



# Why ‘Card-Check’ Forced Unionism Is Economically Harmful

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**By Stan Greer, Senior Research Associate**

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## **About the Author**

Stan Greer serves as senior research associate for the National Institute for Labor Relations Research. Mr. Greer holds a bachelor's degree (1983) from Georgetown University in Washington, D.C., and a master's degree (1986) from the University of Pittsburgh.

## **About the Organization**

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.

## Executive Summary

For years, scientific opinion polls have shown that Americans overwhelmingly oppose federal labor laws that endow union officials with the power of so-called “exclusive” representation over all employees in a company unit, wherein union nonmembers are denied any right to bargain for themselves. But Organized Labor’s top priority in the 2007-2008 Congress, the inaptly named “Employee Free Choice” Act, would rewrite federal labor law to make it even easier for union officials to secure monopoly-bargaining privileges over employees.

Well aware that the American people oppose monopoly unionism, union officials are citing their legislation’s allegedly beneficial economic effects as the key reason for passing it. However, even a cursory look at the contrasting economic track records of states in which a relatively high share of employees are under union monopoly bargaining and states in which monopoly bargaining is relatively rare shows this case is phony.

The record shows that the prevalence of union monopoly bargaining is correlated with lower real incomes, higher living costs, slower growth in jobs and job benefits, and higher unemployment. The evidence is overwhelming that enactment of federal legislation that is designed to put millions of additional workers under union monopoly-bargaining control would be economically harmful, not beneficial.

If Congress really wants to bolster the U.S. economy and help employees and businesses, it should instead revise federal labor law to ensure that it respects the ability of each individual employee to choose whether or not to be represented by and furnish financial support for a labor union.

## Introduction: Big Labor Tries to ‘Sell’ Monopoly Unionism

Much that is written about American labor unions is misleading because it assumes they operate like other private, nonprofit organizations.

In key respects, this assumption is false. For example, affiliation with private organizations is, the vast majority of the time, a purely personal decision. But under federal labor law and the labor laws of most states, union affiliation is primarily a collective, rather than a personal, decision.

Under American traditions of limited government, your decision to contribute your household’s money to a charity, a political campaign, or a single-issue lobbying organization is made individually, or together with your spouse or solicitor. Your neighbors, fellow employees, or business associates may offer advice, but do not get a chance to vote on which private groups you support or don’t support.

But U.S. labor laws empower pro-union employees who constitute the majority within a government-delineated “bargaining unit” to force other employees within that unit who don’t want a union to accept a particular union as their “exclusive” (monopoly) bargaining agent in dealings with their employer. Furthermore, once a monopoly-bargaining agent is in place, it and the employer are legally authorized to agree to fire employees who refuse to pay monthly dues or fees to the union.

Apologists for current labor laws typically cite the “majority rule” principle as the rationale for forcing unwanted union monopoly bargaining and forced union dues or fees on employees who don’t wish to join a union. But under our constitutional system, majority rule normally controls only the affairs of government or the *internal* affairs of a private association. The invocation of majority rule to force unwilling persons into membership in or financial support for a private organization is not normally accepted.

For example, the decision by the majority of businesses based in a small town to join and pay dues to the Chamber of Commerce doesn’t give them the legal power, under any federal or state statute, to force the remaining businesses to join or pay dues.

Monopoly bargaining is well-entrenched as a matter of law, and has been for decades, but whether it is sound policy is another matter completely. In recent years, a number of allies of Organized Labor and former union officials have openly acknowledged doubts about whether monopoly bargaining, as currently authorized by federal and many state labor laws, is in workers’ best interest.<sup>1</sup>

Furthermore, opinion polls have shown for many years that the general public overwhelmingly opposes monopoly bargaining in principle.

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<sup>1</sup> See, e.g., “Toward a New Labor Rights Movement,” an article by law professor James Pope, former local textile workers union boss Peter Kellman, and former electricians union national organizing director Ed Bruno, *WorkingUSA*, Spring 2001, pp. 8-33, esp. p. 26.

For example, a December 2006 nationwide survey on the monopoly-bargaining issue, commissioned by the National Institute for Labor Relations Research and conducted by veteran pollster Del Ali and his firm Research 2000, posed the following question:

As you know, labor unions are permitted to represent all employees in a company unit. Do you believe that employees who do not want to be represented by a labor union should or should not have the right to bargain for themselves?

