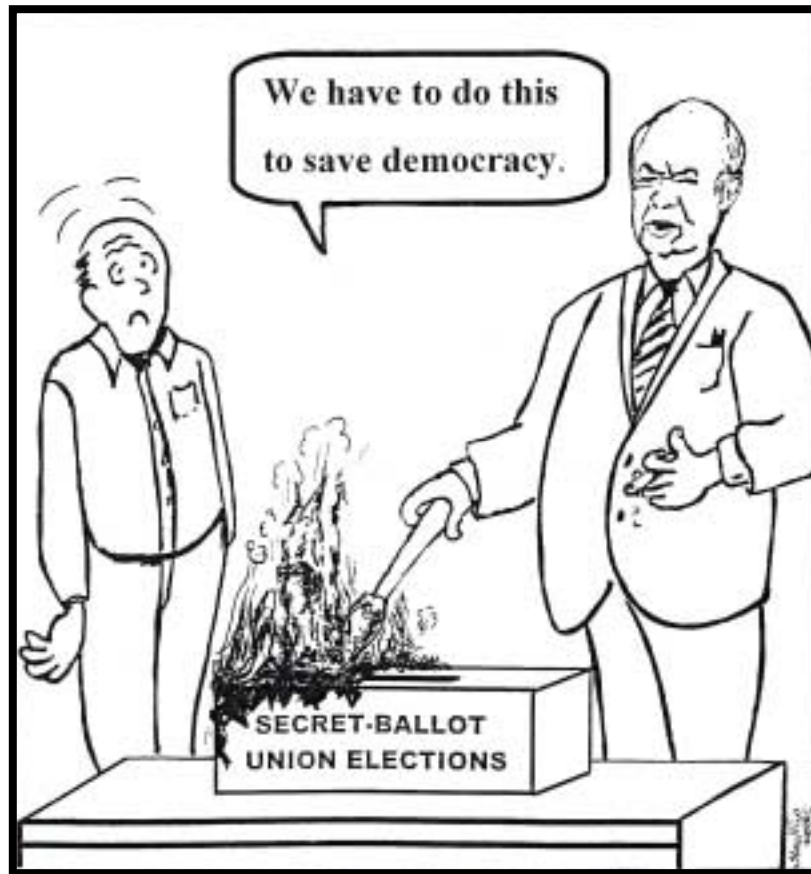


Big Labor's Cockamamie Campaign Against Secret-Ballot Elections For Workers



A Study by Stan Greer
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October 2003

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This fall, the AFL-CIO hierarchy is stepping up a nationwide propaganda campaign that is intended to make what is known in PR circles as a "tough sell" with the media and the public.

The campaign's counterintuitive message is that the secret-ballot vote, although normative for electing federal, state and local government officials everywhere in the United States, is an unreliable and unfair means of ascertaining whether a majority of employees in a federally-determined "bargaining unit" favor having a union as their "exclusive" bargaining agent in contract negotiations with their employer.

There is a strong case that an individual worker or group of workers should be free to negotiate either directly with their employer or through a union, even if a majority of employees in the "unit" disagree, regardless of the means through which the majority has been determined.¹

But AFL-CIO spokesmen and apologists do not question federal labor law's premise that, in the workplace, employees' individual preferences should in certain cases be trumped by "majority rule."

Instead, they attack secret-ballot votes because they supposedly frustrate the will of the majority!

In an August 30, 2003 speech to an academic group, AFL-CIO President John Sweeney actually claimed that when union organizers are required to seek monopoly bargaining power to negotiate wages, benefits, and other contract terms for a group of employees through a secret-ballot election, "democracy ends at the workplace door."²

¹ See, e.g., Charles W. Baird, "The Right to Work Issue: A Rebuttal of Hogler and Shulman." National Institute for Labor Relations Research, Springfield, Va., 1999 (nilrr.org/bairdresponse.htm).

