



Leadership Conference
on Civil Rights

TM

1629 K Street, NW
10th floor
Washington, DC 20006
202-466-3311
Fax: 202-466-3435
www.civilrights.org

LET ALL VOICES BE HEARD

Restoring the Right of Workers to Form Unions

A National Priority and Civil Rights Imperative

MAY 21, 2007

JUST OVER 40 YEARS AGO, Congress passed the Voting Rights Act of 1965, closing a chapter on a grave national crisis and a deep national shame, the systematic denial of the franchise to African Americans and people of color. Although the Fifteenth Amendment to the Constitution had extended voting rights to all male citizens without regard to “race, color or previous condition of servitude,” in practice, voting was more often like a game of Russian roulette for people of color, particularly African Americans, than the free exercise of a fundamental right. Facially neutral state practices, such as poll taxes, literacy tests and restrictive voter registration requirements, had the intended effect of keeping minority voters from the polls. And when these policies were not enough, private vigilantes and public officials initiated campaigns of intimidation and coercion in a concerted and often successful effort to chill the exercise of a fundamental right.

In response to this national crisis, historic allies in the fight for equal rights—civil rights advocates and labor activists—stood shoulder to shoulder to win passage of the Voting Rights Act, widely regarded as one of the most important civil rights measures in our nation’s history.

This was neither the first nor the last time the civil rights and labor movements joined together to right a grave wrong. Instead, determined to move beyond a history of bias and segregation that too often pitted them against each other, in 1950, the Leadership Conference on Civil Rights (LCCR) was formed, largely of civil rights and labor organizations, under the able and visionary leadership of labor and civil rights giant, A. Philip Randolph, head of the Brotherhood of Sleeping Car Porters; Roy Wilkins of the NAACP; and Arnold Aronson, a leader of the National Jewish Community Relations Advisory Council. In the more than 50 years since its founding, LCCR, working closely

with its members and partners in the labor movement, has led the fight for equal opportunity and social justice. Together, we passed civil rights laws banning discrimination in employment, education, public accommodations, voting and housing; outlawed job-based age discrimination; won employment and other rights for people with disabilities; and extended family and medical leave protections to millions of American workers. Together, we continue to fight to end employment discrimination against GLBT Americans and to expand protections against hate crimes, preserve affirmative action, raise the minimum wage, and provide paid leave for America's workers.

Workers' rights are civil rights; and when Dr. Martin Luther King spoke to the AFL-CIO in 1961 about the shared vision between the fights for racial equality and for workers' rights, he said it best: "Our needs are identical with labor's needs: decent wages, fair working conditions, livable housing, old age security, health and welfare measures, conditions in which families can grow, have education for their children and respect in the community." Because of this "duality of interests," King continued, "any crisis which lacerates you is a crisis from which we bleed."

Today, the labor and civil rights movements confront another shared crisis—the systematic, often brutal denial of the right of American workers “to form, join, or assist labor organizations, to bargain collectively...and to engage in other concerted activities....” As the following discussion details, this attack on organizing rights is one piece of an overall roll-back of civil and workers' rights over the past quarter century, as federal policymakers and judges have etched away at rights and protections for all workers. The damage resulting from these public acts is greatly exacerbated when it comes to workers' organizing and bargaining rights by the **aggressive, virulent and often unchecked anti-union campaigns that private actors—employers and their consultants—mount when workers try to form unions.** So ruthless are these campaigns and so predictable their consequences that the right to form unions and bargain collectively has been all but eliminated in America's workplaces.

Denial of *any* fundamental right concerns LCCR. However, the denial of organizing and bargaining rights raises special concerns for several reasons. First, the communities of workers our earliest civil rights laws were designed to protect, women and minorities, are also those who stand to gain the most from union representation, and hence, have the most to lose when the right to form unions is denied. Second, our statutory scheme of workplace protections is fragmented and incomplete; union representation provides disadvantaged workers—disproportionately, women, minorities, and people with disabilities—an arsenal of workplace tools that better enable them to achieve the promises of equal opportunity and economic security. Finally, the assault on the right of workers to form unions and the corresponding decline of the labor movement diminishes the power of working people overall, making it harder to secure public policies and programs that broadly benefit working families and easier to enshrine legal and regulatory practices that prioritize narrow corporate interests. This is of grave concern to the civil rights movement. Our history makes clear that a strong labor movement, born of the free and robust exercise of the right to organize, is an essential partner in the ongoing struggle for civil rights for all Americans.

For all these reasons, reinvigorating the right to organize is a matter of basic civil rights, a priority for our nation, and an imperative for our movement.

RESTORING THE RIGHT TO FORM UNIONS: An Important First Step in Reversing the Erosion of Workers' Rights Overall

Over much of the past quarter century, federally guaranteed workplace and civil rights have been chipped away through a combination of anti-worker executive and administrative actions and adverse judicial decisions. Actions by the Bush administration and its federal agencies have greatly accelerated this erosion of workplace rights.

Within weeks of his first inauguration, President Bush issued an executive order requiring federal contractors to affirmatively inform workers of their right *not* to join unions, but imposing no corresponding obligation to tell workers of their explicit right to organize and bargain. Another order issued at the same time struck down modest Service Contract Act rules designed to provide limited job security to service contract workers, many of whom are low-paid women and minorities, when contracts change hands. More recently, on the heels of Hurricane Katrina, President Bush suspended Davis-Bacon Act standards governing wages and quality of work for federally-funded reconstruction projects in the affected areas. Though subsequently rescinded, the order was widely seen as a thinly veiled attempt to bootstrap this horrific tragedy into a rationale for achieving on a small scale what employers and anti-worker legislators had, for nine years, tried but failed to win more broadly: repeal of the Davis-Bacon Act.

