



---

# FACT SHEET

---

## National Institute for Labor Relations Research

5211 Port Royal Road, Suite 510 • Springfield, VA 22151 • Phone: (703) 321-9606 • Fax: (703) 321-7342 • research@nilrr.org • www.nilrr.org

January 4, 2006

## **Big Labor-Funded Study Deeply Flawed** **Academic Apologists For Top-Down Organizing Ignore Basic Facts, Twist Logic**

Recently, AFL-CIO agents across America have been breathlessly promoting a study of union organizing campaigns issued by the University of Illinois at Chicago's Center for Urban Economic Development.

The study was prepared by urban planning and policy professor Nik Theodore and by researcher and former Service Employees International Union (SEIU) staffer Chirag Mehta for the Organized Labor-founded and financed lobbying group American Rights at Work.

Union officials love the Theodore-Mehta study, entitled "Undermining the Right to Organize: Employer Behavior During Union Representation Campaigns," because it endorses enactment of a nationwide "card check" law designed to help Big Labor acquire "exclusive" (monopoly) bargaining privileges over millions of now-independent employees.

### **Big Labor Has Responded to Growing Employee Resistance to Unionization by Pushing For Card Checks, 'Neutrality'**

Under current federal laws, roughly nine million private-sector employees already are compelled to allow a particular union to negotiate their pay, benefits and working conditions. For as long as they keep their jobs, employees who would prefer to bargain for themselves or be represented by another union have no say as individuals in how they will be represented.

In previous decades, U.S. labor policy at least recognized that Big Labor's power to bargain on behalf of workers who choose not to join a union, as well as those who do, is extraordinary. That's why union officials normally had to clear the hurdle of a secret-ballot election before receiving monopoly-bargaining privileges.

But in recent years, employees have, for a number of reasons, some of which will be discussed below, become much less apt to vote for unionization. In response, Big Labor is resorting more and more frequently to coercive, top-down organizing tactics aimed at securing so-called "card check" agreements.

*(continued on page 2)*

(page 2)

Union officials pressure employers to grant them monopoly control over employees through card collection alone by battering them with negative PR blitzes, costly and embarrassing lawsuits, strikes, stockholder actions, and political interventions. Employers who succumb to the pressure may help union organizers collect cards by forcing employees to sit through one-sided presentations extolling unionization, as well as by giving union organizers sweeping access to company premises and employees' home addresses and phone numbers.<sup>1</sup>

The Theodore-Mehta study and the AFL-CIO officials who are touting it have no problem whatsoever with employers who attempt in these ways to influence employees to support unionization. But at the same time, Theodore-Mehta accuses employers who seek, even through unquestionably legal methods, to influence employees to vote against unionization of "undermining" employees' right to organize.

This is fundamentally flawed logic. It's like saying that, when Ford pays for an advertising campaign designed to persuade people to buy Ford cars and trucks, it is somehow "undermining" people's right to buy GM cars and trucks.

To justify the selective crackdown it recommends on employers' legal rights under the First Amendment, Theodore-Mehta paints an extremely dire picture of alleged *illegal* activities by forced-unionism opponents. Key elements of this picture, however, are unsubstantiated and in conflict with widely known facts.

### **'Campaigns With Discharges Are Actually Associated With Higher [Union] Win Rates Than Campaigns Without Discharges'**

Theodore-Mehta's most shocking claim is that, in its sample of recent union organizing campaigns in the Chicago metropolitan region, 30% of employers "fired workers when they engaged in union activities."<sup>2</sup>

Employers who discharge or suspend workers *for engaging* in union activity violate Section 8(a)(3) of the National Labor Relations Act (NLRA). However, firing or laying off workers who happen to have engaged in union activity for misconduct or poor performance or for purely economic reasons is, of course, completely legal. Theodore-Mehta dodges the issue of whether or not firings were illegal or improper by writing "when they engaged" instead of "for engaging."

But Theodore-Mehta has even more fundamental problems than this equivocation.

