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Academics on Employee Free Choice

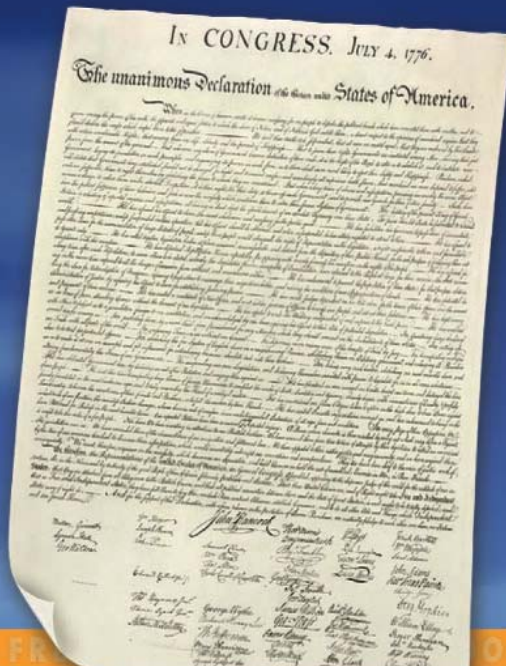
Multidisciplinary Approaches to Labor Law Reform

edited by John Logan

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with an introduction by Robert B. Reich

Our nation formed when
the founding fathers
signed their names.



Freedom

FREEDOM FREEDOM FREEDOM FREEDOM FREEDOM FREEDOM FREEDOM FREEDOM FREEDOM FREEDOM

Peter Dreier

The Employee Free Choice Act: Economic Consequences and Political Implications

Advocates for the Employee Free Choice Act (EFCA) argue that its passage is a precondition for strengthening workers' rights and expanding union membership in the United States. EFCA would not automatically result in an increase in union membership. Employees would still need to mount campaigns to persuade other workers to join a union. But, EFCA's proponents argue, the law would change the ground rules and provide greater balance between employees and employers in the workplace, making it more likely that union organizing campaigns would succeed.

EFCA's advocates assume that expanding union membership is a positive thing for employees and for the overall economy. But is it? This paper briefly explores those questions, a particularly timely matter in the context of the nation's current economic difficulties.

Advocates for labor unions often make the case that it was the American labor movement that provided the basis for what many citizens today take for granted—for example, the 40-hour work week, weekends, eight-hour work days, occupational safety and health standards, and the prohibition of child labor. But others argue that unions are outdated institutions in the 21st century, no longer necessary to provide employees with an adequate standard of living and perhaps even a brake on economic growth and prosperity. What does the evidence indicate?

Wages and Benefits

In 2008, union members accounted for 12.4 percent of employed wage and salary workers, up from 12.1 percent a year earlier, according to the U.S. Department of Labor's Bureau of Labor Statistics. The number of workers belonging to a union rose by 428,000 to 16.1 million. This was the largest increase in union density since 1983, the earliest year for which comparable data are available. Except for last year's increase and a smaller rise in

2007, union membership has fallen or held steady in every year since 1983 (U.S. Department of Labor, 2009).

Although union bargaining power has weakened considerably as overall union membership has declined in recent decades, it is incontrovertible that employees in unionized workplaces receive higher wages and benefits. According to *The State of Working America 2008–2009*, union workers earn 14.1 percent more in wages than non-union workers in the same occupations and with the same level of experience and education. The “union premium” is considerably higher when total compensation is included, since unionized workers are much more likely than their non-union counterparts to get health insurance and pension benefits (Mishel, Bernstein, & Shierholz, 2009).

Unions not only raise wages, they also reduce workplace inequalities based on race. The union wage premium is especially high for Black employees (18.3 percent), Hispanic employees (21.9 percent), and Asian employees (17.4). (The union wage premium is 12.4 percent for white employees.) In other words, unions help to close racial wage gaps based on employer discrimination. Unions make it tougher for employers to use race to discriminate against workers.

Likewise, unions reduce workplace inequalities based on gender. The union wage premium is 14.5 percent for Black women, 18.7 percent for Hispanic women, 12.6 percent for Asian women, and 9.1 percent for white women.

