

EPI TESTIMONY

TESTIMONY GIVEN BY

Ross Eisenbrey

Vice President

Economic Policy Institute

IN A HEARING BEFORE THE
NATIONAL LABOR RELATIONS BOARD
1099 14TH STREET, NW
WASHINGTON, DC 20005

**National Labor Relations Board
Public Meeting**

Monday, July 18, 2011

**Statement of Ross Eisenbrey, Vice President of the Economic Policy Institute,
In Support of the NLRB's Proposed Rule on Representation Case Procedures
July 18, 2011**

This rulemaking could be an important first step toward a crucial goal: restoring the ability of middle-class Americans to share fairly in the nation's continually growing prosperity. The proposed rule will remove some of the procedural obstacles that make it hard for workers to form unions, and by doing so will allow them to bargain for a bigger share of the profits their work creates. Eventually, that increased leverage should lead to a stronger economy and more broadly shared prosperity.

A fundamental purpose of the National Labor Relations Act was – and still is, as stated in Section 1 of the Act – “restoring equality of bargaining power between employers and employees.” (29 USC 151) Because collective bargaining, which depends on unions and the ability of employees to form them, can be a powerful way to restore equality of bargaining power, the policy of the Act, as declared in Section 1, is to encourage collective bargaining and to protect the right of employees to “self-organization” – the right to form unions. The Board should embrace this policy and use the full extent of its statutory authority to accomplish it.ⁱ

The bargaining power of U.S. production workers has declined dramatically since the 1970s because of a combination of forces, including declining union density, the blatant greed of corporate executives, and increased and unbalanced international trade. Union participation fell from more than 25% of the workforce in the early 1970s to about 13% today, and studies show that this decline has been a substantial factor in the rise of income inequality, responsible for at least one-fifth of that rise and probably more. The U.S. trade deficit ballooned over the same period and regularly exceeds \$500 billion a year. U.S. workers are now in competition for their jobs with poorer (and more poorly paid) workers around the world, putting tremendous downward pressure on their wages. And any moral restraint on executive compensation has been lost. CEO pay soared relative to the pay of the average worker, from about 25 times greater in the 1960's to about 250 times greater today. As Paul Krugman has pointed out, when unions were strong they helped impose cultural norms that held greed in check and made excessive CEO compensation unacceptable.

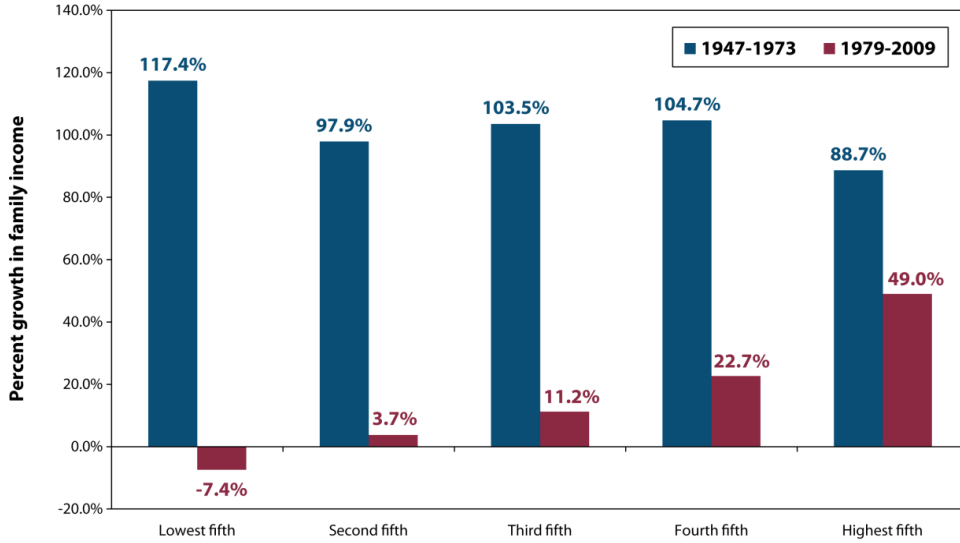
www.epi.org/publications/entry/webfeatures_viewpoints_politics_policy_inequality/

The results of this loss of employee bargaining power are striking: the share of national income claimed by the bottom 90% of Americans fell from 65% in 1968 to just 52% in 2008. The share claimed by the top 1% grew from 11% to 21% over the same period. If the relative shares had remained unchanged, the income of the bottom 90% would have been \$1.1 trillion greater in 2008.