Bush appointees at federal agencies have likewise acted to limit or eliminate opportunities, rights, and protections for workers at the same time they have loosened requirements imposed on employers. The examples are legion:

- Echoing the White House, the Labor Department exempted federal contracts for Katrina relief efforts from affirmative action requirements and shrunk the pool of contracts targeted to economically disadvantaged minority-owned businesses. Only a year earlier and over the strenuous objections of bipartisan majorities in both houses of Congress, the Labor Department implemented new overtime rules estimated to deprive eight million workers of overtime protections.
- The Federal Acquisition Regulation Council repealed a procurement rule designed to limit the likelihood that corporations guilty of illegal conduct, including violations of labor and environmental laws, would receive taxpayer-funded federal contracts.
- Alternately construing employment tests under the National Labor Relations Act (NLRA) narrowly or broadly, the National Labor Relations Board (NLRB) has wiped out NLRA protections for whole categories of workers, including graduate teaching assistants and certain kinds of senior level employees, such as charge nurses.
- The Transportation Department explicitly denied collective bargaining rights to the nation's 40,000-plus Transportation Security Administration airport screeners—a denial both houses of Congress have recently voted to reverse, against the threat of a presidential veto. Similarly, the Attorney General and heads of other agencies have stripped bargaining rights from federal employees who had long enjoyed them, under the superficial guise of “homeland security.”

Furthermore, decisions by the Supreme Court and lower courts have eroded workers' rights and protections, making it easier—and even more tempting—for employers to violate both the letter and spirit of worker rights and civil rights laws. The Supreme Court's 2002 decision in *Hoffman Plastic Compounds v. National Labor Relations Board* (535 U.S. 137 [2002]), which barred back pay awards to undocumented immigrants fired for attempting to form unions, erased for an entire group of workers the primary (albeit limited) monetary deterrent our labor law provides against unlawful employer conduct. Meanwhile, a decade's worth of Supreme Court decisions interpreting the Eleventh Amendment has greatly curtailed the right of individuals who work for states and their agencies to recover monetary damages for violations of the Fair Labor Standards Act (*Alden v. Maine* (527 U.S. 706 [1999])); the Age Discrimination in Employment Act (*Kimel v. Florida State Board of Regents* (528 U.S. 62 [2000])); and the Americans with Disabilities Act (*University of Alabama v. Garrett* (531 U.S. 356 [2001])).

The cumulative impact of these actions by public officials who make, enforce, and interpret federal rules governing workers and the workplace has been to diminish rights and protections for workers overall. But **when it comes to the particular right of workers to organize and bargain collectively, the damage arising from these acts by public officials is magnified many times over by the aggressive and virulent offensives employers and their union-busting consultants typically launch when workers try to form unions.**

The observations in a recent Human Rights Watch study (2000) about what happens to American workers who try to form unions are eerily, and sadly, reminiscent of what minorities routinely endured when trying to assert their basic rights before passage of civil rights laws. According to Human Rights Watch, “[M]any [U.S.] workers who try to form and join trade unions to bargain with their employers are spied on, harassed, pressured, threatened, suspended, fired, deported or otherwise victimized in reprisal for their exercise of the right to freedom of association.” Although “[p]rivate employers are the main agents of abuse,” they are aided by inadequate law enforcement and “enervating delays and weak remedies” that “invite continued violations.” As a result, Human Rights Watch concluded, “Freedom of association is a right under severe, often buckling pressure when workers in the United States try to exercise it.”

THE EMPIRE STRIKES BACK

The Corporate Attack on the Right of Workers

Throughout the late 19th century and much of the 20th century, union representation and the union movement played an incalculable role in achieving workplace and societal policies and programs that changed bad jobs into good jobs, raised living standards, reduced inequality, and created a vibrant and growing American middle class. From leading the fight for such basic protections as the minimum wage, a 40-hour work week, overtime pay, and safe and healthy workplaces, to partnering with civil and human rights organizations to ban discrimination on and off the job and champion reforms like Social Security and Medicare, a growing labor movement dedicated its resources and strength in numbers to building a better America for all working families.

Dr. Martin Luther King acknowledged the powerful, transformative role of unions in his 1961 remarks to the AFL-CIO. “History is a great teacher,” Dr. King said. “Now everyone knows that the labor movement did not diminish the strength of the nation but enlarged it. By raising the living standards of millions, labor miraculously created a market for industry and lifted the whole nation to undreamed of levels of production. Those who attack labor forget these simple truths, but history remembers them.”

Unions were able to improve workplaces and build a better America because for many decades, public officials and even many corporate leaders, while perhaps not warmly embracing workplace representation, nevertheless accepted the role of collective bargaining in American life and tolerated—even respected—the right of workers to form unions. But that acceptance has evaporated. As labor historian John Logan noted last year, “Over the past three decades, **U.S. employers have waged what *Business Week*** [in a 1994 article] **has called ‘one of the most successful anti-union wars ever’ with spectacular results**—private-sector union membership now stands at...its lowest level since the 1920s.”

