COMPULSORY UNION DUES AND CORPORATE CAMPAIGNS

HEARING

BEFORE THE

SUBCOMMITTEE ON WORKFORCE PROTECTIONS

OF THE

COMMITTEE ON EDUCATION AND THE WORKFORCE

HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

HEARING HELD IN WASHINGTON, DC, JULY 23, 2002

Serial No. 107-74

Printed for the use of the Committee on Education and the Workforce

82-142 pdf

For sale by the Superintendent of Documents, U.S. Government Printing Office
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COMPULSORY UNION DUES

AND CORPORATE CAMPAIGNS

Tuesday, July 23, 2002

Subcommittee on Workforce Protections

Committee on Education and the Workforce

U.S. House of Representatives

Washington, D.C.

The Subcommittee met, pursuant to call, at 2 p.m., in Room 2175, Rayburn House Office Building, Hon. Charlie Norwood, Chairman of the Subcommittee, presiding.

Present: Representatives Norwood, Owens, Kucinich, Woolsey, and Sanchez.

Staff Present: Stephen Settle, Professional Staff Member; Loren Sweatt, Professional Staff Member; Travis McCoy, Legislative Assistant; Kevin Smith, Senior Communications Counselor; Heather Valentine, Press Secretary; Patrick Lyden, Professional Staff Member; and, Deborah L. Samantar, Committee Clerk/Intern Coordinator.

Mark Zuckerman, Minority General Counsel; Peter Rutledge, Minority Senior Legislative Associate/Labor; Maria Cuprill, Minority Legislative Associate/Labor; and, Dan Rawlins, Minority Staff Assistant/Labor.

Chairman Norwood. A quorum being present, the Subcommittee on Workforce Protections of the Committee on Education and the Workforce will come to order. We are meeting today to hear testimony on compulsory union dues and corporate campaigns.

Under committee rule 12(b), opening statements are limited to the Chairman and Ranking Minority Member of the Subcommittee. Therefore, if other Members have statements, they will be included in the hearing record. So ordered.

With that, I ask unanimous consent for the hearing record to remain open 14 days to allow Members' statements and other extraneous material referenced during the hearing to be submitted in the official hearing record. Without objection, so ordered.

I will yield to myself first for an opening statement, and I would like to wish all of you a good afternoon and thank you very much for taking your time to be with us today.

OPENING STATEMENT OF CHAIRMAN CHARLIE NORWOOD, SUBCOMMITTEE ON WORKFORCE PROTECTIONS, COMMITTEE ON EDUCATION AND THE WORKFORCE

Today's hearing continues the efforts of this Subcommittee to determine if workers are afforded their basic American rights. In a previous hearing, we looked at the issue of whether the rights of workers not to be forced to contribute to candidates and causes that they do not support is honored by unions and protected by the National Labor Relations Board. During that hearing, we heard from witnesses that unions continually try to evade their responsibilities under the Supreme Court decision in the Beck, Hudson, and Street cases. We also heard persuasive evidence that the National Labor Relations Board has been lax, to put it mildly, in its enforcement of the Beck case.

At another hearing, we looked at whether the religious rights of workers were being protected. We heard from witnesses who have their religious rights denied by unions that force them to pay dues as a condition of employment and then use their dues money to promote causes that are condemned by the Bible.

Today our inquiry continues into two very fundamental rights. One is the right to be represented by people whom we elect and are not appointed by others. The other is that money should not be taken from us without the vote of people who are held accountable to us in an election. These are fundamental American rights. Our Nation's founders dumped tea into the Boston harbor and risked their lives, fortune, and sacred honor to stop King George from taxing them without allowing them representation.

Today's workers, as the American colonists did in the 18th century, confront a situation whereby they can be forced to be represented by and contribute to a union that they did not choose and which they may oppose. I believe that with a few exceptions, workers should have the right to choose whether they want union representation. I believe that choice should be left to the workers. It should not be imposed on them by deals made by any other parties. I especially believe that workers should not be forced to pay compulsory dues to a union that was not elected by them, their coworkers, or the workers that preceded them in their jobs.

In that belief, I am guided by the Democratic principles upon which this Nation was founded and for which brave men took up arms and, some, the ultimate sacrifice. Ours is a great

country because ordinary people from all backgrounds can choose their representatives in government in free and fair elections. It is time that these basic American rights are extended to workers who should have the right to choose whether they want representation by a particular union in a government-conducted secret ballot election.

With that said, I will now yield to the distinguished Ranking Minority Member, Mr. Owens, for whatever statements he might wish to make.