An economy that – during the period of union growth and increasing bargaining power for average workers – worked to lift the living standards of Americans across the income

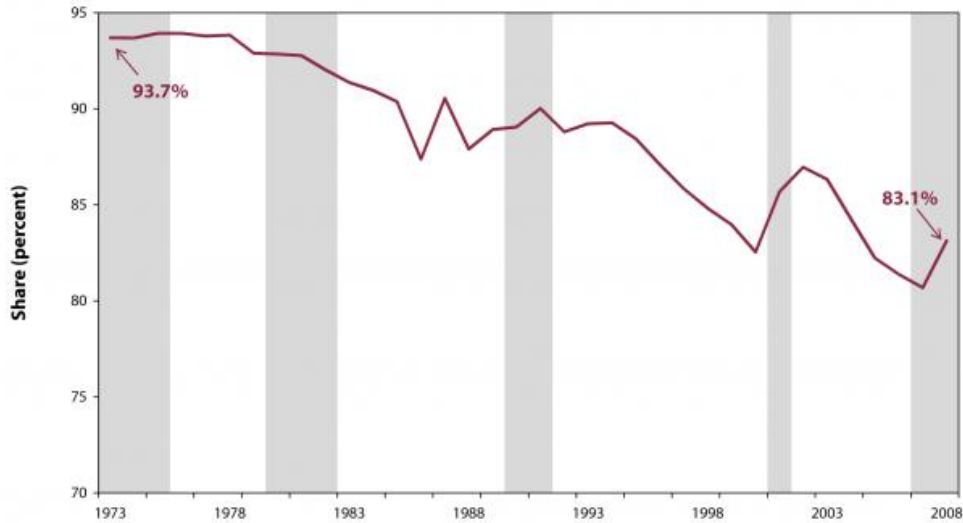
spectrum now operates to lift the very wealthiest at the expense of almost everybody else, as shown by the figures below.

"Fast-and-fair" versus "Slow-and-skewed"
 Real family income growth by quintile, 1947-73 and 1979-2009



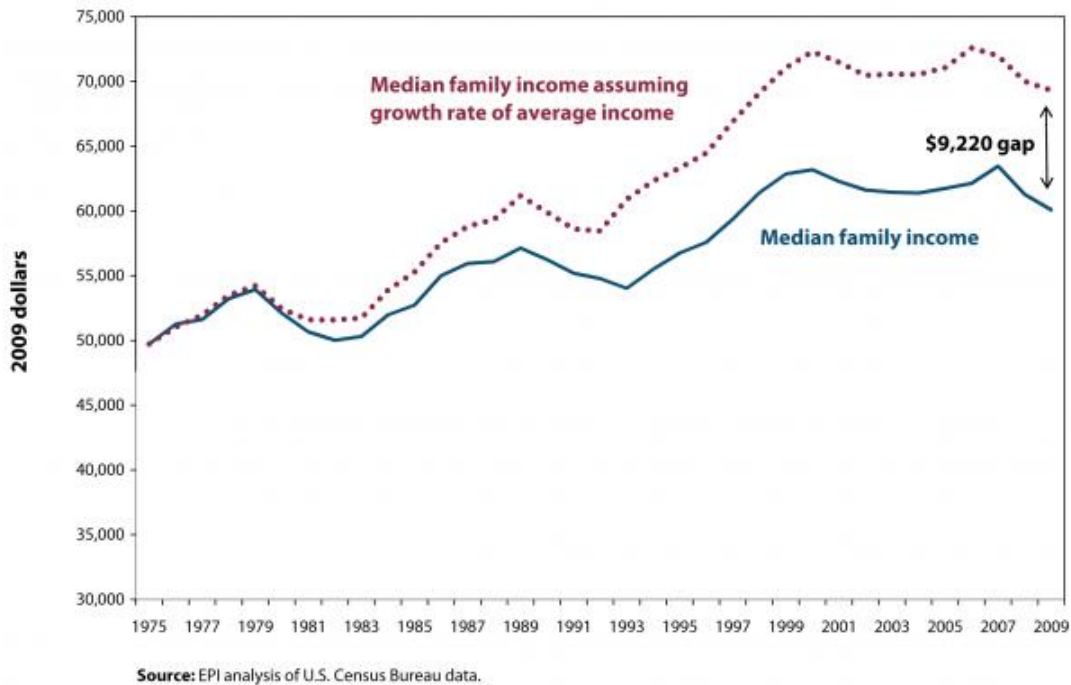
Source: EPI analysis of U.S. Census Bureau data.

