. He helped lead the efforts to organize with his coworkers for better conditions. Torres supported his three children and his mother with his job, so he was at first reluctant to take the risk of speaking publicly. He was fired after he spoke to reporters about the working conditions at Vermont Hand Wash.

"The day after I spoke to the press, the manager sped up the cars on the conveyor belt while I worked inside the wash tunnel, which was really dangerous for me and my coworkers. Not long after that, I was fired," said Torres.

Aura Lopez

Aura Lopez worked at Best Way Car Wash for 2 ½ years, supporting her two daughters with her wages. In July 2008, she was washing the windows of a car, standing on a tire to reach the windshield because the step ladder was broken. She slipped off the car and

fell backwards, severely injuring her back. Her employer refused to take her to the hospital or to provide her with any information about workers' compensation.

A month after the accident, the carwash owner spotted Lopez talking to a union organizer about how to get help for her injuries. The owner fired Lopez on the spot and told her never to come back to the carwash. Lopez continues to live with back pain that makes it difficult for her to walk and perform even basic tasks. She has been unable to find another job due to her injury.

Eduardo Gonzalez

Eduardo has worked for five years in Los Angeles carwashes. Although the carwash where Gonzalez worked has been subject to the Los Angeles Living Wage Ordinance since 2006, he and his coworkers report that they have consistently been paid less than even the state minimum wage.

According to Gonzalez, "Even though I worked between ten and twelve hours a day, they only paid me for seven hours of work. So for a 12-hour day, I was paid $56. I support my parents and my two children with my wages. It is very difficult to pay the rent, transportation, and food on only $56 a day." After community supporters held a demonstration at the carwash, managers accused Gonzalez of being a union supporter and told him there would be no work for him at the carwash.

Custodio Camacho

Custodio Camacho worked at Auto Spa Express carwash for more than two years. Camacho wanted to join a union because of the conditions at the carwash; workers had no place but a chemical storage room in which to eat lunch, and often had to work under the hot sun without fresh drinking water or time to take breaks.

Camacho and his coworkers tried to improve the dangerous working conditions they faced by filing a Cal/OSHA complaint. Camacho also went to speak with Cal/OSHA officials about the injuries workers were experiencing, such as getting their hands and legs caught in the conveyor chain.

After managers learned Camacho was a union supporter, he had his work hours reduced, was cut off from his daily tips, and was frequently questioned by management about his union activities and the union activities of his coworkers. In October 2008, Camacho was fired from the carwash. He is 61 years old; because of his age, he has not been able to find work since being fired.

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Peter Dreier

The Employee Free Choice Act: Economic Consequences and Political Implications

Advocates for the Employee Free Choice Act (EFCA) argue that its passage is a precondition for strengthening workers' rights and expanding union membership in the United States. EFCA would not automatically result in an increase in union membership. Employees would still need to mount campaigns to persuade other workers to join a union. But, EFCA's proponents argue, the law would change the ground rules and provide greater balance between employees and employers in the workplace, making it more likely that union organizing campaigns would succeed.

EFCA's advocates assume that expanding union membership is a positive thing for employees and for the overall economy. But is it? This paper briefly explores those questions, a particularly timely matter in the context of the nation's current economic difficulties.

Advocates for labor unions often make the case that it was the American labor movement that provided the basis for what many citizens today take for granted—for example, the 40-hour work week, weekends, eight-hour work days, occupational safety and health standards, and the prohibition of child labor. But others argue that unions are outdated institutions in the 21st century, no longer necessary to provide employees with an adequate standard of living and perhaps even a brake on economic growth and prosperity. What does the evidence indicate?

Wages and Benefits

In 2008, union members accounted for 12.4 percent of employed wage and salary workers, up from 12.1 percent a year earlier, according to the U.S. Department of Labor's Bureau of Labor Statistics. The number of workers belonging to a union rose by 428,000 to 16.1 million. This was the largest increase in union density since 1983, the earliest year for which comparable data are available. Except for last year's increase and a smaller rise in

2007, union membership has fallen or held steady in every year since 1983 (U.S. Department of Labor, 2009).

Although union bargaining power has weakened considerably as overall union membership has declined in recent decades, it is incontrovertible that employees in unionized workplaces receive higher wages and benefits. According to *The State of Working America 2008–2009*, union workers earn 14.1 percent more in wages than non-union workers in the same occupations and with the same level of experience and education. The "union premium" is considerably higher when total compensation is included, since unionized workers are much more likely than their non-union counterparts to get health insurance and pension benefits (Mishel, Bernstein, & Shierholz, 2009).

Unions not only raise wages, they also reduce workplace inequalities based on race. The union wage premium is especially high for Black employees (18.3 percent), Hispanic employees (21.9 percent), and Asian employees (17.4). (The union wage premium is 12.4 percent for white employees.) In other words, unions help to close racial wage gaps based on employer discrimination. Unions make it tougher for employers to use race to discriminate against workers.

Likewise, unions reduce workplace inequalities based on gender. The union wage premium is 14.5 percent for Black women, 18.7 percent for Hispanic women, 12.6 percent for Asian women, and 9.1 percent for white women.

Unions also reduce overall wage inequalities, because they raise wages more at the bottom and middle than at the top (Mishel, Bernstein, & Shierholz, 2009).

Equally important, unions raise wages for non-union workers. As one report indicated: "First unions have a positive impact on the wages of non-union workers in industries and markets in which unions have a strong presence. Second because the non-union sector is large, the union effect on the overall aggregate wage comes almost as much from the impact of unions on non-union workers as on union workers" (Mishel, Bernstein, & Shierholz, 2009). Employers bring wages up to, or closer to, union wage levels, often in an effort to preempt employees from unionizing.

