

WebMemo



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Giving Employees Free Choice in the Workplace

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Workplace relations and the economy have changed substantially since the 1930s, but federal labor law has not evolved with these changes. The National Labor Relations Act (NLRA) still reflects a top-down, adversarial view of management–labor relations that is foreign to many workers today.

Private-sector union membership has fallen over the past generation as many workers have concluded that traditional unions do not meet their needs. In response, the labor movement is pushing the Employee Free Choice Act. Instead of taking away workers' right to vote on joining a union by secret ballot, Congress should restore employers' and employees' right to explore innovative labor–management relations. Most workers want a voice in their workplace even if they do not want a traditional union.

Employee involvement (EI) programs enable workers to participate cooperatively in workplace decisions, but the NLRA prohibition on creating “company unions” is so broad that it bans any EI programs that give workers a real voice. The Act forces workers to choose between a traditional union and no formal representation at all.

Congress should modify the NLRA to prohibit only employer-dominated unions while allowing workers to participate in work councils and EI programs. This would enhance workers' voice in the workplace and allow employers and employees to seek labor–management relations that fit into the 21st century economy.

A Changed Economy. Congress passed the National Labor Relations Act in 1935 and has not substantially modified it since 1947. The Act assumes an adversarial relationship between workers and employers, with the gains of one coming at the expense of the other. Also underlying the NLRA is the assumption that employers and employees use a top-down management structure where managers dictate to employees exactly what to do and the employees simply follow those directions without providing feedback.¹

That economy no longer exists. Businesses today rely on feedback and communication from employees. Employers do not simply give top-down orders, but incorporate bottom-up communication and employee discretion.² The line between workers and management has increasingly blurred, and most workers want cooperative—not adversarial—relations with their employers.³

Unions Have Not Modernized. Traditional unions are less relevant to workers in the modern economy than they were a generation ago because they have not modernized. Polls show that non-union workers want to stay that way by a proportion of more than three to one.⁴

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Collective bargaining assumes a hostile relationship between workers and management that few workers want.⁵ Workers believe that they and their employers are on the same side. Consequently, as demand for union membership has fallen, private-sector union membership has decreased sharply over the past generation.⁶ In 1974, 24.2 percent of private-sector workers belonged to unions. Today, that figure has fallen to 7.5 percent.⁷

The labor movement has responded to the decline in union membership by lobbying Congress to pass the misnamed Employee Free Choice Act (EFCA), which would end secret-ballot elections for joining unions. Under EFCA, unions could add members with a public card-check process. The elimination of the secret ballot enables the coercion of workers.

EFCA addresses the wrong problem. Union membership is not declining because secret-ballot elections make it too difficult for workers to join. Union membership is declining because few workers want to join unions.

Workers Want a Voice. The fact that few workers want to join traditional unions does not mean that they do not want a voice in workplace relations. Surveys show that workers want to participate in decisions in the workplace and want to be heard by their supervisors,⁸ but they do not want hostile relations with management.

Employee Involvement Programs. What many employers and employees would like are employee involvement programs or work groups in which workers and supervisors can meet to discuss workplace issues. These programs are innovative and can take many forms. Examples include self-directed work teams, safety committees, and production committees.⁹ The essential element is advancing employee interests through employee involvement. Polls show that 60 percent of workers prefer EI programs to improve working conditions over either more government regulations or labor unions.¹⁰

Examples of effective EI programs that advance worker interests abound. For instance:

- Webcor Packaging, Inc., a manufacturing company in Flint, Michigan, formed a plant council made up of five elected employees and three appointed managers to look at ways to improve work rules, wages, and benefits. The council members took suggestions from all employees and made recommendations to management based on those suggestions.
- Employees at Electromation, Inc., in Elkhart, Indiana, opposed a plan to change the attendance bonus the company offered. In response, the company met with randomly selected employees and formed action committees to solve various workplace problems. The company asked committee members to meet with other