WRITTEN OPENING STATEMENT OF CHAIRMAN CHARLIE NORWOOD, SUBCOMMITTEE ON WORKFORCE PROTECTIONS, COMMITTEE ON EDUCATION AND THE WORKFORCE – SEE APPENDIX A

OPENING STATEMENT OF RANKING MEMBER MAJOR OWENS, SUBCOMMITTEE ON WORKFORCE PROTECTIONS, COMMITTEE ON EDUCATION AND THE WORKFORCE

Thank you, Mr. Chairman. I think we have covered this territory before. It is most unfortunate that this Committee, Education and the Workforce Committee, which has jurisdiction over most laws governing pension funds, is not directing so much time and energy toward the protection of pension funds and the present crooked actions of corporations with respect to pension funds and their practices which whittle away the investments of shareholders. I think that there are many more urgent things to do than repeat what we have done several times here in terms of harassment of unions with respect to their use of dues. Nevertheless, I want to welcome today's witnesses, especially Mr. Getler and Professor Craver, who are here on very short notice at my request.

Unions have long contended that the election process under the National Labor Relations Act is one-sided and unfair. Human Rights Executive Director Kenneth Roth summarized a recent report by that organization on the right to organize in the United States as follows. I am quoting:

"Our findings are disturbing, to say the least. Loophole-ridden laws, paralyzing delays, and feeble enforcement have led to a culture of impunity in many areas of U.S. Labor law and practice. Legal obstacles tilt the playing fields so steeply against workers' freedom of association that the United States is in violation of international human rights standards for workers."

Under the National Labor Relations Act, employers may lawfully require employees as a condition of employment to attend meetings on paid time. Sometimes these are large audience meetings and sometimes they are one-on-one meetings at which the reasons the employee should oppose organizing efforts are explained to the worker. While employers may lawfully pay workers to hear the employer's views on organizing at the one place that workers' congregate, the job site, employers may also deny the union access to employer property. Unions cannot compel workers to listen to pro-union arguments, and it is unlawful for the union to attempt to buy votes.

The decision to be represented by a union should be an independent, autonomous choice by employees alone. Among the principal purposes of the NLRA is protecting the right of workers to freely choose to be represented by unions. In reality, however, employers have greater rights and access to attempt to influence workers than is afforded to the unions. Furthermore, because the laws and remedies are too weak to deter violation, unlawful tactics such as unlawful discharge can further magnify an employer's legal advantages.

Where an employer refuses to voluntarily recognize a union, the only way a union may be certified to represent workers is through a certification election, with all the pitfalls that that process entails. In order to obtain an election, the union must show sufficient interest among the employees for an election. The minimum required is 30 percent; that is, the union must show that at least 30 percent of the employees the union seeks to represent have signed a petition or a card showing that they support union representation or desire an election to choose the union representative. In fact, because of the inevitable inroads that will be made into union support because of the one-sided election process, union organizers typically say they have to have support of 70 percent or more of the workers at the time they petition for an election in order to have a good chance of winning the election.

In 1999, 22,879 workers received back pay as a result of unfair employer labor practices. Stated another way, nearly 23,000 workers were unlawfully cheated out of pay because of anti-union efforts by employers. When workers try to form unions, 92 percent of employers force workers to attend mandatory anti-union meetings; 78 percent of employers require supervisors to conduct one-on-one anti-union meetings with workers; 51 percent of employers threaten that the company may have to close the plant if the union wins. And one out of four employers illegally fires workers in order to prevent workers from organizing. It is against this backdrop that some of my Republican colleagues want to contend that the real problem with labor laws is that we allow employers to voluntarily recognize unions.

The right of workers to form and join unions and to organize for the purpose of collective bargaining is a fundamental human right and among the most meaningful embodiments of freedom of association and speech. Unions enable workers to protect themselves, to achieve dignity and respect, and to participate effectively in the economic and social decisions that affect their lives. Collective bargaining is also good for the community. It is an effective tool for combating poverty and ensuring equality of opportunity. It brings democracy to the workplace and ensures that workers receive a fairer share of the wealth their labors generate. By lifting workers' earnings, collective bargaining promotes consumer demand; and by ensuring the workers are treated as partners rather than servants, collective bargaining promotes productivity. Unfortunately, it is apparent that the Chairman of the Subcommittee has no interest whatsoever in protecting the right to organize, but is intent on eliminating the figment of that right that still exists.

