FACT SHEET

MAY 20, 2009

NO HOLDS BARRED

The Intensification of Employer Opposition to Organizing

BY KATE BRONFENBRENNER

Overall, 12.4% of U.S. workers are represented by unions, a density far below what would be the case if all workers who wanted to belong to a union could freely do so. In fact, studies have shown that if workers' preferences were realized, as much as 58% of the workforce would have union representation. Yet, this low overall unionization rate obscures a striking imbalance – while almost 37% of public-sector workers belong to unions, less than 8% of private-sector workers do. A 2009 study by Cornell University researcher, Dr. Kate Bronfenbrenner, offers a detailed look at why.

Employers continue to punish workers for supporting a union

In the last two decades, private-sector employer opposition to workers seeking their legal right to union representation has intensified. Compared to the 1990s, employers are *more than twice as likely* to use 10 or more tactics in their anti-union campaigns, with a greater focus on more coercive and punitive tactics designed to intensely monitor and punish union activity.

It has become standard practice for workers to be subjected by corporations to threats, interrogation, harassment, surveillance, and retaliation for supporting a union. An analysis of the 1999-2003 data on NLRB election campaigns finds that:

- 63% of employers **interrogate workers** in mandatory one-on-one meetings with their supervisors about support for the union;
- 54% of employers **threaten workers** in such meetings;
- 57% of employers **threaten to close the worksite**;
- 47% of employers **threaten to cut wages and benefits**; and
- 34% of employers **fire workers**.

Employers have increased their use of more punitive tactics ("sticks") such as plant closing threats and actual plant closings, discharges, harassment, disciplinary actions, surveillance, and alteration of benefits and conditions. While at

the same time, employers are less likely to offer "carrots," such as granting of unscheduled raises, positive personnel changes, bribes, special favors, social events, promises of improvement, and employee involvement programs.

These private-sector campaigns differ markedly from public-sector campaigns. Survey data from the public sector describe an atmosphere in which workers organize relatively free from the kind of coercion, intimidation, and retaliation that so dominates in the private sector. *Most of the states in the public-sector sample have laws allowing workers to choose a union through the majority sign-up process.*

In ***No Holds Barred: The Intensification of Employer Opposition to Organizing,*** published by American Rights at Work and the Economic Policy Institute (EPI), Dr. Bronfenbrenner provides a comprehensive, independent analysis of employer behavior in union representation elections supervised by the National Labor Relations Board (NLRB). Her research identifies the range and incidence of legal and illegal coercive tactics used by employers in NLRB elections and the ineffectiveness of current labor law to protect and enforce workers' rights during the process.

Dr. Bronfenbrenner's report also compares employer behavior in this study's time period (1999-2003) to previous studies that she and her research teams have conducted over the last 20 years.

Punitive behaviors lead to charges of unfair labor practices

Workers filed Unfair Labor Practice (ULP) charges in about 40% of elections, and the highest percentage of allegations were threats, discharges, interrogation, surveillance, and wages-and-benefits cuts for supporting a union. These findings and previous research suggest that workers file ULPs in fewer than half of elections for three main reasons: filing charges where the election is likely to be won could delay the election for months if not years; workers fear retaliation for filing charges, especially where the election is likely to be lost; and the weak remedies, lengthy delays, and the numerous rulings where ALJ recommendations for reinstatement, second elections, and bargaining orders have been overturned, delayed, or never enforced, have diminished trust that the system will produce a remedy.

- 23% all ULP charges and 24% of serious charges—such as discharges for union activity, interrogation, and surveillance—were filed before the petition for an election was filed; confirming that employer campaigning begins even before a formal election campaign kicks into effect.
- 45% of the cases where ULPs are filed result in "wins" for the union: the charges are either settled by the employer or found meritorious by the NLRB and courts.

Employers tend to appeal most NLRB Administrative Law Judge decisions, and in the most egregious cases the employer can count on a final decision being delayed by three to five years. Of the few cases in the sample where a penalty was imposed, the heaviest penalty was backpay, minus the worker's interim wages.

Many employers resist collective bargaining long after workers form their union

- One year after a successful election, 52% of newly formed unions had no collective bargaining agreement.
- Two years after an election, 37% of newly formed unions still had no labor agreement.

Dr. Bronfenbrenner's study reaffirms the glaring problems that block workers from exercising their freedom to organize and bargain for a better life, with serious repercussions for our entire economy.