

## **It's Not a Decline When You Are Denied**

As we approach Labor Day 2006, many of the traditional Labor Day editorials are already written, and waiting for publication. In fact, many have simply been rewritten from what was produced over the last twenty years.

They go something like this:

“The Department of Labor has reported that union membership has continued to shrink as a percentage of working Americans. Today, union membership dropped to 13% American workers, and in the private sector the numbers have fallen to less than 10% of the work force. This shows that we are living in a new economy where workers don't need unions, and are rejecting them when they have a choice. Blah, blah, blah, blah, blah . . . ”

Though Section 7 of the National Labor Relations Act states:

“Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3) [section 158(a)(3) of this title].”

This right to organize is often short circuited by efforts by employers to prevent workers exercising their rights. A few examples can help clarify this point.

When the Hilton of the Americas was built in Houston, the owners agreed to be neutral in the decisions their employees made regarding being represented by a union or not. When these employees were not worried about being fired, having closed meetings with their supervisors on the “dangers” of unions, or warned that the hotel would close if there was a union, they overwhelmingly voted “yes,” and they are employees of the first union hotel in Houston.

When Cingular Wireless acquired AT&T's wireless services, the Communication Workers of America, which represented the Cingular workers, got a similar neutrality agreement. In short order the ex-AT&T employees voted to be union. Now most of the workers of our nation's largest wireless company are union.

When one compares this to what happened at the local Wal-Mart in Jacksonville, Texas in 2000, we can see that workers many times do not really have a right to choose. Six meat cutters at the Jacksonville Supercenter decided to join the United Food and Commercial Workers. Wal-Mart responded to these six employees' desire to exercise their rights under the National Labor Relations Act by instituting a policy to do away with all meat cutters, and have only prepackaged

meats at their superstores. Though a Wal-Mart spokeswoman denied that the decision had anything to do with the “union yes” vote, the message picked up by the workers was: “You will lose your job if you vote “union yes.”

This was hammered home in February of 2005, when Wal-Mart said it was shuttering the store in Jonquiere, Quebec, where 200 workers had been negotiating for a first contract. "We were hoping it wouldn't come to this," Andrew Pelletier, a spokesman for Wal-Mart Canada, said. "Despite nine days of meetings over three months, we've been unable to reach an agreement with the union that in our view will allow the store to operate efficiently and profitably."

However, the workers received another message. Michael J. Fraser, national director of UFCW Canada, said in a written statement, "Wal-Mart has fired these workers not because the store was losing money but because the workers exercised their right to join a union."

To attribute the decline in union membership to a desire on the part of workers to “go it alone” misses the reality of the work environment. It would be like someone arguing that the illegal immigrants are here because of our great minimum wage. Let’s not look at their horrendously corrupt economies, or the effects NAFTA has had on their standard of living.

For many years now, a niche industry that focuses on “union avoidance” has flourished in our country. These consultants and attorney’s advertise that they are skilled in assisting management in maintaining a “union-free environment.” In his 1993 book, *Confessions of a Union Buster*, Marty Levitt describes how as a union-busting consultant, he made a very comfortable living advising clients how to keep wages down, limit healthcare and keep unions out of their facilities while charging hundreds of dollars an hour. Fortunately, he came to understand the degree of suffering he was causing, and the personal cost his work was having on himself, and left the industry. He chronicles his journey in his book.

However, if a case presently before the National Labor Relations Board goes as many of in the labor movement dread, companies won’t even have to hire union busting consultants and attorneys.

In what has become known as the Kentucky River Case, the National Labor Relations Board will decide if millions of American workers with marginal leadership authority will cease being hourly employees, and become listed as supervisors. Nurses, quality control inspectors, sales representatives, and many others would become supervisors, and therefore ineligible to join a union or be covered by a collective bargaining agreement.

In a hilarious satire by Stephen Colbert, once everyone becomes a supervisor, “there will be no one left to supervise ‘except the Mexicans.’”

([http://www.americanrightsatwork.org/workersrights/colbert\\_kyriver.cfm](http://www.americanrightsatwork.org/workersrights/colbert_kyriver.cfm))

Since the passing of the National Labor Relations Act in 1935, the right and the ability of workers to organize a union have been eroded through legislation, court decisions, and decisions of the National Labor Relations Board. In retrospect, what is really surprising is that workers are

able to organize at all. In the face of firing, intimidation, loss of livelihood and great personal cost, there are still instances where workers do vote “union yes.” This happened on July 14 in Houston, when 100 bakery workers at the local Fiesta Grocery chain joined the bakery union.

As American workers continue to be squeezed by higher health costs, rising transportation costs, globalization and worries about their pensions, it is truly time for us to re-reform our labor laws so that they can get back to the ideas of the original National Labor Relations Act. Imagine a time when a group of workers could choose a union as freely as a company can choose to be part of a trade association.