WRITTEN OPENING STATEMENT OF RANKING MEMBER MAJOR OWENS, SUBCOMMITTEE ON WORKFORCE PROTECTIONS, COMMITTEE ON EDUCATION AND THE WORKFORCE – SEE APPENDIX B

Mr. Owens. Mr. Chairman, I ask unanimous consent to submit a letter from the United Auto Workers for the hearing record, and in addition I would like unanimous consent to submit a statement for the record from my colleague, Representative Kucinich.

Chairman Norwood. If there is no objection, so ordered.

We are indeed fortunate today to have a panel of witnesses that mixes legal and practical and real-world experiences in the area of corporate campaigns. Our first witness today will be Jarol B. Manheim, Professor of Media and Public Affairs, and of Political Science at The George Washington University here in Washington D.C.

Our second witness is Mr. Terry Getler. He is a member of the Hotel Employees and Restaurant Employees International Union employed at the MGM Grand Hotel in Las Vegas, Nevada. Next we have Mr. Bruce Esgar. Mr. Esgar is also employed at the MGM Grand Hotel in Las Vegas. Welcome to both of you and thank you for coming today.

Our fourth witness is Mr. Ron Kipling who joins us from Los Angeles, California. Mr. Kipling is the Director of Rooms at the New Ontani Hotel in Los Angeles, California.

Next we have Professor Charles Craver. Like Professor Manheim, Professor Craver teaches at The George Washington University right here in Washington, D.C. We are delighted to have you. I noticed in your statement that you titled our hearing today, Hearing on Proposed Bill on "Workers' Bill of Rights". Actually it is an oversight hearing about compulsory union dues and corporate campaigns.

Our final witness is Mr. Dan Yager, Senior Vice President and General Counsel for the Labor Policy Association here in Washington, D.C. I would note that Mr. Yager is an alumnus of this Committee. Not that many years ago he served as general counsel for the Republican Members on this Committee. We welcome you back, Mr. Yager.

Before the witnesses begin their testimony I would like to remind the Members that we will be asking questions after the entire panel has testified. And in addition, Committee Rule (2) imposes a 5-minute limit on our questions. I really don't like interrupting people that have come such long distances to testify, but I would ask you to try to stay within the 5-minute time frame. The members know about the red, green, and yellow lights in front of you. However, I will not stop you when the red light comes on if you will help me.

Professor Manheim, could we start with you, please?

STATEMENT OF JAROL B. MANHEIM, PROFESSOR OF MEDIA AND PUBLIC AFFAIRS, AND OF POLITICAL SCIENCE, THE GEORGE WASHINGTON UNIVERSITY, WASHINGTON, D.C.

Mr. Chairman and distinguished Members of the Committee, thank you very much for inviting me to share with you this afternoon some of the results of my research on corporate campaigns.

A corporate campaign is an organized assault by a union or some other group, literally a form of warfare designed to undermine a company's relationships with its key stakeholders and to define that company as an outlaw that must be stopped before it does further damage to our society. One of the most common uses of the corporate campaign is to pressure non-union companies to accept representation of their employees without a secret ballot election. Where the unions once claimed victory and a solid majority of such elections, today their chances of winning are at best even, and perhaps less than that. The unions attribute their reduced success rate to the increasing sophistication of union avoidance strategies used by management. Also unions share with corporations themselves relatively low standing in public esteem, and that may be a factor as well.

But whatever the cause, it is clear that the risk entailed in the unions investing significant time and resources in a traditional organizing drive at a non-union company is higher today than in years past. This has led labor leaders to seek innovative strategies for organizing workers and rebuilding their movement. The corporate campaign is one component of such an organizing strategy. These attack campaigns do not accomplish unionization, so they are often used in tandem with two organizing demands, card check and neutrality, which the unions seek as an alternative to a secret ballot vote by workers. Card check reduces the costs and the risks of organizing, and it takes organizing outside the process anticipated in the National Labor Relations Act, mirroring the union's claims about corporate union avoidance activity. Management often claims that card check procedures can lead to intimidation of workers.

Card check clearly does increase the likelihood that organizing efforts will be successful. In 1999, an analysis, for example, reported that more than 70 percent of card check organizing campaigns were successful, which is significantly better from labor's perspective than the outcomes of secret ballot elections. To enhance the effectiveness of a card check drive, unions generally insist that management adopt a position called “neutrality,” which is to say that the company promises not to communicate to its workers any indication that it opposes the union. Neutrality is, in effect, the labor-management equivalent of unilateral disarmament in an organizing campaign.

This raises the question of why a company that does not favor unionization of its employees would agree to card check and neutrality, and that is where the corporate campaign comes in. There are things that non-union companies fear more than the unionization of their workforce: loss of customers, loss of financing or insurance, bulky institutional shareholders, overly zealous regulators, querulous media and others. The corporate campaign is designed to convert some number of these stakeholders from supporters of the company into aggressive pressure points

against it. The core message from the union to the company is very straightforward: Give us what we want and all of these troubles will suddenly go away.

