

In Public, Corporate America Says 'Democracy' **In Private, They Say 'War'**

THE PRINCIPAL ARGUMENT used by the U.S. Chamber of Commerce, its allies and corporate front groups against the Employee Free Choice Act is that it would deprive U.S. workers of their democratic right to an election. The truth behind Corporate America's opposition to the Employee Free Choice Act, however, has nothing at all to do with the secret ballot and has everything to do with keeping unions out of the workplace. But anti-Employee Free Choice Act groups such as the Employee Freedom Action Committee and the Coalition for a Democratic Workplace, all funded by business, are running a \$200 million campaign that tries to convince the public they are simply protecting workplace democracy.

In fact, the Employee Free Choice Act in no way eliminates the secret ballot as a means for workers to choose unionization. Under the current law, workers may choose a union either through majority sign-up—in which a majority express their desire to form a union by signing authorization cards—or through an election; however, it is up to the employer to choose the method. Employers typically veto the choice of workers who want to form a union through majority sign-up, forcing them to go through

an election process the employer can readily manipulate. The Employee Free Choice Act still will allow workers to organize through a majority signing of cards or through an election, but it will be up to the workers, not their employer, to choose the method.

Only in organized workplaces is there any real possibility for workers to have a voice or participate in their own jobs and futures. There are no works councils or other structures that allow workers to have a voice on the job at American workplaces where there is no collective bargaining coverage. In the absence of a trade union, the terms and conditions of employment are totally controlled by employers. In the United States, "employment-at-will" is the law of the land unless workers are covered by a collective bargaining agreement. That means employers at nonunion workplaces can fire workers for any reason whatsoever, with the exception of discrimination based on race, religion, national origin, gender, age, disability or pregnancy. While it is also unlawful to fire or discipline workers for exercising their right to freedom of association, the reality is that employers do it routinely because the financial sanctions for breaking the

law are so minimal and cases often takes years to adjudicate. In fact, one in five union activists will be fired as a result of their activities in a union election campaign.¹

There is a good reason why so many workers would choose the majority sign-up method of organizing rather than going through an election. Under the current system, it is common to take six weeks or longer for the government to hold such an election. During that time, workers who want union representation frequently are subjected to employer intimidation, harassment, coercion and even dismissal. Workers are fired in a quarter of all private-sector union organizing campaigns. Most workers who try to form unions are subjected to repeated, coercive, one-on-one, anti-union meetings with their supervisors. Even after workers successfully form unions, 44 percent of the time they cannot secure a first collective bargaining agreement due to employer recalcitrance.

“Protecting democracy” is simply the facade the corporate opposition is using to wage war on organized labor. The business community has engaged for decades in a bitter campaign to fight unions, usually hiring firms that specialize in anti-union consulting. This is a multimillion dollar industry that employs union-busting tactics “designed, at every juncture, to undermine employees’ free choice of bargaining representatives.”² When faced with the prospect of employees organizing a union, companies pay large sums of money to consulting firms, which, in turn, vilify unions and engage in scare tactics to crush workers’ organizing efforts. Use of these consultants and their union-busting tactics is pervasive in the United States. Businesses hire anti-union consultants in 75 percent of all union organizing drives.³

The union-busting consultants’ opinion of organizing campaigns is evidenced by their virulently anti-union rhetoric. One of the largest anti-union law firms has titled its union avoidance

seminars “War Games,”⁴ and in a more recent newsletter suggested that clients “inoculate your employees to the union virus early.”⁵ Doug Cartland, an independent consultant, wrote an article titled “Union Avoidance—Win the War!” in which he compares unions to sharks in the very first line.⁶ A video production company tried to sell its anti-union videos by stating, “A union organizing campaign is a declaration of war,” and went on to ask, “Are you using the most powerful weapon in your arsenal?”⁷

A former union-buster, Martin Levitt, describes the business as “a field populated by bullies and built on deceit. A campaign against a union is an assault on individuals and a war on truth. As such, it is a war without honor. The only way to bust a union is to lie, distort, manipulate, threaten and always, always attack.”⁸ Reporter Hsiao-tse Chao described the atmosphere at her newspaper, the *Chinese Daily News*, which utilized the union-busting consultant the Burke Group, as “political terror.”⁹

One consultant’s training video is advertised to prospective clients to “prepare your organization to resist organizing drives.”¹⁰ Yet another firm specializes in helping its clients “minimize the threat of union organizing activity.”¹¹ A publication directed at human resources managers offers guidance on union avoidance and concludes with, “Unions continue to snare unsuspecting employers. Indeed, complacency is organized labor’s surest friend. If employers are to hold on to their cherished union-free status, they must develop and implement a union-prevention program that will protect them from assault.”¹²

Clearly, the 75 percent of employers that utilize union-busting consultants are not standing up for the rights of workers—they are doing everything possible to destroy those rights. These employers are focused on creating an atmosphere of fear by firing and otherwise punishing union activists, engaging in intimidating, mandatory meetings between employees and their supervisors, often

threatening to close the workplace if the union campaign is successful and using hyperbolic language to paint an image of unions as Public Enemy No. 1. As a result, the rights enshrined in ILO conventions 87 and 98 concerning freedom of association and collective bargaining are routinely violated.