The scientific Research 2000 poll found that 81% of Americans who regularly vote in statewide elections believe that employees in unionized businesses who do not want to be union-represented should retain the right to bargain for themselves. Just 17% of regular voters in statewide elections believe employees should not have that right, while 2% are unsure.<sup>2</sup>

## Card-Check Bills Designed To Expand Monopoly-Bargaining System

Clearly, the American people are against monopoly bargaining. But Big Labor is vehemently for it. Not only that, union officials and their apologists want far more of it. In 2006, according to U.S. Labor Department data, 8.69 million private-sector workers were under union monopoly-bargaining control. The top item on Big Labor's legislative wish list for the 2007-2008 Congress is designed to enable union organizers to secure monopoly-bargaining power over millions of now-independent private-sector employees.

This measure has been introduced in the 2007-2008 Congress as H.R. 800 by pro-forced unionism Congressman George Miller (D-Calif.). Mr. Miller and Sen. Ted Kennedy (D-Mass.), who has indicated he will soon introduce a very similar, if not identical, measure, cynically label their legislation as the "Employee Free Choice" Act. The Miller measure currently has 234 House sponsors. In 2005 and 2006, a total of 215 House members and 45 senators sponsored nearly identical Miller/Kennedy legislation, introduced as H.R. 1696 and S. 842.

Key provisions in the Miller/Kennedy legislation, more accurately labeled as the Card-Check Forced-Unionism Bills, would effectively ban employee secret-ballot elections over unionization in the private sector, and replace such elections with so-called "card checks."

"Card-check" organizing is already a favorite Big Labor tactic, but as yet isn't mandated by federal law. It empowers union officials to force a business's employees to accept a union as their monopoly-bargaining agent solely through the acquisition of signed union authorization cards. Big Labor may resort to deceit or intimidation to get individual workers to sign themselves, and ultimately all of their nonunion fellow employees, over to

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<sup>2</sup> To obtain a brief report detailing the poll results and methodology, call the National Institute for Labor Relations Research at 703-321-9606.

union-boss control. Authorization cards are typically signed while workers are standing under the peering eyes of union organizers.

Law-abiding employers who do not want their independent-minded employees to be subject to union monopoly rule may currently insist that all affected employees at least get the chance to hear why unionization might not be in their best interest and to vote in a secret-ballot election before a union is granted “exclusive” bargaining privileges. But the Miller/Kennedy legislation would eliminate that small safeguard. Consequently, during unionization drives only the views workers express while being monitored by union officials would count.<sup>3</sup>

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.

In an August 2001 letter to Mexican government officials who oversee labor policy in the state of Puebla, Rep. Miller, the lead sponsor of the House version of the Card-Check Forced-Unionism Bill, and 15 other Big Labor congressmen and women wrote that in union recognition drives, “the secret ballot is absolutely necessary . . . .” Without the secret ballot, they explained, workers may be “intimidated into voting for a union they might not otherwise choose.”<sup>4</sup>

And in the U.S. as well as in Mexico, union officials 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 a 1998 brief to the National Labor Relations Board (NLRB) that, approvingly citing federal court precedents, criticized decertification petitions and cards as “not comparable to the privacy and independence of the voting booth.” The union lawyer-authored brief 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].’”<sup>5</sup>

As the National Institute for Labor Relations Research has previously pointed out, AFL-CIO and other union officials are not pushing hard to advance and ultimately enact the Miller/Kennedy bill out of a sincere, albeit bizarre, belief that card checks are somehow more fair than secret-ballot elections.<sup>6</sup>

Instead, Big Labor is obviously acting on the belief that enactment of Miller/Kennedy will enable union organizers to secure monopoly-bargaining power over millions, perhaps even tens of millions, of now-independent private-sector employees. Pro-forced unionism historian Jefferson Cowie, a Cornell University professor whose cheerleading for Miller/Kennedy has been cited approvingly on the main AFL-CIO web forum, has been especially frank about the intent of this legislation:

<sup>3</sup> Go to <http://thomas.loc.gov/home/multicongress/multicongress.html> and enter “Employee Free Choice Act” into the bill-name box to locate and review the 2007 Miller bill. See especially Sec. 2, “Streamlining Union Certification.”

<sup>4</sup> Letter to the Junta Local de Conciliación y Arbitraje del Estado de Puebla, August 29, 2001.

<sup>5</sup> 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).

<sup>6</sup> See [www.nilrr.org/Big%20Labors%20Cockamamie%20Campaign.pdf](http://www.nilrr.org/Big%20Labors%20Cockamamie%20Campaign.pdf) (“Big Labor’s Cockamamie Campaign Against Secret-Ballot Elections For Workers”) for details.

