



# Policy Memorandum

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## PROPOSED RULE CHANGES BY LABOR BOARD WOULD MAKE WORKPLACE ELECTIONS MORE DEMOCRATIC

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### Executive summary

The National Labor Relations Board recently proposed new rules for elections to create unions in American workplaces. The NLRB's proposal focuses on two primary changes:

- First, employers will be required to provide union supporters with a list of eligible voters—with complete contact information—as soon as employees indicate their desire to hold an election aimed at forming a union. This brings NLRB procedures in line with the laws governing elections for members of Congress or any other public office.
- Second, legal objections to procedural or logistical aspects of the election will be heard after the election date if they affect less than 20% of potential voters. All such claims are guaranteed to be heard and adjudicated, and the election's outcome will not be certified until they have been settled; but the date of the election will remain fixed, and will not be subject to manipulation for partisan advantage. This, too, brings NLRB procedures closer into conformity with the definition of free and fair elections under American democracy.

Both these changes represent modest but important steps toward making workplace elections more democratic. This policy memorandum exposes how current NLRB election procedures undermine employees' ability to make a free and uncoerced choices regarding unionization, and explains how the proposed rule changes would help make the system more democratic.

### ***Moving towards a more level playing field by providing equal access to voter lists***

An axiom of American democracy is that both parties in an election must have equal access to the list of eligible voters. Every state requires that voter lists be provided to all candidates at the same time, the same cost, and with equally complete information. In workplace elections, however, management possesses complete contact information for all employees from their dates of hire, and is free to campaign against unionization at any time, by phone, mail, email,

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or in-person. Yet, under current NLRB rules, pro-union employees are not entitled to a list of their co-workers until after all legal objections have been settled, and are then provided only with a partial list that does not include email or phone contact information. This leads to a dramatically uneven playing field, and creates an incentive for frivolous legal delays aimed at withholding the voter list over an extended period. The proposed rule change will rectify these problems and bring the election system closer to American democratic norms.

### ***Reducing opportunities for employers to prolong anti-union campaigns***

Beyond unequal access to voter lists, workplace elections are marked by a series of one-sided advantages that allow anti-union employers to run election campaigns that would be deemed undemocratic and illegitimate if carried out by a foreign government. For instance, management is permitted to inundate the workplace with anti-union literature while banning union supporters from doing likewise; supervisors may campaign against unionization all day, every day, while employees are prohibited from talking about unionization except on break time; and management may force employees to attend mass anti-union meetings in which the union side is given no equal air time and pro-union employees may be fired for asking questions. The proposed rule change will not alter any of these practices. But by restricting the opportunity for frivolous legal delaying tactics, they will reduce the likelihood that employees are subject to a prolonged campaign of intimidation in the lead up to election day.

## **Introduction**

The National Labor Relations Board recently proposed new rules for the procedure American workers must undergo when they want to form a union (NLRB 2011). The proposed changes are very modest—but they take a step toward making workplace elections more democratic. This report draws primarily on the work of management-side attorneys to show how legal delay tactics have served to undermine democratic standards in the workplace, and how the NLRB's proposed rules help rectify this problem.

At its core, the NLRB proposal boils down to two changes.

First, when employees indicate that they are interested in having an election to create a union, the employer will be required to provide a preliminary list of employee contact information, including phone and email addresses if available. Under the current regulations, employers are only required to provide to union supporters a list of employees' names and street addresses, without apartment numbers, zip codes, phone numbers, or email addresses. Furthermore, employers may delay providing even such a bare-bones list until all legal issues regarding the logistics of the election have been resolved. This practice is at odds with the conduct of elections for members of Congress or other public offices. It creates an incentive for frivolous legal delays whose purpose is to create an unbalanced playing field in the months leading up to an election.

While management may inundate the workplace with anti-union banners and leaflets, and campaign against unionization before every employee, every day, all day long, pro-union employees are prohibited from talking about the union on work time. Thus, the only way they can communicate with co-workers is by contacting them at home. But this is only possible if employees have an accurate list of contact information for their co-workers.