During the first half of the 20th century, many unions—particularly the older "craft" unions—were often hostile to Blacks and Latinos. Many white workers sought to protect their hard-won gains and viewed Blacks and Latinos as a threat rather than as fellow workers. Employers often hired Blacks, and sometimes Latinos, as strikebreakers to exacerbate racial tensions. Some unions thus helped contribute to racial segregation in American workplaces, with Blacks and Latinos relegated to the lowest-paying, dirtiest, and most dangerous jobs.

Union strength reached its peak (at 35 percent of the workforce) in the United States in the mid-1950s. Unions enabled American workers, especially blue-collar workers, to share in the postwar prosperity and to join the middle class. Union pay scales boosted the wages of non-union workers as well.

But it was not until the civil rights movement of the 1960s that Black Americans began to gain a fairer slice of these postwar economic gains. With organized labor finally becoming an ally, the civil rights crusade helped many Black Americans move into the economic mainstream. They gained access to good-paying jobs—in factories, government agencies, and the professions—that had previously been off-limits. And, as noted above, in unionized firms, the wage gap between Black and white workers narrowed significantly.

Today, Blacks, Latinos, and women, including immigrants, are at the forefront of the labor movement's efforts to expand its power. Blacks are more likely to be union members (15.8 percent) than any other group, while the proportion of Hispanics in unions has been growing significantly (particularly in California), even as overall union membership has declined in the past decade. The union wage premium for immigrants who have lived in the U.S. less than ten years is 16.5 percent for men and 16.2 percent for women. Joining a union clearly improves the economic circumstances of immigrants, helping to lift them out of poverty.

A Stronger Economy

Business groups often argue that unions thwart economic growth and destroy jobs by making unionized enterprises less competitive, less profitable, and more likely to reduce the size of their workforces. This is particularly important in the context of the current economic downturn. If the deep recession was due to what some would call "over-priced" labor costs, the business view might be valid. But, to the contrary, the current downturn is due to what economists call weak "effective demand." The purchasing power of the American consumer—particularly families among the bottom two-thirds in the income distribution—has been declining. Since 2000, prices of basic necessities—housing, food, gas, clothing, and health care—have increased much faster than wages. The goal of various stimulus plans has been to put money into employees' pockets so they will spend it in the private economy, creating a multiplier effect.

Los Angeles County provides a good example of how unions strengthen the overall economy. A December 2007 study by the Economic Roundtable found that union workers in Los Angeles County earn 27 percent more than non-union workers in the same jobs. The increased wages for the approximately 800,000 union workers adds $7.2 billion a year in pay. As these workers spent their wages on food, clothing, child care, car and home repairs, and other items, their buying power created 307,200 jobs—64,800 more jobs than would have been created if these workers did not earn union wages. These union wages generated $7 billion in taxes to all levels of government (Flaming, 2007).

(The economic benefits of unionization are somewhat greater in Los Angeles County, where unions represent 15 percent of all workers, than they would be in other metropolitan areas with lower levels of union density).

The argument made by some business opponents of EFCA that unionization leads to higher unemployment is wrong. To promote this idea, some groups have been circulating a report that looks at differences in unionization rates and unemployment rates in Canadian provinces. In fact, Canada's level of unionization is about 20 percentage points higher than the level in the U.S., but its unemployment rate is somewhat lower.

Using Canada as an example of unions' negative impacts is particularly misleading and disingenuous. Canada has many of the same big employers and a similar economy as the United States. But in many ways, Canada is a much more livable society. It has a significantly lower level of poverty, less wage and wealth inequality, a lower infant mortality rate, fewer homeless people (as a proportion of the overall population), and much less crime. In *Differences that matter: Social policy and the working poor in the United States and Canada* (2006), sociologist Dan Zuberi compared the lives of hotel workers in Vancouver, Canada, and Seattle, Washington, 140 miles apart, who worked for the same hotel chains (Zuberi, 2006). Canada's much stronger labor, health, social-welfare, and public-investment policies protected Canadian workers from the hardships that burden America's low-wage workers. Workers in Vancouver had better access to health care, public transit, housing, and educational opportunities for their children than did their counterparts in Seattle.

There are, in fact, a number of countries with very high unionization rates and low levels of unemployment. For example, Norway and Denmark have unionization rates near 80 percent. Before the current economic crisis, their unemployment rates were under 3 percent.

Moreover, when the U.S. had its highest rate of unionization—over 30 percent in the late 1950s and early 1960s—the unemployment rate was as low as 3 percent and was below 5 percent for most of that period.

The same argument by anti-union advocates is often made in terms of unions' alleged detrimental impact on productivity. In fact, a broad overview of the economics literature found "a positive association [of unions on productivity] is established for the United States in general and for U.S. manufacturing" in particular (Doucouliagos & Laroche, 2003).

The same linkage is found when comparing different countries. In 2006, the Organization of Economic Co-operation and Development (OECD) did a comprehensive study of the alleged link between unions and productivity. The analysis of 18 nations revealed "a positive relationship between trade union density and per worker output" (Asteriou & Monastiriotis, 2004).

Are Americans Anti-Union?

Some people might ask: If unions are good for workers and good for the economy, why are so few employees union members?

Some business leaders argue that American employees are simply anti-union, a consequence of our culture's strong individualistic ethic and opposition to unions as uninvited "third parties" between employees and their employees. Anti-union attitudes, business groups claim, account for the decline in union membership, which peaked at 35 percent in the 1950s.

It is misleading, however, to infer Americans' attitudes about unions in general, or about unions in their own workplaces, with the relatively low level of union membership in the United States. In general, Americans have positive attitudes toward unions, and these positive views are increasing as their anxiety about job security, wages, and pensions grows.

