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A War Against Organizing

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A War Against Organizing

Abstract
[Excerpt] Unless Congress passes serious labor law reform with real penalties, only a small fraction of the workers who seek union representation will succeed. If recent trends continue, there will no longer be a functioning legal mechanism to effectively protect the right of private-sector workers to organize and collectively bargain. Our country cannot afford to make workers defer their rights and aspirations for union representation any longer.

Keywords
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A War Against Organizing

By Kate Bronfenbrenner

Special to The Washington Post

Angel Warner, an employee at a Rite Aid distribution center, sat next to me recently in a congressional briefing room and described what happened when she and her fellow workers tried to form a union in their California workplace. She talked about the surveillance, constant threats and harassment they endured; how she and other workers were repeatedly taken aside and interrogated, one on one, about how they planned to vote; how two co-workers were fired; and how the rest lived in fear that any day they, too, might get a pink slip. The union filed numerous charges of unfair labor practices and eventually won the organizing election. But three years after the campaign began, Warner and her fellow Rite Aid workers still don't have a contract.

Like most U.S. companies, Rite Aid takes full advantage of current labor law to try to keep workers from exercising their full rights to organize and collectively bargain under the National Labor Relations Act. Far from an aberration, such behavior by U.S. companies during union organizing campaigns has become routine, and our nation's labor laws neither protect workers' rights nor provide disincentives for employers to stop disregarding those rights.

Late last month I published a study, "No Holds Barred," that was presented at the hearing at which Angel spoke. I looked at a random sample of more than 1,000 union elections over a five-year period to determine the parameters of employer behavior during union representation elections in the private sector and the limitations of the labor law system established to regulate that behavior.

In 34 percent of the elections I studied, companies fired employees for union activity. In 57 percent of elections, employers threatened to shut down all or part of their facilities, and in 47 percent, employers threatened to cut wages and benefits.

In 63 percent of campaigns, supervisors met with workers one on one and interrogated them about their union activity or whether they or others were supporting the union. In 54 percent of the elections, supervisors used these one-on-ones to threaten individual workers.

The bottom line is that there has been a steady decline of workers' rights in the past several decades. Colleagues and I have examined this issue in a series of studies over the past two decades. My new data show that employers are more than twice as likely as they were in the 1990s to use 10 or more tactics — including threats and firings — to thwart workers' organizing efforts, and they are more likely to use more punitive and aggressive tactics such as interrogations, discharges and threats of plant closings, while shifting away from softer tactics such as social events, promises of improvement and employee involvement programs.

For the vast majority of workers who want to join unions today, the right to organize and bargain collectively — free from coercion, intimidation and retaliation — is at best a promise indefinitely deferred. In election campaigns overseen by the National Labor Relations Board, it is now standard practice for companies to subject workers to threats, interrogation, harassment, surveillance and retaliation for union activity.

The failure of the system to defend workers' rights in a timely manner multiplies the obstacles workers face when seeking union representation, creating delays that favor employers. Employers appeal a high percentage of the cases to the NLRB, and in the most egregious instances, the employer can count on a final decision being held up by three to five years.

A key aspect of proposed labor law reform, the Employee Free Choice Act, concerns revisions to the rules surrounding arbitration of the first contract. My findings show that this provision may be among the most crucial of the legislation. Fifty-two percent of workers who form a union are still without a contract a year after they win an election, I found, and 37 percent remain without a contract two years after the election. For employers, labor law provides yet another means to indefinitely delay unionization.

It doesn't have to be this way. My survey data from the public sector portray an atmosphere in which workers may organize free from the kind of coercion, intimidation and retaliation that so taints the election process in the private sector. Most of the states in the public-sector sample have laws allowing workers to choose a union through card check or voluntary recognition. And more than a third of public-sector workers in the United States are members of unions.

Unless Congress passes serious labor law reform with real penalties, only a small fraction of the workers who seek union representation will succeed. If recent trends continue, there will no longer be a functioning legal mechanism to effectively protect the right of private-sector workers to organize and collectively bargain. Our country cannot afford to make workers defer their rights and aspirations for union representation any longer.

The writer is director of labor education research at Cornell University's School of Industrial and Labor Relations. Her paper "No Holds Barred — The Intensification of Employer Opposition to Organizing" was published last month by the nonprofit Economic Policy Institute.