



The Employee Free Choice Act

Improving Employee Rights at Work, Improving Employee Livelihood



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EXECUTIVE SUMMARY:

- ✍ PASSAGE OF THE FEDERAL EMPLOYEE FREE CHOICE ACT will make the union recognition process fairer by giving workers the right to choose the method by which they form a union. At present, an employer can demand a secret-ballot election even after a majority of employees have signed union recognition forms. This option enables an employer time and opportunity to conduct an extensive anti-union campaign at the workplace during work hours utilizing legal and illegal tactics.
- ✍ UNDER THE PROPOSED CHANGES, a majority of employees would be able to express their desire to unionize by majority sign-up. A secret ballot option remains if at least one-third of employees choose it.
- ✍ IN ADDITION, the sanctions for illegal employer behavior, such as firing employees who support unionization, would be significantly increased. Nation-wide in 2007 alone, there were 29,000 documented cases of intimidation or coercion by employers during secret ballot election campaigns. Compare that to the 42 cases by unions in the previous 70 years.
- ✍ UNION MEMBERSHIP IS ASSOCIATED WITH HIGHER WAGES and a greater likelihood that employees will receive health care, retirement, paid leave and disability benefits.
- ✍ MAKING THE UNION RECOGNITION PROCESS FAIRER will enable workers to bargain for higher wages and wider access to benefits.

CURRENT LAW ALLOWS AN EMPLOYER TO DEMAND that workers hold a secret-ballot election in order to form a union, but research shows that process leaves workers vulnerable to intimidation. The Employee Free Choice Act would allow workers to form a union using a fairer process known as “majority recognition.” If the majority of employees sign union representation forms, and the National Labor Relations Board validates those signatures, then the company must recognize and bargain with the union.

Unlike typical American political elections, secret-ballot elections at workplaces are routinely conducted in ways that are unjust and undemocratic because of intimidation tactics – both legal and illegal – that employers commonly use. This robs workers of the increased wages and access to benefits that come with union representation.

The Benefits of Unionization

The “union wage premium” is the extra pay union members receive compared to non-union members in the same kinds of jobs. Between 2003 and 2007, unionization raised workers’ wages, on average, by 11.9% in the United States, with low-wage employees seeing a wage boost of more than 20% (Figure 1).

The union wage premium in North Carolina is less than that for the United States at each point of the wage spectrum, but it is still substantial.¹ Between 2003 and 2007, North Carolina unionized workers were paid more than their non-union peers at every point in the wage distribution except among the top 10% of wage earners, where union membership appeared to have no effect on wages either way. Union members among the bottom half of workers earned between an extra 11% and 14% per hour over their non-union counterparts (Figure 1).² On average, union employees earned 9.7% more than their non-union counterparts.³

In addition, union members are significantly more likely to enjoy health, retirement, paid-leave, paid-vacation, life insurance and disability benefits than non-union members (Table 1 - see page 3). Perhaps the most important difference is that more than five in six union members receive both health and retirement benefits, while only a little more than half of non-union members do. Around one in four non-union members receive no health care or retirement benefits; the rate for union members is around one in fourteen. Plus, union members pay less, as a rule, of the cost of their health insurance than non-union members (Figure 2 - see page 4).

As health-care costs escalate, these differences matter and once again demonstrate the importance of unions to working people. It is not surprising that the percentage of non-union workers who would have voted in favor of union representation if given that option has grown steadily since the 1980s. In 2004, the number stood at 53%, up from 30% in the mid-1980s.⁴