The Gallup poll has tracked public sentiment about unions for many years. Their most recent survey on unions, conducted in August 2008, found that 59 percent of Americans approve of labor unions, compared to only 31 percent who disapprove ("Labor Unions," n. d.). The report noted that, "Americans have generally held a favorable view of unions for decades—with no less than 55 percent of Americans saying they approve of labor unions in Gallup polls conducted from 1936 to 2008" (Jones, 2008). In the 2006 poll on unions, Gallup asked Americans if unions generally help or hurt the U.S. economy. In response, 53 percent said that unions generally help, 36 percent said they generally hurt, and 11 percent had no opinion ("Labor Unions," n. d.).

In an August 2005 poll, Gallup asked: "In the labor disputes of the last two or three years, have your sympathies in general been on the side of unions (or) on the side of the companies?" Survey participants sided with unions 52 percent to 34 percent. This was the widest margin in favor of unions since 1952, when Gallup asked that question for the first time. General pro-union attitudes, however, may not translate into positive feelings about unions in one's own workplace. To assess the level of worker interest in joining unions, Hart Research has been tracking responses to this question since 1993: "If an election were held tomorrow to decide whether your workplace would have a union or not, do you think you would definitely vote for forming a union, probably vote for forming a union, probably vote against forming a union, or definitely vote against forming a union?" Among non-managerial, non-union workers, Hart Research has found a steady increase among respondents in positive sentiments ("definitely" and "probably" vote for a union) toward a union in their workplace. In its most recent (December 2006) survey, 53 percent of non-union, non-managerial employees wanted a union in their workplace, while 42 percent said they would vote against a union. In addition, 58 percent of all non-managerial employees (union and non-union) wanted a union in their workplace. In other words, 58 percent of U.S. workers would be in unions if employees could choose freely.

In 1984, the Harris poll asked the same question and discovered that only 30 percent of non-managerial workers said that they would vote for a union. In both 1993 and 1996, only

39 percent of non-union workers said they'd vote yes. From 1997 to 2001, support rose slightly to about 43 percent yes, but opposition still stood above 50 percent. By 2003, support for and opposition to unions in one's workplace was evenly split—47 percent yes and 47 percent no.

What accounts for the growing support for unions by Americans in general and by employees in particular? As Teixeira observed: "Workers' increased interest in joining unions is probably due to workers' sense that job quality, employee benefits, and worker voice are all increasingly uncertain in today's workplace" (Teixeira, 2007).

An analysis of polling data by Richard Freeman, a Harvard University economist, documents Americans' growing dissatisfaction with their employers. In 1999 and 2005, Hart Research asked survey respondents the following question: "Thinking generally about companies and other employers and the way they treat employees, let me mention some different aspects of work, and please tell me how well employers are doing on each item. Are employers doing very well, doing fairly well, falling somewhat short, or falling very short when it comes to ... [different workplace issues]." Between 1999 and 2005 the gap widened significantly between the proportion of workers who said that employers are doing well and those who said that employers are falling short. On the four concerns that Freeman called "bread and butter" issues—providing cost of living raises, providing retirement benefits, providing jobs that offer good benefits and job security, and paying a fair share of employees' health care costs—45 percent said that employers were doing well in 1999, while 50 percent said that employers were falling short—a gap of five points. Six years later, only 33 percent said that employers were doing well, while 64 percent said that employers were falling short—a gap of 31 points (Freeman, 2007). When asked about four workplace relations issues—whether employers were loyal to long-term employees, showed concern for employees, not just the financial bottom line, listened to employees' ideas and concerns, and shared profits with employees when a company did well—the gap also increased. In 1999, 40 percent said that employers were doing well, while 57 percent said that they were falling short—a gap of 17 points. Six years later, only 33 percent believed that employers were doing well on workplace relations issues, while 62 percent believed that employers were falling short—a gap of 29 points.

On a third set of issues—which Freeman called "future opportunities/work conditions"—the gap also widened, although not as dramatically. These concerns involved the following: providing opportunities for advancement, adopting policies that help working parents, giving employees the education and training they need, and providing women with equal pay. In 1999, the average gap was two points; by 2005, it was seven points. In the latter year, 43 percent said that employers were doing well on these issues, compared to 50 percent who believed that employers were falling short.

Fears and Rights at Work

A significant majority of American employees say they would join a union if they could. But they won't vote for a union, much less participate openly in a union-organizing drive, if they fear they will lose their jobs or be otherwise punished or harassed at work for doing so. Such fears are, one report observed, "widespread and well-founded" (Freeman, 2007).

In 1994, the Commission on the Future of Worker-Management Relations, chaired by former Secretary of Labor John Dunlop, reported that 59 percent of workers surveyed said they would likely lose favor with their employer if they supported an organizing drive; 79 percent said that it was "very" or "somewhat" likely that "non-union workers will get fired if they try to organize a union."

This awareness of employers' hostility toward unions has persisted. A 2005 Hart Research survey found that 53 percent of employees believe that "employers generally oppose the union and try to convince employees to vote no" in National Labor Relations Board elections. Only 26 percent believed that employers remain neutral and allow employees to decide on their own. Employees understand that employers resort to a variety of anti-union tactics—including firing employees illegally—to thwart unionization efforts. And there's the rub. Americans have far fewer rights at work than employees in other democratic societies. Current federal laws are an impediment to union organizing rather than a protector of workers' rights. The rules are stacked against workers, making it extremely difficult for even the most talented organizers to win union elections. Under current National Labor Relations Board regulations, any employer with a clever attorney can stall union elections, giving management time to scare the living daylights out of potential recruits.

According to Cornell University's Kate Bronfenbrenner, one-quarter of all employers illegally fire at least one employee during union organizing campaigns (Bronfenbrenner, 2000). In 2007, more than 29,000 workers were illegally disciplined or fired for union activity. Some workers get reinstated, but years later and only after exhaustive court battles. Penalties for these violations are so minimal that most employers treat them as a minor cost of doing business. Employees who initially signed union cards are often long gone or too afraid to vote by the time the NLRB conducts an election.