The claim that 30% of employers fired pro-union workers for any reason, legitimate or not, lacks any credibility when scrutinized. First of all, the primary source for it is the mostly uncorroborated

---

<sup>1</sup> See, e.g., "Testimony of Clarice Atherhold, Dana Corporation Employee." U.S. Senate Appropriations Committee, Labor-HHS Subcommittee Field Hearing on the Employee Free Choice Act, Harrisburg, Pa., July 16, 2004 -- <http://www.appropriations.senate.gov/subcommittees/record.cfm?id=224897>. Also see "Testimony of Daniel V. Yager, Senior Vice President and General Counsel LPA, the Labor Policy Association." U.S. House Education & the Workforce Committee, Subcommittee on Workforce Protections, Washington, D.C., July 23, 2002 -- [www.hrpolity.org/memoranda/2002/02-88\\_Yager\\_Testimony.pdf](http://www.hrpolity.org/memoranda/2002/02-88_Yager_Testimony.pdf) -- for details on how Organized Labor's "corporate campaigns" and neutrality agreements work.

<sup>2</sup> Nik Theodore and Chirag Mehta, "Undermining the Right to Organize: Employer Behavior During Union Representation Campaigns." American Rights at Work, December 2005, p. 5. Visit <http://araw.org/resources/studies.cfm> to download a copy of the study.

(page 3)

claims of union organizers interviewed by the authors. Mere compilation of self-interested claims made in privately conducted surveys may not even qualify as significant research, much less as compelling “evidence.”

As Theodore-Mehta ultimately concedes, “unions filed charges in fewer than half of the cases” in which, according to their union organizer sources, workers were discharged. Moreover, “[i]n most cases where an 8(a)(3) charge was filed, the Board either dismissed the union’s charge” or formally ruled against the charge.<sup>3</sup>

Theodore-Mehta further claims that the reason the unions in its sample didn’t file more 8(a)(3) charges with the National Labor Relations Board (NLRB) is because such cases rarely succeed. In fact, nearly 90% of unfair labor practice (ULP) charges over alleged illegal discharges in 2004 were settled when the employer, without admitting that the firing was illegal in the first place, offered to reinstate the employee. The settlements typically provided employees with backpay as well.<sup>4</sup>

Theodore-Mehta’s own examination of the NLRB records concerning the organizing drives they researched indicates, therefore, that illegal firings and layoffs were quite rare. Apparently, a number of the union organizers interviewed by Theodore-Mehta have faulty memories.

But there is yet another, even bigger flaw in Theodore-Mehta’s attempt to concoct a rationale for mandatory card checks.

The fact is, overwhelming evidence indicates that any employer who would fire or lay off employees as a means of resisting unionization is shooting him or herself in the foot. Labor-management relations scholars of otherwise widely disparate views agree about this matter. On one end of the spectrum is pro-forced unionism Cornell professor Kate Bronfenbrenner.

Dr. Theodore and Mr. Mehta thank Dr. Bronfenbrenner for “reviewing the design of the research methodology” of their study on their acknowledgements page and go on in their forward to say their new study “complements” her “seminal” 2000 study “Uneasy Terrain.”<sup>5</sup> But unlike Dr. Bronfenbrenner, Dr. Theodore and Mr. Mehta don’t seem to grasp, as she observed in a September 16, 2003 e-mail message to the National Institute for Labor Relations Research, that “campaigns with discharges are actually associated with higher [union] win rates than campaigns without discharges.”

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

Nearly a decade earlier, management consultant Howard V. Knicely, citing Philadelphia Teamster boss John Morris and a survey of union organizers commissioned by the AFL-CIO, made

---

<sup>3</sup> *Ibid*, p. 19.

<sup>4</sup> *Sixty-Ninth Annual Report of the National Labor Relations Board for the Fiscal Year ended September 30, 2004*, p. 207. Visit [http://www.nlr.gov/nlr/shared\\_files/brochures/Annual%20Reports/AnnualReports.asp](http://www.nlr.gov/nlr/shared_files/brochures/Annual%20Reports/AnnualReports.asp) to obtain a PDF copy.

