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Workers need the Employee Free Choice Act

Employer intimidation tactics have denied Maine employees and others nationwide the right to union representation.

By MICHAEL HILLARD September 20, 2009

The Employee Free Choice Act will go before Congress this fall, after a business-financed, \$100 million national television campaign using former "Sopranos" actors.

The ads were designed to make voters think the legislation would allow unions to use organized crime tactics to intimidate workers in union campaigns. Nothing could be further from the truth.

From the 1930s through the early 1970s, American workers' rights to democratically choose whether to unionize were federally protected. Tens of millions of workers chose union representation as a means to improve wages, working conditions and benefits, with rates of union membership reaching nearly 40 percent. A middle class was born.

Factory workers in Maine's paper, textile, apparel and shoe mills joined unions and saw their lives improve dramatically.

Since the 1970s, American workers have effectively lost the right to choose to join unions. Retail and health care workers have attempted, with little success, to unionize. The unionization rate for private sector workers now stands at 7 percent (down from 39 percent) because government stopped protecting workers.

For 30 years, a new generation of workers has increased productivity but seen no overall wage increases. Their health and retirement benefits are at risk, and their economic security is in crisis.

American workers gained the right to petition for elections to certify union representation under the 1935 National Labor Relations Act. Union membership increased from 3 million to 15 million in a decade.

Over the next 30 years, innovative anti-union employers discovered that intimidation and scare campaigns could defeat workers in union elections.

Since the 1970s, a huge anti-union consultant industry, on which employers spend hundreds of millions of dollars each year, has developed. Consultants teach employers to exploit changes and loopholes in the law to defeat workers who engage in union organizing campaigns.

Employers learn how to wreak havoc on their employees during government-sponsored union elections through well-timed and sophisticated campaigns of legal and illegal intimidation.

In dozens of Maine workplaces, majorities of workers have recently sought to join unions but been defeated because of employer intimidation.

Tactics include firing or threatening to demote or fire union supporters; threatening to freeze wages or close the business (both are illegal, but federal penalties are minimal); and extreme, but legal, intimidation.

The most devastating form of legal intimidation is a one-on-one meeting between a supervisor and an employee. Management identifies vulnerable workers, pinpoints their worst fears and, in frequent meetings, makes it clear that their worst fears will come true if they vote for the union.

For example, a single mother may, she is told by managers, lose her flexibility to leave work and attend to a sick child. Managers falsely tell workers that if they unionize, their union will force them to strike and that the employer will have no choice but to replace them permanently.

Employers also challenge which employees can vote as a way to delay elections; pack the voting unit with friends, relatives and anti-union workers; organize "vote no" committees of anti-union workers; and form illegal company unions in the late stages of a campaign.

In the 1950s, when a strong majority of workers sought union elections, 70 percent succeeded, and virtually all received first contracts. During the past five years in Maine, only 17 percent succeeded. If workers are fortunate enough to win a union vote, consultants advise employers how to negotiate in bad faith.

Workers at Gorham House, a local health care facility, won their election in 2000 but have yet to receive a contract.

The Employee Free Choice Act is designed to give employees civil and economic rights they have lost under the weak National Labor Relations Act.

The Employee Free Choice Act has three provisions. It would give workers the choice of a majority signup or a traditional secret ballot election, popularly known as "card-check."

The TV ads paid for by employer groups that depict card check as an opportunity for union goons to intimidate workers into favoring the union are misleading. Two recent, detailed studies found no evidence of union or fellow employee intimidation in card-check campaigns.

Two other, equally important provisions of the proposal are stiffer penalties for employers that violate the law, and binding arbitration for certified unions if no contract is reached within 90 days.

Richard Freeman of Harvard University found in a 2007 survey that about 60 million non-union workers would choose union representation if it were available to them. But intimidation has denied a majority of workers nationwide, and thousands of Maine workers who have attempted unionization in recent decades, the right to choose union representation.

A 2000 Human Rights Watch Report said that because of failed U.S. labor law, our country does not meet international human rights standards. The Employee Free Choice Act, or a law closely modeled on it, is essential if we are to live up to our own democratic ideals.

Without it, another 30 years of workers lacking basic rights may pass, to the benefit of a rich few and the detriment of Maine's community as a whole.