Large employers spend hundreds of millions of dollars a year to hire anti-union consultants in order to intimidate workers from participating in or showing support for union campaigns. Employers can require workers to attend meetings on work time, during which company managers give anti-union speeches, show anti-union films, and distribute anti-union literature. Unions have no equivalent rights of access to employees. To reach them, organizers must leaflet outside factory gates (an activity unions have not found cost-effective), visit workers' homes, or hold secret meetings.

A Healthier Democracy

Political scientists, sociologists, and others have bemoaned the decline of "civic engagement" and voting in America over the past few decades—a phenomenon sometimes called "bowling alone" (Putnam, 2000; Skocpol, 2003). But civic engagement and voting don't happen automatically. They require mobilization—that is, organizations with resources to reach out, identify, educate, and mobilize people to get involved. One study, for example, found that a "decline in mobilization" accounts for much of the drop-off in voting in recent decades (Rosenstone & Hansen, 1993). The wide class disparities in voting that we take for granted in the United States do not exist in other democratic societies.

Despite its small size compared to its counterparts in other countries, the American labor movement remains the nation's most potent political force for progressive change. Unions play an important part in electing liberal candidates to office at the local, state, and federal levels. Once in office, pro-union politicians are typically the strongest advocates of tough environmental laws, funding for public schools and higher education, civil rights, women's rights, gay rights, universal health insurance, affordable housing, and protection of Social Security.

Consider the labor movement's role in the 2008 elections. Approximately 12 percent of all voters were union members and about 21 percent of all voters were members of union households. But union members were much more active than others in the campaign in terms of volunteering, registering voters, getting out the vote on election day, and making campaign contributions. This was particularly the case in key swing states.

Three weeks before the November election, the *New York Times Magazine* ran a cover story that asked, "Will Gun-Toting, Churchgoing White Guys Pull the Lever for Obama?" When the polls closed, the question was answered: Nationwide, a significant majority of white men, white women, working-class whites, white gun owners, and white weekly churchgoers supported McCain.

But a significant number of whites in each category broke ranks and voted for Obama—enough to help him win key battleground states and the presidency. Exit polls conducted by Guy Molyneux of Peter D. Hart Research explain why.

Molyneux surveyed 1,487 members of AFL-CIO unions—about half in battleground states—and compared the results with all voters. What he discovered is nothing short of astounding. Fifty-seven percent of white men favored McCain, but 57 percent of white male union members favored Obama. White gun owners cast 68 percent of their votes for McCain, but 54 percent of white gun owners who are also union members preferred Obama. Among white weekly churchgoers, McCain scored a landslide, receiving 70 percent of their votes. But Obama had a slight edge (49 percent to 48 percent) among white weekly churchgoers who

were union members. Similarly, 58 percent of white non-college graduates voted for McCain, but 60 percent of white union members who didn't graduate from college tilted to Obama. Overall, 53 percent of white women cast ballots for McCain, but Molyneux found that 72 percent of white women union members favored Obama.

Nationwide, according to Molyneux, 67 percent of union members of all races—and 69 percent in swing states—supported Obama.

They voted for him because of the unions' effectiveness at educating and mobilizing members. They spent millions of dollars and built an army of volunteers who went door to door, reaching out to other members about key economic issues. Members in "safe" Democratic states staffed phone banks and made tens of thousands of calls to unionists in key swing states.

Unions made a special effort to talk with white members who may have been reluctant to vote for a Black man for president. AFL-CIO Secretary-Treasurer Richard Trumka gave the same impassioned speech to union members in key states, appealing to their class solidarity, decency, and sense of history:

> "There are a thousand good reasons to for vote for Barack Obama. And there's not a single good reason for any worker—especially a union worker—to vote against Barack Obama. And there's only one bad reason not to vote for Barack Obama—and that's because he's not white."

Labor activists carried Trumka's message to union voters. On Election Day, union members, including white males, were more likely than non-union counterparts to vote for Obama and Democrats running for Congress and to volunteer for their campaigns.

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David Brundage

Civil Rights and Workers' Rights: The Historic Connection

Forty-five years ago this June, Congress passed the historic Civil Rights Act of 1964, followed a year later by the 1965 Voting Rights Act. Together these two pieces of legislation barred racial segregation in schools, public places, and employment, and outlawed the discriminatory voting practices that had been responsible for the widespread disenfranchisement of African Americans in the United States. These legislative milestones were major achievements of the Civil Rights Movement, one of the most important grassroots social movements of the modern era, which had been growing steadily since the mid-1950s. That movement was not about to rest on its laurels, however: along with segregation and disenfranchisement, civil rights leaders also sought to overcome the deep economic inequality between blacks and whites and to combat the poverty that scarred the lives of many African Americans. The economic side of the movement had long been present; it was a notable theme in the 1963 "March on Washington For Jobs and Freedom," for example. But after the victories of the 1964 and 1965, the struggle for economic justice increasingly took center stage.

Movement leaders worked to fight economic inequality and poverty using a wide variety of tools. They were enthusiastic supporters of Lyndon Johnson's War on Poverty, and many advocated increased federal spending to rebuild inner cities and open up opportunities for the urban poor. In a series of highly publicized local campaigns, like that of the Chicago Freedom Movement of 1965–67, they worked to open up private and public sector employment opportunities and end racial discrimination in housing and lending. But occupying a very important place among these tools were labor unions, which, most civil rights leaders believed, were absolutely essential to improving the conditions of life for working people of color and the working poor generally.