Bruce Raynor, President of the United Clothing and Textile Workers Union, once made this point when he said, and I quote: "employers think we are out of our minds, and the result is we win because we are willing to do what is necessary. We are not businessmen and, at the end of the day, they are. We are willing to cost them enough, they will give in."

Secret ballot elections can be thought of as retail organizing. Workers are organized from the bottom up, one vote at a time. Card check and neutrality, on the other hand, can be thought of as wholesale organizing, workers organized from the top down, one company at a time. This process was aptly summarized by Joe Crump, a local official of the United Food and Commercial Workers, some years ago when he said: "employees are complex and unpredictable. Employers are simple and predictable. Organize employers, not employees."

My research does not address whether the combination of card check and neutrality and corporate campaigns to pressure non-union employers protects and advances the interests of workers as the unions argue, or deprives them of their rights and protections as many employers argue. It does show, however, that non-union companies targeted in corporate campaigns have felt considerable pressure to forego their rights under the law in return for being permitted to conduct their daily business without the threat of continued damage to their reputations and financial well-being. And so on that point, the effectiveness of the corporate campaign in organizing is clear and unambiguous. Thank you very much.

WRITTEN STATEMENT OF JAROL B. MANHEIM, PROFESSOR OF MEDIA AND PUBLIC AFFAIRS, AND OF POLITICAL SCIENCE, THE GEORGE WASHINGTON UNIVERSITY, WASHINGTON, D.C. – SEE APPENDIX C

Chairman Norwood. Do you want to repeat that last sentence?

Professor Manheim. On that point, the effectiveness of the corporate campaign in organizing is clear and unambiguous.

Chairman Norwood. Mr. Getler, you are recognized for 5 minutes.

STATEMENT OF TERRY GETLER, CHIEF SHOP STEWARD, HOTEL EMPLOYEES AND RESTAURANT EMPLOYEES INTERNATIONAL UNION, MGM GRAN D HOTEL, LAS VEGAS, NV

Thank you. Good afternoon, Mr. Chairman and Members of the Subcommittee. Thank you for inviting me here to tell you about our success at the MGM Grand with our card and neutrality agreement.

My name is Terry Getler. I have worked as a bellman at the MGM Grand since December 10, 1993 when the hotel first opened. I was actively involved in the MGM's original decision for the workers to unionize. I am now chief shop steward, and have been involved in the negotiations of both of our contracts.

Workers at the MGM Grand wanted a union because they realized the company, which was then under different management at the time, was breaking promises they made to us when we were hired. Management was beginning to make decisions about things like seniority, health benefits, and guaranteed tips without consulting the workers. Their management style was changing and we were afraid we were going to lose what we had. Nothing was in writing. We felt we needed representation. Whenever we raised concerns with hotel management, it fell on deaf ears. Problems about human resources were neither addressed nor resolved.

The company's informal dispute resolution process was called “guarantee of fairness.” There were 26 of these guarantees of fairness hearings, of which one was decided for the employee. The process turned out not to be so fair. Workers were upset. We held public demonstrations in the streets. At one point, the MGM was having union demonstrators arrested, whenever they stepped up on the sidewalks. You could be out there on the sidewalks leafleting pornography and you were left alone, but if you are leafleting union material you were arrested.

So we had a march one day with 5,000 union members and we were going to take the sidewalks back. Five hundred of them were arrested. The union later filed a lawsuit over those arrests and won.

We asked for a card check neutrality agreement, which means free choice for all the workers. With a neutrality agreement, there is little or no pressure from the employer on the individuals. There are no captive audience meetings where management walks you into a room and tells you why you shouldn't join a union. We felt neutrality was the only way we could get a level playing field with management. Another reason we wanted a neutrality card check agreement was because we knew winning an NLRB election is no guarantee we would ever get a contract. For instance, we knew about the Santa Fe Hotel. They won an NLRB election despite the obstacles, but it turned out they lost in the end because they never got a contract. For 7 years the company filed frivolous suits. And in the end, the hotel was sold to a new operator that fired all of the employees.

In our case, fortunately, new management came aboard the MGM Grand and agreed to neutrality card check. I think they made the right choice for themselves and the workers. Among other things, card check neutrality meant that workers would have access to union representatives

to ask questions and get information. The atmosphere was still tense but we made steady headway until over 50 percent of the workers signed authorization cards. The card check also meant once we got cards from more than 50 percent of the workers, a neutral arbitrator could be selected to compare the signatures from the information the company provided, and the arbitrator declared the union had a majority and ordered us to start collectively bargaining.

