

Federal Update The New National Labor Relations Board (NLRB) and Labor Law Reform

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Preventive Strategies and
Positive Solutions for the Workplace

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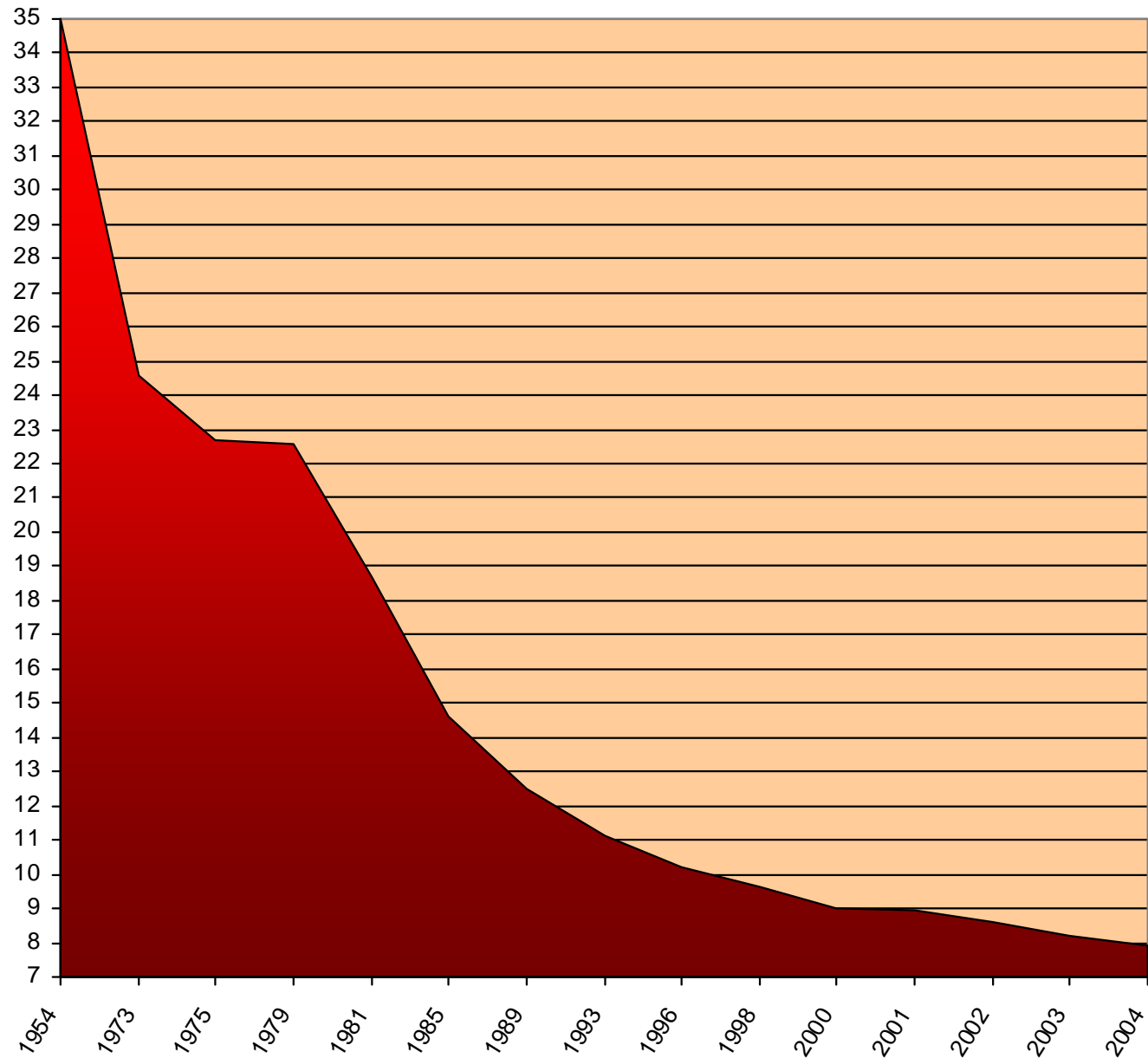
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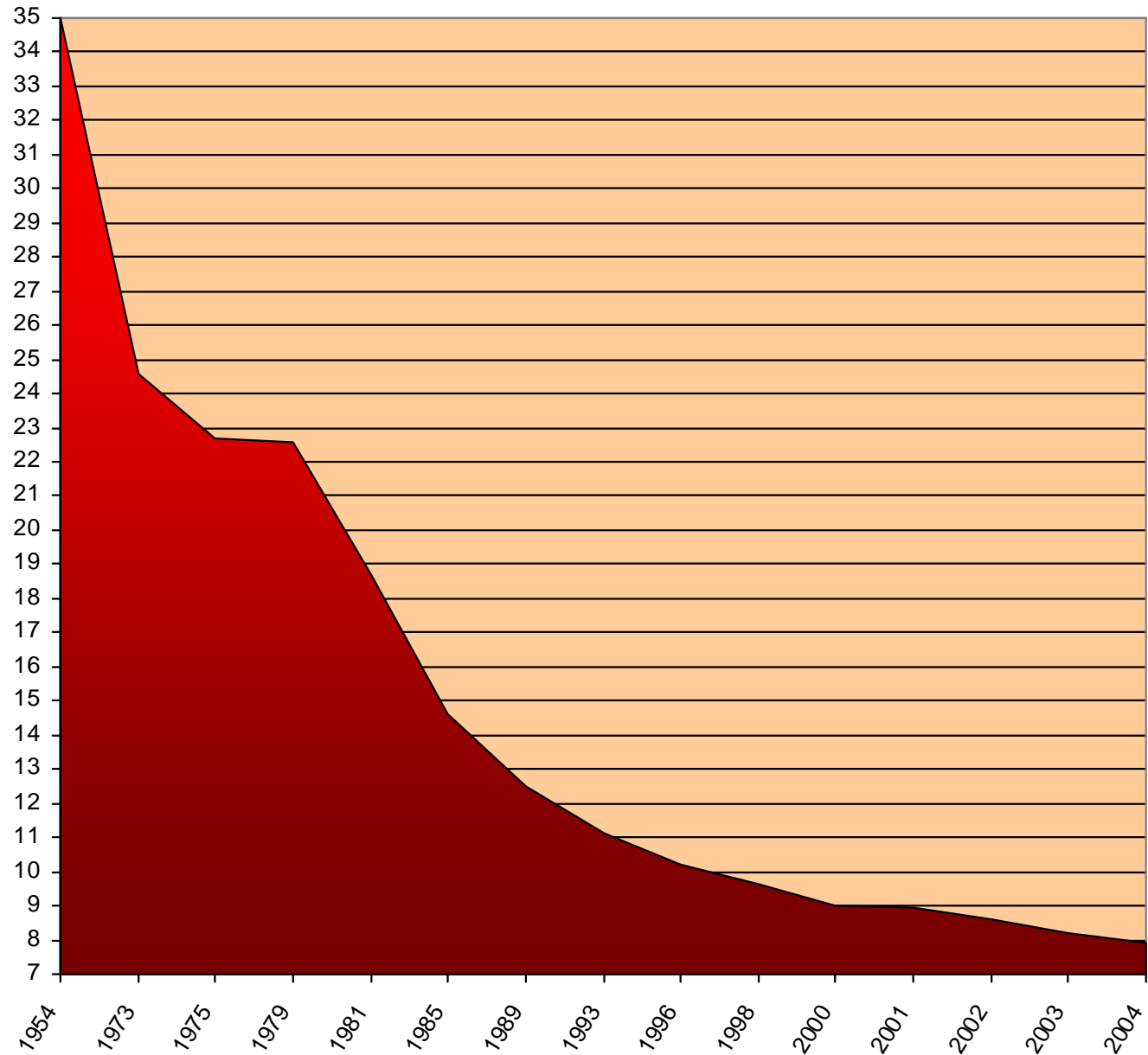
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This IS the history of union membership in the last 55 years.