One of the axioms of free and fair elections is that both parties must have equal access to the list of registered voters. Our government would condemn as a sham an election run in another country where the ruling party had voters' employers talking to them all day long, while the opposition was restricted to contacting people in their homes at night. But this is the reality that employees face under current NLRB regulations. By delaying the date on which union supporters get access to the list of eligible voters—and then providing a list with incomplete information—employers seek to maximize their ability to run a one-sided campaign of the type we would not accept in any country on the globe. The change proposed by the NLRB—requiring that employers provide a preliminary list as soon as employees indicate their desire to hold an election, including all known contact information—will help bring workplace elections closer to the norms of American democracy.

Second, the NLRB wants to make the schedule of workplace elections run the same way it does in elections to Congress or the presidency. That is, an election date is set, everyone knows when it's going to be held, and neither side can engage in legal maneuvers designed to change the date of the vote in order to gain partisan advantage. In elections to Congress, even when one party accuses the other of electoral impropriety, the election is held on the date scheduled, with legal arguments held after the fact. In extreme cases, judges may require that an election be rerun; but neither side can manipulate the date of the election. Under current NLRB procedures, however, employees are not guaranteed a fixed date for their election. Because employers enjoy a series of advantages during the election campaign—opportunities to blanket the workplace with anti-union literature while prohibiting the union from doing likewise; repeatedly force employees into anti-union meetings while refusing equal time for pro-union employees; and subject employees to intimidating interactions with anti-union supervisors—management consultants and anti-union attorneys regularly advise their clients to engage in legal delaying tactics in order to prolong the campaign period. Even when claims appear frivolous, or would have no discernible impact on the election's outcome, the NLRB is required to delay the election in order to hold hearings.

Under the rules proposed by the NLRB, all claims by either party will still be reviewed, but the hearing will take place *after* the date of the election if the claim is likely to impact less than 20% of eligible voters. The election will be held, with any challenged ballots impounded pending a legal hearing. If the number of challenged ballots is large enough to affect the outcome of the election, then the election results will not be declared until all evidence is heard and cases argued. Thus, the opportunity of either side to raise genuine legal concerns will be just as full and fair as under the current system. But by holding hearings after the date of the vote, the NLRB's rules will remove the incentive to file frivolous claims, and will make it harder for unscrupulous employers to prolong a period of voter intimidation leading up to the election. In this way, NLRB-supervised elections will be brought closer into conformity with American norms of electoral democracy.

Finally, by limiting employers' ability to artificially prolong the election period through legal gimmickry, the NLRB's proposed changes will also go a long way toward preserving the sanctity of the secret ballot. Elections to form a union take place behind a curtain, in a booth where no one can see how employees vote. However, employers are allowed to engage in tactics that are prohibited in elections for public office, and that force employees to reveal their political preferences long before they step into the voting booth. In elections to public office, voters cannot be forced to listen to political speech or to respond to questions designed to force them to reveal their political leanings. Canvassers may ask people how they plan to vote, but residents are always free to ignore the question and refuse to engage. In workplace elections, however, standard management practice is to have supervisors repeatedly confront their subordinates with anti-union statements, designed to provoke a reaction; supervisors are required to listen, watch, and grade employees' reactions. Under the direction of outside anti-union consultants, supervisors must repeat these confrontations day after day, until the consultants are confident they have identified the intentions of each voter in the workplace. These methods are so effective that one longtime management attorney regularly held contests in which supervisors would predict the final vote count in workplace elections; they succeeded with remarkable accuracy.

If management knows how everyone is voting before they ever approach the ballot box, then there is no reality to the notion of a secret ballot. The ability of managers to pierce the secrecy of the ballot is largely dependent on the power to delay the vote, in order to send supervisors back for repeated interrogation of their subordinates. By limiting the scope of legal delaying tactics, the new regulations will also provide more meaningful protection for the privacy of employees' political beliefs.

## **Why Americans' ability to form unions is so important**

Three years into the Great Recession, there is no economic policy more important than restoring the ability of working Americans to earn a decent living. At the core of the current economic crisis is a disconnect between hard work

and fair pay. Corporate profits hit record highs at the end of 2010<sup>1</sup>, but we are witnessing the first generation of downwardly mobile Americans.