We started meeting with our coworkers to see what they wanted in our contract. Some of the most important issues were our vacation package and the need to solve problems at the lowest possible level. We needed to negotiate what is called a living contract, not a set of rigid rules, but a labor management cooperation that would adapt to changing circumstances.

It was at the negotiating table when we had started to search for something new, because the company didn't want a contract to resemble what any of the other hotels had, that we found out that there was a very small, very strong anti-union group starting to collect signatures to decertify the union. We felt that this decertification petition was undermining our bargaining position. The company knew that there was a small group of anti-union workers working against us. The longer it took for us to finish negotiations, the more chances there would be for workers to lose confidence with the union. This meant that management had interest in dragging their feet when they were finishing with the group, because they knew the anti-union people were working against us.

For whatever reason, the negotiations dragged on for a year. During the time that we were trying to negotiate the contract, the anti-union went to the NLRB three times to try to get the union decertified. The last time was in November 1997. They claimed they had signatures from 1,900, or about 60 percent of our workers. We couldn't figure how that could be possible that they could get signatures from 60 percent of our workers, because we had already had more than 50 percent of them signed on authorization cards.

I think one explanation is that union authorization cards, on its face, tell you exactly what you are signing. These decertification petitions, on the other hand, were just pieces of paper with rows of signatures. Some people had no idea what they were signing. Another explanation is that the signatures on a decertification petition were never verified by anybody, as far as I know. By contrast, a neutral arbitrator, Professor Harback, closely scrutinized union authorization cards. He and his students compared signatures and Social Security numbers with information supplied by the company. If there was any intimidation towards the anti-union people they could have filed an NLRB complaint to nullify the cards. In fact, that is exactly what they tried to do, but the NLRB dismissed every single one of those charges. Fortunately the NLRB decided not to interfere with our contract negotiations because we already demonstrated that we had a majority and we needed to negotiate a contract without being undermined.

We completed our negotiations just days after the third decertification petition was filed. Workers at the MGM obviously were happy with the contract and the union. They ratified the contract by a 7-to-1 ratio. We are very happy with our accomplishment. Though the contract may not have been perfect, it was a start. It was creative and it dealt with workers' issues. And we succeeded in creating a living contract.

One of the most important successes of our contract was establishing mutual respect between management and labor. If we had never gotten card check neutrality, I don't think we would have ever been able to negotiate a contract like this. I think the NLRB election would allege to pitch battle between workers and the company on an unlevel playing field.

While we were back bargaining at the table to negotiate our second contract in 2000, the anti-union started collecting signatures for yet another decertification petition. They were lying and telling workers things like, if you don't sign the decertification petition you are going to lose your vacation package. But even so, the anti-union group didn't come close to getting the 30 percent of necessary signatures for decertification. They got something like 18 percent. And the fact that our second contract was overwhelmingly approved shows that we had the majority.

We will be negotiating our third contract next year. I doubt there will be another decertification petition. I heard the anti-union group is basically throwing in the towel. They know that people are happy with our union and happy with our contract. About 75 percent of our bargaining units are union members and that is in a right-to-work State. The numbers of union members are still growing, and I am confident after we negotiate our next contract we will gain more members. In the case of the MGM I think that card check neutrality process worked very well. The company agreed voluntarily. Workers freely made their own decisions to form a union. We were productive to negotiate two good contracts, and again 75 percent of the workers have freely joined.

Thank you very much.

WRITTEN STATEMENT OF TERRY GETLER, CHIEF SHOP STEWARD, HOTEL EMPLOYEES AND RESTAURANT EMPLOYEES INTERNATIONAL UNION, MGM GRAN D HOTEL, LAS VEGAS, NV – SEE APPENDIX D

Chairman Norwood. Mr. Esgar, you are recognized for 5 minutes.

STATEMENT OF BRUCE G. ESGAR, EMPLOYEE, MGM GRAND HOTEL, LAS VEGAS, NV

I was invited here because I was on the other side of the union campaign for the card check. When the MGM opened, they announced that they would be a non-union hotel, offering wages, health benefits and a 401(k) retirement plan that far exceeded anything the union had ever done. They also stated that if the members or employees, who they call cast members, wanted to be union, they would recognize it in a NLRB election only. No card check.