Unions also reduce overall wage inequalities, because they raise wages more at the bottom and middle than at the top (Mishel, Bernstein, & Shierholz, 2009).

Equally important, unions raise wages for non-union workers. As one report indicated: “First unions have a positive impact on the wages of non-union workers in industries and markets in which unions have a strong presence. Second because the non-union sector is large, the union effect on the overall aggregate wage comes almost as much from the impact of unions on non-union workers as on union workers” (Mishel, Bernstein, & Shierholz, 2009). Employers bring wages up to, or closer to, union wage levels, often in an effort to preempt employees from unionizing.

During the first half of the 20th century, many unions—particularly the older “craft” unions—were often hostile to Blacks and Latinos. Many white workers sought to protect their hard-won gains and viewed Blacks and Latinos as a threat rather than as fellow workers. Employers often hired Blacks, and sometimes Latinos, as strikebreakers to exacerbate racial tensions. Some unions thus helped contribute to racial segregation in American workplaces, with Blacks and Latinos relegated to the lowest-paying, dirtiest, and most dangerous jobs.

Union strength reached its peak (at 35 percent of the workforce) in the United States in the mid-1950s. Unions enabled American workers, especially blue-collar workers, to share in the postwar prosperity and to join the middle class. Union pay scales boosted the wages of non-union workers as well.

But it was not until the civil rights movement of the 1960s that Black Americans began to gain a fairer slice of these postwar economic gains. With organized labor finally becoming an ally, the civil rights crusade helped many Black Americans move into the economic mainstream. They gained access to good-paying jobs—in factories, government agencies, and the professions—that had previously been off-limits. And, as noted above, in unionized firms, the wage gap between Black and white workers narrowed significantly.

Today, Blacks, Latinos, and women, including immigrants, are at the forefront of the labor movement's efforts to expand its power. Blacks are more likely to be union members (15.8 percent) than any other group, while the proportion of Hispanics in unions has been growing significantly (particularly in California), even as overall union membership has declined in the past decade. The union wage premium for immigrants who have lived in the U.S. less than ten years is 16.5 percent for men and 16.2 percent for women. Joining a union clearly improves the economic circumstances of immigrants, helping to lift them out of poverty.

A Stronger Economy

Business groups often argue that unions thwart economic growth and destroy jobs by making unionized enterprises less competitive, less profitable, and more likely to reduce the size of their workforces. This is particularly important in the context of the current economic downturn. If the deep recession was due to what some would call “over-priced” labor costs, the business view might be valid. But, to the contrary, the current downturn is due to what economists call weak “effective demand.” The purchasing power of the American consumer—particularly families among the bottom two-thirds in the income distribution—has been declining. Since 2000, prices of basic necessities—housing, food, gas, clothing, and health care—have increased much faster than wages. The goal of various stimulus plans has been to put money into employees' pockets so they will spend it in the private economy, creating a multiplier effect.

Los Angeles County provides a good example of how unions strengthen the overall economy. A December 2007 study by the Economic Roundtable found that union workers in Los Angeles County earn 27 percent more than non-union workers in the same jobs. The increased wages for the approximately 800,000 union workers adds \$7.2 billion a year in pay. As these workers spent their wages on food, clothing, child care, car and home repairs, and other items, their buying power created 307,200 jobs—64,800 more jobs than would have been created if these workers did not earn union wages. These union wages generated \$7 billion in taxes to all levels of government (Flaming, 2007).

(The economic benefits of unionization are somewhat greater in Los Angeles County, where unions represent 15 percent of all workers, than they would be in other metropolitan areas with lower levels of union density).

The argument made by some business opponents of EFCA that unionization leads to higher unemployment is wrong. To promote this idea, some groups have been circulating a report that looks at differences in unionization rates and unemployment rates in Canadian provinces. In fact, Canada's level of unionization is about 20 percentage points higher than the level in the U.S., but its unemployment rate is somewhat lower.