² "Remarks by AFL-CIO president John J. Sweeney at the American Political Science Association Annual Meeting, Philadelphia, Labor Day Weekend," (aflcio.org/mediacenter/preptm/sp08302003.cfm).

As a remedy for the alleged evils they associate with workplace secret-ballot votes, which will be discussed shortly, Mr. Sweeney and his lieutenants support S.1513, legislation introduced by Big Labor U.S. Sen. Charles Schumer (D-N.Y.) that would effectively deny workers the freedom to vote in secret-ballot elections if union organizers were opposed.

Under S.1513, employers would be forced to recognize a union as the monopoly bargaining agent of all employees in a "unit" if 50.1% of them signed union authorization cards.³ Experience shows that many employees who would never cast a vote for a union into a secure ballot box will sign pro-union cards or petitions while union organizers are watching.⁴

In Decertification Drives, Union Bosses Insist on Secret Ballots

Forced-unionism apologists sometimes concede that, in principle, secret-ballot elections are fairer than "elections" in which your "vote" is monitored by agents of one of the opposing parties.

At a June 2002 hearing by the U.S. Senate Committee on Health, Education, Labor and Pensions, Kenneth Roth of the Washington, D.C.-based group Human Rights Watch was a favorite witness of union-label U.S. Sen. Ted Kennedy (D-Mass.), then the panel's chairman. Mr. Roth admitted: "Clearly, in an ideal world, secret-ballot elections would be preferable [to card checks]."⁵

And union officials themselves insist that unionized employees be given a chance to cast a secret-ballot vote before a union is *decertified*, even if most have already signed a petition opposing the union.

Indeed, the AFL-CIO hierarchy actually joined in a 1998 brief to the National Labor Relations Board (NLRB) that, approvingly citing court precedents, criticized decertification petitions and cards as "not comparable to

³ "Schumer, Top Union Officials Open New Legislative Front in Effort to Expand Unionization." September 3, 2003 press release (schumer.Senate.gov/SchumerWebsite/pressroom/press_releases/PR01976.html).

⁴ Recent examples are many of the hundreds of employees at the Dana Corporation auto-parts plant in Elizabethtown, Ky., who, after signing pro-union cards, were to have had the chance to vote for or against unionization in a September 10, 2003, secret-ballot election. Less than a month before the vote was to take place, the company and United Autoworkers (UAW) union officials announced its cancellation, and within a few days the union was granted monopoly-bargaining privileges based on cards allegedly signed by 61% of employees. Clearly, UAW bosses would not have courted controversy by engineering the cancellation of this election if they were expecting to win it.

⁵ "Workers' Freedom of Association: Obstacles to Forming a Union." A hearing before the Committee on Health, Education, Labor and Pensions, U.S. Senate, June 20, 2002 (access.gpo.gov/congress/senate/senate15sh107.html), p. 101.

the privacy and independence of the voting booth," and forcefully argued that the secret-ballot "election system provides the surest means of avoiding decisions which are 'the result of group pressures and not individual decision[s].'"⁶

But because of the extraordinary situation in which U.S. union organizers find themselves, tacitly argue Mr. Sweeney and Mr. Roth, the federal government should impose something analogous to martial law when it comes to *certifying* a union in the workplace: Elections as we normally understand them must be suspended for the time being in order to save "democracy" over the long haul.

Trying to justify such an extreme measure, AFL-CIO propaganda paints an extremely dire picture of alleged illegal activities by union opponents.

Key elements of this picture, however, are unsubstantiated and in conflict with known facts.

Other elements are not nearly as sinister as AFL-CIO propaganda paints them. Quite simply, there is no evidence of union foes' abuses that remotely calls for the drastic remedy of routine imposition of union monopoly bargaining through card checks.