Income growth has tilted so heavily to the top 0.5% of Americans that the share of national income has fallen steadily for the other 99.5% of the population, shrinking by more than 10% since 1973. In essence, 10% of national income was transferred from the bottom 99.5% of the population to the top one-half of one percent.



Note: Shaded areas denote recessions.
 Source: Atkinson, Piketty, and Saez (2010).

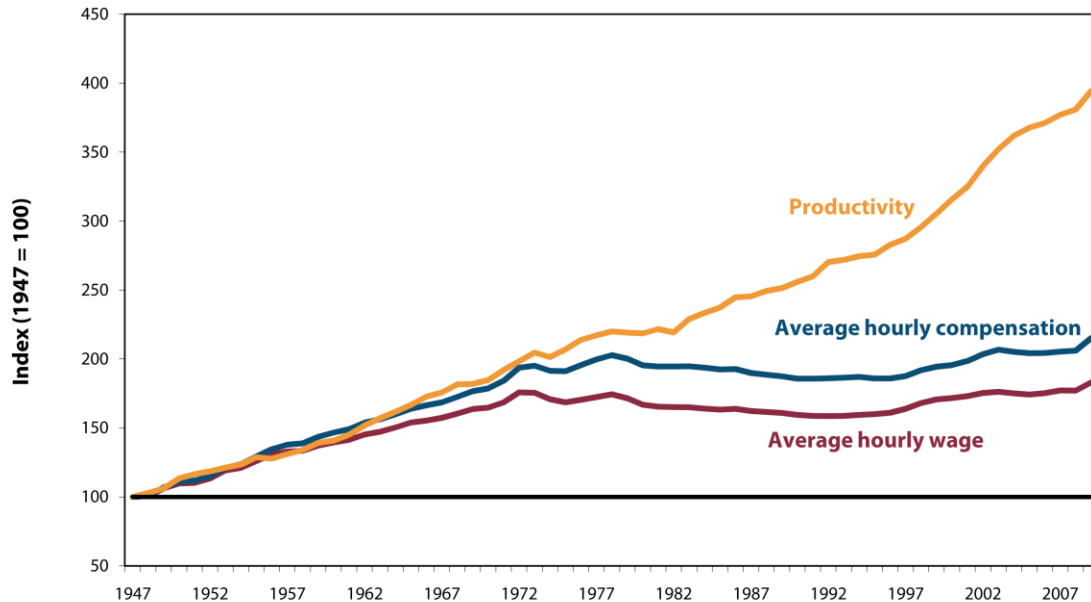
This rise in inequality costs the median or typical family about \$9,000 in annual income, as shown by the chart below, which tracks the divergence between growth in average income and the median family's income.



Middle class families derive almost all of their income from wages and salaries, and wage stagnation is the main cause of stagnating family incomes. As EPI president Lawrence Mishel and economist Heidi Shierholz point out, “The typical worker has had stagnating wages for a long time, despite enjoying some wage growth during the economic recovery of the late 1990s. While productivity grew 80% between 1979 and 2009, the hourly wage of the median worker grew by only 10.1%, with all of this wage growth occurring from 1996 to 2002.” <http://www.epi.org/page/-/old/Issuebriefs/IssueBrief297.pdf?nocdn=1> Workers have produced more and more, but they haven't had the leverage to win a proportionate share of the nation's growing wealth, particularly in the last nine years (see chart below).

Wages and compensation stagnating

Hourly wage and compensation growth for production/non-supervisory workers and productivity, 1947-2009



Source: EPI analysis of Bureau of Economic Analysis and Bureau of Labor Statistics data.