Today, employers’ anti-union campaigns are typically so ruthless and so effective in achieving their desired results that the right to organize, a fundamental right that is also codified under U.S. and international law, has been virtually extinguished in America. According to reports by **American Rights at Work** and research by Dr. Kate Bronfenbrenner, Director of Labor Education Research at the Cornell ILR School, and by Professor Gordon Lafer of the University of Oregon’s Labor Education and Research Center, when workers launch an organizing effort:

- One in four companies fires at least one pro-union worker;
- One of every 17 eligible voters in NLRB elections is terminated, suspended, demoted, or otherwise penalized economically for supporting unionization;
- Overwhelming majorities of companies hire anti-union consultants to squelch the organizing campaign (75 percent);
- One-third of companies (34 percent) use bribes and special favors to discourage union support;
- Half of companies (51 percent) threaten to shutter their operations if a union is formed;
- Virtually all companies (92 percent) require their employees to attend “captive audience” mass meetings, at which management preaches against the union; and
- More than three-quarters of companies (78 percent) require workers to participate in one-on-one anti-union meetings with their supervisors or other managers.

The fact that workers routinely encounter such hostility when trying to exercise their right to form unions is a travesty of justice. Compounding the tragedy is the fact that much of the conduct employers engage in to dissuade workers from organizing is entirely legal, or falls into a vast gray area that neither courts nor the labor board aggressively regulate. Thus, for example, employers can hold as many captive audience anti-union meetings as they want (until 24 hours before the election), during which they can present one-sided anti-union pitches; they can require employees to attend these meetings and terminate them

for refusing to do so; they can ban union supporters from the meetings; and they can impose gag orders barring employees at the meetings from speaking in support of forming a union. Employers can also arrange regular one-on-one anti-union chats between workers and their immediate supervisors, while barring union organizers from the worksite and prohibiting employees from talking among themselves about forming a union except during non-work periods (i.e. at any time other than during breaks).

Employers also know—and are regularly reminded by their anti-union consultants—that delaying a final decision on union certification is one of the most powerful and predictably effective tactics for defeating an organizing effort. To that end, employers routinely exploit the NLRB’s multiple avenues for delay, filing both pre-election challenges and post-election appeals. Though frequently frivolous, these delays are entirely lawful. But when employers do cross the line and engage in clearly illegal acts, workers and unions are often reluctant to file unfair labor practice (ULP) charges, because they do not want to contribute to further delays. For those workers whose unlawful treatment becomes the subject of an ULP, the wait for remedies is often unconscionable: the median time between the filing of an unfair labor practice charge and a decision by the NLRB was almost two years (659 days) in 2005.

Meanwhile, the basic remedies the law prescribes for unlawful employer behavior (back pay less interim earnings and slap-on-the-wrist cease-and-desist orders) are so minimal as to have no deterrent effect at all. Finally, even if workers persevere against all odds to form a union, continued employer recalcitrance in bargaining substantially reduces the odds of obtaining a collective bargaining agreement, the primary goal of most organizing drives. According to **American Rights at Work**, workers fail to secure a first contract within a year of union certification in one-third (34 percent) of all successful organizing campaigns.

In short, exercising their fundamental right to join together with their co-workers into unions and bargain collectively with their employers requires workers to run a relentless gauntlet of employer opposition, hostility, abuse and delay. As noted labor scholar and Berkeley professor Harley Shaiken puts it, “Joining a union has become a risk rather than a right” for American workers.

The bludgeoning of workers’ rights in America has been remarkably effective. While the percentage of non-managerial workers who want to belong to unions rose sharply from 44 percent in the mid-1990s to 58 percent today, the share of private sector workers in unions has fallen from 11.3 percent to only 7.4 percent (and the organized workforce overall has fallen from just under 15 percent of all workers to 12.0 percent last year). This decline in unionization has had devastating consequences. Real wages have been stagnant for most of the last 30 years. Income inequality has exploded. Health coverage is declining and costs are rising. Guaranteed pensions have all but disappeared. And because the power of working people has been so eroded, anti-worker politicians inordinately stall simple humane measures, like raising the minimum wage, or hold them hostage to tax breaks for the wealthiest or to other items on the corporate wish list. Efforts to expand and strengthen workplace protections and societal programs that will broadly benefit working families

Ivo Camilo is one of the many American workers with firsthand knowledge of the risk that forming a union can pose. For 35 years, Camilo worked for Sacramento-based Blue Diamond Growers, where he and his co-workers started an organizing effort in October 2004. Management fought back immediately, distributing more than 30 anti-union flyers, forcing workers to attend group anti-union meetings and one-on-one sessions with supervisors, and threatening plant closure and a loss of pensions and benefits if the workers formed a union. Then, less than one week after Camilo and others presented the company with a letter stating they had formed an organizing committee, Camilo was suspended and subsequently fired on trumped-up charges. Two other workers were fired shortly thereafter. In March 2006, an NLRB administrative law judge ruled Blue Diamond had committed 20 labor law violations, including Camilo's discharge. Camilo was finally reinstated in April 2006, a year after his unlawful firing. More workers have been fired and more hearings held, yet still the company persists in doing all it can to block the workers from exercising their right to form a union.

Sherri Buffkin understands the risks as well, albeit from the vantage point of a company manager carrying out orders to repel worker organizing. After workers began their union organizing campaign at hog processing giant Smithfield Foods, the company required Buffkin, a division manager, to monitor employees, find out where they stood on the union, mete out punishment and rewards accordingly, and file daily reports on union activity. She was coached on what to say about potentially dire consequences of forming a union and directed to fire hardworking, loyal employees whose only offense was their desire to organize for better conditions on the job. She witnessed the company's cynical attempts to pit black and Hispanic workers against each other and its threat of immigration enforcement to stifle organizing among Latinos. Under duress, she signed false NLRB affidavits. When she could no longer live with the lies, she told the company that if called to testify, she would tell the truth. For that, despite her solid performance record, she was fired. Now, more than ten years after workers began to organize and despite legal findings of numerous, repeated and massive labor law violations by Smithfield, workers at the plant still have not had a free and fair chance to decide on union representation.