Though less well known than its historic battles against segregation and disenfranchisement, the Civil Rights Movement's deep belief that labor unions were indispensable vehicles for social advancement for the working poor was a theme that ran through its history. This is why civil rights leaders from organizations as diverse as the Southern Christian Leadership Conference (SCLC) and the Student Nonviolent Coordinating Committee (SNCC) gave passionate support to Local 1199, the New York City health-care workers' union that is now part of the Service Employees International Union (SEIU). Local 1199, which drew on the civil rights traditions of its many African-American and Puerto Rican members, was famously Martin Luther King's "favorite union," and his widow, Coretta Scott King, became the honorary chair of its organizing campaigns in the late 1960s. Civil rights leaders in these years also supported the fledgling United Farm Workers (UFW), which was working to improve the wages and conditions of impoverished Mexican and Filipino workers in the fields of California. When Coretta Scott King visited UFW leader César Chávez in a Salinas, California, jail in 1970, she drew public attention to the deep connection between civil rights and workers' rights.

It was this same connection that had led Martin Luther King himself to Memphis, Tennessee, in the early months of 1968. Though in the midst of organizing his last campaign, the broadly-based interracial Poor Peoples Campaign, King traveled a number of times to that city to support a strike of African-American sanitation workers, members of the American Federation of State, County and Municipal Employees (AFSCME), who were waging a bitter struggle for better pay and safer working conditions. Though many Americans today know that King died from an assassin's bullet in the city of Memphis, few remember why he was there.

Much has changed since the time of King's death. As detailed by other contributors to this volume, an employer offensive against the labor movement over the last three decades has made it extremely difficult—in many cases nearly impossible—for workers to obtain union representation, a situation that the Employee Free Choice Act or similar legislation would do much to rectify.

What has not changed since King's death is the role of unions as essential vehicles for the poorest members of the American labor force to better their conditions of life. This is the reason that so many veterans of the great civil rights struggles of the 1960s remain passionate supporters of the labor movement. The Rev. Joseph Lowery, who co-founded the Southern Christian Leadership Conference with King and others in 1957 and who gave the benediction at the recent inauguration of President Obama, is only one of many such veterans. "Unions especially honor Dr. King's message," Lowery has said. "He believed in workers' rights, in fighting for the rights for poor people. He embraced collective bargaining and workers' rights."

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The Social Benefits of Unionization in the Long-Term Care Sector

Introduction

The United States is in the midst of a significant and accelerating crisis in caregiving for its growing population of elderly people and people with disabilities: an acute shortage of and high turnover rates among direct-care workers caused by poverty wages, inadequate training infrastructure, and few opportunities for advancement. This crisis is broadly recognized by policymakers as the key obstacle to providing high-quality and accessible services to the elderly and people with disabilities. This is also a crisis that disproportionately affects women workers and workers of color, who are overrepresented in direct-care occupations.

Against this dire backdrop, labor unions have been amongst the most effective social actors in addressing the workforce crisis in long-term care. Since the late 1990s, unions have organized hundreds of thousands of direct-care workers—mostly in publicly funded homecare. In doing so, they have not only helped workers get better wages and benefits, but have also been leaders in policy innovation to find solutions to a range of challenges facing the homecare system.

The Direct-Care Workforce Crisis

More and more people need paid caregivers. Between 2005 and 2030 the number of adults aged 65 and older will almost double, from 37 million to over 70 million, accounting for an increase from 12 percent of the U.S. population to almost 20 percent (Institute of Medicine, 2008, p. xi). In addition, the explosion of autism, the aging of family caregivers, and other factors will continue to increase the number of people with disabilities in need of support services, though at a slower rate. It is widely recognized in the field that there will be a tremendous growth in demand for direct-care workers who provide most of the services for the elderly and the disabled over the next decade. These services include health services and

assistance with personal care and household activities. The number of direct-care workers as of 2006 is estimated at over three million, and an additional one million new positions will be needed by 2016 (Paraprofessional Healthcare Institute, 2008, p. 1).

However, there are too few people able and willing to work as caregivers, paid or unpaid. The available pool of unpaid family caregivers has been shrinking relative to need, as women's labor force participation has grown and as families have fewer children, resulting in fewer adult children per aging parent. This has led to a growing dependence on paid caregivers, who are overwhelmingly female (89 percent) and are typically between the ages of 25 and 55 (Smith & Baughman, 2007). Yet there is a severe and worsening shortage of paid paraprofessionals—direct-care workers—who perform the bulk of paid long-term care services. This shortage is due in large part to the poor wages and benefits, lack of training and career opportunities, and high levels of physical and emotional stress that are typical of direct-service jobs. These factors contribute to the unacceptably high rates of vacancies and turnover among these occupations, which can, in turn, lead to poor quality of care for patients (Institute of Medicine, 2008). Furthermore, the shift in service delivery from institutional settings to home- and community-based settings creates special challenges in recruiting, training, and keeping workers in the field.

Direct-care jobs contribute to working poverty, especially for women, through low hourly pay and the prevalence of part-time work. In 2005 the median hourly wage for all direct-care workers was $9.56, about one-third less than the median wage for all U.S. workers (Dawson, 2007). Direct-care workers are more likely to live in poverty and to rely on food stamps than other workers (General Accounting Office, 2001). Women in direct-care jobs are more than twice as likely to be poor than working women in general (Smith & Baughman, 2007).

Many direct-care workers lack access to health and other benefits. Nearly 30 percent of direct-care workers lack health coverage of any kind (Regan, 2008; see also Brady, Himmelstein, & Woolhandler, 2002). They are much less likely than U.S. female workers to have employer-based health insurance, or any insurance at all (Smith & Baughman, 2007). Direct-care workers in home-based settings are much more likely to lack health coverage than are their counterparts in hospitals and nursing homes (Regan, 2008; Smith & Baughman, 2007). Direct-care workers have limited access to sick leave and retirement benefits (Smith & Baughman, 2007).