The loss of middle class purchasing power is a serious problem for an economy driven by consumers. It contributed significantly to the Great Recession, as typical families found themselves financially squeezed, borrowed heavily – especially against the equity in their homes, and then were forced to constrict their spending dramatically when the housing bubble collapsed and credit dried up. With sales weakening, businesses cut investment and hiring and laid off workers, further undermining demand and causing a vicious cycle that spun out of control until the government intervened in 2009 with fiscal stimulus.

Even today, more than three years after the collapse and despite the recovery of the stock market and corporate profits, the labor market and economic growth have not recovered. This is in large measure because consumers, with wage growth stagnant and unemployment high, remain on the sidelines.

Thus, finding a cure for the unequal bargaining power that holds down the wages and incomes of average Americans should be a paramount concern of public policy. To be effective, increased unionization must be a key part of any cure. As Paula Voos explains:

Increased union organization would tend to shift the income distribution in favor of the middle class, enhancing the purchasing power of this key group of the nation's consumers and allowing them to once again afford to buy automobiles, homes with 30-year fixed rate mortgages, and all the other goods and services important to American life. Unionization of low-wage service workers similarly would increase

purchasing power and help revive the economy. Putting more dollars into the pockets of working families stimulates the American economy—both in the short term and in the long run—because they spend such a high proportion of those dollars here.

It is no accident that the prosperity and consumer boom of the 1950s—a period of unprecedented middle class expansion, broad business growth, increased home ownership, rising consumer spending, and the shared expectation that a college education was within the reach of everyone and that the lives of our children would be better than our own—followed the greatest sustained expansion of unionization in American history.

http://www.epi.org/analysis_and_opinion/entry/how_unions_can_help_restore_the_middle_class/

We know of no mechanism with the potential to do more to reduce inequality and increase bargaining power for middle and working class Americans than unions and collective bargaining.

In non-union settings, each employee must make a separate deal with the employer, which might be a giant multinational corporation and which, even if a small business, has the power to fire the employee and take away her salary, health insurance coverage, and pension contributions, and can hurt the employee's chances of finding another job by giving a negative reference. The individual's bargaining power is negligible. But when an entire workforce bargains collectively with an employer, its ability to replace them all is diminished and their information and power are increased. When one compares non-union workers with union workers whose experience, education, region, industry, occupation and marital status are comparable, those covered by a union agreement enjoy:

- 14.7% higher wages;
- 28.2% greater likelihood of having employer-provided health insurance;
- 53.9% greater likelihood of having pension coverage; and
- 14.3% more paid time off.

The union wage premium varies by race, ethnicity and gender, but is large for all groups:

- Whites – 13.1%
- Blacks – 20.3%
- Hispanics – 21.9%
- Asians – 16.7%
- Men – 18.4%
- Women – 10.5%

In unionized settings there is much less inequality since people doing similar work are similarly paid, race and gender differentials are less, occupation differentials are less, and the wages of front-line workers are closer to those of managerial workers. Unions also lessen inequality because they are most successful at raising the wages of those in the bottom 60% of the wage pool.

It is important to note that even non-union employees benefit from the presence of unions in their industry and area. Because of the so-called "threat effect," when union density is sufficient, non-union employers give their employees higher wages and more generous benefits in order to prevent their own employees from organizing.

In addition, unions reduce employee turnover by lessening the number of voluntary quits and increase the retention of skilled employees, enhancing human capital and productivity both in the firm and the economy as a whole (Freeman and Medoff 1984; Bennett and Kaufman 2007). And, as Paula Voos has pointed out, because union-represented employees typically cannot be disciplined or discharged without just cause, they typically are more willing to make suggestions or speak up to improve business operations. http://www.epi.org/page/-/pdf/20090310_voos_efca_testimony.pdf

Why then, given all of these benefits, aren't more workers unionized? While it's clear that not all workers are interested in joining a union, whether because of ideology, satisfaction with their wages and working conditions, or simply because they have no familiarity or experience with unions, tens of millions of Americans who do want a union are not represented. Over the course of 20 years of polling by Hart Research Associates, the percent of non-union workers who said they would vote for a union if they had a chance never fell below 30% and in some years exceeded 50%.