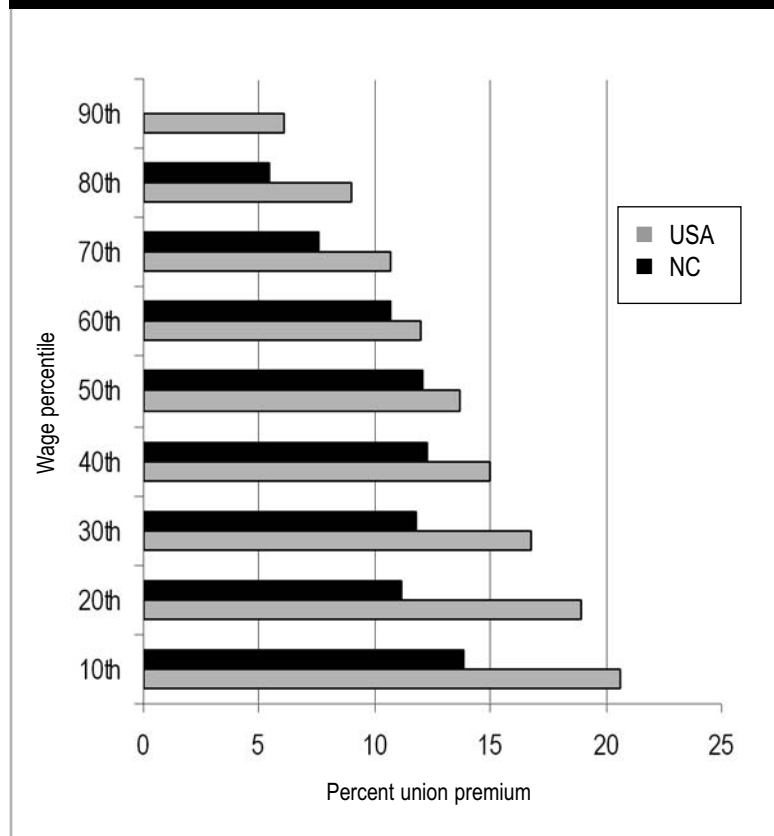
THE BARRIERS – LEGAL AND ILLEGAL – TO UNIONIZATION

Under the current system, employers have ample opportunity to impede or prevent union recognition and contract negotiation using legal and illegal tactics. In contrast, union organizers have little access to employees before a union vote and limited means to secure a contract if the employer blocks it.

Inequality of Access and Opportunity

The secret-ballot election process allows employers to delay a vote, giving them time to organize anti-union campaigns and ample means and opportunity to carry out those campaigns. Anti-union managers and supervisors can compel employees to attend meetings and watch videos or presentations, which are conducted or crafted by anti-union consultants from an industry that by the 1980s generated \$300 million in income per year.⁵ Renowned labor expert and Cornell University professor Kate Bronfenbrenner conducted an exhaustive study of union election campaigns from 1999 to 2003, and she found employers used these anti-union tactics almost universally.⁶ Since the mid-1980s, employers in election campaigns have doubled the use of presentations and meetings and the distribution of anti-union literature at work.⁷

FIG. 1: Union Wage Premium, NC & USA, 2003-2007



Source: Schmitt (2008) The Union Wage Advantage for Low-Wage Workers, Center for Economic & Policy Research

TABLE 1: Percentage of Union & Non-union Employees Receiving Various Benefits, USA, 2009.

	UNION MEMBERS	NON-UNION MEMBERS	THE UNION ADVANTAGE
Retirement			
Access to retirement	87%	65%	22%
Participation in retirement	82%	48%	34%
Health care			
Access to medical care	90%	69%	21%
Participation in medical care	76%	49%	27%
Single coverage – employee premium contribution required	51%	83%	32%
Family coverage – employee premium contribution required	58%	94%	36%
Access to dental care	69%	44%	25%
Participation in dental care	61%	33%	28%
Access to vision care	54%	24%	30%
Participation in vision care	46%	18%	28%
Access to outpatient prescription drug	88%	67%	21%
Participation in outpatient prescription drug	74%	48%	26%
Benefit packages			
Health care & retirement offered	84%	57%	27%
No health care & no retirement offered	7%	24%	17%
Other benefits			
Access to Life insurance	79%	57%	22%
Participation in life insurance	77%	54%	23%
Access to short-term disability	62%	37%	25%
Participation in short-term disability	61%	36%	25%
Access to long-term disability	35%	32%	3%
Participation in long-term disability	34%	31%	3%
Wellness programs	43%	28%	15%
Leave			
Paid holidays	86%	76%	10%
Paid sick leave	69%	61%	8%
Paid vacations	85%	77%	8%
Paid jury duty	83%	68%	15%

Source: Bureau of Labor Statistics (2009) National Compensation Survey: Employee Benefits in the United States, March 2009, tables 2, 9, 10, 11, 15, 16, 30, 35, 39.

Employers can and routinely do hold one-on-one meetings with employees during work time to instruct them to vote against the union. More than three-quarters of employers use this tactic.⁸ Employers may fine employees for not attending these meetings and presentations, or alternately exclude pro-union employees from them.

Union organizers, on the other hand, can only campaign on break time and may not post information. In addition, employers are not required to provide a union with a list of eligible worker-voters until two weeks before the election, and that list need not include contact numbers or email addresses.