AFL-CIO propagandists' most shocking claim is that "one-quarter" of private-sector employers who are confronted with union organizing campaigns "illegally fire union supporters." Mr. Sweeney and other forced-unionism apologists have repeated this charge in many forums.⁷

The sole source for this assertion is a paper by Dr. Kate Bronfenbrenner of Cornell University.⁸ Dr. Bronfenbrenner makes no bones about the fact that she is a forced-unionism cheerleader. And she tacitly acknowledges in her paper that her "documentation" for the "one-quarter" figure consists overwhelmingly of the uncorroborated claims of union organizers whom she surveyed by mail or over the phone.⁹

Mere compilation of self-interested claims made in privately conducted surveys may not even qualify as significant research, much less as compelling "evidence."

⁶ Joint Brief of the United Automobile, Aerospace, and Agricultural Implement Workers of America, the United Food and Commercial Workers, and the AFL-CIO in *Chelsea Industries and Levitz Furniture Co. of the Pacific, Inc.*, Nos. 7-CA-36846, 7-CA-37016 and 20-CA-26596 (NLRB).

⁷ One example is Mr. Sweeney's August 28, 2003 joint news conference with AFL-CIO Secretary-Treasurer Richard Trumka at the National Press Club in Washington, D.C. Excerpts including the relevant passage can be found on the AFL-CIO web site (aflcio.org/mediacenter/prsptm/pr08282003.cfm).

⁸ Kate Bronfenbrenner, "Uneasy Terrain: The Impact of Capital Mobility on Workers, Wages, and Union Organizing." Submitted to the U.S. Trade Deficit Review Commission, September 6, 2000 (ustrc.gov/research/bronfenbrenner.pdf), p. 44.

⁹ *Ibid.*, pp. 12-15.

Union Officials' Inaction Shows They Don't Believe Their Own Propaganda

Furthermore, records kept by the NLRB clearly show that union officials do not act as if illegal firings of union supporters frequently occur.

It is a case, to paraphrase Sherlock Holmes, of "the dog that didn't bark."

Responding to a recent question from the National Institute for Labor Relations Research, then-NLRB Information Director David Parker wrote back in a July 16, 2003 letter:

A review of elections since 10-1-99 shows that of a total of 14,078 . . . [NLRB-sponsored union certification and decertification] elections held, 448 or 3% involved objections. About half of the objections (225) were filed by unions or an intervenor (13), while 223 were filed by employers.

Objections are filed by unions or employers with the aim of overturning NLRB elections whose results they allege were tainted by irregularities.

Since an illegal firing is nearly always considered by the NLRB to constitute sufficient grounds for overturning an election, and unions have lost nearly half of the NLRB elections held in recent years, wouldn't union officials have filed objections in more than 1.6% of elections if workers had been fired in 25% of election campaigns? (And Dr. Bronfenbrenner's own research shows that, even among the 1.6% of elections where union objections were filed, many if not most, did not involve allegations of illegal firings.)¹⁰

Sometimes the NLRB remedy for the illegal firing of one or more union supporters is to order the employer to grant immediate recognition of the union as the employees' monopoly bargaining agent. Most often, the NLRB orders a new election.

Union officials would logically have a strong incentive to seek a new election in campaigns that involve illegal firings.

To start with, unions typically have already made a major investment in such campaigns. Two Princeton University researchers estimated in 2000 that

¹⁰ Ibid, p. 50.

union organizers spend an average of at least \$2300, and possibly far more, for each worker over whom they secure monopoly-bargaining privileges.¹¹

Therefore, when union organizers have a choice, it certainly doesn't make sense for them to walk away after a failed election (most likely a close one, since rogue employers would have little reason to fire union supporters during campaigns that weren't close) and seek to organize workers elsewhere.

Furthermore, as Dr. Bronfenbrenner herself observed in a September 16, 2003 e-mail message to the Institute, "campaigns with discharges are actually associated with higher win rates than campaigns without discharges."

One possible reason this is so is that illegal firings of pro-union workers mobilize and energize activism on Organized Labor's side. At any rate, securing a new election resulting from an official NLRB ruling that a worker was illegally discharged is bound to give a union organizing drive that is already near success a real shot in the arm.