All [the] labor wonk stuff is important, but it overlooks the economic and political potential of meaningful labor law reform. . . . After what could be a sizeable increase in union density with EFCA [Miller/Kennedy], the rest of the progressive agenda will have a much easier time flowing with more voters, more money, more organization, . . . and more power.<sup>7</sup>

## Real Weekly Earnings and Disposable Income Negatively Correlated With Union Monopoly

In the eyes of union officials and their ideological champions, the goal of dramatically increasing the number of unionized employees is unquestionably noble. Therefore, they imply, no one should focus too long on the proposed means. But they have a big problem. By an overwhelming majority, employees don't support increased unionization at any cost.

For example, a June 2005 nationwide telephone survey of employees, covering a number of labor-relations topics and conducted by pollster John Zogby, found that employees oppose efforts to prevent employers from saying or doing "anything that might discourage employees from seeking union representation." By nearly a two-to-one margin, employees agreed that during union organizing campaigns "employers should be able to provide employees information about unions and the potential impact of unionizing" on their jobs.<sup>8</sup>

Union officials and other forced-unionism apologists have thus been unable to convince a majority of employees, let alone the general public, to support eliminating secret ballots or the employer's perspective on unionization, pro- or con-, from the union campaign process. Now they are trying to shift the focus of the debate to the alleged economic benefits that Americans generally would derive if millions of additional workers were forced to accept a union as their monopoly-bargaining agent.

For example, Cowie glibly claims that enactment of Miller/Kennedy would mean "a better day for the working poor," increased "access to health care," and even perhaps a "new blue-collar golden age."<sup>9</sup>

Unfortunately for Cowie and for the union hierarchy, their claims about the alleged economic benefits of increasing the number of workers subject to union monopoly bargaining are no more convincing than their case that secret-ballot elections in the workplace are "unfair" and must be eliminated. To the contrary, considerable evidence suggests that a new federal

<sup>7</sup> Jefferson Cowie, "For the Long Run: The Employee Free Choice Act," first by CommonDreams.org on April 27, 2006.

<sup>8</sup> Christian W. Peck, "The Attitudes and Opinions of Unionized and Non-Unionized Workers Employed in Various Sectors of the Economy Toward Organized Labor" Zogby International, August 2005, p. 30. Visit <http://www.psrp.org/info/zogby2005.jsp> to obtain a copy of the entire survey, which was commissioned by the Public Service Research Foundation, based in Vienna, Va.

<sup>9</sup> See Footnote 7.

law promoting monopoly unionism would actually lower real earnings and household incomes, and hinder job creation.

Some of the potential harm that would be wrought by Miller/Kennedy can be seen by contrasting real earnings levels, job growth, and other key economic indices in states where private-sector monopoly bargaining is most prevalent with indices in states where it is least prevalent.<sup>10</sup>

In 2005, cost of living-adjusted average weekly earnings in the 14 states with 10% or more of private-sector employees subject to union monopoly bargaining were \$680, roughly \$52 less than in the 17 states with 5% or less of private-sector employees under Big Labor control. That comes to a \$2700-a-year disadvantage for full-time employees in states with high monopoly-bargaining density.<sup>11</sup>

Residents of low monopoly-bargaining-density states also enjoy higher real per capita disposable income.<sup>12</sup> When adjusted for cost of living, 2005 disposable per capita income in the 17 states with the lowest share of private-sector workers under monopoly bargaining was \$30,296, compared to just \$27,623 in the 14 states where Organized Labor enjoyed the most monopoly power.<sup>13</sup>

Further confirmation that real incomes are negatively correlated with the prevalence of union monopoly control over the workforce is furnished by a “conservative adjustment” of official federal poverty rates calculated in 2006 for the San Francisco-based Public Policy Institute of California (PPIC) to account for regional differences in living costs.<sup>14</sup>

<sup>10</sup> For data on overall and private-sector union density levels in the 50 states, see various editions of the annual *Source Book on Collective Bargaining: Wages, Benefits, and Other Contract Issues*, published by the Bureau of National Affairs. Such data are always located either at the end of the annual review section or at the end of the economics section.