Low wages contribute to high turnover among direct-care workers. Numerous studies have documented the link between low wages for direct-support workers and high rates of turnover and vacancies.[1] Turnover rates range from 41 percent per year to over 71 percent per year in community settings, compared to a range of 14 to 34 percent in institutional settings (Hewitt & Lakin, 2001). New hire retention is also poor: 80 to 90 percent of

home-health aides leave their jobs within the first two years; 40 to 60 percent leave after less than one year (Paraprofessional Healthcare Institute, 2005).

High turnover undermines the quality of long-term care services. The relationship between turnover and the quality of services for consumers has long been recognized by leading scholars concerned with the direct-support workforce in a variety of care sectors (Hewitt & Lakin, 2001; Braddock & Mitchell, 1992; Zabin, 2006). In some sectors, such as personal-assistance services for the elderly and physically disabled, the length of match between direct-caregiver and consumer—directly related to worker turnover—is used as a direct measure of quality, because this indicator appears consistently in consumer-satisfaction surveys (Reif, 2002). In services for people with developmental disabilities, Hewitt and Lakin note, "lack of continuity makes it extremely difficult to develop and sustain the trusting and familiar relationships that foster personal growth, independence, and self-direction" (Hewitt & Lakin, 2001).

The decentralization of service delivery has increased consumer autonomy but also created major challenges in direct-care workforce development. Over the past several decades, seniors and people with disabilities have successfully advocated for long-term care services that support them to live with dignity in their own homes and communities, rather than in institutional setting such as hospitals, nursing homes, or segregated facilities for people with developmental disabilities. Consequently, direct-care jobs in "non-institutional personal assistance and home health services tripled between 1989 and 2004" (Kaye, Chapman, Newcomer, & Harrington, 2006). The new model allows greater consumer choice in hiring and firing their own support workers. However, the lack of a workforce infrastructure—systems and institutions to facilitate recruitment, training, and retention of qualified workers in the field—combined with high turnover and low wages poses serious challenges for individual consumers. Recipients of publicly funded homecare services in states with low hourly rates have difficulty finding workers. Current training standards for direct-care workers are minimal across the spectrum of long-term care, but particularly deficient for those who provide services in home settings (Institute of Medicine, 2008). Thus there is a need to create economies of scale through systems and institutions for recruiting qualified workers, training them in core competencies, and creating career lattices that entice workers to stay in the field.

Unionization and Its Impact on Consumers and Workers

Recognizing that increased wages and benefits are critical to improving homecare service quality and accessibility, key senior and disability rights groups have partnered with unions and workers in several states to win policy reforms enabling homecare workers who are state-funded but privately employed to join a union. To date, over 430,000 homecare

workers directly hired by consumers have unionized and are bargaining collectively for better labor standards.

Unionized homecare workers are concentrated in the independent provider (IP) model of service delivery. Under this model, individual consumers hire and fire their own homecare workers, who are in turn paid through public funds. Because of this unique employment arrangement, workers are caught in a legal no-man's land in terms of their collective bargaining rights. On the one hand, individual consumer-employers are not in a position to bargain over wages and benefits. On the other hand, such workers do not fall under the scope of public employment relations regulations in the states.

To surmount this barrier, several states have undertaken legislative reforms to grant client-hired, state-paid homecare workers the ability to bargain collectively over wages, benefits, and working conditions. A leading innovation is the homecare public authority, a legal "employer of record" for homecare workers for the purposes of collective bargaining. Usually overseen by an advisory board that includes consumers, such public authorities are also charged with training and recruitment in order to improve service quality and access (Rivas, 2007; Delp & Quan, 2002; Boris & Klein, 2006; Mareschal, 2006). In other cases, the state simply passed a law recognizing a union of homecare workers. These reforms gave workers the ability to negotiate wages, benefits, and working conditions but did not give them public employee status. Significantly, they also preserved consumer choice in hiring and firing their own support workers.

California pioneered the public authority model by first enabling and then mandating the establishment of county-level public authorities for homecare workers paid through its In-Home Support Services (IHSS) program. Since the state legislature passed a series of laws providing for the formation of county-level IHSS public authorities between 1991 and 1993, over 300,000 workers have joined the Service Employees International Union (SEIU) and American Federation of State, County and Municipal Employees (AFSCME) in California. Several other states—Oregon, Washington, Michigan,[2] Massachusetts, and Missouri—have followed suit by creating statewide public authorities charged with improving the quality of homecare and bargaining with the union representing IPs. Two states gave collective bargaining rights to direct-care workers through other means. Illinois relied on a State Labor Relations Board ruling giving the executive branch discretion in the matter. Ohio granted an anti-trust exemption to in-home care providers paid through Medicaid, effectively treating them as a group of small businesses with which the state would bargain on specified issues.

Unionization of Independent Provider (IP) Direct-Care Workers

Year(s) of Reform	State	Reform via	# Workers Initially Eligible	# Workers Currently Organized
1993–1998	California	legislation	50,000	300,000
2000	Oregon	ballot measure	12,000	12,000
2001	Washington	ballot measure	26,000	26,000
2003 (2004)	Illinois	executive order (codified through legislation)	20,000	20,000
2004	Michigan	regulatory authority	40,000	41,000
2006	Massachusetts	legislation; overrode veto	22,000	25,000
2007	Ohio	executive order	7,000	7,000
2008	Missouri	ballot measure	8,000	na
TOTAL				**431,000**

While it is difficult to determine the size of this workforce nationally because of under-reporting, we estimate that over 25 percent of publicly funded IPs are unionized. Among agency-employed homecare workers, union density is much lower because of strong employer resistance and the applicability of National Labor Relations Board regulations that create serious obstacles in the path to unionization. One major exception is New York, where homecare workers employed through private, mostly nonprofit agencies under contract with state and local government have organized strong unions. Here, a major strike in 2004 resulted in the unionization of a majority of New York City's homecare subcontractor agencies.