The only plausible explanation, then, for why unions so rarely file objections alleging illegal firings after they lose an NLRB election is that such firings occur quite rarely -- probably in less than 2% of the elections unions lose. And in these rare cases the law already provides for rerun elections or mandated union certification as remedies.

Do Workers Have the Right to Know Unionization Will Sharply Increase Their Risk of Getting Laid Off?

Another misstatement made by Mr. Sweeney at the National Press Club as he summarized Dr. Bronfenbrenner's research is that half of private-sector employers confronted with organizing campaigns "illegally threaten[] to shut down, if their workers choose a union."¹²

That claim is flat-out wrong.

As Dr. Bronfenbrenner admits in the study itself, such employer threats are very rare. What Mr. Sweeney is tendentiously referring to, as Dr. Bronfenbrenner puts it, are campaign materials that include "newspaper articles, posters, and videos of union plants that have closed," and, more frequently, employer statements that, "if the employees voted in favor of union representation, the plant might shut down"¹³

¹¹ Henry S. Farber and Bruce Western, "Round Up the Usual Suspects: The Decline of Unions in the Private Sector," *Working Paper #437*. Princeton University Industrial Relations Section, April 2000 (irs.princeton.edu/pubs/pdfs/437.ps), p. 33.

¹² See Footnote 6.

¹³ See Footnote 7, p. vi.

Dr. Bronfenbrenner and Mr. Sweeney believe that employers should be legally barred from making such predictions, even if they manifestly constitute an honest opinion and not a threat.

What they ignore is the ample evidence that in key sectors like manufacturing, telecommunications, construction, and retail sales, private-sector unionized workers are, in fact, far more likely to lose their jobs as a result of shutdowns, bankruptcies, or mass layoffs than are union-free workers.

For example, between 1999 and 2002, the number of U.S. manufacturing jobs under union monopoly-bargaining control plummeted by 20.3% -- nearly double the 10.9% decline for nonunion manufacturing jobs.¹⁴

And the mass layoffs and shutdowns plaguing unionized manufacturing workers didn't start with the overall downturn in factory jobs that began at the end of the Clinton Administration.

During the 1992-99 economic boom, even as nonunion manufacturing jobs grew by 6.9%, unionized jobs in the sector dropped by 19.1%.¹⁵

To cite just one other example, according to pro-forced unionism Internet journalist Harry Kelber, since 1992 thousands of unionized supermarkets across the U.S. have shut down because customers have opted to patronize nonunion competition instead.¹⁶

The AFL-CIO hierarchy knows full well that, during a union organizing campaign, if workers don't hear evidence that unionization will sharply increase their risk of getting laid off from the employer, they in all likelihood won't hear it at all.

Therefore, union propaganda regarding employer "threats" of job losses is really an expression of the opinion that workers should be kept in the dark about such risks.

For John Sweeney and his lieutenants, it seems that preventing workers from acquiring information that might influence them to oppose a union is necessary to safeguard workplace "democracy."

¹⁴ Barry T. Hirsch and David A. Macpherson, "Union Membership and Earnings Data Book (2003 Edition)." Bureau of National Affairs, Washington, D.C., p. 14.

¹⁵ Ibid.

¹⁶ Harry Kelber, "Why Can't Any AFL-CIO Union Organize Even One of Wal-Mart's 4750 Stores?" *LaborTalk* column, October 8, 2003 (laboreducator.org/wlmrtorg.htm).