Many businesses will stop at nothing to keep their workers from forming a union. The president of one company was revealed in a lawsuit to have said, “We need to do whatever we’ve got to do to get rid of this union, regardless of what it may cost us.”¹³ One union-busting firm is so certain it will defeat an organizing campaign, it guarantees that if the company doesn’t beat the union, it doesn’t have to pay the union-busting consultant any fees.¹⁴

American employers and their anti-union consultants have been fighting workers’ efforts to organize unions for decades, long before there ever was a mention of the Employee Free Choice Act. The anti-union rhetoric, the high costs of the consultants and the union-busting tactics employed during organizing campaigns make it clear that winning the “war” against the union, not protecting the rights of workers, is the ultimate goal. Levitt revealed the truth about the industry when he wrote, “The enemy was the collective spirit...I poisoned it, choked it, bludgeoned it if I had to, anything to be sure it would never blossom into a united workforce.”¹⁵ Nothing could be further from protecting democracy.

Employers have been incredibly successful at stymieing workers’ organizing efforts. The

percentage of workers belonging to unions in the United States was only 12.4 percent in 2008, compared with 31.8 percent in 1955. In the private sector, the situation is worse—fewer than eight out of every 100 workers belonged to unions last year. And, unlike in some countries where workers who do not belong to unions are still covered by collective bargaining agreements, this is not the case for the vast majority of nonunion workers in the United States. (In 2008, 1.7 million workers—just 1.3 percent of the workforce—who were not union members were nonetheless covered by collective bargaining.) This low collective bargaining coverage compares poorly to most other countries in the Organization for Economic Cooperation and Development. Public opinion polls show a huge pent-up demand for unionization by workers. But unfair labor laws coupled with virulent, anti-union corporate practices make joining a union an act of enormous courage, rather than the simple act of freedom of association.

America’s workers are facing very tough economic times—a financial market in shambles, massive unemployment, home foreclosures, unaffordable health care and shattered retirement security. Wages for working men and women have stagnated, while pay and bonuses for CEOs have skyrocketed. The Employee Free Choice Act will remove many unfair barriers to union representation and collective bargaining so workers can get their fair share and improve jobs and benefits for everyone. It will help workers by giving them the freedom to choose a union and bargain collectively so the economy can work for everyone again.

ENDNOTES

¹John Schmitt and Ben Zipperer, "Dropping the Ax: Illegal Firings During Union Election Campaigns, 1951-2007," Center for Economic Policy and Research, March 2009.

²John Logan, "Consultants, lawyers, and the 'union free' movement in the USA since the 1970s," *Industrial Relations Journal*, Volume 33, p. 198.

³Kate Bronfenbrenner, "Uneasy Terrain: The Impact of Capital Mobility on Workers, Wages and Union Organizing," U.S. Trade Deficit Review Commission, 2000.

⁴Jackson Lewis, "Union kNOw" newsletter, Summer 2001, available at <http://www.jacksonlewis.com/legalupdates/newsletters/pdf/74.pdf>

⁵Jackson Lewis, "Union kNOw" newsletter, September 2003, available at <http://www.jacksonlewis.com/legalupdates/article.cfm?aid=474>

⁶<http://www.doucartland.com/union-avoidance-article.htm>

⁷John Logan, "Consultants, lawyers, and the 'union free' movement in the USA since the 1970s," *Industrial Relations Journal*, Volume 33, referencing the materials of Projections Audiovisual Productions.

⁸Martin Jay Levitt with Terry Conrow, *Confessions of a Union Buster*, 1993.

⁹John Logan, "The Long, Slow Death of Workplace Democracy at the *Chinese Daily News*."

¹⁰Business Training Media.com, Inc., at <http://www.business-marketing.com/store/laborunion.html>

¹¹Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, at <http://www.bakerdonelson.com/Practices.aspx?NodeID=111>

¹²Jonathan A. Segal, "The 'U' Word; Union Avoidance Programs," *HRMagazine*, Volume V37, August 1, 1992.

¹³Steven Greenhouse, "How Do You Drive Out a Union? South Carolina Factory Provides a Textbook Case," *The New York Times*, Dec. 14, 2004.

¹⁴Labor Relations Institute, Inc., Guaranteed Winner, available at http://www.lrionline.com/union_avoidance/video1.htm

¹⁵Martin Jay Levitt with Terry Conrow, *Confessions of a Union Buster*, 1993.