

## More Effective Remedies Against Employer Coercion

*The Employee Free Choice Act helps ensure employee free choice by providing more effective remedies—including injunctive relief and monetary penalties—against employer coercion.*

**Management routinely coerces employees not to choose union representation.** Freedom of association—the right of employees to join a union and bargain collectively—is theoretically guaranteed by the National Labor Relations Act (NLRA), the U.S. Constitution and several international human rights agreements. However, as Human Rights Watch concluded in a 2000 report on U.S. compliance with international human rights standards, employees' freedom of association in the United States is routinely violated through employer coercion.<sup>1</sup>

- According to a survey of 400 National Labor Relations Board (NLRB) election campaigns in 1998 and 1999 by Dr. Kate Bronfenbrenner of Cornell University, employers illegally fire employees for union activity in at least 25 percent of all organizing efforts.<sup>2</sup>
- In 1998, roughly 24,000 employees won compensation for being illegally fired or punished for union activity, up from less than 1,000 in the 1950s and about 6,000 in 1969.
- Employees who are not actually fired fear losing their jobs if they support union representation. In one poll 79 percent of workers agreed that workers are “very” or “somewhat” likely to be fired for trying to organize a union.<sup>3</sup>
- According to the Bronfenbrenner survey, management forces employees to attend group anti-union presentations in 92 percent of all organizing efforts.<sup>2</sup>
- Management forces employees to attend one-on-one anti-union meetings with their own supervisors in 78 percent of all organizing efforts.<sup>2</sup>

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<sup>1</sup> Human Rights Watch, *“Unfair Advantage: Workers’ Freedom of Association in the United States Under International Human Rights Standards* (2000).

<sup>2</sup> Kate Bronfenbrenner, “Uneasy Terrain: The Impact of Capital Mobility on Workers, Wages and Union Organizing,” *U.S. Trade Deficit Review Commission* (2000).

<sup>3</sup> Brent Garren, “When the Solution Is the Problem: NLRB Remedies and Organizing Drives,” *51 Labor L. J.* 76, 78 (2000).

- Management mails anti-union leaflets to employees' homes in 70 percent of all organizing efforts.<sup>2</sup>
- In 71 percent of all organizing efforts at manufacturing companies, management threatens or predicts that the workplace will close if employees vote for union representation.<sup>2</sup>
- In 52 percent of all organizing efforts involving undocumented workers, employers threaten to call the Bureau of Citizenship and Immigration Services (formerly known as the Immigration and Naturalization Service).<sup>2</sup>

**Current remedies against employer coercion are ineffective.** The 2000 Human Rights Watch report concluded that protections for workers' freedom of association are inadequate under current law and that enforcement of current law is much too weak to deter unscrupulous employers from engaging in illegal conduct.

- The NLRB's penalties against illegal firing of union supporters are so minimal that employers treat them as a minor cost of doing business. Employers who illegally fire workers for union activity are required only to pay back wages minus what the worker has earned in the meantime—a sum that is often negligible. Moreover, the employer is usually not required to pay any compensation until years after the firing occurs.
- Though virtually cost-free to employers, illegal discharges are extremely effective in thwarting employees' efforts to form a union. Studies show that even when workers are reinstated, they are often so scarred that they do not resume organizing activities.<sup>4</sup> Many report bad treatment from their employer, and most leave their job within a year of reinstatement.
- The dramatic increase in illegal firing and discrimination against union supporters over the past decades is evidence of the ineffectiveness of current law remedies against employer coercion.
- For many other violations, such as illegal threats to close the workplace or move overseas if employees opt for union representation, the only remedy is a "cease and desist" order. Employers are required simply to post a blue and white sign announcing they have broken the law—again, usually years after the illegal threats or other illegal conduct occurred.

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<sup>4</sup> *Id.* at 80.

- Other coercive employer conduct, such as one-on-one mandatory meetings with supervisors warning against the dire consequences of union representation, is perfectly legal under current law.

**The Employee Free Choice Act increases penalties for illegal firing of employees.** Monetary penalties must be strong enough to change employer behavior and not simply be treated as another cost of doing business.

- The Employee Free Choice Act increases the monetary penalty for illegal discrimination (including discharge) against employees for union activity. While current law provides for the award only of back pay to victims of illegal discrimination, the Employee Free Choice Act provides for the award of three times the amount of back pay.
- The stronger monetary penalties of the Employee Free Choice Act apply only to illegal discrimination that occurs during organizing efforts or during the period when employees are seeking to negotiate a first contract.

**The Employee Free Choice Act levels the playing field with management by giving employees equal access to injunctive relief.** While current remedies for violation of worker rights are exceedingly weak under the NLRA, remedies available to employers are much more effective.

- Under current law, the NLRB is required to seek court orders to stop unions from engaging in certain prohibited activity. If the NLRB has reasonable cause to believe a union has engaged in such activity, it must seek injunctive relief against the union in federal district court.
- Under current law, employees do not have equal access to such “mandatory” injunctive relief against employers. Employees may request the NLRB to seek a court order to stop illegal employer conduct, such as the firing of union supporters, but these requests are granted only in rare circumstances.
- The Employee Free Choice Act levels the playing field by giving employees access to the same kind of injunctive relief now available to management.
- A court order putting fired union supporters back to work and stopping management from firing union sympathizers would be a very effective tool to prevent management from using intimidation to smother union organizing efforts.
- Under the Employee Free Choice Act, the NLRB must sue for injunctive relief if it has reasonable cause to believe allegations that an employer has illegally discharged or otherwise discriminated against an employee

for protected union activity, threatened to illegally discharge or otherwise discriminate against employees for protected union activity or engaged in any other violation of the NLRA that significantly interferes with employees' right to self-organization.

- The Employee Free Choice Act's provisions for equal access to injunctive relief are limited to violations that occur during organizing efforts or during the period when employees are seeking to negotiate a first contract.

**The Employee Free Choice Act provides for civil monetary fines to deter other forms of illegal employer conduct.** The Employee Free Choice Act provides for civil fines of up to \$20,000 for violations of employees' statutory right to join a union and bargain collectively that occur during organizing efforts or during the period when employees are seeking to negotiate a first contract. Such violations, for which there are often no effective remedies under current law, include the following:

- Threatening to close the workplace or move overseas if employees opt to form a union.
- Switching employees' shifts, reducing their pay, demoting them or giving them inferior work assignments to discourage unionization.
- Surveilling or spying on employees who support forming a union.
- Prohibiting employees from wearing union buttons.
- Illegally firing employees to discourage unionization.