Why can't hourly employees make a decent living even when the companies employing them are pulling in healthy profits? The single most important cause may be the decline of unions. Without the pressure of collective action, there is little reason for a company to share its wealth. In the non-college-educated, non-professional labor market—that is, the job market occupied by two-thirds of Americans—employees are understandably wary of making any but the most minimal demands of their employers. Facing such insecurity, employers have determined that they can force most people to accept low wages and limited benefits even when those at the top are enjoying substantial profits and growing salaries.

Unions provide the most effective means by which hourly employees can obtain a fairer share of the corporate profits they help create. National data show that when employees have a union, they earn significantly higher wages than similar workers in the same type of job. Likewise, the odds that employees receive employer-supported health insurance or pensions are much greater—other things being equal—when employees have a union. (Schmitt 2010).<sup>2</sup>

Unions represent a private-sector solution to the economic crisis. Unlike a one-size-fits-all government mandate, unionization simply allows a group of employees to negotiate with their employer in order to agree on terms of employment that are fair for the employees while keeping the company financially healthy.

Unsurprisingly, millions of nonunion workers tell pollsters that they wish they had a union in their workplace. A Peter D. Hart Research Associates poll puts the total at nearly 60 million (AFL-CIO 2011). Corporate lobbies dispute these figures; but even the most conservative business organizations estimate that 25 million nonunion workers would like a union in their workplace. Although somewhere between 25 and 60 million unorganized employees wish they had a union, less than 100,000 employees were able to form new unions through NLRB-supervised elections in fiscal 2009 (NLRB 2009).

The gap between the desire for unions and the ability to actually create one under federal law shows the extent

to which the NLRB union election system is broken and undemocratic. It is this problem that the proposed rule changes aim to ameliorate.

## **What's wrong with current NLRB procedures?**

When people hear there is something called “union elections,” they assume it must work more or less the same as elections to Congress. Unfortunately, the current NLRB system more closely resembles the “election” system of the old Soviet bloc than anything we would recognize as American. If elections in any other country were conducted in the same manner as NLRB-supervised elections, our government would condemn them as undemocratic.

Among the most egregiously undemocratic characteristics of current procedures are the following:

### ***Unequal access to voter lists***

The first step taken by any candidate for public office is obtaining a list of registered voters in order to mail literature, make phone calls, and knock on doors to promote one's candidacy. By law, voter rolls must be available to all candidates at the same cost, on the same date, and including the same information. It is hard to imagine a more fundamental breach of democratic norms than providing one candidate with an earlier or more complete list than his or her opponent. Yet this is exactly what happens in workplace elections.

In any workplace, management possesses all the contact information for every employee from their date of hire, and is free to contact them by mail, email, or telephone—or talk to them in the workplace—at any time. But, under current procedures, the election date is not formally set until all legal challenges have been resolved; pro-union employees are not entitled to the list of eligible voters until seven days after this point. This enables employers to run intensive anti-union campaigns for months before the union is able to make its first contact with most employees. The Jackson Lewis law firm, for example—one of the nation's premier anti-union firms—recommends that its clients mail two sets of letters to employees' homes, post anti-union messages on bulletin boards, distribute anti-union leaflets in the workplace, and require all employees to attend anti-

union propaganda meetings—all before the pro-union employees have even seen the list of eligible voters.

Furthermore, under current rules, employers are only obliged to provide the names and street addresses of employees—not phone numbers, email addresses, or zip codes. One longtime management attorney describes the typical method in which such information is provided:

*I provided the minimum information legally required while withholding enough details to frustrate union officers in their hunt for employees. I never included first names, for example, only the first initial. I listed the employee's house number and street, as required, but always was sure to leave out apartment numbers and street designations such as Street, Avenue, Drive, or Place. I never included zip codes. Such a skeletal list guaranteed that some employees would not be found and that the union would take an inordinately long time finding others.<sup>3</sup> (Levitt 1993, 25)*

As a result of this one-sided process, recent data show that in a typical union campaign, fewer than half the employees have even a single home conversation with a union representative during the course of the entire election season (Rundle 1998, 219).