Using Canada as an example of unions' negative impacts is particularly misleading and disingenuous. Canada has many of the same big employers and a similar economy as the United States. But in many ways, Canada is a much more livable society. It has a significantly lower level of poverty, less wage and wealth inequality, a lower infant mortality rate, fewer homeless people (as a proportion of the overall population), and much less crime. In *Differences that matter: Social policy and the working poor in the United States and Canada* (2006), sociologist Dan Zuberi compared the lives of hotel workers in Vancouver, Canada, and Seattle, Washington, 140 miles apart, who worked for the same hotel chains (Zuberi, 2006). Canada's much stronger labor, health, social-welfare, and public-investment policies protected Canadian workers from the hardships that burden America's low-wage workers. Workers in Vancouver had better access to health care, public transit, housing, and educational opportunities for their children than did their counterparts in Seattle.

There are, in fact, a number of countries with very high unionization rates and low levels of unemployment. For example, Norway and Denmark have unionization rates near 80 percent. Before the current economic crisis, their unemployment rates were under 3 percent.

Moreover, when the U.S. had its highest rate of unionization—over 30 percent in the late 1950s and early 1960s—the unemployment rate was as low as 3 percent and was below 5 percent for most of that period.

The same argument by anti-union advocates is often made in terms of unions' alleged detrimental impact on productivity. In fact, a broad overview of the economics literature found “a positive association [of unions on productivity] is established for the United States in general and for U.S. manufacturing” in particular (Doucouliagos & Laroche, 2003).

The same linkage is found when comparing different countries. In 2006, the Organization of Economic Co-operation and Development (OECD) did a comprehensive study of the alleged link between unions and productivity. The analysis of 18 nations revealed “a positive relationship between trade union density and per worker output” (Asteriou & Monastiriotis, 2004).

Are Americans Anti-Union?

Some people might ask: If unions are good for workers and good for the economy, why are so few employees union members?

Some business leaders argue that American employees are simply anti-union, a consequence of our culture's strong individualistic ethic and opposition to unions as uninvited "third parties" between employees and their employers. Anti-union attitudes, business groups claim, account for the decline in union membership, which peaked at 35 percent in the 1950s.

It is misleading, however, to infer Americans' attitudes about unions in general, or about unions in their own workplaces, with the relatively low level of union membership in the United States. In general, Americans have positive attitudes toward unions, and these positive views are increasing as their anxiety about job security, wages, and pensions grows.

The Gallup poll has tracked public sentiment about unions for many years. Their most recent survey on unions, conducted in August 2008, found that 59 percent of Americans approve of labor unions, compared to only 31 percent who disapprove ("Labor Unions," n. d.). The report noted that, "Americans have generally held a favorable view of unions for decades—with no less than 55 percent of Americans saying they approve of labor unions in Gallup polls conducted from 1936 to 2008" (Jones, 2008). In the 2006 poll on unions, Gallup asked Americans if unions generally help or hurt the U.S. economy. In response, 53 percent said that unions generally help, 36 percent said they generally hurt, and 11 percent had no opinion ("Labor Unions," n. d.).

In an August 2005 poll, Gallup asked: "In the labor disputes of the last two or three years, have your sympathies in general been on the side of unions (or) on the side of the companies?" Survey participants sided with unions 52 percent to 34 percent. This was the widest margin in favor of unions since 1952, when Gallup asked that question for the first time. General pro-union attitudes, however, may not translate into positive feelings about unions in one's own workplace. To assess the level of worker interest in joining unions, Hart Research has been tracking responses to this question since 1993: "If an election were held tomorrow to decide whether your workplace would have a union or not, do you think you would definitely vote for forming a union, probably vote for forming a union, probably vote against forming a union, or definitely vote against forming a union?" Among non-managerial, non-union workers, Hart Research has found a steady increase among respondents in positive sentiments ("definitely" and "probably" vote for a union) toward a union in their workplace. In its most recent (December 2006) survey, 53 percent of non-union, non-managerial employees wanted a union in their workplace, while 42 percent said they would vote against a union. In addition, 58 percent of all non-managerial employees (union and non-union) wanted a union in their workplace. In other words, 58 percent of U.S. workers would be in unions if employees could choose freely.