<http://www.sharedprosperity.org/bp182/bp182.pdf>

Why don't they have union representation? Employer hostility and the widespread use of sophisticated anti-union campaigns of intimidation led by employers and consultants are the most important reason. Forty years ago most of those workers probably would have had unions, but the government has sat by while the union movement in America has been decimated. In Paul Krugman's words: "There is no question that aggressive, often illegal, union busting is the reason the union movement declined. And the change in the political climate that began in the '70s clearly played a role in making that possible."

The election procedures rule the Board has proposed is a small step to help prevent further damage. In most of the rest of the world, employees who want union representation simply sign a card. The employer has nothing to say about it; the choice belongs to the employee. In the United States, by contrast, unions must show majority support to have the legal right to represent employees in collective bargaining. They can exercise that right by presenting authorization cards for a majority of workers, but only if the employer agrees. If the employer refuses, the employees must endure the election process that is the subject of this proposed rule, giving the employer the opportunity to pressure employees into changing their minds and voting against the union.

As Kate Bronfenbrenner has documented, employer election "campaigns" can be highly stressful – even frightening – for the employees:

"It is standard practice for workers to be subjected to threats, interrogation, harassment, surveillance, and retaliation for union activity. According to our

updated findings, employers threatened to close the plant in 57% of elections, discharged workers in 34%, and threatened to cut wages and benefits in 47% of elections. Workers were forced to attend anti-union one-on-one sessions with a supervisor at least weekly in two-thirds of elections. In 63% of elections employers used supervisor one-on-one meetings to interrogate workers about who they or other workers supported, and in 54% used such sessions to threaten workers.”
http://epi.3cdn.net/edc3b3dc172dd1094f_0ym6ii96d.pdf

Minimizing the opportunity for such harassment should be a goal of this rulemaking, and to the extent the proposed rule would prevent undue delay, such as by eliminating the pre-election request for review, it should be supported. In addition to reducing stress on employees and making it less likely that union supporters will be intimidated into changing their minds, eliminating unnecessary delays between the petition and election should also increase productivity by reducing the time otherwise wasted by managers and staff on captive audience speeches, one-on-one meetings with potential voters, surveillance, etc.

Employers have ample opportunity to make their position regarding unions known to every employee, from the moment of hiring and repeatedly in the months or years before a union ever appears on the scene or any employee raises the possibility of seeking representation. The current election rules are so one-sided they make a mockery of the pretense of a fair election. No one would support a political election system where only one side had the voter registration list and a realistic way to reach the voters. But under the NLRA, employers have the right to keep non-employee union organizers out of the workplace and to prohibit work-time discussions about unionizing. To give unions and pro-union employees a chance to be heard, it is therefore critical that organizers have access to the other employees outside of work. The proposed rule’s provision to require employers to provide the petitioner not just a list of employee names and addresses, but e-mail addresses and telephone numbers (when available) should significantly improve access and make the election process at least a little fairer.

On February 24, 2009, 40 noted economists, including three winners of the Nobel Prize in Economics, issued a statement calling on Congress to fix the election process overseen by the National Labor Relations Board and restore the right of employees to form unions and engage in collective bargaining. Subsequently, another 190 economists endorsed the statement. In their words:

A rising tide lifts all boats only when labor and management bargain on relatively equal terms. In recent decades, most bargaining power has resided with management. The current recession will further weaken the ability of workers to bargain individually. More than ever, workers will need to act together.
http://www.epi.org/publications/entry/prominent_economists_call_for_passage_of_the_employee_free_choice_act/

The proposed rule is a step in the right direction.

ⁱ The proposed rule is extremely modest and deals only with the NLRB's own, unnecessary procedural failings. To make a truly significant difference and meet the National Labor Relations Act's goal of encouraging collective bargaining, the Board will have to find ways to curb or at least to discourage the widespread employer lawlessness that for decades has prevented workers who want unions and collective bargaining from forming unions and achieving their goals.

The Board denies any interest in affecting the outcome of representation elections (76 FR 36829), an attitude that is unfortunate, given the wealth of information showing that the Board's current election process is sharply tilted against employees who seek representation and that increased unionization would be good for working Americans and for the economy.