It's not surprising that anti-union employers would want to keep workers locked into such a lopsided system; but that doesn't make it sound policy. If we imagine similar standards being applied to a congressional campaign, then it would be virtually impossible for a challenger to ever win an election. Such discriminatory use of voter rolls is illegal in every state in the country. By mandating that voter rolls include complete information, and that at least a preliminary list be provided as soon as employees announce their desire for an election, the NLRB's proposed new rules mark an important step toward bringing workplace elections into line with American democratic norms.

### **Unequal access to the media**

In elections for Congress or the U.S. presidency, a host of laws guarantee opposing candidates equal access to voters. There is no such thing as a neighborhood or restaurant that

is available to one candidate and off-limits to the other. Radio and television stations cannot offer advertising time at a cheaper rate or in a better time slot to one candidate than the other. Even private corporations are banned from inviting one candidate to address their employees without providing equal opportunity for the opposition. By contrast, under current NLRB rules, management is allowed to blanket the workplace with anti-union leaflets, posters, and banners while prohibiting pro-union employees from doing likewise. As one prominent management-side attorney explains:

*[U]nions are at a severe disadvantage in the communications battle. Home visitations are expensive and time-consuming, meetings are sparsely attended because they take place on the employee's own time, and union organizers can rarely ensure that all voters will even receive the union flyers that organizers hand out. On the other hand, management has the employee under its control for eight hours a day. (DeMaria, 2005, 3)*

In an environment so completely dominated by one side, anti-union employers can easily create an atmosphere of intimidation. Thus, one management attorney described his standard procedure for the 10 days leading up to the election as

*...the "Vote No" saturation carnival. I had "Vote No" hats, buttons, and T-shirts printed up. Supervisors and foremen were ordered to wear their "Vote No" vestments every day and to give away T-shirts and trinkets to any workers who asked for them. Almost everyone ended up wearing something; whether it was out of conviction or fear didn't matter. What mattered was that the "Vote No" message was everywhere. It hung on the walls, it danced atop people's heads, it rode upon their chests...It seemed impossible that anyone would feel free to talk against management in that chummy environment. It seemed impossible that union proponents would have any momentum or any support or any hope left.<sup>4</sup> (Levitt 1993, 255)*

In these ways, management's ability to create a near-total media monopoly within the workplace turns NLRB elections into something more like the staged pageants of one-party rulers rather than anything we would recognize as American democracy.

### **No right to free speech for employees**

Under current procedures, anti-union managers may campaign against unionization all day long, anyplace in the workplace. By contrast, pro-union workers are almost completely prohibited from talking about unionization. The universal advice of anti-union consultants and lawyers begins with two rules. First, union organizers are banned from ever entering the workplace—at any time, for any reason. Second, pro-union employees are banned from talking about the union while they are on work time, and are banned from distributing pro-union information except when they are both on break time and in a break room. Unsurprisingly, such rules render pro-union conversations virtually nonexistent.

The most extreme restriction on free speech occurs when employers force workers to attend mass anti-union meetings. Not only are pro-union employees not given equal time, but they can be made to attend on condition that they don't open their mouths. If they even ask a question, they can be fired on the spot. Studies show that well over three-quarters of major employers resort to such strong-arm tactics, with an average of five to 10 forced-attendance propaganda meetings during the course of a typical election campaign (Bronfenbrenner 1994 and 2000 and Rundle 1998).

Employers defend such events as necessary to protect their free speech rights. But these meetings represent the opposite of free speech. In American democracy, freedom of speech includes within it the freedom to not listen to political speech; only in the workplace can voters be forced to listen to one-sided partisan monologues (Masson 2004). Moreover, free speech is meaningless if it does not include equal time for opposing views. This is the ideal at the heart of Jeffersonian democracy—an electorate that is educated through free-ranging public debate. Yet this core principle is aggressively opposed by those who govern the workplace. The publication *Management Report for Nonunion Orga-*

*nizations*, for instance, insists that “debating the union is never a good idea for the employer” (DeMaria 2003, 8). Similar views have been expressed elsewhere.<sup>5</sup> Thus, the very principle that lies at the heart of the democratic process has been banned from workplace elections.