In 1984, the Harris poll asked the same question and discovered that only 30 percent of non-managerial workers said that they would vote for a union. In both 1993 and 1996, only

39 percent of non-union workers said they'd vote yes. From 1997 to 2001, support rose slightly to about 43 percent yes, but opposition still stood above 50 percent. By 2003, support for and opposition to unions in one's workplace was evenly split—47 percent yes and 47 percent no.

What accounts for the growing support for unions by Americans in general and by employees in particular? As Teixeira observed: “Workers’ increased interest in joining unions is probably due to workers’ sense that job quality, employee benefits, and worker voice are all increasingly uncertain in today’s workplace” (Teixeira, 2007).

An analysis of polling data by Richard Freeman, a Harvard University economist, documents Americans’ growing dissatisfaction with their employers. In 1999 and 2005, Hart Research asked survey respondents the following question: “Thinking generally about companies and other employers and the way they treat employees, let me mention some different aspects of work, and please tell me how well employers are doing on each item. Are employers doing very well, doing fairly well, falling somewhat short, or falling very short when it comes to ... [different workplace issues].” Between 1999 and 2005 the gap widened significantly between the proportion of workers who said that employers are doing well and those who said that employers are falling short. On the four concerns that Freeman called “bread and butter” issues—providing cost of living raises, providing retirement benefits, providing jobs that offer good benefits and job security, and paying a fair share of employees’ health care costs—45 percent said that employers were doing well in 1999, while 50 percent said that employers were falling short—a gap of five points. Six years later, only 33 percent said that employers were doing well, while 64 percent said that employers were falling short—a gap of 31 points (Freeman, 2007). When asked about four workplace relations issues—whether employers were loyal to long-term employees, showed concern for employees, not just the financial bottom line, listened to employees’ ideas and concerns, and shared profits with employees when a company did well—the gap also increased. In 1999, 40 percent said that employers were doing well, while 57 percent said that they were falling short—a gap of 17 points. Six years later, only 33 percent believed that employers were doing well on workplace relations issues, while 62 percent believed that employers were falling short—a gap of 29 points.

On a third set of issues—which Freeman called “future opportunities/work conditions”—the gap also widened, although not as dramatically. These concerns involved the following: providing opportunities for advancement, adopting policies that help working parents, giving employees the education and training they need, and providing women with equal pay. In 1999, the average gap was two points; by 2005, it was seven points. In the latter year, 43 percent said that employers were doing well on these issues, compared to 50 percent who believed that employers were falling short.

Fears and Rights at Work

A significant majority of American employees say they would join a union if they could. But they won't vote for a union, much less participate openly in a union-organizing drive, if they fear they will lose their jobs or be otherwise punished or harassed at work for doing so. Such fears are, one report observed, "widespread and well-founded" (Freeman, 2007).

In 1994, the Commission on the Future of Worker-Management Relations, chaired by former Secretary of Labor John Dunlop, reported that 59 percent of workers surveyed said they would likely lose favor with their employer if they supported an organizing drive; 79 percent said that it was "very" or "somewhat" likely that "non-union workers will get fired if they try to organize a union."

This awareness of employers' hostility toward unions has persisted. A 2005 Hart Research survey found that 53 percent of employees believe that "employers generally oppose the union and try to convince employees to vote no" in National Labor Relations Board elections. Only 26 percent believed that employers remain neutral and allow employees to decide on their own. Employees understand that employers resort to a variety of anti-union tactics—including firing employees illegally—to thwart unionization efforts. And there's the rub. Americans have far fewer rights at work than employees in other democratic societies. Current federal laws are an impediment to union organizing rather than a protector of workers' rights. The rules are stacked against workers, making it extremely difficult for even the most talented organizers to win union elections. Under current National Labor Relations Board regulations, any employer with a clever attorney can stall union elections, giving management time to scare the living daylights out of potential recruits.

According to Cornell University's Kate Bronfenbrenner, one-quarter of all employers illegally fire at least one employee during union organizing campaigns (Bronfenbrenner, 2000). In 2007, more than 29,000 workers were illegally disciplined or fired for union activity. Some workers get reinstated, but years later and only after exhaustive court battles. Penalties for these violations are so minimal that most employers treat them as a minor cost of doing business. Employees who initially signed union cards are often long gone or too afraid to vote by the time the NLRB conducts an election.