Well, they changed their management about a year into it, and everybody got worried that they were going to have the union. Card check came in and we were told no. They announced that

they were going to go into the Detroit market and at that point, almost simultaneously they announced that the card check would be recognized. So that opened it up to the union coming in. The minute they came in, they divided groups, union/non-union. Because we wanted the right to vote, which we felt we had, believing in America, we asked where is our right to vote, and they would not give it to us. For two years we fought for our right to vote.

Now, because they had never faced a group of people that wanted a right to vote, they started calling us anti-union. That came about because we went to the NLRB board to ask how to obtain the right to vote, and we were told there is none. Get a lawyer. We found us a lawyer. We found out that in a NLRB petition, that an employer can ask for the right, the union can ask for a vote. The employee whose life is affected by it has no right to call for a vote.

So the only thing left on this form is a decertification. Once we signed the decertification notice, then we got labeled very strongly as anti-union. That is when union representatives and organizers told us many things. They walked in. People were coming to us and asking, can they do this? Can they say this? Can they promise this? And one of the first things that came up was what to do if you were having a problem with a supervisor. Well, yes, we fired supervisors in the past. We can have that done. If you don't sign a card and we get in, you lose your job. If you are non-union you lose it. You lose your benefits.

You need everything, as he just mentioned, in writing, which I still to this day do not understand. People were told to just sign on the card who was calling for the vote. They were offered or told, you sign the card, we will give you a free turkey. This is around Thanksgiving time. It sounds good to most people.

People were being harassed in their dressing rooms while they were dressing for work, which to a lot of people, that is privacy at most. And they were signing these cards at that point, saying that is it, I am signing it, let me out of here, get away from me. These are just some of the things that we put up with.

One gentleman told me that the union had told him we know where your wife works and she is at another union hotel. If you don't sign the card, we will have her fired. I had one gentleman, I promised I would keep quiet, apologize to me because he said that union representatives had come and told him, “We know where you work, we know where your wife works and know where your kids go to school. Accidents can happen.”

These are things that the employees put up with. We did it for 2 years. And all we were asking for was our right to vote. In America, you vote for your future. We felt that if the union was right and they had the majority, they would win the election and we would say fine, that is what the majority wants. But, as he said, yes, we did come up with 1,900 signatures, 1,900 signatures of people saying we want to vote. Does that mean they are all non-union or anti-union? I can honestly tell you, no, they weren't. Some were union members; because they also felt it is only fair in America to vote. There were those that would sign the card check under protest and the only way back was to sign the petition. So, yes, you have the give and take. But I feel that the 1,900 weren’t saying we don't want the union as they tried to portray it.

What we were saying for 2 years was give us our right to vote. Let us tell you whether we want to be represented by a union. And if we do, we want the right to tell you which union we want to represent us. We don't want to be told this one will do it.

Thank you.

WRITTEN STATEMENT OF BRUCE G. ESGAR, EMPLOYEE, MGM GRAND HOTEL, LAS VEGAS, NV – SEE APPENDIX E

Chairman Norwood. Thank you. I was so intrigued by your statement I wasn't watching the clock. Thank you very much Mr. Esgar.

Mr. Kipling, you are now recognized for 5 minutes.

STATEMENT OF RON KIPLING, DIRECTOR OF ROOM OPERATIONS, THE NEW ONTANI HOTEL AND GARDEN, LOS ANGELES, CA

Thank you. Mr. Chairman and Members of the Committee, I would like to thank you for allowing me the opportunity to appear before you today. I appreciate the opportunity to offer my company's support in your attempt to ensure that the wishes of our country's workers are given full consideration by the Nation's labor laws.

Again, my name is Ron Kipling; I am Director of Rooms for the New Ontani Hotel in Los Angeles, California. The New Ontani is a 434-room hotel located in the heart of the civic center in downtown Los Angeles. The employee base of the New Ontani is made up of over 90 percent minority workers. And what is highly unusual in an industry noted for its high turnover rate of personnel, a number of New Ontani employees have been with the hotel since it opened in 1977. Many others joined the property shortly thereafter and have been with the property over 20 years. We feel we have an outstanding group of employees and the comments of our guests seem to reflect that view as well.

It is precisely because we feel so strongly about this family of employees that we wanted the opportunity to appear before you today. In 1982 the Hotel Employees and Restaurant Employees Union of Los Angeles, Local 11, petitioned the National Labor Relations Board to represent our employees. Shortly later during that same year, our employees voted overwhelmingly, 88 percent, to reject union membership. Over the last decade, Local 11 has attempted again to have our employees join their union. But no longer do they wish to have a NLRB-certified election to determine whether the employees favor that relationship. Local 11 instead made great use of a weakness in our labor laws to bypass the employees' wishes and attempt to deal directly with hotel management. They proposed doing this by having hotel

management sign a neutrality agreement with Local 11 and then having the union obtain signatures on authorization cards, with no oversight as to how or under what circumstances signatures are obtained. Hotel management would inspect those cards and those signatures, without any form of verification, and then designate the union to represent our employees.