It is inconceivable that such a practice could be allowed in elections for public office. If the Democrats, for instance, compelled all voters in a given district to attend Democratic campaign rallies, with no right of reply for Republicans, and Republican voters who spoke their minds would lose their jobs, we would regard this as a flagrant violation of the democratic process. Indeed, this is one of the classic behaviors for which we regularly condemn elections abroad.

Corporate attorneys seek to delay elections in order to prolong their ability to subject employees to such heavy-handed campaigns of intimidation. By restricting the opportunity for frivolous delays, the new rules also lessen the ability of unscrupulous employers to subvert the democratic process.

### **No meaningful right to a secret ballot**

Under current NLRB rules, the standard conduct of management campaigns dramatically undermines the principle of the secret ballot. On election day, the physical voting still takes place behind a curtain; but the protection that curtain provides is increasingly flimsy.

Anti-union attorneys coach employers in how to lead employees to reveal which way they are voting long before they step into the ballot booth. In a typical week, each supervisor is given two or three leaflets to hand out to each individual under their direction. These encounters are designed to be intense, “eyeball-to-eyeball conversations between supervisors and employees” (Levine 2005, ch. 8, p.5). Managers are trained to make provocative anti-union comments, and then carefully observe and interpret the words, nuances, and body language of employees' responses, ranking each employee's reactions.<sup>6</sup> When management provides “Vote No” buttons, hats, t-shirts or bumper stickers, this too provides a means of gauging workers' views simply by watching who embraces and who avoids these items.<sup>7</sup>

As a result, management's intelligence on how employees will vote is often eerily accurate. One anti-union

attorney would commonly hold a pool for managers to predict the number of anti-union votes, with a \$100 prize for the closest guess. “It was amazing,” he reports. “In pool after pool the supervisors were astonishingly accurate” (Levitt 1993, 29).

In American democracy, the principle of the secret ballot extends beyond the 60 seconds during which one is behind a curtain; it is the right to keep one’s political opinions to oneself—before, during, and after the act of casting a ballot. No one can force voters into a conversation designed to reveal their political preferences. But this most fundamental freedom is absent in workplace elections. And because management’s ability to obviate the secret ballot derives primarily from daily confrontations between supervisors and subordinates, the longer an election campaign continues, the less any employee is able to preserve the privacy of his or her beliefs. By limiting the ability of unscrupulous employers to artificially prolong the election season in order to extend political surveillance and mandatory encounters designed to “out” opposition supporters, the NLRB’s new rules mark an important step toward upholding the privacy of the ballot in workplace elections.

## **Illegal coercion and intimidation are commonplace in workplace elections**

Labor law is the only area of employment law—perhaps the only area of civil law as a whole—in which there is no provision for punitive sanctions. No matter what employers do, no matter how egregiously or how often they violate the law, the NLRB can never impose fines or sanctions of any kind. As a result, illegal surveillance, threats, and coercion have become commonplace in employers’ campaigns to prevent their employees from forming unions.

With very few exceptions, the worst-case scenario faced by an unscrupulous employer is a rerun of the vote under the same conditions. As one prominent anti-union consultant explained to employers:

*What happens if you violate the law? The probability is you will never get caught. If you do get caught, the worst thing that can happen to you is you get a second election and the employer wins 96% of second elections. So the odds are with you.<sup>8</sup>*

Because the penalties for violating labor law are so weak, employers have little incentive to avoid illegal tactics if they succeed in intimidating workers into abandoning the union effort. In 2009, there were 23,000 charges filed alleging illegal behavior; of the complaints issued by the NLRB based on these charges, nearly 90% were against employers. Employers that year were found to have unlawfully fired, suspended, or otherwise financially punished more than 14,000 union supporters, illegally withholding a combined \$76 million from employees’ rightful earnings (NLRB 2009).