Camilo and Buffkin's accounts are only two anecdotes in an epic saga of how employers, anti-union consultants, and anti-worker politicians and judges have joined forces to suppress and deny the right of workers to form unions.

are stymied. And longstanding workplace guarantees, like overtime pay; progressive social programs, like unemployment insurance; and public policies designed to help disadvantaged workers achieve workplace equity, like affirmative action, come under blistering attack.

All workers suffer from the denial of the right to form unions and the corresponding decline in unionization. However, because **women and racial minorities benefit disproportionately from union representation, the cost to them—in lost opportunities for greater economic security and genuine equal opportunity—is especially great.**

UNION REPRESENTATION: A Bridge to Economic Security and Equal Opportunity for All Workers

The fair employment laws of the 1960's were passed to eliminate race, gender and ethnicity as stumbling blocks on the road to economic security and prosperity. These laws have been a boon to all workers, including white men, women, and racial minorities. Yet even now, more than 40 years later, women and people of color still earn less than their white male counterparts. They are more likely than white men to be concentrated in low wage work and less likely to be covered by employer-provided benefits such as health care and retirement plans. Incomes are lower and poverty greater for minority and female-headed households. People of color are more likely to be uninsured than non-minorities and when insured, are more likely than non-minorities to receive health coverage through public programs like Medicaid (see Appendix Table A).

One reason these differences in economic well-being persist is because the promise of equal opportunity is not a guarantee of economic security. Unions, however, help close the gaps, raising wages and improving benefits for all workers, especially for women and minorities. Enabling workers to freely exercise the right to form unions is thus one of the most effective, efficient and comprehensive ways to translate promised equal opportunity into real economic security for women and minorities, particularly people of color.

Unions Raise Wages for Women and People of Color

In 2006, the typical union worker earned 30 percent more than a non-union worker. Union wage premiums are even higher for women and most minority workers. Among workers overall, median weekly earnings in 2006 were **31 percent greater for women in unions** than for non-union women, **36 percent greater for unionized African Americans** than for their non-union counterparts, **8 percent greater for unionized Asian Americans than their non-union counterparts**, and a **whopping 46 percent greater for Hispanic union members** (and 49 percent greater for unionized Hispanic men) than for non-union Hispanics. Even after taking into account factors that affect wages (experience, education, region, industry, occupation and marital status), union wage premiums for women and people of color remain sizable—10.5 percent for women, 20.3 percent for African Americans, 21.9 percent for Hispanics and 16.7 percent for Asian Americans.

Women and minorities benefit so much from union representation, in part, because unions raise wages more for workers at the bottom of the pay scale than for those with higher earnings. Women and minorities are over-represented in low wage jobs relative to their share of the workforce and under-represented in higher-paid positions; hence, they benefit disproportionately from union representation (see Appendix Table A, "Share Earning..."). Likewise, the union wage premium is substantial in certain occupational groupings with large numbers of female and minority workers. For example, women, African Americans, and Latinos are over-represented in service occupations relative to their representation in the workforce overall; the union wage advantage in the broad service occupations' category is 58 percent. Women hold 75 percent of office and administrative support jobs, where the

union wage advantage is 30 percent. And African Americans and Hispanics, who are 25 percent of the employed workforce overall, are 35 percent of workers in transportation and material moving occupations, where the union wage advantage is 47 percent.

Unions Improve Benefits for Women and Minority Workers

In addition to earning higher wages, workers in unions are more likely to have employer-provided benefits, and their benefits are richer than those of non-union employees. The union benefits advantage is a boon for women and people of color, making it more likely that, in unionized workplaces, they will enjoy benefits parity with white men (see Appendix Table A, “Share with employer-provided...”).

As shown in Appendix Tables B and C, a larger share of union members than non-union workers have **job-based health coverage**; their coverage is more comprehensive; they are less likely to contribute to the costs of coverage; and if they contribute, their contributions are smaller. Not surprisingly, union members are far less likely to be uninsured than their non-union counterparts: Only 2.5 percent were uninsured in 2003, one-sixth the share of uninsured non-union workers (15 percent).

Union members are also more likely than non-union workers to have access to employer-sponsored retirement plans and far more likely to have access to **guaranteed pensions**, i.e., defined benefit plans. (Appendix Table B) Seventy percent of union members have access to guaranteed pensions compared with only 15 percent of non-union workers.

For a measure of the tangible difference union representation makes in the lives of traditionally low-paid workers, many of them women, minorities and immigrants, consider what having a union means to hotel industry workers in Las Vegas. There, hotel maids and housekeepers, food servers and cooks, groundskeepers and cashiers earn wages and benefits sufficient to send their kids to college, save for retirement, live in comfort and invest in the future. The picture is “so right,” journalist Harold Meyerson says, “that in an America where Wal-Mart and a thousand other unnatural shocks drive working class living standards down, we can scarcely account for it.” It is the union difference that accounts for the middle class opportunities enjoyed by Las Vegas hotel workers. Because the hotel workers union (now, UNITE-HERE) was eventually able to convince key hotel owners there to remain neutral when workers tried to organize, the overwhelming majority of jobs in the city’s major hotels—roughly 90 percent—are unionized. This extraordinary union density produces wages for the typical Vegas hotel employee that are 40.2 percent higher than in non-union Reno. (A Russell Sage study cited by Meyerson found that in cities with high union density, hourly wages for hotel workers are \$3.00 higher than in cities where fewer workers are unionized.) And the benefits are not confined to hotel employees alone. As former Las Vegas mayor Jan Jones points out in describing the city’s amazing growth, including new schools, parks and libraries, “This is what management and labor working together can produce—a vibrant economy.”

