

Will New Union Organizing Laws Rough up the Finishing Industry

by Woodruff Imberman*
Imberman and DeForest, Inc., Evanston, IL

Legislation is being introduced this Spring to change the rules by which unions can organize private employers, obviously including those in the metal finishing industry. The proposed law, called the "Employee Free Choice Act" by its supporters, would let unions organize a company's workforce in two different ways. Under the new legislation, unions could choose either a "card check" or a secret-ballot election under current National Labor Relations Board election rules. Platers, specialty coaters like Teflon finishers and galvanizers would have to honor the choice, which would be made by the union, not their own employees.

The proposed new law has 216 co-sponsors in the House of Representatives, mainly Democrats. New House Speaker Nancy Pelosi (D-Cal.) said in early December the bill would probably go to the House floor for a vote in early Spring. "We certainly will be passing the card check, the Employee Free Choice Act," she said, despite strong opposition almost sure to come.

How the current law works

The new legislation upsets a lot of history. The 1935 National Labor Relations Act established a system of industrial democracy based on secret ballot elections. Under the NLRB, elections allow employees to vote whether or not they wish to be represented by a union. The votes are supervised by the federal National Labor Relations Board.

Now, if more than 30% of the workers in a bargaining unit file signed "union authorization cards" with a local NLRB office, it will order an election. NLRB rules require the election to be held within 42 days of the filing of the original petition, unless there is a question of voter eligibility. Such questions are usually quickly handled. For example, in fiscal year 2003, over 92% of all initial representation petitions went to election within 56 days petition-filing.

Between the petition and election, both unions and employers are allowed to campaign, using their "free speech" rights to try to persuade employees to vote either for or against the union. The NLRB has a long list of rules governing union and company conduct for this, to balance the competing interests of employees, unions and employ-

ers. This is a daunting task for which it has frequently been criticized by both labor and management.

The Board conducts the secret ballot election. The election is just that — workers cast secret ballots in a vote stringently supervised by NLRB agents. No campaigning is allowed by either the union or management within sight of the voting area, nor can supervisors and managers be nearby. The only people there are the NLRB field agent(s), several designated employee observers and those who vote. The winner is the one for whom a majority of the votes have been cast. Either side can appeal an election to the NLRB, and then to the Federal Courts, a process that sometimes takes years, due to the NLRB's sometimes dilatory practices.

What finishing executives want

Virtually all finishers wish to remain non-union. They point to the high costs of negotiating labor contracts, the highly restrictive union work-rules that result in wasteful work practices and feather bedding and the rigid contract provisions that prevent a company from reacting quickly to changing market conditions caused by non-union and foreign competitors. Companies dislike being forced into a "partnership" with anti-management union leaders, who say they are happy to "help run the business." After all, many companies are still managed by entrepreneurs who founded them, or who dominate managers they hired to run the businesses.

* Corresponding author:
Dr. Woodruff Imberman, President
Imberman and DeForest, Inc.
990 Grove Street
Evanston, IL, 60201
Phone: (847) 733-0071
E-mail: IMBandDEF@aol.com

What finishing executives believe

Virtually all private employers feel they treat their employees fairly, offer competitive wage and benefit packages either for their areas or industries, and deal with employee complaints openly, honestly, and quickly. In my career, I have seen dozens of executives who received a registered letter from the NLRB, dumbfounded to read that their employees have signed cards authorizing a union to file an election petition. They cannot comprehend how a union organizer could contact their employees; how their employees could circulate authorization cards and organize a union drive under their noses; or how "loyal" supervisors and managers did not catch wind of the effort or why their employees would ever want a union in the first place.

The reality

The widespread belief that union promises of higher employee wages and benefits cause employees to sign "union cards" is wrong. The real causes of union sympathies among workers are perceptions of favoritism (often ethnic), unfair treatment and management indifference to the feelings and emotions of workers. Union leaders are quick to capitalize on these feelings, and often seek out ethnic leaders to support their drives.