<sup>5</sup> Kate Bronfenbrenner, “Uneasy Terrain: The Impact of Capital Mobility on Workers, Wages, and Union Organizing.” Submitted to the U.S. Trade Deficit Commission, September 6, 2000. See <http://www.ustre.gov/research/bronfenbrenner.pdf> to access this study.

(page 4)

essentially the same point as Dr. Bronfenbrenner in prepared testimony for the Dunlop Commission, established by then-U.S. Labor Secretary Robert Reich.<sup>6</sup> Dr. Bronfenbrenner, Mr. Knically and others have explained that illegal firings of pro-union workers mobilize and energize activism on Organized Labor's side.

If the end results of illegal firings are overwhelmingly for the employee or employees to be reinstated, with backpay when warranted, and for the odds of the union prevailing in an NLRB election to rise significantly, then why should mandated card checks be a remedy for such firings? There is no logical reason.

In addition to wildly misrepresenting the facts about illegal firings in union organizing campaigns, Dr. Theodore and Mr. Mehta are deceptive, to the say the least, in their claim that 49% of the employers in their sample "threatened to close or relocate all or part of the business if workers elected to form a union."<sup>7</sup>

As Dr. Bronfenbrenner's study "Uneasy Terrain" readily admits, actual employer threats are in reality very rare. What Theodore-Mehta is tendentiously referring to are statements by employers or managers that, if the employees voted for unionization, the business might shut down. Distributing copies of newspaper articles or showing videos about unionized firms that have in fact closed down is also a "threat," according to Theodore-Mehta.

By Theodore-Mehta's own account, in all the examples of "threats" they cite, "the employer was careful not to make the explicit connection between voting for unionization and the threat to close or relocate the business."<sup>8</sup>

But Dr. Theodore and Mr. Mehta believe that employers should be denied, by mandatory card checks or by quick-snap elections, the opportunity to predict that the business may have to lay off employees, shut down, or relocate, even if the prediction manifestly constitutes an honest opinion and not a threat.

What the study ignores is the ample evidence suggesting that, in key sectors like construction, telecommunications, manufacturing, and 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 2004, the number of U.S. construction jobs under union monopoly-bargaining control fell by 5.1% -- even as nonunion construction jobs *increased* by 25.8%.<sup>9</sup> The union organizing campaigns examined by Theodore-Mehta were heavily concentrated in this sector.

Similarly, in driver/sales and truck driving, unionized jobs across the U.S. fell by 20.9% over the past five years, but nonunion jobs increased by 2.1%.<sup>10</sup>

---

<sup>6</sup> Mr. Knically's 1994 statement appears as Appendix A to the testimony of Daniel Yager in "Workers' Freedom of Association: Obstacles to Forming a Union," a hearing before the U.S. Senate's HELP Committee, Washington, D.C., June 20, 2002, see esp. pp. 63-64. Go to <http://www.access.gpo.gov/congress/senate/senate15sh107.html> for the transcript.

<sup>7</sup> *Supra*, Footnote 2, p. 5.

<sup>8</sup> *Ibid*, p. 18.

<sup>9</sup> Barry T. Hirsch and David A. Macpherson, *Union Membership and Earnings Data Book (2005 Edition)*. Bureau of National Affairs, Washington, D.C., p. 48, 89.

<sup>10</sup> *Ibid*, pp. 66, 107.

(page 5)

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.<sup>11</sup>

Although there is considerable evidence suggesting that unionization increases employees' risk of getting laid off,<sup>12</sup> union officials know full well that during an organizing drive, if employees don't hear about this evidence from their employer, they in all likelihood won't hear about it at all.

Therefore, when Dr. Theodore and Mr. Mehta bemoan employer "threats" of job losses, they are actually expressing their opinion that workers should be kept completely in the dark about any and all such risks.

But the vast majority of employees don't agree with Theodore-Mehta that employers who provide them with information that may influence them to oppose a union are interfering with their right to join a union. And even a majority of union members don't believe workplaces should be unionized through card checks.