We, of course, have made it abundantly clear that we will not in the present or in the future accept this type of arrangement. We have made it equally clear that we feel very strongly that only employees have both the moral right and the legal right to make that determination about their own future. This is precisely why we have insisted throughout the years that an NLRB-supervised election is the only way to truly permit these employees to express their views on this subject. We believe so strongly in this principle that twice we have petitioned the National Labor Relations Board for an election and twice, the last time up on appeal at the national level, those petitions have been denied.

Yet despite our declarations on issues, Local 11 has continued to spend much of the last decade attempting to coerce hotel management and ownership into accepting a card check agreement in place of our supervised election. They have intimidated our employees to the extent that in 1996 we were forced to go to Los Angeles Superior Court and obtain an injunction forbidding the union representatives from going to the employees' homes late at night and harassing them on their porch, sometimes as many as 8 to 10 union representatives at a time. They have sent letters to both our business and social clients advising them that if they hold an event at the New Ontani, then they can expect labor demonstrations will have an adverse effect on those activities, and as meeting planners, they will be responsible for answering to their clients for the atmosphere that they put their guests in.

They have gone as far as going to the Los Angeles International Airport and greeted our arriving guests from overseas and handing them flyers printed in Japanese that indicate our kitchens are infested with insects and that our restaurants serve spoiled and rotten food. And they have held confrontational and noisy demonstrations in the streets in front of our hotel condemning the majority stockholder of the hotel as a corrupt and evil company governed by war criminals.

Local 11 has been able to exert their influence over the local political community. And as such, the majority of the city council, local clergy, and local universities have sent delegations to our hotel or have written us urging us to accept Local 11's offer of neutrality agreement and a card check, saying that it would bring peace to the community and that it would be better relations for all of us combined. Yet amazingly, not one of these officials or clergy have ever offered to speak directly to the hotel workers to find out how they feel on this very important subject.

And I feel that is what we are discussing here today: the issue of workers' rights, the opportunity for the employees themselves to have some degree of control over their work environment, some degree of control over their own future. I don't think there is anyone in this room who would deny that the strength of this country is the willingness of its citizens to accept the results of the ballot box as the means to lawfully and respectfully determine the issues that are important to us as a country. Why would we expect the workers of this Nation not to have that same privilege?

It is now time that the Nation's labor laws reflect that their intent is not only to protect the worker's rights, but also to protect the worker's right to choose.

Thank you very much.

WRITTEN STATEMENT OF RON KIPLING, DIRECTOR OF ROOM OPERATIONS, THE NEW ONTANI HOTEL AND GARDEN, LOS ANGELES, CA – SEE APPENDIX F

Chairman Norwood. Thank you very much Mr. Kipling.

Professor Craver, you are now recognized for 5 minutes.

STATEMENT OF CHARLES B. CRAVER, MERRIFIELD RESEARCH PROFESSOR OF LAW, THE GEORGE WASHINGTON UNIVERSITY, WASHINGTON, D.C.

Mr. Chairman, and Members of the Committee, thank you very much for inviting me to be here. I apologize for having the wrong caption, but I was asked yesterday afternoon if I could appear, and I was given the indication that it was based on that bill.

I am glad to see Congress concerned about the rights of employees, but as Congressman Owens has so eloquently pointed out, the rights that tend to be violated the most frequently are not the rights of employers, they are the rights of employees.

In our society, we have at-will employment relationships where an individual can be fired for good cause, bad cause, or no cause at all. Under the National Labor Relations Act as originally established in 1935, a union could be certified either by winning a certification election or the Labor Board could, quote, "utilize any other suitable method to ascertain representatives."

In 1947, Congress eliminated that provision to require a secret ballot election for a certified union, but did not diminish the right of employers to grant voluntary recognition based on card checks or other indications of union majority support.

Much of what we heard today would be illegal under the current National Labor Relations Act. If a union were to promise people benefits and give them turkeys to sign authorization cards, it would most likely violate section 8(b)(1)(a). They would be coercing or restraining employees in the exercise of their protected rights.

And the free speech provision, section 8(c), says you cannot threaten reprisals or promise benefits. Throughout the 1940s, 1950s and 1960s, it wasn't that uncommon to see voluntary recognition. Neutrality agreements weren't that common, but voluntary recognition was. In the last two to three decades we rarely see neutrality agreements. We used to see it occasionally when I was in practice with hospitals not covered at that time by the National Labor Relations Act.

