Getting organized: Hurdles to unionizing

by Kim Bobo in the May 29, 2007 issue

Imagine being a single parent who works as a nursing assistant at a hospital. You love your job, though your wages are only $9.50 per hour. The hospital gives you health insurance for yourself, but not your two children. Health insurance for your children would cost $200 more per month—which you can't afford. The worst thing about your job is your schedule. You never know ahead of time what shift you will be working, which makes it impossible to coordinate after-school care for your children. To get better health insurance and a regular work schedule, among other benefits, you and your co-workers decide to organize a union.

The next thing that happens is your supervisor calls you in for a private talk to say that the union is a bad idea and that he hopes you won't support it. There is nothing overtly coercive about the meeting, but your supervisor does have the power to fire you, set your work schedule, deny requests for vacation days and review your work performance.

Then you are offered a better work schedule if you agree to speak out against the union. Given your family situation, this is tempting. A week before the union election, one of the main supporters of the union is fired. You are terrified of losing your job.

This is the kind of environment many workers face when they seek to organize a union. Studies have shown that during a union organizing drive, 90 percent of employers force employees to attend one-on-one antiunion meetings with their supervisors. Thirty percent of employers illegally fire pro-union workers during union drives. And over half of employers use bribes or special favors to illegally coerce workers into opposing unions.

In response to concerns about workers' ability to organize, the U.S. House of Representatives in March passed the Employee Free Choice Act. The bill, now being considered in the Senate, aims to give workers greater freedom to organize, provide

arbitration so that workers and management can secure a contract, and discourage employers from violating labor laws.

A major provision of the bill would allow workers to be represented by a union if more than 50 percent of them sign union authorization cards. This process is often referred to as the card-check process. Companies would then be required, as they are under current law, to negotiate in good faith with the union.

Currently, when workers sign cards indicating that they would like to be represented by a union, the cards are presented to the employer, who can either recognize the union and negotiate a contract or arrange for an election supervised by the National Labor Relations Board. The election is usually scheduled several months away.

Although some employers do recognize a union and negotiate a contract after the majority of their workers sign union cards, many more choose the election route. Employers then can use the time before the election to campaign against the union. Because most workers can be fired “at will,” there is little open and democratic debate at the workplace about the values of having or not having a union. Workers are often harassed about their support for unions, barraged with antiunion literature and videos, threatened either individually (many union supporters are fired) or collectively (employers threaten to close companies if they become unionized), and penalized in subtle and not-so-subtle ways.

A second provision of the bill requires mediation and then binding arbitration for first contracts in cases in which the union and management can’t reach agreement within a reasonable time period. This provision is designed to ensure that workers get a contract. Some employers thwart collective bargaining by refusing to negotiate in good faith or by dragging out legal appeals regarding the election process so that even after winning an election, a union might never achieve a first contract. Under current law, after one year employers can claim that they have reached an impasse at the bargaining table, and then they are legally free to withdraw recognition of the union.

A third provision of the bill would increase penalties for employers who violate labor laws. Now, when employers fire workers for their union activity or threaten to close a company if the workers vote for a union, the penalties are so slight as not to be a deterrent.

Unions are crucial vehicles for lifting families out of poverty and for ensuring workers fair wages, family benefits and better working conditions, but it has become increasingly difficult for workers to organize. Union-busting consulting and law firms emerged in the 1970s to advise companies on how to remain—as their literature says—“union-free.” These advisers, combined with the almost complete control many employers have over the worksite, have created environments in which the so-called right to organize is virtually meaningless.

Union leaders have been fired, harassed or penalized by employers, with few or no consequences. Over half of U.S. workers say they would like to have a union, but only 12 percent are represented by unions, in large part because of how difficult it is to get a union recognized.

The card-check rule, the most controversial part of the legislation, has proven to work. Card-check recognition of unions was often used in the United States prior to 1939, when the Taft-Hartley Act took away the NLRB’s ability to decide which method of determining majority status was most appropriate and allowed employers to insist on NLRB-certified elections. Card-check unionizing is used in half of the 10 Canadian provinces. And hundreds of employers have decided on their own to recognize a union when a majority of workers have signed cards because they believe it is the fair thing to do.

Most employers negotiate contracts with unions in a reasonable fashion, but about a third of employers find ways to stall. Take, for example, the Case Farms chicken processing plant in Morganton, North Carolina. The workers there, most of them Guatemalan immigrants, first began organizing in 1991. They voted to be represented by a union in 1995 and staged a hunger strike in 1996. But because of delays and appeals, the workers never got a union contract.

Or consider Walker Methodist Health Center in Minneapolis, where nearly 500 workers voted on May 2003 to be represented by the American Federation of State, County and Municipal Employees. Nursing home administrators appealed the vote, claiming that licensed practical nurses were “supervisory staff” and shouldn’t have been allowed to vote. Although a December 2006 NLRB ruling validated the election, the workers still have no contract. The Employee Free Choice Act would ensure that workers at Case Farms and Walker Methodist Health Center got a first contract within a reasonable period.