Nor is such behavior limited to rogue operators. In 2004, the Jackson Lewis firm was charged by one of its clients with advising illegal tactics in “a relentless and unlawful campaign” that included spying on workers, firing union activists, and supplying cash-filled envelopes to anti-union employees (Greenhouse 2004). The only thing unusual about this case is that the internal tension between the employer and its attorneys led to a public record of management tactics. “Jackson Lewis is a key player in the union avoidance industry,” noted former NLRB General Counsel Fred Feinstein, and “this kind of aggressive anti-union campaign is not unusual” (Greenhouse 2004).

Management’s tactics have clearly made their mark on American employees. In one poll, 79% of adult Americans said they believe that it is either “very” or “somewhat” likely “that nonunion workers will get fired if they try to organize a union.” Among nonunion employees, 41% believed that “it is likely that I will lose my job if I tried to form a union.” If such huge shares of Americans believed they would be financially punished for backing the “wrong” congressional candidate, we would think we were living in a totalitarian state; and we would be right. By limiting the length of the periods during which employees are subject to this reign of workplace intimidation, the NLRB’s new rules will enable employees to make a choice about unionization in a freer and more protected climate.

## **Why employers love frivolous delays and why the NLRB should restrict them**

As described above, management subjects employees to a series of intensive strong-arm tactics during the course

of an election campaign. For this reason, management strategists almost always seek to stretch out the campaign's duration as long as possible.

For employers, every day of delay is a day in which managers are free to communicate anti-union messages to subordinates, eight hours a day, while union supporters are restricted to brief lunchtime conversations. Since employers are not required to turn over the list of employee names and addresses until all procedural disputes have been settled and all appeals exhausted, even groundless legal challenges that are clearly doomed to failure lead to an extended period in which most employees are shut off from conversations with union representatives.

Attorney Marty Levitt (1993, 175), who spent two decades running anti-union campaigns with some of the nation's premier management consultants, notes that:

*It was a bread-and-butter delay tactic to argue that the Labor Board had no business overseeing union elections at a company for some obscure legal reason. But the stratagem was no less effective for its ordinariness. As long as the Board went on debating and deliberating on that issue, the union would not get the [voter] list, making it hard for them to contact all the potential voters, and no election date would be set. All the while, we would have the run of the place.*

Current procedures provide employers myriad opportunities for delay.

"The company may dispute the jurisdiction of the NLRB, that the union is a labor organization, or that the proposed bargaining unit is appropriate," advises one consultant (Kilgour 1981, 261).

In 2002, one employer argued that the International Association of Machinists was not a "labor organization," despite the fact that it has been recognized in employer contracts going back more than 100 years. The NLRB actually held a hearing on this question, ultimately concluding that the IAM is, in fact, a labor organization, but the election was delayed by one month in order to address the issue (Theodore 2005, 14).

In addition to prolonging a climate of intimidation, delaying tactics are designed to convince employees that unionization is futile. In an article entitled "Time Is On

Your Side," the Jackson Lewis firm advised employers that legal delays should be considered "an opportunity for the heat of the union's message to chill prior to the election."

Employees generally request an election when a majority of them have gotten together and decided they want to work collectively to improve conditions in the workplace. By repeatedly postponing the election date, management attorneys aim to undermine employees' confidence in their own ability to bring about positive change. Levitt (1993, 58) thus describes the strategy of one pioneering union buster, whose

*centerpiece technique, now a common strategy among management lawyers, was to challenge everything. He tried to take every challenge to a full hearing, then prolonged each hearing as much as he could. Finally he appealed every unfavorable decision... He knew that if he could make the union fight drag on long enough, workers would lose faith, lose interest, lose hope.*

## **Conclusion: The proposed rules will strengthen democracy in the workplace**

Under current NLRB procedures, employers have created a system in which employees are subjected to a range of coercion and intimidation tactics that violate fundamental norms of American democracy. Management attorneys and corporate consultants promote the strategic use of legal delays in order to extend the period during which employees are subject to such tactics. The procedural changes recently proposed by the NLRB represent modest but critical steps toward limiting such practices. These changes will make workplace elections more democratic, and thus will enable more hourly employees to improve their livelihoods by engaging in collective bargaining with their employers.

