



AAA POLICY BRIEF #1

POLICY AREA

Labor

POLICY ISSUE

Right of Employees to Organize Unions

POLICY INITIATIVE

Employee Free Choice Act (H.R. 800, S. 1041)

ABSTRACT

Ethnographic research supports the underlying assumption of the Employee Freedom of Choice Act—that there is significant management interference in employees' right to freedom of choice and association. Such interference constitutes a human rights violation that the Act is intended to remedy.

BACKGROUND

The International Covenant on Civil and Political Rights—ratified by the United States in 1992—affirms the right of free association, including the right to form and join trade unions. US law (1935 National Labor Relations Act, or, the Wagner Act) grants employees the right to form, join, or assist labor organizations, to bargain collectively, and to engage in other activities for mutual aid or protection.

Income inequality is currently at historically high levels in the US and around the world while workers' self-organization has reached historic lows (Human Rights Watch 2000). Human Rights Watch concludes, "Both historical experience and a review of current conditions around the world indicate that strong, independent, democratic trade unions are vital for societies where human rights are respected. Human rights cannot flourish where workers' rights are not enforced and these rights are not being enforced in the US."

Currently, 7.4% of private sector workers are represented by unions. However, a recent survey shows that 53% of workers would elect to be represented by a union if they had a choice. While polling reveals that management opposition is one cause of the disconnect (Freeman 2007), detailed ethnographic fieldwork, such as that cited herein, leaves no doubt.

Since the 1990s, anti-union consulting firms have become a multi-million dollar industry aggressively creating demand for their services by inculcating in management fear that unions are an avoidable catastrophe. Research shows that two-thirds of employers faced with organizing campaigns hired such consultants (Logan 2002, 2006). The chances that an employee who favors a union will be unlawfully fired are one in five (Schmidt and Zipperer 2007). In 2005, more than 31,000 employees received back pay because of illegal employer discrimination for activities protected under the National Labor Relations Act (NLRB 2005)—a 500% increase since the late 1960s (HRW 2000). Such sanctions against corporations are minor and come too late to be effective. Even after employees vote for a union, forty-five percent of employers deny the elected union a contract (Federal Mediation and Conciliation Service 2004).

Among the topics that anthropologists have addressed related to labor unions in the US is the process of organizing a union. Whereas sociologists typically base their studies on national level data, anthropologists focus on specific ethnographic details. This was the strategy of Brodtkin (1988) in North Carolina, Brodtkin and Strathmann (2004) in Los Angeles and of Durrenberger and Erem (2005) in Chicago.

THE EMPLOYEE FREE CHOICE ACT

The legislation this research addresses is the Employee Free Choice Act (H.R. 800, S. 1041, or EFCA). During the second stage of the current two-stage voting process, corporations routinely intimidate, harass, coerce and even fire workers who try to form unions. The EFCA would eliminate the second stage and allow employees to form unions at the first vote, when they sign cards authorizing a union to represent them. It would also institute stronger penalties for violation of employee rights (to increase the costs of corporate law-breaking) and provide mediation and arbitration for first-contract disputes (to end long term stalling of negotiations after a union is authorized). The EFCA is supported by a bipartisan coalition in Congress. Senator Edward Kennedy (D-MA) introduced S.1041 on March 29, 2007 and it is now being considered by the Health, Education, Labor and Pensions Committee. The Act has passed in the House of Representatives.

KEY RESEARCH FINDINGS

Fine-grained ethnographic fieldwork (Brodtkin 1987, 2007, Brodtkin and Strathmann 2004, Durrenberger and Erem 2005) documents that:

- Management consultants organize supervisors to incorporate them into a "management team" with the objective of defeating unions. Those supervisors who favor the union, want to remain neutral, or are unwilling to commit unlawful acts are ostracized or fired.
- Management consultants coach supervisors on both legal and illegal methods of persuading workers to oppose the union.

KEY RESEARCH FINDINGS

- Management bombards workers with anti-union letters saying that that workers can adequately represent themselves individually to a benevolent management, and that unions: 1) remove any choice from workers, 2) make them strike, and 3) could cause them to lose their jobs.
- Management consultants work to reinforce hierarchical relations of workers with management, and define management as workers' only source of information, affirmation, and confirmation.
- Management consultants disrupt social relationships among workers who might establish alternative horizontal channels of communication, confirmation, and affirmation.
- Management depicts itself as powerful and willing to yield nothing to a union, and issues pamphlets designed to intimidate workers and disparage the union.

These and other studies (Zlolniski 2007) show that these practices disproportionately affect women, immigrants, minorities, and people of color. The studies also document other practices designed to inhibit union organization, such as contracting of service work.

Ethnography seeks to understand the ways in which people live, relate to one another, and understand the world, their communities, and themselves through on-site observation and analysis of human behavior. Although the discipline of anthropology was initially developed to research distanced "others," ethnographic sensibilities and practices have changed over time. North American workplaces, systems of production, power structures, and legislation are now viewed as potential sites and subjects of ethnographic research.

In their ethnographic study of organizing in Los Angeles, Karen Brodtkin and Cynthia Strathmann learned about consultants' use of " ... coercion and psychological warfare" (Brodtkin and Strathmann 2004:4) to create interpersonal dissension among workers. Such tactics also aim to isolate people who favor the union, sow ethnic conflict, target pro union employees for conspicuous surveillance and harassment, and humiliate workers in front of others. In this instance, ethnography yielded the following account:

"A management consultant takes a gun from his briefcase and speaks into a tape recorder addressing the union organizer by name. 'I have a license to carry this revolver. I will protect myself. I will protect all the workers who don't want to vote for the union.' Afraid of violence, the organizing committee tells the organizer that people want the union to go away. When the consultant starts his act after the next shift, the workers squirt him with water pistols the organizer purchased. This kind of fear tactic is routine for management consultants. Humorous responses may defuse the tense situations they engineer."

This ethnographic research exposed a previously concealed dimension of management-worker communication: actions of consultants that are often extreme and highly coercive. Because ethnographic research makes visible such factors, it is necessary for making fully-informed policy decisions regarding labor organizing practices.

Anthropology provides sound evidence for the premises of The Employee Free Choice Act, namely that current organizing processes do not allow employees to express their desire to join unions because: 1) there are insufficient disincentives to managerial lawbreaking in its resistance to unions; and 2) management uses tactics of intimidation and fear to coerce workers to vote against unions.

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