<sup>11</sup> For mean weekly earnings in the 50 states, see Barry T. Hirsch and David A. Macpherson, *Union Membership and Earnings Data Book: Compilations from the Current Population Survey (2006 Edition)*, Bureau of National Affairs, Washington, D.C., 2006, pp. 30-35. For the 2005 interstate cost-of-living index used to adjust weekly earnings, see Kendra A. and Harold A. Hovey, *CQ's State Fact Finder 2006*, CQ Press, Washington, D.C., 2006, p. 51. For the total number of non-farm employees in each state, see U.S. Department of Labor, *Employment and Earnings*, May 2006 issue, pp. 179, 183, 187, 191, 195 and 199. One low monopoly-bargaining-density state, New Hampshire, is left out of this analysis, because the *CQ State Fact Finder* has no cost-of-living index for it. Since the Granite State has a relatively small number of employees, its inclusion could not substantially change the result.

<sup>12</sup> The Bureau of Economic Analysis calculates disposable personal income as “personal income less personal tax and nontax payments.” A higher share of personal income is disposable in low monopoly-bargaining-density states, partly because state and local tax burdens are generally lower than in high monopoly-bargaining-density states. Another important factor is that progressive income tax rates are levied on nominal, rather than real, incomes. According to the cost-of-living index cited in Footnote 11, living costs are on average 22.5% higher in the 14 states with the highest share of unionized workers than they are in the 17 states with the lowest share. Therefore, a family in one of the low-density states that has the same spendable pre-tax income as a similar family in a high-density state will typically have to fork over a significantly smaller share of its income to the federal government.

<sup>13</sup> Disposable personal income data are found in the U.S. Census Bureau's *Statistical Abstract of the United States: 2007*, p. 439. They are adjusted for cost of living according to the index cited in Footnote 11. Once again, New Hampshire is omitted. To calculate aggregate average per capita disposable income for low and high monopoly-bargaining-density states, states are weighted according to their 2005 population. See <http://www.census.gov/popest/states/NST-ann-est.html> on the Census Bureau (U.S. Department of Commerce) web site to find state population data for every year from 2000 to 2006.

<sup>14</sup> Deborah Reed, “Poverty in California: Moving Beyond the Federal Measure,” *California Counts*, May 2006, published by the Public Policy Institute of California.

Economist Deborah Reed and two research assistants calculated poverty rates that take into account the great disparities in housing costs in the 50 states as part of an effort to provide a more realistic assessment of the poverty problem in California than the one furnished by federal data that do not factor in cost-of-living differences.

Reed's data show that the aggregate, cost-of-living adjusted poverty rate over the 2002 to 2004 period for low monopoly-bargaining-density states was 12.3%, compared to 12.9% for high monopoly-bargaining-density states.<sup>15</sup>

## Private-Sector Job Growth More Than Twice as Fast in Low Union-Monopoly States

The negative correlation between Big Labor coercive power and real incomes is consistent. This evidence is devastating to card-check proponents' oft-repeated claims that expanding the number of employees under union monopoly control is key for maintaining economic prosperity. Furthermore, an array of indices that measure growth indicate that the economic damage inflicted by forced unionism is far more severe than income data alone would reveal.

To compare growth rates, it is appropriate to look at the subsequent performances of the states that had the lowest and highest monopoly-bargaining densities in the past.

Over the decade ending in 2005, the 16 states that started out in 1995 with under 7% of their private-sector workers subject to union monopoly bargaining enjoyed an aggregate private-sector job growth of 21.2%, more than double the combined 8.5% growth of the 13 states with 1995 monopoly-bargaining densities of higher than 13%.<sup>16</sup>

And the vast majority of new jobs created in low-union-monopoly states are highly productive, allowing employers to offer important benefits like health insurance and at the same time be duly rewarded for risking capital. Between 1995 and 2005, the number of citizens in low-union-monopoly states covered by private, employment-based health insurance increased by 16.9%. Coverage expanded by just 3.4%, barely one-fifth as much, in high-union-monopoly states.<sup>17</sup>

<sup>15</sup> Although cost of living-adjusted poverty rates for selected states are cited in Reed's published study, data for all 50 states are not included. However, the PPIC kindly furnished the National Institute for Labor Relations Research with the full list of adjusted poverty rates calculated by Reed.

<sup>16</sup> Go to <http://data.bls.gov/cgi-bin/dsrv?sm> on the Bureau of Labor Statistics web site to access private-sector employment data for all 50 states.

<sup>17</sup> See <http://www.census.gov/hhes/www/hlthins/historic/index.html>, Table HI-4, for U.S. Census data on private, employment-based health insurance in all 50 states between 1987 and 2005.