Quality of life benefits like **paid leave and education and training assistance** are also more available to union members than to their non-union counterparts. Union members are more likely to have paid holidays (and more of them), as well as paid sick

leave, vacation, personal leave, funeral leave, jury duty, and paid military leave. The union advantage with respect to these benefits is again especially important for women and people of color because of their greater concentration in low-wage work. According to the Family and Work Institute, low-paid workers are generally far less likely than high-wage earners to have paid sick leave, holidays and vacations. For many low-wage workers, a union contract is the only means for obtaining access to such benefits.

Finally, union members are more likely to have access to job-related education and training (56 percent of union members compared with only 48 percent of non-union workers) and to non-job-related education (23 percent of union members receive such benefits compared with only 13 percent of non-union workers). Access to such benefits helps workers move up within their companies and industries and better positions them to respond to job loss and downsizing in industries undergoing major contractions during periods of economic transformation.

Unions Help Workers Fight Discrimination and Win Equal Opportunity

Beyond raising wages and improving benefits, union representation bolsters protections against discrimination for women and people of color and gives them more tools to fight for equal opportunity. The added heft unions bring in challenging discrimination is critical: fair employment laws ban a panoply of practices that have the intention or effect of discriminating, but equal opportunity is not a self-enforcing promise. Vindicating non-discrimination rights requires workers to lodge charges with the Equal Employment Opportunity Commission (EEOC) and often, file suit against employers. Litigation is costly, time-consuming and intimidating, imposing burdens most workers, particularly low-wage earners, simply cannot bear. Union representation places equal opportunity more in reach for minorities and women.

Collective Bargaining Agreements—Helping *All* Workers, Particularly Women and Minorities

Collective bargaining agreements set terms and conditions of employment in unionized workplaces, making employment practices more transparent and, hence, less likely to be arbitrary and discriminatory. In addition, union contracts often include explicit bans on employment discrimination or provide for specific remedial measures to correct longstanding inequities, adding another layer of protection and often creating rights beyond those covered under existing laws. Union contracts also establish grievance and arbitration systems that enable workers to challenge decisions they believe are unfair, discriminatory, arbitrary or otherwise in violation of the contract. While not a substitute for the right to go to court, access to the grievance process is important to women and people of color, because it is less expensive, time-consuming and contentious than litigation; it engages the union directly in representing aggrieved workers; and it promotes faster resolution of disputes.

Last, as our system of workplace protections is fragmented and incomplete and many *lawful* actions are nevertheless arbitrary, unreasonable, and unfair, a union contract fills the gaps of this fragmented framework. In this manner, a union contract confers greater rights on workers and gives them an accessible means to vindicate those rights. This fill-in-the-blanks

role of a union contract is especially important to women and people of color because of their greater concentration in low wage jobs, where legal protections are often more limited and arbitrary employer conduct is frequently the norm.

Unions as Agents for Enforcing Labor and Employment Protections

Labor and employment agencies are strapped for investigative resources, and hence, enforcement of workplace protections and rights is often dependent on worker-generated complaints. The presence of a union on the job makes the initiation of such complaints easier. In the area of workplace safety and health, for example, worksite unions are more likely to develop and implement workplace health and safety programs, including complaint processes. Unions' commitment to safe and healthy workplaces is important to all workers, but takes on even greater importance for Latino workers, because of their growing concentration in dangerous industries, such as construction, and their rising incidence of workplace injuries and deaths.

Unions as Initiators of Systemic Workplace Change Benefiting Women and Minorities

Unions have a full panoply of tools they can use—and have used—to end systemic workplace discrimination and maximize the potential to achieve equal opportunity and employment equity. For example, the United Steelworkers negotiated the affirmative action program that led to the Supreme Court's decision in *United Steelworkers Union v. Weber* (443 U.S. 193 [1979]), upholding voluntary goals to correct conspicuous racial imbalances in the workplace. The Service Employees International Union and the American Federation of State, County and Municipal Employees have combined organizing, political and legislative action to win employment status, union recognition, and higher wages for hundreds of thousands of home care workers, most of whom are low-income women of color. The International Union of Electrical Workers (now merged with the Communications Workers) sued General Electric over the company's refusal to cover pregnancy under its employee benefits plan, and after losing the Supreme Court case, was a leader in the successful fight to amend Title VII to bar pregnancy discrimination. Unions have also challenged wage-setting practices that applied different standards to "men's" and "women's" jobs, helping to establish the legal precedent that Title VII's ban on sex-based wage discrimination is broader than the Equal Pay Act's requirement of equal pay for equal work. Through these groundbreaking initiatives and others, unions have helped open vast opportunities for women and minorities to enter jobs previously closed to them, secure benefits long denied to them, and win wage adjustments and back pay that translated promised equal opportunity into real economic security.

No one suggests that unions have been unerringly non-discriminatory or that their relationship with the civil rights movement has been without blemish. But, it is indisputably true that through organizing, bargaining, litigation, legislative, and political advocacy, unions and the union movement have played a signature role in advancing the rights and interests of people of color and women, in the workplace and in our society overall. Unions can best play this role when the right of workers to organize and bargain is fully protected, and can be freely exercised. But as described above, this right has been ruthlessly stripped away, to the detriment of all workers, particularly women and minorities.