### **'I Would . . . Want to Hear All Sides of the Story, Not Just the Union's Side'**

A June 2005 nationwide telephone survey of employees, commissioned by the Vienna, Va.-based Public Service Research Foundation (PSRF) and conducted by world-renowned pollster John Zogby, covered a number of labor-relations topics, including 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 "employers should be able to provide employees information about unions and the potential impact of unionizing on their jobs."<sup>13</sup>

The Zogby firm's report on this survey did not provide a cross-tabulation of all union members on this survey question. But an earlier Zogby survey, commissioned by the Midland, Mich.-based Mackinac Institute, did ask a sampling of union members about card checks.

By a 53% to 41% majority, with the rest undecided, union members themselves rejected the notion that having "union organizers ask workers to sign their name on a card if they want a union" was "the fairest way to decide on a union."<sup>14</sup>

Most workers, union and nonunion alike, evidently agree with the view expressed by Pittsburgh hotel worker Faith Jetter at a May 2004 Capitol Hill press conference addressing the perils of neutrality and card check schemes:

"I would . . . want to hear all sides of the story, not just the union's side."<sup>15</sup>

---

<sup>11</sup> Harry Kelber, "Why Can't Any AFL-CIO Union Organize Even One of Wal-Mart's 4750 Stores?" *LaborTalk* column, October 8, 2003. Visit <http://finance.groups.yahoo.com/group/gangbox/message/13286> to download a cached copy.

<sup>12</sup> A current example is the auto industry, where union-free "transplant" firms like Toyota and Nissan are adding U.S. jobs, but domestic unionized automakers, especially General Motors and Ford, are cutting U.S. jobs by the tens of thousands.

<sup>13</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.psr.org/info/zogby2005.jsp> to obtain a copy of the entire survey.

<sup>14</sup> "Checking the Premises of 'Card Check.'" *Michigan Education Report*, Mackinac Center for Public Policy, July 20, 2004, Table 3. Go to <http://www.educationreport.org/print.asp?ID=6704> to review the poll.

(page 6)

As yet another Zogby poll, this one commissioned by PSRF and conducted in February 2004, has shown, employees may oppose unions in general or a particular union for a variety of reasons in addition to the potentially negative impact on their job security.

Employees may regard union officials seeking to organize their workplace as corrupt, excessively political, coercive, disruptive, or in conflict with their religious beliefs. Employees may oppose unionization for still another reason or for a combination of reasons.<sup>16</sup>

Eager to see millions of additional employees herded into unions, Dr. Theodore, Mr. Mehta and other apologists for monopoly unionism want effectively to gag employers to prevent them from sharing with employees, in non-coercive ways, reasons why they may not wish to have a particular union as their monopoly-bargaining agent.

That policy change would clearly benefit union officials by giving them more power and dues revenue, but it would not benefit employees who want to make an informed choice.

If union officials and their academic allies are sincerely determined to bring more workers into unions, they ought to confront the genuine failures and abuses associated with monopoly unionism -- failures and abuses of which millions of employees are already aware -- rather than try to prevent employers from talking about them.

To sell workers on the merits of unionization, union organizers need also to spend more time building bonds with them rather than attacking their employers. As AFL-CIO Executive Vice President Linda Chavez-Thompson suggested a decade ago, "If we can go out into . . . communities and show [union nonmembers] that we are also members of those communities, they will want to join unions."<sup>17</sup> Ms. Thompson had the right idea back then.

Next time, Dr. Theodore and Mr. Mehta should aim to craft public-policy proposals that would genuinely serve the interests of employees and the general public, regardless of what effect they would have on Organized Labor's institutional interests.

---

<sup>15</sup> "Big Labor 'Card Check' Schemes Rife With Abuses." National Right to Work Committee, July 28, 2004, available at <http://www.nrtwc.org/newsroom/275.htm> on the Committee's web site.

<sup>16</sup> Rebecca Wittman, "Nationwide Attitudes Toward Unions." Zogby International, February 26, 2004, pp.13-14. Visit <http://www.psrp.org/info/zogby.jsp> to obtain the entire survey.

<sup>17</sup> Bill Lewis, "AFL-CIO Reaching Out For Membership." *Memphis Business Journal*, November 20, 1995.