WebMemo
Published by The Heritage Foundation
No. 1393
March 12, 2007
Revised and updated June 20, 2007

The Truth About Improper Firings and Union Intimidation

James Sherk

Labor activists argue that Congress should pass the Employee Free Choice Act because employers routinely intimidate and fire workers who try to unionize. Employers, they claim, have retaliated against pro-union workers in one-quarter of organizing elections, discriminating against or firing more than 31,000 workers who wanted to join a union in 2005. This compares, they contend, to just 42 cases of union intimidation of workers in the past 60 years.

All these claims are false.

Union Allegations. Unions allege that employers systematically violate the law by threatening and firing workers who want to join a union. Their proposed solution is the Employee Free Choice Act (EFCA, H.R. 800), which would replace secret-ballot organizing elections with "card checks" in which workers join a union by publicly signing a card. Card check could expose workers to pressure from both employers and union organizers. Labor activists contend, however, that such union intimidation is exceedingly rare. Nancy Schiffer, the AFL-CIO's Associate General Counsel, presents the unions' case:

> In one fourth of worker campaigns for collective bargaining, workers are fired…. Is coercion in the signing of authorizations a legitimate concern? A recent review of 113 cases cited by the HR Policy Association as "involving" fraud and coercion identified only 42 decisions since the Act's inception that actually found coercion, fraud or misrepresentation in the signing of union authorization forms. That's less than one case per year. Compare that to the 31,358 cases in 2005 of illegal firings and other discrimination against workers for exercising their federally protected labor law rights.[1]

Other pro-union sources have cited the same figures,[2] but union activists misrepresent the truth when they make these claims, and their allegations are refuted by solid National Labor Relations Board data.

Companies Respect Employee Rights. First, the claim that companies fire workers in one-quarter of organizing drives comes from a survey of union organizers, which is hardly an impartial source.[3]

No less mistaken is the claim that "illegal firings and other discrimination against workers" occurred 31,358 times in 2005. The number itself comes from the 2005 annual report of the National Labor Relations Board (NLRB).[4] The report shows that the NLRB ordered employers to pay that many workers back pay in 2005, but the NLRB awards back pay to resolve many types of disputes, very few of which involve intimidation during organizing. For example, the NLRB orders companies to provide back

This paper, in its entirety, can be found at:
www.heritage.org/research/labor/wm1393.cfm

Produced by the Center for Data Analysis

Published by The Heritage Foundation
214 Massachusetts Avenue, NE
Washington, DC 20002–4999
(202) 546-4400 • heritage.org

pay if they have unilaterally changed a collective bargaining agreement. Asserting that all of these cases concern intimidation, fraud, or illegal firings during organizing campaigns is simply false.

Putting that number in context reveals the absurdity of the unions' claim. About 149,000 workers were eligible to vote in union certification elections in 2005.[5] If 31,000 cases of back pay resulted from employers illegally firing or coercing pro-union workers, then employers fired or coerced over *one-fifth* of all workers who voted on organizing that year, which is a far higher proportion than even unions assert.

In addition, if a company had illegally fired a worker for supporting a union during an election campaign, it would be required to reinstate that worker in addition to providing back pay. But government records show that reinstatement is far less common than back pay. The NLRB ordered just 2,008 workers reinstated in 2005, a number that includes workers who were not fired during organizing drives.[6]

In short, union activists' claim that employers fired or discriminated against 31,000 employees for trying to organize in 2005 reflects a complete misunderstanding and misuse of what the NLRB's data really represent.

In fact, NLRB data reveal that employers rarely fire workers during organizing drives and that unions win most organizing elections. Companies improperly fired workers in just 2.7 percent of organizing campaigns in 2005,[7] and unions won 61 percent of those elections.[8] These facts, not polls of union organizers or numbers taken out of context, show that most organizing elections are fair and that companies very rarely take illegal action against workers who want to join a union.

Union Intimidation a Problem. Conversely, labor activists regularly downplay the possibility that unions would intimidate workers. They claim that there have been only 42 cases of forgery or coercion in card-check drives in the past 60 years. This is false.