Restoring Organizing and Bargaining Rights for America's Workers: THE EMPLOYEE FREE CHOICE ACT

Congress can take an important step to begin reversing some of the damage that has been done to workers' rights and restoring the civil and human right of workers to form unions by passing the Employee Free Choice Act, a straightforward measure designed to ensure that when a majority of workers want to form a workplace union, they can do so free of employer intimidation and coercion. This legislation would restore and strengthen the right of workers to form unions and bargain collectively by:

- Requiring employers to recognize their employees' union when a majority of workers present signed authorization cards demonstrating their choice to form a union (the "majority sign-up" process). Majority sign-up does not deprive employers of opportunities to express their views. What it does is prevent them from routinely demanding secret ballot elections to preclude workers from achieving the representation they desire, leaving to workers the decision about the process to use.

The ideal of secret ballot elections is enormously appealing, but the current NLRB election process enshrines a vast imbalance of economic power and resources that gives employers near-unilateral advantage from start to finish. Employers and their anti-union consultants exercise this power coercively to instill fear and intimidation, undermine worker unity, sow mistrust, and defeat union formation and collective bargaining. Democracy is not served where, as Professor Shaiken notes, "Ballots may be counted honestly but the outcome ratifies the coercive, even threatening atmosphere in which the vote occurs." Workers in majority sign-up campaigns, however, are only half as likely as those in NLRB elections (23 percent vs. 46 percent) to say their employers coerced them to oppose the union, according to **American Rights at Work**, and only a tiny share of those signing cards, less than 5 percent, report feeling pressured to sign a card because of a union organizer's presence. Because it reduces the potential for, and impact of, employer coercion and helps level the playing field, majority sign-up is actually more democratic than secret ballot elections and better effectuates the right of workers to make their own decisions about unionization.

Majority sign-up works for workers and is good business for employers. At Cingular Wireless, more than 17,000 workers chose to join the Communications Workers Union within the first year after the company and the union agreed to neutrality and majority sign-up. According to Cingular's Executive Vice President for Human Resources, "[M]aking choice available...results, in part, in employees who are engaged in the business and who have a passion for customers."

- Boosting penalties for unlawful interference with the right to form unions, so that the cost of breaking the law is a real deterrent, rather than a small nuisance on the road to union avoidance. Existing remedies for violations of the right to form unions are so paltry—\$3,800 on average in 2003—employers are essentially encouraged to break the law. Under the Employee Free Choice Act, workers who are victims of unfair labor practices could win triple their backpay in monetary awards and employers could be assessed fines of up to \$20,000 for illegal conduct during organizing campaigns and first contract negotiations.

These provisions would align penalties for violating the fundamental right to form unions more closely with remedies available for violations of the civil rights employment statutes (back pay, compensatory and punitive damages) and wage and hour violations (liquidated damages twice the back pay and a longer statute of limitations for determining the scope of recovery).

In the *Smithfield Foods* case described earlier, the company responded to workers' 1997 desire for a union election by spying on, interrogating and physically assaulting them, and threatening to close the plant. Yet the only "remedy" imposed on the company was an order to read, post, and send a notice to workers, telling them it would not break the law. Last year, the NLRB ordered a new election at Smithfield—a decade after the organizing began, and in an environment desperately tainted by the company's relentless and often illegal efforts to break the workers' will to form a union.

- Providing for mediation and arbitration when an employer and the workers' union are unable to reach agreement on a first contract within a reasonable period of time, thus preventing employers from engaging in bad faith, protracted negotiation with the purpose of depriving workers of the benefits of union representation, and undermining their support for the union. Mediation and arbitration would prevent situations like Champion Homes in California, where workers formed a union in 2000; secured a 2003 administrative law judge's decision, ordering the company to bargain in good faith; and yet, still today do not have a collective bargaining agreement.

Reforming our labor laws to restore the freedom to form unions, as proposed by the Employee Free Choice Act, is long overdue. No other U.S. civil rights or worker protection standard countenances the type of employer interference in the exercise of protected rights that workers routinely endure when they try to form unions and bargain collectively. No other worker protection law or its interpretations contemplate that workers' enjoyment of the right conferred by the law is conditioned on their conquering an employer-imposed obstacle course. No other law governing the workplace presumes that workers are entitled to exercise a fundamental right—but that employers are also entitled to use their inherently unequal and vastly superior economic power to discourage, dissuade and prevent workers from exercising their rights. If the legal regime and standard operating procedures employers engage in when workers try to organize and bargain were imported to the laws governing other fundamental rights of American workers, such as the right to be free of discrimination based on color, race or gender, the civil rights movement would be marching on Washington again—and the labor movement would be with us.

Now is the time to restore the right of workers to form unions and bargain collectively. America's workers need—and have a right to enjoy—union representation in the workplace. The Leadership Conference on Civil Rights, and the collective struggle for civil and human rights, needs workers and their unions as allies in the ongoing struggle for justice. And all Americans need a strong civil rights movement and a strong labor movement, working together, to advance the cause of social and economic justice for all. The Employee Free Choice Act is an important first step for us all.