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## Endnotes

1. Hall (2011) notes that corporate profits grew 36% in 2010, the highest rate since 1950.
2. Measuring the impact of unions for employees of the same age, education level, gender and industry, hourly wages for those with unions are 15.6% higher. The likelihood of getting employer-supported health insurance is 19.1% higher for those with unions; and of having employer-supported retirement plans 24.4% higher.
3. Since 1996, employers have been required to provide full first and last names of eligible voters.
4. Levitt (1993, 30) describes his standard strategy for building momentum toward election day: "I knew that many workers would decide how to vote in the last couple of weeks, so I wanted the words Vote No everywhere the men looked. Typically, the way I did that was through such election campaign paraphernalia as T-shirts, hats, buttons, and patches.... The ubiquitous 'Vote No' message ... had a powerful psychological effect on the voters."
5. DeMaria's *Supervisor's Guide* (1986, 53-54) suggests that managers "avoid debates on the pro's and con's of unions in general." Similarly, Lewis and Krupman (1979, 76) advise that managers don't allow employees to ask questions from the floor in response to anti-union speeches: "The employer can thereby avoid the embarrassment of being forced to make an unprepared response to a 'shop lawyer's' provocative, and often union-inspired, questions... Occasionally, a union representative will request an opportunity to reply to the employer's talk or to 'debate the issues.' As a general rule such requests should be rejected."
6. Levitt (1993, 14) notes that in more intensive campaigns he had managers distributed 2-3 letters per week; DeMaria (1986) describes a "daily dialogue" on union issues between supervisors and their subordinates. Levitt (1993, 191) describes the intensity of this process, sending supervisors into the workplace "complete with the memorized explanations and probing questions and relentless follow-up." Those who oversaw particularly active union supporters were forced into an even heavier schedule of painfully intense confrontations with their subordinates – over and over again, until the worker was so stressed and beaten down as to be ineffective. Levitt (1993, 21) recalls that "We kept charts on every employee, identifying each with one of five marks: a plus sign in a circle if he was staunchly anti-union; a plain plus sign if he leaned toward management; a minus sign in a circle for a strong union supporter; a simple minus sign if he was pro-union; a question mark for unknowns." Similar accounts are common among other management-side practitioners. One management attorney told Kaufman and Stephan (1995, 11, fn. 4) about "a campaign at a large multi-plant utility where eight attorneys/consultants compiled a book with a detailed analysis of the likely voting behavior of each employee in the election unit."
7. It is illegal for supervisors to directly hand such anti-union paraphernalia to employees. Since the act of handing someone a button, for instance, forces them to make an immediate choice to either wear it or not wear it, this is considered a form of illegal interrogation. However, it is fully legal for supervisors to put a pile of buttons on a break room table and track which employees choose to take them.
8. Transcript of tape recording made by Joel D. Smith of presentation of Fred R. Long, at Century Plaza Hotel, Los Angeles, July 28, 1976, reproduced in Logan (2002, 207). Although this quote is 35 years old, the playbooks and advice manuals of anti-union management consultants are largely unchanged since that time. For instance, prominent anti-union attorney Alfred DeMaria advises employers: "Let's suppose during [the] early period of card signing you discharge a prime mover, and the NLRB finds that you did it on a discriminatory basis. What are the remedies? Reinstatement, back pay ... and you gotta post a notice saying, 'We've been bad boys and girls, we won't do it again.... Some companies will just say, 'Hey, where's the check?'" (DeMaria presentation to seminar on 'Maintaining Nonunion Status,' quoted in Phillips-Fein, 1998). DeMaria (2004,1) likewise advises readers that "One might think that an employer that committed unfair labor practices and had to face the union again in the second election would be less likely to succeed because of its previous unfair labor practices. Yet NLRB statistics show that, overwhelmingly, the party that wins the first election (whether it be the union or the employer) wins the second election handily, often by a greater margin."
9. 1991 Fingerhut poll, reported in Dunlop Commission (1994, p. 72).

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