Thanks to broad political support, homecare workers in these states have been able to successfully negotiate first contracts within a year after having their unions recognized by the relevant public agencies. These contracts not only increase wages and benefits, but contain key measures to improve skill standards, protect stability of care services, and honor consumer choice.

Living Wages and Benefits

Through collective bargaining as well as policy advocacy by consumer and other advocacy groups, unionized homecare workers have been able to win substantial gains in wages and benefits:

- In California, wages and benefits are set by 58 county-level public authorities and thus vary geographically. Nevertheless, union contracts have brought substantial wage increases in most counties. In 2008, 50 counties (all but the poorest rural

locations) paid higher than the recently increased state minimum wage of $8.00 per hour. Unions have been able to negotiate significantly higher wages in urban counties, both in comparison to pre-unionization locally and relative to the state minimum wage. IHSS workers earned the highest wages in the eight-county San Francisco Bay Area, with most counties offering $11.50 per hour. Santa Clara County paid a Bay Area and statewide high of $12.35.[3]

- In Illinois, SEIU Local 880 won wage increases for homecare workers subsidized through the Department of Rehabilitation Services (DORS) through legislative advocacy even before the union was recognized, up from the $3.35 an hour minimum wage in 1984 to $7.00 an hour in 2002. The first union contract, effective in 2003, provided a 34 percent increase over four years, to $9.35 per hour. The current contract provides for an increase to $10.45 in July 2009, $11.20 in July 2010, and $11.55 in July 2011. Through legislative advocacy, the union has also won a rate increase for homecare agencies that includes a $1.00 per hour pass-through to increase workers' wages.

- Washington State instituted a groundbreaking stepped wage scale for homecare IPs beginning in July 2006.[4] Under the 2009–2011 contract, the scale starts at $10.03 per hour; workers with more experience can earn up to $11.07. It also offers a $1.00 per hour differential for workers who mentor other IPs, leading to a maximum hourly wage of $12.07.[5] These represent a significant increase over the pre-collective bargaining pay rate of less than $8.00 an hour (Galloway, 2001).

- The first contract in Massachusetts provided an increase for personal care attendants from the pre-unionization hourly wage of $10.84 to $11.60 in July 2008, $12.00 in July 2009, and $12.48 in July 2010.[6]

Over time, collective bargaining has also resulted in the significant expansion of health insurance and other benefits for unionized homecare workers:

- The number of California counties offering benefits to IHSS homecare workers has increased over time. Prior to the state's IHSS public authority legislation, IPs had no health insurance access through their jobs. As of 2008, 45 counties offered health insurance; of these, 31 counties also offered dental coverage; and 20 counties offered medical, dental, and vision. A strong majority of IHSS workers are employed in counties that offer health benefits.

- In Oregon, the current contract between SEIU 503 and the Home Care Commission provides employer-paid health insurance to IPs who work 80 or more hours per month.[7]

- In Washington State, collective bargaining first resulted in health benefits for a limited number of homecare workers employed through the Homecare Quality Authority. However, a Taft–Hartley Trust—the SEIU 775 MultiEmployer Health Benefits Trust—was established in 2005. The Trust offers comprehensive medical coverage with dental and vision benefits to IPs who have been employed at least three months and work at least 86 hours per month.
- In Illinois, SEIU Local 880 won health-care access for homecare workers employed through the IP model (through DORS) and through private agencies. Through collective bargaining, the union secured $57 million in state contributions into a health-care and training fund for DORS homecare workers.[8] Through legislative advocacy, the union secured a $1.33 per hour payment to agencies effective July 2008 to be used to provide health insurance coverage for their homecare workers (Kelleher, 2008, p. 11[9]).

Improved Training and Professionalization

Greater training and professionalization—for instance, through credentialing—is required to improve the quality of services to consumers, improve economic mobility for direct-support workers, and improve the retention of direct-support workers. A review of the literature by the Paraprofessional Healthcare Institute found that higher training levels helped long-term care service agencies, particularly homecare agencies, to hire and keep more workers (Paraprofessional Healthcare Institute, 2005). States, particularly those with unionized workforces, have begun to improve homecare worker training. The scope and scale of their efforts (how rigorous the standards and how many workers are trained) varies significantly from state to state, and much still needs to be done to standardize skill standards and expand training programs to adequate scale. Nonetheless, unions representing homecare workers are a critical force in the drive toward such improvements.

Homecare public authorities established by states are also charged with overseeing worker training and setting minimum qualifications, though the content of this responsibility varies between states. Some public authorities rely on union-negotiated and -delivered training programs. In California, where contracts are negotiated at the local level, training provisions also vary widely in scale. Some counties, such as Santa Clara, offer a free and voluntary training program that culminates in basic certification, and/or have union contract provisions for a Job Development Fund that reimburses homecare workers for continued education. In other states, like Washington, public authorities have the responsibility for setting minimum statewide training standards for homecare workers.

The State of Washington has become a leader in the field of homecare worker training and professionalization, in large part because of the efforts of SEIU Local 775, the union that represents long-term care workers including homecare IPs paid by the state. As described above, the union contract with the Homecare Quality Authority established a tiered wage system based on experience, with a $1.00 per hour differential for mentorship. Local 775 also helped pass legislation, ESSHB 2284, which established the Washington State Long-Term Care Workers Training Workgroup. This body has set up advanced training for long-term care workers, including homecare workers. Finally, Local 775 sponsored Initiative 1029, passed in November 2008 by an overwhelming majority of voters (72.6 percent). Initiative 1029 increases training standards for long-term care workers who provide home health services to seniors and people with disabilities, from 34 hours to 75 hours, equivalent to the current federal standard for certified nursing assistants (CNAs).[10] Homecare workers who provide services for their own parents or children, or who work no more than 20 hours a month for one client, are only required to complete 47 training hours. Initiative 1029 requires state certification and national background checks for homecare workers hired after January 1, 2010. It also provides that the state will pay for training costs and wages for state-subsidized workers. If successfully implemented, the competency-based training and certification system imposed by Initiative 1029 will help to professionalize the state's home-care workforce and improve the quality of care services they provide.