If this was your company's profit picture what would you do?



When you are desperate you will try ANYTHING!!!:

Unions are desperate and are trying everything

- **Traditional organizing – NLRB Elections**
- **Corporate campaigns and Neutrality Agreements**
- **Amending the law – EFCA and labor law reform**
- **Changing the makeup of the NLRB to reinterpret the law in its favor**
- **Presidential Executive Orders**

Labor's Plan for Future

The Voice of Organized Labor



The only way to rebuild the labor movement is to organize wholesale, not retail, to organize all of a company at one time, not one plant, one shop, one worksite at a time.”

- Andrew Stern, President SEIU

NLRB Elections, Neutrality Agreements, Card Check

Fiscal 2009

- Union win rate of 63.8% of NLRB elections down slightly from year earlier
- But, total number of elections conducted down significantly in the last 10 years
- Unions avoiding the election process in favor of card check
- Neutrality agreements imposed as a result of corporate campaigns

Union Authorization Card

Authorization for Representation Under the National Labor Relations Act

I, the undersigned employee of

Company: _____

Address of Company: _____

authorize Local _____ affiliated with the International Brotherhood of Teamsters to represent me in negotiations for better wages, hours and working conditions.



(PLEASE PRINT)

Name _____ Date _____

Home Address _____
(Number and Street) (City, State and Zip Code)



Social Security Number _____ Phone _____

Job Classification _____



Signature _____

Secret Ballot

	UNITED STATES OF AMERICA National Labor Relations Board	
OFFICIAL SECRET BALLOT For certain employees of _____ COMPANY		
Do you wish to be represented for purposes of collective bargaining by - SAMPLE LOCAL UNION 528, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO?		
MARK AN "X" IN THE SQUARE OF YOUR CHOICE		
YES <input type="checkbox"/>		NO <input type="checkbox"/>

National Labor Relations Act (NLRA) Today

Unions believe current process is broken

- Unions solicit about 60% of cards by the time election petition filed, but win only 70%
- Biggest factor: lawful employer education programs
- Secret-ballot election ensures those who were pressured to sign cards can change their mind in private
- Good faith negotiations do not guarantee a union contract—most do not within a year

Organizing

Petition

Election

Post
Election

EFCA - Probable Components of an EFCA compromise – “EFCA-Lite”

- **No “card check” – politically unacceptable**
- **“Quickie” elections 10-21 days from filing an election petition with the Labor Board**
- **Enhanced remedies including monetary damages and possible extraordinary remedies in bad faith bargaining cases**
- **Binding arbitration as either a right or a remedy**
- **Equal access to employees at the workplace**

New National Labor Relations Board

Labor Law Reform Without an Act of Congress

Members

CHAIR WILMA LIEBMAN

Term Expires 2011

Clinton/Bush/Obama Appointee

PETER SCHAUMBER

Term Expires August 2010

Bush Appointee-Former Arbitrator

Recess Appointments

CRAIG BECKER

Assoc. General Counsel Service Employees International Union

MARK PEARCE

Creighton, Pearce, Johnson and Giroux- Union side labor lawyer

BRIAN HAYES - Nominated did NOT receive a recess appointment

Republican Staffer Senate HELP Committee

Proposed NLRB –a Stacked Deck – 3 of 5



Wilma Liebman, Current Chair

- She believes Labor Law should be changed to make it easier for unions to organize workers*



Mark Pearce, Union Attorney

- Represented Unions and Union officials but considered moderate



Craig Becker, SEIU In-House Lawyer

- Believes Employers should be stripped of any role in NLRB elections and NLRB should eliminate or restrict Employer free speech

The Road to Craig Becker's Nomination

- ❑ July 9, 2009- Nominated by President Obama
- ❑ October 21, 2009- Senator McCain places a hold on Mr. Becker's nomination and insists on a public hearing
- ❑ January 7, 2010- President Obama re-nominates Mr. Becker to the NLRB
- ❑ February 2, 2010- Public hearing held before HELP committee on Mr. Becker
- ❑ February 10, 2010- Senate democrats fail to invoke cloture on Mr. Becker's nomination (52-33)
- ❑ March 27, 2010- receives a **recess appointment** that does not require Senate confirmation

Labor Law Reform Without EFCA

The New Labor Board can re-write Labor Law in two ways:

➤ *Reversing pro-employer Bush Board decisions and issuing new decisions favoring unions in novel ways*

➤ *Issuing rules that permanently shift the balance in favor of unions*

Changing the Law

Some Examples:

- NLRB will make it harder to prove first line supervisors are exempt from unionization
- NLRB will reverse Bush Board decision requiring employer consent before temporary employees can be unionized with its regular employees
- NLRB to reverse employer's right to prohibit employees from discussing unions via email systems
- Revisit the granting of "Weingarten" rights to non-union employees