Freedom to Try to Influence How Other People Vote Is Protected by First Amendment

AFL-CIO propaganda simply assumes that employers have no right to try to persuade employees to vote against a union. Hence Mr. Sweeney considers it shocking that, according to Dr. Bronfenbrenner, "95% of private-sector employers fight" union organizing drives.¹⁷

A 2002 AFL-CIO briefing paper baldly asserted that "employers must be taken out of the decision making process about whether or not workers want to join together in a union."¹⁸

The paper went on to cite approvingly the opinion of pro-forced unionism academic Dr. Karl Klare:

[T]he employer has no rightful claim in moral or democratic theory to participate in . . . an election among employees as to how they wish to deal with the employer. The employer has no more right to do so than the Democrats have to participate in selecting the Republican candidates they will oppose in political elections (or vice versa).¹⁹

One hardly knows where to begin in dissecting the factual and logical flaws in these two sentences, which AFL-CIO propagandists unaccountably find persuasive.

In the first place, no one asserts that employers have the right to *vote* in an election over unionization, even though, to follow Dr. Klare's inept analogy, otherwise qualified citizens' right to vote in the primaries of parties to which they do not belong has repeatedly been upheld in court.

The relevant issue is whether employers have the right, if they don't resort to threats or bribes, to seek to influence how employees vote. Here again, citizens in general and elected officials in particular clearly have the right to seek to influence the outcome of primary elections even if they do not belong to the political party holding the election.

¹⁷ See Footnote 6.

¹⁸ "The Silent War: The Assault on Workers' Freedom to Choose a Union and Bargain Collectively in the United States," AFL-CIO, Washington, D.C., 2002 (aflcio.org/aboutunions/joinunions/howjoin/upload/vatw_issuebrief.pdf), p. 18.

¹⁹ Karl Klare, "The Right to Organize: A Basic Civil Right." Unpublished paper, 2002, p. 7.

Big Labor Complaints Regarding 'Captive-Audience' Meetings For Employees Reek of Hypocrisy

To argue that employers have no right to seek to influence how employees vote in a union election is akin to arguing that a President has no right to try to persuade voters to put members of his own party in control of the U.S. House and Senate.

In other words, to argue thus is simply to be absurd.

Moreover, the AFL-CIO hierarchy's self-purported position in favor of employer non-interference in union organizing campaigns is, in light of AFL-CIO unions' own recent practice, immensely hypocritical.

Since last year, one large AFL-CIO affiliated international union, the United Autoworkers, has sought and obtained a series of so-called "neutrality" agreements under which auto-parts firms like Johnson Controls, the Dana Corporation, Magna-Donnelly and Freightliner are *required* to intervene in union organizing drives *on the UAW's behalf*.²⁰

In addition to UAW officials, the hierarchies of the Union of Needletrades, Industrial and Textile Employees (UNITE) and the United Steelworkers of America (USW) union have been especially aggressive in seeking employer assistance in union organizing drives.²¹

Implementing their neutrality agreements, companies like Johnson Controls and Magna Donnelly have required employees to attend what are known as "captive-audience" meetings, during which company representatives "tell workers of the firm's support for unionization."²²

But of course, John Sweeney did not have these closed-door meetings in mind when he denounced such meetings before the National Press Club as an unconscionable interference with employees' decision making. In fact, AFL-CIO propaganda applauds employer intervention on the union's behalf.²³

In Mr. Sweeney's mind, employer intervention in union organization campaigns is "democratic" if it constitutes part of a monolithic message predetermined by the union.

²⁰ For more information on the deals between the UAW and the companies cited here as well as others, see nrtw.org -- the home page of the National Right to Work Legal Defense Foundation, and download the site's special section on "neutrality agreements."

²¹ Ibid.

²² "'Neutrality' Not Word For It," *Grand Rapids* (Mich.) *Press* editorial, July 19, 2003.

²³ Laureen Lazarovici, "Crafting a Voice @ Work," *America @ Work: Ideas, Info and Ammo for AFL-CIO Leaders and Activists*. February 2003, pp. 13-14.

However, if the employer presents a different point of view, that is "undemocratic"!

Compulsory Unionism Is the Real Threat to Employees' Freedom

By persistently railing about what turns out to be an imaginary epidemic of violations against employees' legally protected freedom to join unions, the AFL-CIO hierarchy detracts attention from the fact that, to a large extent, federal law doesn't even purport to protect employees' freedom *not* to join a union.