Workforce Stabilization

In advocating for public authorities and collective bargaining for homecare workers, unions and advocacy groups representing seniors and people with disabilities have argued that improvements in compensation and in recruitment, retention, and training systems are necessary to stabilize the homecare workforce in the face of growing need. An initial measure that has been promoted to address workforce stabilization is the worker registration and referral system to assist eligible seniors and people with disabilities with recruitment. Most state laws that establish homecare public authorities also provide for such a registry. Currently, the efficacy of such systems—which require consumer education about their existence—has not been well documented.

However, as we discussed above, there is a demonstrated, strong positive correlation between wage increases and increased workforce retention in the long-term care field, measured as the proportion of direct-care workers who stay in their jobs and in their field over a given time frame.[11] Because unions have negotiated substantial improvements in wages and benefits, and also have begun to improve training standards and career pathways for homecare workers, it is reasonable to expect improvement in worker retention. Due to the recent timing of most large-scale unionization events in this sector, research comparing

workforce retention before and after unionization is not available in many states. Nonetheless, available research indicates that wage and benefit increases due to collective bargaining have led to significantly lower worker turnover, greater availability of qualified workers, and shorter gaps in services for consumers.

- A study of IHSS homecare workers in San Francisco (Howes, 2004) analyzed the impact of large wage increases in this newly unionized sector. The study showed that between 1997 and 2001, as wages rose from the minimum wage to $10.00 per hour plus health and dental benefits, turnover dropped by 30 percent.
- A study commissioned by the Washington State Homecare Quality Council and funded by the Centers for Medicare and Medicaid Services found that (union-negotiated) improvements in wages, health-benefit access, and paid leave, and the implementation of a referral registry system, resulted in several statistically significant beneficial outcomes for consumers. Between 2004 and 2006, turnover declined by 26 percent (Pavelcheck & Mann, 2007, p. 19, Figure 2). The percentage of workers leaving the industry also declined, from 10.36 percent to 8.9 percent (Pavelcheck & Mann, 2007, pp. 7–8). This means that homecare IPs were more likely to stay in the field.

Conclusion

In the homecare sector, unionization has occurred almost exclusively in employment settings that are not regulated by the National Labor Relations Act, but rather are under state public employee labor relations acts, which provide greater protection to workers than the federal law that applies to the private sector. Consequently, most of the workforce stabilization and training benefits of unionized homecare have benefitted seniors and people with disabilities served by publicly funded programs. At the same time, improvements in wages and training are constrained by available public resources. As of this writing, there is growing recognition in the national policy arena—including key federal agencies—of the need for federal policies that can support state-level reforms in investing in the long-term care workforce. The voice of an organized workforce is key to improving direct-support jobs in order to mitigate the long-term care workforce crisis, both through collective bargaining and through partnerships for state and national policy advocacy.

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Endnotes

[1] Many studies show that turnover is negatively correlated with wages in long-term care services. For instance, Lakin's and Braddock's seminal national studies (Lakin & Bruininks, 1981; Braddock & Mitchell, 1992; Larson & Lakin, 1999) use cross-sectional analysis to show the strong relationship between higher wages and lower turnover in developmental disabilities services workers. Wheeler (2002) documented turnover rates of 24 percent in community-care facilities after the two wage pass-throughs in 1999 and 2000.

[2] The Michigan Quality Community Care Council was created as a partnership between the Michigan Department of Community Health and the Tri-County Aging Consortium under Urban Cooperation Act, Public Act 7 of 1967. Source: Michigan Department of Community Health Beneficiary Eligibility Bulletin, Health Care Eligibility Policy 04-07, November 23, 2004. Retrieved from http://www.michigan.gov/documents/HCEP_04-07_110034_7.pdf

[3] Data source: California Association of Public Authorities for IHSS. CAPA Survey on IHSS Wages and Benefits as of October 9, 2008. Retrieved from http://www.capaihss.org/PDF/CAPA_MOU_Wage_Benefit_Survey_100908(ps).pdf

[4] 2007–2009 Collective Bargaining Agreement by and between the State of Washington and Service Employees International Union 775. Effective July 1, 2005, through June 30, 2007. Retrieved from http://www.ofm.wa.gov/labor/agreements/05-07/homecare/homecare.pdf

[5] Information on 2009–2011 SEIU 775NW contract received from SEIU Long Term Care Division.

[6] Collective Bargaining Agreement between the Personal Care Assistant (PCA) Quality Home Care Workforce Council and 1199 SEIU Healthcare Workers East. Retrieved from http://www.mass.gov/pca/union/pca_contract.pdf

[7] Collective Bargaining Agreement between Home Care Commission and Service Employees International Union, Local 503, OPEU. Retrieved from http://www.dhs.state.or.us/spd/tools/cm/homecare/0709_contract.pdf

[8] "Personal Assistants win healthcare, higher wages with new contract." SEIU Healthcare Illinois and Indiana. Retrieved from http://www.seiuhealthcareilin.org/home_care/Personal_Assistants_win_healthcare__higher_wages_with_new_contract.aspx

[9] See also Illinois Public Act 095-0713, retrieved from http://www.ilga.gov/legislation/publicacts/95/PDF/095-0713.pdf

[10] Several states, including California, require many more hours. Many experts and advocates now call for a standard of 200 hours for CNA training.

[11] For instance, a study of direct-support workers in developmental disabilities in Wyoming showed that when total compensation rose from $9.08 per hour in 2001 to $13.19 by 2004, turnover dropped from 52 percent per year to 32 percent (Lynch, Fortune, Mikesell, & Walling, 2005).

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