This claim originated from union activists' analysis of a Human Resource Policy Association policy brief on EFCA. The brief included a list of 113 NLRB decisions involving "union deception and/or coercion in obtaining authorization card signatures."[9] The activists found that, of those 113 NLRB cases, only 42 directly concerned those issues. But that does not mean that there have been only 42 cases of union intimidation in the past 60 years. It means that the National Labor Relations Board has decided 42 cases concerning forgery or intimidation in the obtaining of union cards during that time. These are two different things.

The NLRB is labor law's equivalent of the Supreme Court. Most cases are decided well before they reach the full board, either in a settlement or in

1. Testimony of Nancy Schiffer, AFL-CIO Associate General Counsel, before the Subcommittee on Health, Employment, Labor, and Pensions, Committee on Education and Labor, U.S. House of Representatives, February 8, 2007, at *http://edworkforce.house.gov/testimony/020807NancySchiffertestimony.pdf*
2. See, e.g., AFL-CIO Blog, "House Rejects Amendments to the Employee Free Choice Act," March 1, 2007, at *http://blog.aflcio.org/2007/03/01/house-rejects-amendments-to-the-employee-free-choice-act/*.
3. Kate Bronfenbrenner, "Uneasy Terrain: The Impact of Capital Mobility on Workers, Wages and Union Organizing," September 6, 2000, at *http://digitalcommons.ilr.cornell.edu/reports/3/*.
4. National Labor Relations Board, Seventieth Annual Report of the National Labor Relations Board for the Fiscal Year Ended September 30, 2005, May 1, 2006, Table 4, at *www.nlrb.gov/nlrb/shared_files/brochures/Annual%20Reports/Entire2005Annual.pdf*.
5. *Ibid.*, Table 13.
6. *Ibid.*, Table 4.
7. J. Justin Wilson, "Union Math, Union Myths," Center for Union Facts, June 2007, at *www.unionfacts.com/downloads/Union_Math_Union_Myths.pdf*.
8. NLRB, *Seventieth Annual Report of the National Labor Relations Board*, Table 13.
9. HR Policy Association, "Mistitled 'Employee Free Choice Act' Would Strip Workers of Secret Ballot in Union Representation Decisions," *Policy Brief*, April 2004, pp. 4-7, at *www.hrpolicy.org/memoranda/2004/04-10_Employee_Free_Choice_Act_PB.pdf*.

an administrative law judge's decision. The full board usually decides cases that involve novel legal issues, not the routine enforcement of the law. The union argument makes as much sense as examining 60 years of Supreme Court rulings, finding 42 that involved arson, and then claiming that there have been only 42 cases of arson in the United States during that time.

In fact, union coercion and intimidation are not as rare as labor activists contend. Thousands of unfair labor practices cases have been filed against unions since 2000, including 1,417 for coercive statements, 416 for violence and assaults, 546 for harassment, and 1,325 for threatening statements.[10] Many of these cases did not involve election campaigns, and the unions were not found guilty in every case, but these numbers show that union intimidation is a real problem that workers face.

Conclusion. Labor activists bend the truth when they argue that workers need the Employee Free Choice Act because employers regularly fire workers for organizing. Their claims of mass firings are based on biased polls of union organizers and the severe misrepresentation of government statistics. In fact, NLRB data show that employers rarely fire workers for organizing.

Labor activists further distort the truth when they claim that there were only 42 cases of union coercion over the past six decades, because this number refers only to cases decided by the National Labor Relations Board, which decides very few of the total number of cases filed. In fact, thousands of charges of unfair labor practices involving threats, violence, and coercion have been filed against unions since 2000.

Workers should not lose their fundamental right to vote for or against unionization in privacy as a result of labor activists' misrepresentations.

—James Sherk is Bradley Fellow in Labor Policy in the Center for Data Analysis at The Heritage Foundation.

10. Analysis of unfair labor practice charges against unions involving section 8(b)(1)(A) of the National Labor Relations Act using data from the National Labor Relations Board's Electronic Case Information System. Full results are available from the author upon request.