The first union to mix employee rights and civil rights was Local 1199, the East Coast hospital workers' union, now part of the Service Workers International Union. In 1969, Local 1199 hired Mrs. Coretta Scott King, wife of slain civil rights leader Dr. Martin Luther King, to help organize the service workers of Johns Hopkins Hospital in Baltimore. In order to emphasize their "Union Power, Soul Power" emphasis, 1199 had Mrs. King climax their campaign by a speech saying she considered herself "...a Sister 1199er," and that "...my husband would have wanted you to vote for the union." Since then, black leaders have allied themselves with unions, mixing civil and employee rights into anti-employer witches' brews virtually impossible to combat.

Hispanic leaders have quickly followed their lead, seizing upon real and perceived Latino sentiments of mistreatment. These feelings were behind the highly successful wave of union organizing of Hispanics following the amnesties offered under the 1986 immigration reforms. Union organizers have co-opted this generation's Hispanic leaders, and are again eagerly waiting the chance to organize today's Hispanics, many undocumented, who feel discriminated against by their employers.¹

How finishers can maintain a union-free environment

The only way to deal with the realities of finishing employee discontents that cause workers to seek out a union is to identify those realities and remedy their discontents. This can best be done by an Employee Audit — not a simple paper-and-pencil questionnaire — but by a skilled interviewer who understands what employees mean by what they say. Employees will speak more openly to an outside interviewer with no coercive power over them than to a member of management. Workers are afraid of retribution, should they say anything critical about supervisors and supervisory treatment, working conditions, alleged discriminatory treatment, inequitable pay differentials, incomprehensible benefits and inadequate equipment maintenance that prevents them from doing their jobs as well as they would want. Any combination of these factors irritate employees to the point they will seek outside representation by a union.^{2,3}

Debate over current rules

Private employers oppose the new legislation, supporting the existing law requiring secret ballot elections. Employers say workers are often pressured by union representatives and pro-union fellow employees into signing such authorization cards. Employers say quick "card check" unionization prevents them from giving their side of the story — why unions are not necessarily in the employees' best interests. And finally, the new card check would deny workers the right to secret ballot elections.

"It is very telling that first up on the Democrats' agenda after taking power is rolling back voting rights," said Charles Norwood, (R-Georgia), ex-Chairman of the House Subcommittee on Workforce Protections. "Democrats and their big labor bosses are seeking to steal workers' rights to cast ballots in a private voting booth." Calling card checks unfair, Mr. Norwood said unions use physical force to make workers sign union authorization cards. Card check opponents also say card signing blitzes are conducted so quickly and surreptitiously by union organizers that employers have no chance to explain to their workers the disadvantages of joining a union.

On the other hand, labor leaders and their political supporters denigrate secret ballot elections as a way to let employees decide if they want a union. They say employees' organizational rights have been badly compromised by aggressive antiunion campaigns companies mount against union organizing campaigns.

Unions are wildly opposed to the few, highly successful consultants many companies have used to defeat unions. Why professional union organizers condemn a company for employing anti-union professionals to run their campaigns is simple — several have excellent track records, winning over 95% of their elections for management.⁴

Who's right in the current debate?

Everybody agrees on one thing — unionization among private employers has declined sharply since its height of nearly 36%, reached in 1953 (Table 1). Today, the unionization rate among private employers is about 7.8%, concentrated in heavy industries originally organized in the 1930s — steel, auto, shipbuilding, aerospace and construction.

According to the Bureau of Labor Statistics in a 2005 study "Union Members Summary," unionization is higher for men than women, highest among blacks, then whites, then Asians and finally Hispanics. Unionization is also highest among workers aged 45 to 64, and lowest among those aged 16 to 24 (Tables 2 and 3). These statistics reflect today's reality — efforts by unions to organize minorities — and yesterday's reality — most of today's union members were organized long ago, before modern anti-discrimination laws were passed and other workplace regulations were promulgated by state and Federal agencies.