1. Barry Hirsch and Jeffrey Hirsch, "The Rise and Fall of Private Sector Unionism: What Next for the NLRA?" *Florida State University Law Review*, Vol. 34 (2007), p. 9.
2. *Ibid.*
3. Richard Freeman and Joel Rodgers, "What Workers Want," ILR Press, Updated 2006, pp. 56–58.
4. Zogby International poll of 803 employed Americans conducted August 22–25, 2006, for the Public Service Research Foundation, with a margin of error of plus or minus 3.5 percent. 74 percent of non-union workers say they would not "personally like to be a member of a labor union," while 20 percent would. Complete poll results ARE available from the author upon request.
5. *Ibid.* Workers choose an organization that cooperates with management to discuss views but has no power to make decisions over one that has more power but is opposed by management by a 63 to 22 percent margin.
6. Henry S. Farber and Alan B. Krueger, "Union Membership in the United States: The Decline Continues," National Bureau of Economic Research *Working Paper* No. 4216, 1992.
7. Barry T. Hirsch and David A. Macpherson, "Union Membership and Coverage Database from the Current Population Survey," Unionstats.com, at <http://www.trinity.edu/bhirsch/unionstats>.
8. Hirsch and Hirsch, "The Rise and Fall of Private Sector Unionism," p. 16.
9. Freeman and Rodgers, "What Workers Want," p. 101.
10. *Ibid.*, p. 8.

workers and promised to implement the solutions if they were not cost-prohibitive.¹¹

Law Prohibits Most Employee Involvement Programs. These EI programs gave workers a say in the workplace and improved working conditions. They were also illegal.

The government forced Webcor and Electromation to disband their EI programs.¹² Section 8(a)(2) of the National Labor Relations Act prohibits employer-dominated labor organizations. The National Labor Relations Board (NLRB) defines a labor organization as an organization in which employees participate that exists in part to deal with employers over grievances, labor disputes, wages, hours of employment, or other working conditions.¹³

This bans virtually any work council or EI program that gives workers a real voice in the workplace. The law gives workers an all-or-nothing choice: They can speak with their employers through a labor union, or they cannot speak at all. The law forbids anything in between. Any form of two-way discussions between workers and management over working conditions outside of collective bargaining is illegal.

Employee Involvement No Threat to Choosing Unions. Congress passed this ban to prevent companies from creating and negotiating with employer-dominated “company unions” to fight off organizing drives. However, the employee involvement programs that modern employers want to create would not interfere with workers’ ability to choose a union. Employers do not negotiate and sign collective bargaining agreements with action teams. EI programs complement the roles of traditional unions; they do not replace unions or prevent workers from organizing.

Some in the labor movement fear that employees and employers would turn to work councils and EI

programs instead of unions, undermining attempts to organize. The experiences of other countries show that this fear is misplaced. Canada permits EI programs and has a union density over twice the American rate. German law requires companies to provide their workers with work councils, and unions often recruit new members from these councils.¹⁴

Employee Free Choice. Employee involvement programs would weaken unions only to the extent that workers prefer them to unions. That possibility should not prevent employees and managers from forming work councils. Congress should not make nonunion workplaces as unpleasant as possible in order to compel workers to unionize. Labor unions exist to serve workers, not vice versa. Any competition with EI programs would force traditional unions to innovate and modernize to better suit workers needs.

Workers should have the right to freely choose how to work with their employers. Congress should not force workers to choose between unions and no representation at all. By an 85 percent to 10 percent margin, workers prefer employee organizations run by employees and management together to organizations run by employees alone.¹⁵ Congress should not deny workers that choice.

What Congress Should Do. Current law forces workers to make an all-or-nothing choice between no voice at work and speaking through a labor union, but the economy has changed since the 1930s, and many workers do not want the adversarial labor relations that unions offer. As a result, union membership has fallen. Rather than deprive workers of the right to choose to join a union in privacy, Congress should give employees free choice about how to express themselves in the workplace.

Congress should modify the National Labor Relations Act to define a labor organization as an organization that negotiates collectively bargained

11. Steven C. Bahls and Jane Easter Bahls, “Labor Pains: Employee Focus Groups May Seem Like a Good Idea, But They Could Land You in Court,” *Entrepreneur*, December 1997.
12. *Ibid.* Webcor was forced to disband their program in 1997, and Electromation was forced to abandon its program in 1994.
13. Hirsch and Hirsch, “The Rise and Fall of Private Sector Unionism,” p. 24.
14. *Ibid.*, pp. 28–29.
15. Freeman and Rodgers, “What Workers Want,” pp. 56–57.

contracts with workers. If Congress did so, the NLRA ban on employer-dominated labor organizations would continue to ban company unions used to defeat organizing drives but would allow workers to choose to work with their employers through employee involvement programs and work councils.

These cooperative programs would allow employers and employees to innovate and adapt

workplace relations to the modern economy. They would also attune employers to employees' desires and improve working conditions. Most workers want the option of having employee involvement programs, and Congress should permit them.

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