Illegal Intimidation

At present, the sanctions against employers breaking the law during the period before a union election are grossly inadequate and allow employers to act with virtual impunity. In her study, Bronfenbrenner concluded, “[I]t is standard practice for workers to be subjected to threats, interrogation, harassment, surveillance, and retaliation for union activity.”⁹

Bronfenbrenner found that employers fired workers who actively supported the union during one-third of the election campaigns between 1999 and 2003.¹⁰ In a similar vein, a National Labor Relations Board report concluded that in 2007, a worker was disciplined or fired for union activity every 18 minutes.¹¹ Bronfenbrenner also found that employers altered the pay or benefits of union-supporting employees in just less than one-half of the election campaigns (47%) in the 1999-2003 period.¹²

In more than half (57%) of the election campaigns between 1999 and 2003, employers threatened employees with closing the workplace. This tactic has increased in frequency since the 1980s when it was used in little more than a quarter of election campaigns.¹³

Opponents of unions say unions routinely intimidate or coerce employees into signing union recognition forms. However, in the first 70 years of the National Labor Relations Act, there were only 42 cases of unions engaging in fraud and coercion during unionization campaigns, compared to a shocking 29,000 documented cases of intimidation and coercion by employers during unionization campaigns in 2007 alone.¹⁴

The sanctions for employers who break the law are minimal. There are no punitive damages or criminal charges, and there are no penalties for repeat offenders. Usually offenders are made to post notices or give back-pay to fired employees. Bronfenbrenner concludes:

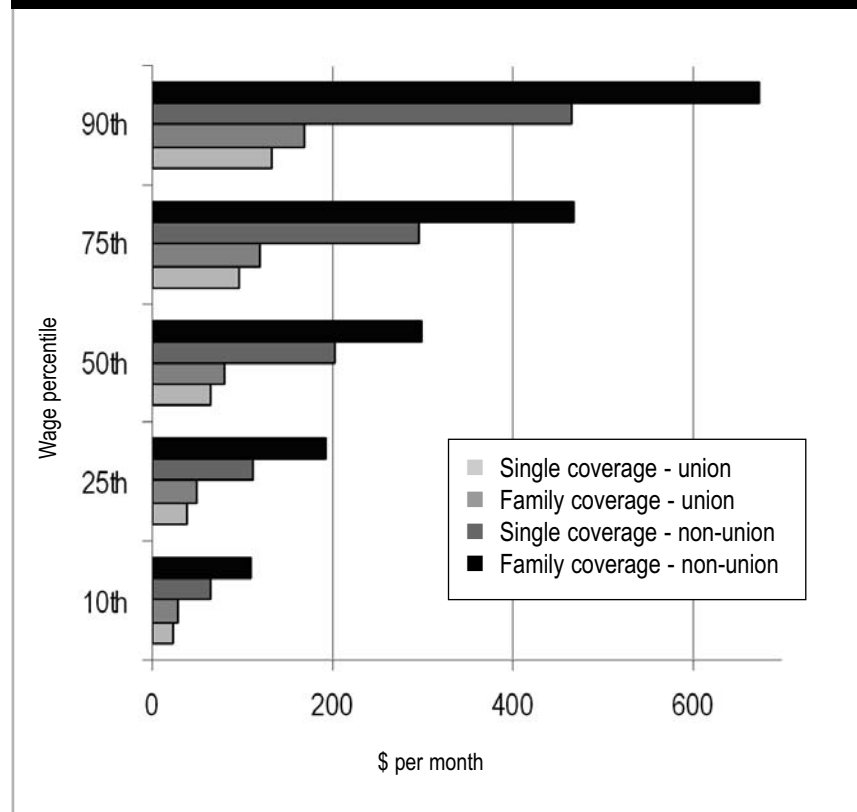
“This combination of threats, interrogation, surveillance and harassment has ensured that there is no such thing as a democratic ‘secret ballot’ in the NLRB certification election process...

I find the patterns of employer behavior...deeply ingrained into our legal framework and employment practices. They have become so deeply ingrained that we as a society have begun to accept illegal behavior as the norm.”¹⁵

Delaying the Contract

Finally, if workers do successfully vote in favor of union representation, they still face significant challenges in securing a collectively bargained contract. Employers can appeal endlessly against a successful union election result – there are five levels of appeals – to delay the signing of the first union contract. Between 1999 and 2003, just half of the newly organized work units successfully negotiated a first contract within the first year following the union election. After three years, one-quarter still had no contract.¹⁶

FIG. 2: Single & Family Health Care Contribution by Wage Percentile, Union & Non-Union Employees, USA, 2009.



Source: National Compensation Survey: Employee Benefits in the United States, March 2009, table 15

A POTENTIAL SOLUTION: the Employee Free Choice Act

There are three reforms that the Employee Free Choice Act will bring to the American workplace.