While U.S. Supreme Court precedents do prohibit firing employees for refusal to become formal union members, federal law at the same time authorizes and promotes the firing of union nonmembers who refuse to pay dues (euphemistically mislabeled as "agency fees") to their union monopoly-bargaining agent.²⁴

This is clearly a privilege for Organized Labor, not a consequence of "majority rule."

After all, under the 1932 Norris-LaGuardia Act, workers employed in a bargaining "unit" where a majority of their colleagues *oppose* union monopoly bargaining may not be compelled to contribute either dues or "fees" to an anti-union organization.

The National Institute for Labor Relations Research estimates that today there are more than seven-and-a-half million private-sector workers who, as a consequence of federal law, could be legally fired if they refused to pay any more union dues or "fees."

This, like government-imposed monopoly bargaining itself, constitutes a genuine, systematic threat to employees' freedom of choice.

As the Supreme Court of Maine succinctly stated in its 1955 ruling in *Pappas v. Stacey*, "Freedom to associate means as well freedom not to associate."

This points to a problem with the AFL-CIO hierarchy's campaign to protect workers' "freedom to form unions" that is more fundamental than its rampant misstatements and distortions:

As long as John Sweeney and company deny that the second freedom in *Pappas v. Stacey's* formula even exists when it comes to the workplace, their complaints about alleged violations of the first freedom in the formula cannot be taken seriously.

²⁴ See, e.g., *NLRB v. General Motors*, 373 U.S. 734 (1963).

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The National Institute for Labor Relations Research is an organization whose primary function is to act as a research facility for the general public, scholars and students. It provides the supplementary analysis and research necessary to expose the inequities of compulsory unionism.

The Institute is classified by the Internal Revenue Service as a Section 501(c)(3) educational and research organization. Contributions and grants are tax deductible under Section 170 of the Code and are welcome from individuals, foundations, and corporations. The Institute will, upon request, provide documentation to substantiate tax-deductibility of a contribution or grant.

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Nothing here is to be construed as an attempt to aid or hinder the passage of any bill before Congress or any state legislature.



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THE PROBLEM

Organized labor has had a profound economic and political impact on the institutions of American power. Yet the far-reaching ramifications of that impact are largely unknown to the public. Academic interest in labor unions and labor relations is at its lowest point in decades.

While there has been a notable proliferation of private interest groups in recent years, none has exposed the excesses of America's union establishment from an academic perspective. Consequently, not enough light has been shed on one of the few remaining forms of tyranny left in America: compulsory unionism.

THE NEED

Labor policy in America has not reflected the will of its citizenry for decades because Big Labor's support in the academic community has allowed it to control debate. As a result, labor unions have not been subjected to the same degree of scrutiny as their counterparts in the corporate world.

In many cases, the interests and concerns of Americans who support the right to work without compulsion are ignored for lack of an academic support structure. Freedom of association has diminished because its proponents frequently are without the analysis and research necessary to effectively make their case.

Obviously, there is an urgent need for an organization that will draw together scholars and economists to perform objective and revealing research into the practices of America's labor unions. The National Institute for Labor Relations Research is such an organization.

THE PROGRAM

1. The Institute's primary function will be to act as a research facility for the general public, scholars and students. It will provide the supplementary analysis and research necessary to expose the inequities of compulsory unionism.

2. It will publish monographs, brochures and briefing papers designed to stimulate research and discussion with easy-to-read summaries of current events. The Institute will also conduct nonpartisan analysis and study for the benefit of the general public.

3. It will render aid gratuitously to individuals suffering from government over-regulation of labor relations and will provide educational assistance to those individuals who have proved themselves worthy thereof.

It is high time that self-interested union officials be confronted with the facts on how their brand of unionism has failed to improve general conditions for workers. With an intensive program of study and education, the National Institute for Labor Relations Research intends to do just that.

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