Pro-union supporters say President Reagan's 1980 firing of striking flight controllers was a milestone in changing American attitudes towards unions, giving an official imprimatur to anti-union action. Supporters claim with President Reagan's encouragement, employers began "vicious" anti-union campaigns often resulting in the termination of pro-union employees. Pro-union supporters forget that flight controllers - Federal employees - were (and still are) forbidden by law to strike, and were ignorant of the fact that when the Professional Air Traffic Controllers Organization's own employees tried to unionize, the NLRB ruled that PATCO itself committed "serious, pervasive, egregious and substantial" unfair labor practices in its efforts to defeat the unionization attempt of its own staffers (5-CA — 12341, 12506, 261 NLRB No. 132).

Table 1
Private sector union membership

Year	Total private employment (in thousands)	Union members (in thousands)	% Private workers who are union members
2005	105,508.4	8,255.0	7.8%
2004	103,583.6	8,204.5	7.9%
2003	102,647.6	8,451.5	8.2%
2002	100,581.4	8,651.5	8.6%
2001	101,577.3	9,141.3	9.0%
2000	101,809.9	9,147.7	9.0%
1999	100,025.4	9,418.6	9.4%
1998	98,328.9	9,306.1	9.5%
1997	96,385.8	9,363.3	9.7%
1996	93,749.9	9,415.0	10.0%
1995	91,680.5	9,432.1	10.3%
1994	89,648.6	9,649.4	10.8%
1993	86,437.9	9,580.3	11.1%
1992	85,525.4	9,737.2	11.4%
1991	84,792.8	9,936.5	11.7%
1990	86,122.5	10,254.8	11.9%
1989	85,988.9	10,536.2	12.3%
1988	84,216.8	10,702.4	12.7%
1987	82,438.4	10,857.3	13.2%
1986	80,512.0	11,084.7	13.8%
1985	78,449.2	11,253.0	14.3%
1984	76,361.4	11,684.0	15.3%
1983	72,655.7	11,960.2	16.5%
1982	---	---	---
1981	74,435.5	13,944.4	18.7%
1979	71,273.1	15,118.0	21.2%
1978	69,566.3	14,424.7	20.7%
1977	66,086.4	14,340.5	21.7%
1976	63,848.0	13,613.5	21.3%
1975	61,206.2	13,176.8	21.5%
1974	62,947.5	14,703.8	23.4%

DATA SOURCES: For the years 1973-1981, the May Current Population (CPS). For the years 1983-2005, the CPS Outgoing Rotation Group (ORG) earning files. There were no union questions in the 1982 CPS. Employment = wage and salary employment in thousands. Members = employed workers who are union members in thousands. Percent members = percent of employed workers who are union members. The definition of union membership was expanded in 1977 to include "employee associations similar to a union."

SOURCE: B.T. Hirsch & D.A. Macpherson, "Union Membership and Coverage Database from the Current Population Survey: Note," *Industrial and Labor Relations Review*, 56, (2), 349 (2005).

Pro-company supporters say union efforts to get employees to sign union authorization cards often cause peer-group strong-arm tactics in local taverns, "card-signing" parties when pro-union employees forge the names of others and widespread lies that union victory will inevitably lead to immediately higher wages and benefits. Pro-company supporters also say a campaign is needed to give employees the full picture - the widespread corruption among union officials, union rules calling for exorbitant "initiation fees," dues and other payments, and the fact that domestic unions make it harder for American companies to compete in world markets.

Legal precedents

The outcome of a union election has an enormous impact on the future of a company and its employees. Both employers and unions try hard to win, but try hard to win within the complex and ever-changing NLRB election rules that balance the interests of all parties. Should one party feel the other overstepped the bounds, it files objections to the election, which the NLRB quickly investigates. It has the authority to prosecute employers or unions who engage in conduct that interferes with employee free choice. It may order penalties, a new election or in extreme cases, order an employer to recognize the union without an election if the Board finds by checking the authorization cards that there originally was majority support for the union.