In addition to enjoying faster long-term growth, low-union-monopoly states are generally better able to weather the storms of economic downturns and even recoveries. From 2000 to 2003, when the nation as a whole was hit by a slowdown, a recession, and what at

first seemed to be a “job-loss” recovery, private-sector payroll jobs in high-union-monopoly states fell by more than 1.5 million, or 3.2%. But payroll employment in low-union-monopoly states fell by fewer than 500,000, or 1.4%.<sup>18</sup>

Not surprisingly, by 2003 the average unemployment rate in the states with the lowest share of private-sector workers under union monopoly control was significantly lower than in the states with the highest share: 5.7% vs. 6.4%.<sup>19</sup>

The gap would undoubtedly have been far larger had not hundreds of thousands of job seekers recently moved out of high-union-monopoly states to seek opportunities where Big Labor wields less coercive control over the labor market. Between April 2000 and July 2003, high-union-monopoly states lost a net of more than 1.1 million employees and their family members and other citizens to other states. Meanwhile, a net of nearly 1.3 million employees and other citizens moved into low-union-monopoly states.<sup>20</sup>

## Equal Protection For Right Not to Join a Union Makes Moral and Economic Sense

Current federal labor policy strongly discourages employers from withdrawing a union’s monopoly-bargaining privilege simply because a majority of employees have signed a petition or cards indicating they no longer wish to be union-represented.<sup>21</sup> That’s why employers who don’t wish to be hauled before the NLRB routinely file for an employee secret-ballot vote instead of heeding requests from a majority of employees to withdraw union recognition.

As we have seen above, Big Labor’s use of card checks for the purpose of obtaining monopoly-bargaining privileges is not similarly discouraged under current law. As long as the employer acquiesces, it is encouraged. The Miller/Kennedy bill, which is designed to expand sharply Big Labor’s use of card checks for the purpose of obtaining monopoly-bargaining privileges, represents another large step in the direction away from equal protection for the individual employee’s right to join or not join a union.

In contrast, legislation introduced in the 2005-2006 Congress as H.R. 874 and S. 1173 by the recently deceased Congressman Charlie Norwood (R-Ga.) and Sen. Jim DeMint (R-S.C.), respectively, is a step toward equal protection. It would require that private-sector

<sup>18</sup> See Footnote 16.

<sup>19</sup> U.S. Department of Labor, *Employment and Earnings*, May 2004 issue, p. 199.

<sup>20</sup> U.S. Census Bureau, “Cumulative Estimates of the Components of Population Change for the United States and States: April 1, 2000 to July 1, 2003” (<http://eire.census.gov/popest/data/states/tables/NST-EST2003-04.php>), December 18, 2003 news release.

<sup>21</sup> See *Levitz Furniture Co. of the Pacific, Inc.*, 333 NLRB 717 (2001) ([www.nlr.gov/nlr/shared\\_files/decisions/333/333-105.pdf](http://www.nlr.gov/nlr/shared_files/decisions/333/333-105.pdf)).

unions clear the hurdle of a secret-ballot election before they are granted monopoly-bargaining privileges. But the National Right to Work Act (H.R. 697), introduced in the 110th Congress last month by Rep. Joe Wilson (R-S.C.), represents a much more fundamental change in labor policy. It would protect employees' unconditional right to refuse to join or pay dues or fees to an unwanted union, just as the right to join and pay dues is already protected by current law.<sup>22</sup>

While the record shows that compulsory union membership and dues as well as union monopoly bargaining are correlated with lower real incomes, higher living costs, slower growth in jobs and job benefits, and higher unemployment, the forced-unionism issue is fundamentally one of freedom: Should federal labor law respect the ability of each individual employee to choose whether or not to be represented by and furnish financial support for a labor union?

Poll after poll has shown that nearly four out of five Americans support the individual employee's Right to Work regardless of his or her union affiliation.<sup>23</sup>

Union officials who disagree should at least be willing to offer a straightforward explanation why that's based on principle, instead of making unsupported and false claims about the economic impact of union monopoly control over the workplace.

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<sup>22</sup> Go to <http://thomas.loc.gov> and enter H.R. 697 to review the Wilson bill. Click at "Search Multiple, Previous Congresses" and enter H.R. 874 and S. 1173, 109<sup>th</sup> Congress, to review the Norwood-DeMint legislation.

<sup>23</sup> See, e.g. "Right to Work's Public Support Hits New High," ([www.nrtwc.org/nl/nl-53.pdf](http://www.nrtwc.org/nl/nl-53.pdf)), *National Right to Work Newsletter*, April 2004, p. 3.



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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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