Labor Law Reform Through Rulemaking

New Election Rules to Favor Unions

- Mandatory union rights postings
- Expedited Election Processing
- Mail and E-Balloting

More Aggressive Remedies in Initial Organizing and First Contract Cases

- Union access to premises
- Equal time rules in campaigns
- Mandated bargaining schedule and monitoring in bad faith bargaining cases

Rulemaking Benefits Labor Law Reform

- Rulemaking takes time, but rules cannot be reversed like case decisions with the next Republican administration.
- Revising these would require a repetition of the time consuming process.
- While conservative federal judges do not hesitate to reverse the NLRB on appeals in individual cases, they defer to agency rules even if they disagree with them.
- Thus, reform instituted through rules may become close to permanent.

Labor Law Reform Through Executive Orders

❑ Required Posting For Government Contractors – E.O. 13496

NOTICE TO EMPLOYEES

RIGHTS OF EMPLOYEES UNDER THE NATIONAL LABOR RELATIONS ACT

Under federal law, you have the right to:

Organize a union to negotiate with your employer concerning your wages, hours, and other terms and conditions of employment.

Form, join or assist a union.

Bargain collectively through a duly selected union for a contract with your employer setting your wages, benefits, hours, and other working conditions.

Discuss your terms and conditions of employment with your co-workers or a union; join other workers in raising work-related complaints with your employer, government agencies, or members of the public; and seek and receive help from a union subject to certain limitations.

Take action with one or more co-workers to improve your working conditions, including attending rallies on non-work time, and leafleting on non-work time in non-work areas.

Strike and picket, unless your union has agreed to a no-strike clause and subject to certain other limitations. In some circumstances, your employer may permanently replace strikers.

Labor Law Reform Through Executive Orders

- ❑ **“NONDISPLACEMENT OF QUALIFIED WORKERS UNDER SERVICE CONTRACTS”- E.O. 13495**

Service Contractors must offer jobs to prior contractor’s employees to help preserve the union and union jobs

- ❑ **“ECONOMY IN GOVERNMENT CONTRACTING”- E.O. 13494**

Contractors cannot use government funds to pay cost incurred for labor consultants, union free training or lawful communications concerning unions

WHICH MEANS:

Forced Neutrality for Federal Contractors

- ❑ Unallowable costs include costs of the following activities when engaged in for the purpose of discussing union issues:
 - ❑ Preparing and distributing materials
 - ❑ Hiring legal counsel to advise regarding employer communications
 - ❑ Holding meetings on paid time
 - ❑ Planning or conducting activities by managers during working hours, such as union free training

More Labor Law Reform

RESPECT Act

(“**R**e-**E**mpowerment of **S**killed and **P**rofessional **E**mployees and **C**onstruction **T**radeworkers”)

- The NLRA defines a supervisor as an:
 - *individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.*

More Labor Law Reform

RESPECT Act

(“**R**e-**E**mpowerment of **S**killed and **P**rofessional **E**mployees and **C**onstruction **T**radeworkers”)

- Introduced in March 2007 as Sec. 969, HR 1644
- Would change the definition of “supervisor” under the NLRA
- The RESPECT Act would DELETE from the definition of “supervisor” the duties of assigning and responsibly directing other employees.
- The legislation also specifies that supervisors must “hire, transfer, suspend, lay off, recall, promote, discharge, reward, or discipline other employees” for a *majority* of their work time.

More Labor Law Reform

RESPECT Act

(“**R**e-**E**mpowerment of **S**killed and **P**rofessional
Employees and **C**onstruction **T**radeworkers”)

- Regarded as a companion to EFCA
- Major agenda item for organized labor
- Not yet introduced in this Congress

Next Steps For Employers - 2010

- Plan now to address legitimate employee concerns before the first sign of union activity
- Conduct vulnerability assessment and create an “issue free” workplace before organizing starts
- Review policies and procedures to assure compliance with new laws, regulations, Executive Orders and standards
- Conduct wage hour compliance audit
- Educate managers and supervisors on how to properly and legally communicate with subordinates

Next Steps For Employers - 2010

- **With regard to supervisory status:**
 - **Review all employee classifications**
 - **Review job descriptions and consider how description matches actual duties**
 - **Review files for evidence of supervisory status, e.g. signatures on forms, evidence of actual decision-making**
- **Provide workplace due process and meaningful employee involvement programs**