Large employers spend hundreds of millions of dollars a year to hire anti-union consultants in order to intimidate workers from participating in or showing support for union campaigns. Employers can require workers to attend meetings on work time, during which company managers give anti-union speeches, show anti-union films, and distribute anti-union literature. Unions have no equivalent rights of access to employees. To reach them, organizers must leaflet outside factory gates (an activity unions have not found cost-effective), visit workers' homes, or hold secret meetings.

A Healthier Democracy

Political scientists, sociologists, and others have bemoaned the decline of “civic engagement” and voting in America over the past few decades—a phenomenon sometimes called “bowling alone” (Putnam, 2000; Skocpol, 2003). But civic engagement and voting don’t happen automatically. They require mobilization—that is, organizations with resources to reach out, identify, educate, and mobilize people to get involved. One study, for example, found that a “decline in mobilization” accounts for much of the drop-off in voting in recent decades (Rosenstone & Hansen, 1993). The wide class disparities in voting that we take for granted in the United States do not exist in other democratic societies.

Despite its small size compared to its counterparts in other countries, the American labor movement remains the nation’s most potent political force for progressive change. Unions play an important part in electing liberal candidates to office at the local, state, and federal levels. Once in office, pro-union politicians are typically the strongest advocates of tough environmental laws, funding for public schools and higher education, civil rights, women’s rights, gay rights, universal health insurance, affordable housing, and protection of Social Security.

Consider the labor movement’s role in the 2008 elections. Approximately 12 percent of all voters were union members and about 21 percent of all voters were members of union households. But union members were much more active than others in the campaign in terms of volunteering, registering voters, getting out the vote on election day, and making campaign contributions. This was particularly the case in key swing states.

Three weeks before the November election, the *New York Times Magazine* ran a cover story that asked, “Will Gun-Toting, Churchgoing White Guys Pull the Lever for Obama?” When the polls closed, the question was answered: Nationwide, a significant majority of white men, white women, working-class whites, white gun owners, and white weekly churchgoers supported McCain.

But a significant number of whites in each category broke ranks and voted for Obama—enough to help him win key battleground states and the presidency. Exit polls conducted by Guy Molyneux of Peter D. Hart Research explain why.

Molyneux surveyed 1,487 members of AFL-CIO unions—about half in battleground states—and compared the results with all voters. What he discovered is nothing short of astounding. Fifty-seven percent of white men favored McCain, but 57 percent of white male union members favored Obama. White gun owners cast 68 percent of their votes for McCain, but 54 percent of white gun owners who are also union members preferred Obama. Among white weekly churchgoers, McCain scored a landslide, receiving 70 percent of their votes. But Obama had a slight edge (49 percent to 48 percent) among white weekly churchgoers who

were union members. Similarly, 58 percent of white non-college graduates voted for McCain, but 60 percent of white union members who didn't graduate from college tilted to Obama. Overall, 53 percent of white women cast ballots for McCain, but Molyneux found that 72 percent of white women union members favored Obama.

Nationwide, according to Molyneux, 67 percent of union members of all races—and 69 percent in swing states—supported Obama.

They voted for him because of the unions' effectiveness at educating and mobilizing members. They spent millions of dollars and built an army of volunteers who went door to door, reaching out to other members about key economic issues. Members in "safe" Democratic states staffed phone banks and made tens of thousands of calls to unionists in key swing states.

Unions made a special effort to talk with white members who may have been reluctant to vote for a Black man for president. AFL-CIO Secretary-Treasurer Richard Trumka gave the same impassioned speech to union members in key states, appealing to their class solidarity, decency, and sense of history:

"There are a thousand good reasons to for vote for Barack Obama. And there's not a single good reason for any worker—especially a union worker—to vote against Barack Obama. And there's only one bad reason not to vote for Barack Obama—and that's because he's not white."

Labor activists carried Trumka's message to union voters. On Election Day, union members, including white males, were more likely than non-union counterparts to vote for Obama and Democrats running for Congress and to volunteer for their campaigns.

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