ISSUE BRIEF

Employers Interfere With Workers Forming Unions

Although workers' freedom to form unions free from employer interference is guaranteed by U.S. labor law and international human rights law, employers routinely resort to both legal and illegal tactics to keep workers from forming unions. A large and growing percentage of employers take advantage of loopholes in the National Labor Relations Act (NLRA) or simply violate the NLRA to harass, pressure, threaten, intimidate, suspend, fire, deport and otherwise victimize workers attempting to exercise their right to freedom of association.

Employer interference has a devastating impact on workers' freedom to form unions. Even when employers do not expressly threaten or persecute employees, workers are aware of this possibility anytime employers make their opposition known. Thus, 36 percent of workers who vote "no" in union representation elections explain their vote as a response to employer pressure, according to a survey of more than 400 union representation elections in 1998 and 1999 by Cornell University professor Dr. Kate Bronfenbrenner.

Employers fire and otherwise discriminate against workers during organizing campaigns. According to the Bronfenbrenner survey, employers illegally fire at least one worker for union activity in 25 percent of all organizing campaigns, in which they fire an average of four workers. According to the National Labor Relations Board (NLRB), roughly 24,000 workers won compensation for illegal discrimination in 1998, up from less than 1,000 in the 1950s and 6,000 in 1969. The dramatic rise in discrimination against workers engaged in protected union activity can be explained, in part, by the ineffectiveness of NLRA remedies and by the proliferation of anti-union consultants.

Employers often hire anti-union consultants to develop counterorganizing campaigns. Anti-union consultants specialize in implementing campaigns to convince workers that forming a union would have a negative impact on their lives. They tutor management and supervisors on how to engage in activities such as surveillance and interrogation without facing unfair labor practice charges. According to a 1990 academic study published by University of Illinois Professor John J. Lawler, employers spent about $200 million out of $1 billion per year in direct payments to defeat organizing drives including the cost of management time dedicated to fighting unions before and after certification. Company-hired consultants also teach supervisors how to recruit anti-union employees into "vote no" committees, even though direct management involvement in such groups is illegal.

Employers hold mandatory captive-audience meetings. In captive-audience meetings, workers are forced to sit through one-sided, anti-union presentations during company time. Workers can be fired for refusing to attend, and workers who support the union can be denied access to the meeting. Although it is legal for employers to use their employees' work time in this manner, no such venue is provided for workers to make their case in favor of union representation. According to the Bronfenbrenner survey, 92 percent of employers force employees to attend an average of 11 mandatory anti-union presentations during union representation campaigns.

Employers hold repeated closed-door, one-on-one meetings with workers. During one-on-one meetings, supervisors ask workers about their views of unions and advise union supporters to change their minds. Under normal circumstances, an employer has the right to confer with an employee freely. However, given the inherent coercive power an employer holds over an employee, the message and frequency of these one-on-one meetings dramatically affects the individual worker's freedom to choose a union. According to the Bronfenbrenner survey, in 78 percent of union representation elections employers force employees to attend one-on-one anti-union meetings with managers, and in 67 percent of election campaigns employers hold oneon-one meetings at least weekly.

Employers deny union representatives access to workers. In most union representation election campaigns, employers have almost completely one-sided access to the voters. Loopholes in the NLRA create an imbalance of power unparalleled in any other democratically run election in our society (see "National Labor Relations Act").

Employers intimidate workers with anti-union propaganda. According to the Bronfenbrenner survey, 55 percent of employers force workers to watch anti-union videos during NLRB election campaigns, and 70 percent mail anti-union letters to workers' homes, averaging six and a half letters per worker. In addition, 75 percent of employers distribute an average of 13 antiunion leaflets to workers.

Employers routinely threaten to close or move the workplace should workers vote to form a union. Threats to close or move the workplace if workers vote to form a union are illegal, but employers have become adept at wording such threats instead as legal "predictions." Penalties for making threats, furthermore, are so trivial that they are not a deterrent. According to the Bronfenbrenner survey, 71 percent of manufacturing companies threatened or predicted the workplace would close or move if workers voted for union representation. Fifty-one percent of all companies made such threats or predictions in 1998 and 1999—up from 29 percent in 1986 and 1987—yet only 1 percent actually closed the workplace after workers voted to form a union.

Employers threaten undocumented workers with deportation. Although the NLRA protects union activity by all employees, 52 percent of employers threaten to call the Immigration and Naturalization Service during organizing drives involving undocumented workers.

Employers refuse to bargain with workers who vote for union representation. Refusal to bargain with workers' representatives is illegal, but there are no effective penalties for such violations. As a result, employers can simply ignore the union their employees have formed. According to the Bronfenbrenner survey, in 32 percent of union representation elections, workers who vote for union representation still have no contract two years after the election.