APPENDIX TABLE A

ECONOMIC SECURITY INDICATORS, BY RACE, HISPANIC ORIGIN AND GENDER

	All	White*	Black	Hispanic	Men	Women
Share earning						
Less than \$12.00/hr	40.5	34.7	52.6	60.2	34.6	46.7
\$12.00–\$19.19	27.2	28.4	26.1	23.5	27.5	26.8
\$19.19–\$28.79	18.3	20.6	14.1	10.5	20.2	16.3
\$28.79 +	14.0	16.4	7.1	5.7	17.6	10.1
Share with employer-provided						
Health coverage		59.8	54.1	39.7	58.7	52.5
Retirement coverage		50.6	42.2	25.0	46.4	44.3
Median household income	\$46,326	\$50,784	\$30,858	\$35,967	\$46,756 ⁱ	\$30,650 ⁱ
Poverty rate	12.6	8.3	24.9	21.8	13.0 ^p	28.7 ^p
Share uninsured	15.9	11.3	19.6	32.7	n.a.	n.a.
Share with Medicaid coverage	13.0	8.9	24.8	21.7	–	–

Sources: Economic Policy Institute, State of Working America, Tables 3.7-3.10 (distribution of employment by wage level (2005 data)); Table 3.12 (private sector employer-provided health coverage (2004 data)); Table 3.15 (private sector employer-provided pension coverage (2004 data)) (http://www.stateofworkingamerica.org/tabfig_03.html); U.S. Census Bureau, Income, Poverty, and Health Insurance Coverage in the United States: 2005, Tables 1 and A-1 (household income); Tables B-1 and B-3 (poverty); and Table C-1 (uninsured and Medicaid-covered) (<http://www.census.gov/prod/2006pubs/p60-231.pdf>).

*White is non-Hispanic whites; Hispanic can be any race.

ⁱIncome data for men/women is for families headed by men, with no wife present; and by women, with no husband present.

^pPoverty rates for men/women is for families headed by men, with no wife present; and by women, with no husband present (all other poverty rates are for individuals).

APPENDIX TABLE B

UNION ADVANTAGE IN ACCESS TO EMPLOYEE BENEFITS

Share of Workers with Access to Selected Benefits, by Benefit Type and Union Status

Benefit Type	Union	Non-Union
Retirement benefits (any)	84	57
Defined benefit	70	15
Defined contribution	50	55
Health care		
Medical	89	68
Dental	69	43
Vision	54	26
Rx coverage	86	64
Life insurance	63	51
Disability		
Short-term	63	36
Long-term	30	30
Paid leave		
Holidays	83	75
5 days or less	3	9
6–9 days	42	61
10+ days	56	29
Sick leave	59	57
Vacation	83	77
Personal leave	47	36
Funeral leave	81	66
Jury duty leave	82	69
Military leave	55	47
Family leave/paid	6	8
Family leave/unpaid	89	81
Child care assistance	19	14
Adoption assistance	14	10
Long-term care insurance	15	11
Education/work related	56	48
Education/non-work related	23	13

Source: U.S. Department of Labor/Bureau of Labor Statistics, National Compensation Survey: Employee Benefits in Private Industry, March 2006, Tables 1, 4, 19, 20, 25 (<http://www.bls.gov/ncs/ebs/sp/ebsm0004.pdf>).

APPENDIX TABLE C

UNION ADVANTAGE IN COST AND QUALITY OF EMPLOYEE BENEFIT PLAN

Share of Participating Workers in Plans Requiring Employee Contribution and Amount of Employer/Employee Contribution by Benefit Type and Union Status

	Union	Non-Union
Defined Benefit plan		
Contribution required	4%	3%
Contribution not required	76%	82%
Not determinable	20%	15%
Defined Contribution plan		
Contribution required	50	62
Contribution not required	37	33
Not determinable	12	6
Medical plans		
Single coverage	51	80
Average flat monthly employee premium	57.28	78.34
Average flat monthly employer premium	278.15	242.89
Family coverage	60	92
Average flat monthly employee premium	196.60	308.88
Average flat monthly employer premium	670.05	583.08
No employee contribution:		
Average flat monthly employer premium—single coverage	390.42	297.67
No employee contribution:		
Average flat monthly employer premium—family coverage	870.66	706.91

Source: U.S. Department of Labor/Bureau of Labor Statistics, National Compensation Survey: Employee Benefits in Private Industry, March 2006, Tables 7, 8, 12, 13 (<http://www.bls.gov/ncs/ebs/sp/ebsm0004.pdf>).

SOURCES

AFL-CIO, **BushWatch**, <http://www.aflcio.org/issues/bushwatch/index.cfm>, miscellaneous items including *Repealed worker protection and labor-management relations rules* (Feb. 2001); *Repealed federal contractor rule that scrutinized corporate lawbreakers during competition for government contracts* (Dec. 2001); *Revoked union representation for hundreds of workers in five Dept. of Justice divisions* (Jan. 2002); *Denies airport screeners freedom to choose a union* (Jan. 2003); *Terminated collective bargaining rights for 1300 federal workers* (Feb. 2003); *National Labor Relations Board says law doesn't apply to graduate employees* (July 2004); *Allows substandard wages for construction workers rebuilding Gulf Coast* (Sept. 2005); *Scraps affirmative action rules for Katrina contractors* (Sept. 2005); *Takes away millions of workers' rights to join a union* (Sept. 2006).

Death on the Job-The Toll of Neglect, April 2007 (www.aflcio.org/issues/safety/memorial/doj_2007.cfm).

The Silent War: The Assault on Workers' Freedom to Choose a Union and Bargain Collectively in the United States, September 2005, p. 5 (<http://www.araw.org/takeaction/efca/resources.cfm>).