Despite occasional election misconduct, the Supreme Court, Appellate Courts and the National Labor Relations Board in an almost endless string of precedents all affirm that secret ballot elections are "... the most satisfactory — indeed the preferred — method of ascertaining whether a union has majority support." **

America has come a long way since the depths of the Depression, when unemployment was high, when management practices were medieval, when there was little from foreign platers and when unions were a necessary safety valve to save the nation from the spreading Old World autocracy that triggered the holocaust of World War II. Today, America is still the shining "city on a hill," one that affirms the Man's Inalienable Rights of free choice, democracy and self-determinism. Hopefully, the Solons of Capital Hill will remember our heritage when they engage in the coming debate on the "Employee Free Choice Act." P&SF

References

1. W. Imberman, "What Immigration Reform Means to Finishers," *Plating & Surface Finishing*, 91 (6), 14 (2004).
2. "Improving Business Through an Employee Audit," *The Fabricator*, December 1998.
3. "What Your Employees Won't Tell You," *Area Development*, May, 1998.
4. "Hocus-Pocus of Union Avoidance," *Journal of Labor Research*, 1 (2), Fall 1980).

** Legal precedents affirming secret ballot elections as the best way to determine true employee sentiments include:

NLRB vs. Gissel Packing Co. (395 U.S. 575), 1969,
NLRB vs. Flomatic Corp. (347 F.2d 74, 78 (2d. Cir.), 1965,
NLRB vs. S.S. Logan Packing Co. 386 F.2d, 565 (4th Cir.) 1967,
J.P. Stevens & Co. vs. NLRB, 441 F.2d 514, 522 (5th Cir.) 1971,
United Services for the Handicapped vs. NLRB, 678 F.2d 661,664 (6th Cir.), 1982,
NLRB vs. Village IX, Inc., 723 F.2d 1360, 1371 (7th Cir.) 1983,
Avecor, Inc. vs. NLRB 931 F.2d 924, 934 (C.C. Cir. 1991).

Table 2
Unionization rates by age, all employers

Age	Total employed	Represented by unions	% Employed
Total, 16 yr and over	123,554,000	17,087,000	13.8%
16 to 24 yr	19,109,000	1,019,000	5.3%
25 to 34 yr	28,202,000	3,316,000	11.8%
35 to 44 yr	30,470,000	4,590,000	15.1%
45 to 54 yr	28,039,000	5,233,000	18.7%
55 to 64 yr	14,239,000	2,617,000	18.4%
65 yr and over	3,495,000	314,000	9.0%

SOURCE : "Table I: Union affiliation of employed wage and salaried workers by selected characteristics," Bureau of Labor Statistics, Department of Labor, 2005.

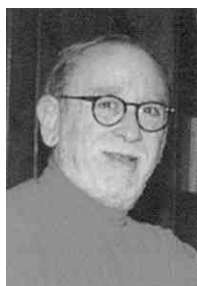
Table 3
Unionization rates by race and Latino ethnicity

Race or ethnic background (Age - 16 yr & over)	Total employed	Represented by unions	% Employed
White	101,340,000	13,657,000	13.5%
Black	14,090,000	2,355,000	16.7%
Asian	5,280,000	670,000	12.7%
Hispanic/Latino	16,533,000	1,888,000	11.4%

SOURCE : "Table I: Union affiliation of employed wage and salaried workers by selected characteristics," Bureau of Labor Statistics, Department of Labor, 2005.

Note: Readers wishing further information on the articles cited should contact the author.

About the Author



Dr. Woodruff Imberman is President and CEO of Imberman and DeForest, Inc., 1740 Ridge Ave., Evanston, IL 60201. The management consulting firm specializes in human resource administration, including group employee incentive compensation plans to motivate workers for performance improvement, employee communications programs, management development and supervisory training efforts, diversity advocacy programs with special emphasis on Latino cultures, and positive employee relations programs in both union and non-union settings. He has lectured at more than a dozen universities, including Indiana University, Tulane University, Lake Forest College Graduate School of Management and DePaul University. He has published more than 400 articles on various aspects of human resource administration and compensation. The firm has been involved in many segments of industry in the U.S., Canada and Mexico.

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