First, an employer will be required to recognize a union if a majority of employees sign union recognition forms and less than one-third opts for a secret-ballot process. This provides an alternative to the currently corrupted secret-ballot process, during which employers often delay the vote and use their considerable advantage of access to employees to intimidate them through legal and illegal tactics. With majority recognition, union organizers collect signed recognition forms and turn them over to the National Labor Relations Board for validation. This is a more even playing field for unions.

Second, employers breaking the law during organizing campaigns and the negotiation of the first contract will face real penalties – up to \$20,000 per incident of an employer violating an employee's rights during these periods, triple back-pay for employees discriminated against or discharged during these periods, and a requirement that the National Labor Relations Board seek federal court injunctions against employers engaged in any illegal conduct against employees during these periods.

Third, employers will be required to negotiate a first contract within 90 days of union recognition. After 90 days, there will be a 30-day federal mediation and conciliation service, after which binding arbitration takes place. Employers and the union may extend this timeline by mutual agreement.

CONCLUSION: The Employee Free Choice Act is a Reform North Carolina's Workers Need

Despite the Piedmont crescent being home to high numbers of decent jobs in high-paying industries and occupations, North Carolina's median income is the 39th highest in the nation. In 2008, around one in seven North Carolinians and one in five of the state's children lived in poverty. Around one in six North Carolinians had no health insurance.¹⁷

North Carolina's low unionization rate is partly to blame. North Carolina has the lowest unionization rate in the nation at just 3.5%.¹⁸ Unionization boosts worker income, especially among the lowest paid, and makes it more likely workers will have employer-provided health insurance. Passage of the Employee Free Choice Act will enable workers to collectively bargain because it short circuits the illegal anti-union employer activity endemic to the secret-ballot union recognition process.

Nevertheless, it is naïve to believe that union membership will multiply rapidly in this state following passage of the Employee Free Choice Act. North Carolina's "right to work" ban on compulsory unionism in workplaces and the ban on public-sector collective bargaining will remain. But passage of the Employee Free Choice Act would be a critical step in the right direction for North Carolina's workers.

1 This is probably because of North Carolina's low unionization rate – around 4%.

2 It should be noted that these estimates from Schmitt are lower than that estimated in a similar study for 2005. That study (Mishel, Bernstein & Allegretto (2007) *The State of Working America 2006-2007* (Cornell University Press)) estimates the average wage premium for union workers at 14.7%. Schmitt's estimate is 11.9%. The difference lies in the use of differing control variables and Schmitt's use of imputed wage estimates for missing observations so as to be able to calculate wage premium estimates for smaller states. This calculation procedure has been demonstrated to bias downward the estimate of the union wage premium effect. Hence the data presented here is a more conservative estimate of the effect of union membership on wages.

3 Schmitt (2008) *The Union Wage Advantage for Low-Wage Workers*, (Center for Economic and Policy Research)

4 Freeman (2007) *Do Workers Still Want Unions? More Than Ever*, (EPI Briefing Paper #182, Economic Policy Institute), p 6.

5 Eisenbrey & Kusnet (2009) *The Employee Free Choice Act: Questions and Answers* (EPI Brief #249, Economic Policy Institute), p 2.

6 Bronfenbrenner (2009) *No Holds Barred: The Intensification of Employer Opposition to Organizing*, (EPI Briefing Paper #235, Economic Policy Institute), table 3.

7 Bronfenbrenner (2009) table 4.

8 Bronfenbrenner (2009) table 3.

9 Bronfenbrenner (2009) p 1.

10 Bronfenbrenner (2009) table 3.

11 Summarized in Shaiken (2007) *Unions, the Economy, and Employee Free Choice*, (EPI Briefing Paper #181, Economic Policy Institute)

12 Bronfenbrenner (2009) table 3.

13 Bronfenbrenner (2009) table 4.

14 Eisenbrey & Kusnet (2009) p 8.

15 Bronfenbrenner (2009) p 25.

16 Bronfenbrenner (2009) p 22.

17 2008 American Community Survey data summarized in Gray Wiehe (2009) *Snapshot of Poverty, Income and Health Coverage in North Carolina, 2008 Census Data* (<http://ncjustice.org/sites/default/files/NC%20Poverty-Income-Health%20Care%202008%20Data.pdf>)

18 Bureau of Labor Statistics (2009) *Union Members Summary*, (http://www.bls.gov/news.release/union2_nr0.htm), table 5, data from the Current Population Survey.