American Rights at Work, **The Employee Free Choice Act: Solutions to a Flawed Labor Law,** 2007 (<http://www.araw.org/takeaction/efca/resources.cfm>).

Exposing The Opposition: The Facts on Critics of the Employee Free Choice Act, 2007 (<http://www.araw.org/takeaction/efca/resources.cfm>).

Workers' Rights Are Human Rights/Why Are Workers' Rights Violations So Rampant?, December 19, 2004 (<http://www.araw.org/resources/facts/remedies.cfm>).

Bernstein, Aaron, **Why America Needs Unions But Not The Kind It Has Now**, *Business Week*, May 23, 1994, p. 70.

Bronfenbrenner, Kate, **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, p. 73, Table 8 (<http://govinfo.library.unt.edu/tdrc/research/bronfenbrenner.pdf>).

Bufkin, Sherri, **Workers' Freedom of Association: Obstacles to Forming Unions**, Testimony Before the Health, Education, Labor & Pensions Committee, United States Senate, June 20, 2002 (www.smithfieldjustice.com/Documentos/Documented_Abuse/PDFs/Testimony_Sherri_Buffkin.pdf).

Camilo, Ivo, Blue Diamond Growers worker, **Testimony in Hearing on Strengthening America's Middle Class Through the Employee Free Choice Act**, before the United States House of Representatives Subcommittee on Health, Employment, Labor and Pensions, February 8, 2007 (http://www.aflcio.org/joinaunion/voiceatwork/efca/upload/EFCA_Camilo_20070208.pdf).

Compa, Lance, **Unfair Advantage: Workers' Freedom of Association in the United States under International Human Rights Standards**, Human Rights Watch, 2000, pp. 7 and 9 (<http://www.hrw.org/reports/2000/uslabor>).

Economic Policy Institute, **State of Working America 2006-2007**, Tables 3.7-3.10, 3.12, 3.15 (http://www.stateofworkingamerica.org/tabfig_03.html).

Families and Work Institute, **What Do We Know About Entry-Level, Hourly Employees?**, November 2006, p. 7 (<http://familiesandwork.org/site/research/reports/brief1.pdf>).

Freeman, Richard B., **Do Workers Still Want Unions? More Than Ever**, Economic Policy Institute Briefing Paper #182, February 22, 2007, pp. 1, 6 (www.sharedprosperity.org/bp182.html).

Frontstin, Paul, ***Union Status and Employment-Based Health Benefits***, Employee Benefit Research Institute, May 2005, p. 2 (http://www.ebri.org/publications/notes/index.cfm?fa=notesDisp&content_id=3327).

Hiatt, Jon, ***Henry Kaiser Lecture Series Speech, Georgetown University Law School***, reprinted in Daily Labor Report, No. 223, p. E-5, November 21, 2005.

Lafer, Gordon, ***Free and Fair: How Labor Law Fails U.S. Democratic Election Standards***, American Rights at Work, June 2005 (<http://araw.org/docUploads/FreeandFair%20FINAL.pdf>).

Statement in Hearing on Strengthening America's Middle Class Through the Employee Free Choice Act, before the United States House of Representatives Subcommittee on Health, Employment, Labor and Pensions, February 8, 2007 (http://www.aflcio.org/joinaunion/voiceatwork/efca/upload/EFCA_Lafer_20070208.pdf).

Logan, John, ***The Union Avoidance Industry in the United States***, British Journal of Industrial Relations, Vol. 44, No. 4, pp. 651-675, Dec. 2006, p. 1 (www.americanrightsatwork.org/unionbusters/).

Mishel, Lawrence, ***The Right to Organize, Freedom and the Middle Class Squeeze***, Testimony before the United States Senate Committee on Health, Education, Labor and Pensions, March 27, 2007, p.3 (http://www.epi.org/content.cfm/webfeatures_efca_testimony_20070326).

Meyerson, Harold, ***Las Vegas as a Workers' Paradise***, The American Prospect, January 2004 (<http://www.prospect.org/print/V15/1/meyerson-h.html>).

Shaiken, Harley, ***Unions, The Economy, and Employee Free Choice***, Economic Policy Institute Briefing Paper #181, February 22, 2007 (www.sharedprosperity.org/bp181.html).

Southern Labor Institute, ***Now Is the Time. Dr. Martin Luther King Jr. on Labor in the South: The Case for a Coalition***, Booklet prepared under the auspices of the Labor Subcommittee of the King Holiday Commission, designed by the AFT and printed by AFSCME, January 1986 (<http://www.aft.org/topics/civil-rights/mlk/connect.htm>).

Sweeney, John, ***Statement on Bush Administration's Final Rule to Eliminate Overtime Protection for America's Workers***, April 20, 2004 (<http://www.aflcio.org/mediacenter/prspmtm/pr04202004.cfm>).

U.S. Census Bureau, ***Income, Poverty, and Health Insurance Coverage in the United States: 2005***, Tables 1, A-1, B-1, B-3, C-1) (<http://www.census.gov/prod/2006pubs/p60-231.pdf>).

U.S. Department of Labor/Bureau of Labor Statistics, ***Employed persons by detailed occupation, sex, race, and Hispanic or Latino ethnicity***, Household Data Annual Averages, Table 11 (<http://www.bls.gov/cps/cpsaat11.pdf>).

National Compensation Survey: Employee Benefits in Private Industry, March 2006 (<http://www.bls.gov/ncs/ebs/sp/ebsm0004.pdf>).

Union Members in 2006, January 25, 2007, Table 2 (<http://www.bls.gov/news.release/pdf/ununion2.pdf>).