We saw just this week United Parcel Service and the Teamsters Union entered into a neutrality agreement, but it is rare where you don't already have a union at that place of employment, as you have with UPS and the Teamsters Union. Most of the time when you see a neutrality agreement, it is a unionized firm, and the employers are agreeing not to oppose unionization of other employees of that particular firm.

I believe wholeheartedly in the election process and I think an uncoerced election is the preferred method for determining representation rights. But so often the employers clearly have the advantage. I can give a captive audience speech. I can stuff pay envelopes. I can do so many things that the union can't possibly do. Day in and day out, my supervisors can issue anti-union statements as long as they are not in and of themselves coercive. If a union coerces someone in the signing of an authorization card, it is already illegal under the statute. The Labor Board should hear the case and order a cease and desist.

If you look at the abuses that have taken place over the last several decades, as Mr. Owens pointed out, every year thousands of employees are discharged for supporting union organizing campaigns. Frequently employers suggest if you unionize, the plant will close or the production will be moved to another location in the United States or elsewhere. Most employers don't want a union, for obvious reasons. They would prefer to have complete control over their wages, hours, and terms and conditions of employment. Most employers lawfully exercise their rights under the statute to oppose unionization, and most good law firms who represent management do a very good job in making sure that you don't illegally discharge people, you don't threaten reprisals, and they win 90 to 100 percent of the elections that they participate in on behalf of their clients. A small number, but a growing number, do not hesitate to threaten employees and do not hesitate to discharge employees.

In the bill that I was asked to talk about, there are provisions that require double or triple back pay, perhaps even punitive damages. I would strongly recommend that Congress think about imposing those penalties on employers who violate the rights of people who support unions.

I will also say I am happy to report the same thing if you could prove that a union has also violated their rights. I don't think that people should automatically vote for a union. I am a real believer in the right under the statute of employees to decide with their own free will whether they wish to be represented. If they vote no and that is their choice, I would totally support that decision. If they wish to have a union, however, and they are thwarted because of threats or reprisals or, worse yet, discharges, I think that should be illegal and the penalty should be sufficiently significant that we wouldn't continue to tolerate that in the future.

Thank you very much.

WRITTEN STATEMENT OF CHARLES B. CRAVER, MERRIFIELD RESEARCH PROFESSOR OF LAW, THE GEORGE WASHINGTON UNIVERSITY, WASHINGTON, D.C. – SEE APPENDIX G

Chairman Norwood. Thank you Professor Craver.

And Mr. Yager, we will finish up with you. You are now recognized.

STATEMENT OF DANIEL V. YAGER, SENIOR VICE PRESIDENT AND GENERAL COUNSEL, LPA, THE LABOR POLICY ASSOCIATION, WASHINGTON, D.C.

Thank you, Mr. Chairman. Our organization represents the senior human resources vice presidents or executives of over 200 leading American companies. I have actually been watching the activities of this Committee for about 20 years, and I believe this is probably the first time that an employer group has ever actually suggested that a new employer unfair labor practice be created. But I really think that that is probably the only way that you can solve this issue that has been raised by some of the other witnesses and guarantee that in situations like the MGM Grand situation, that people like Mr. Esgar and 1,900 other employees, which was 60 percent of the workforce in that situation, do actually get a chance to vote in an uncoerced, confidential manner on whether or not to be represented by a union. The alternative is the kind of campaign that Mr. Kipling described, and there are numerous of those.

I commend Professor Manheim's book to you. Over the last 10 or 15 years, the number of instances of corporate campaigns, and most of them don't get reported accurately, is very numerous. Because of that, employers are put in the untenable position of either having to deny their employees an uncoerced, confidential choice whether or not to be represented by a union or face potential serious damage to their business or especially, even in the case of a small business, possibly even extinction.

I would quote from the number two person at the AFL-CIO, Rich Trumka, who refers to a corporate campaign as "the death of a thousand cuts." In fact one United Food and Commercial Workers official, in a Law Review article that I discuss in my testimony, describes how that UFCW local put a local grocery concern out of business after they refused to agree to a card check. And he then described the corporate campaign as putting enough pressure on employers, costing them enough time, energy, and money to either eliminate them or get them to surrender to a union.

When an employer is under that kind of pressure, it is pretty hard to resist. Now, I am not here to ask for sympathy for the employer. What I am suggesting is at the end of the day, employees ought to have the chance to vote. And for all of the criticisms you will hear about how

NLRB elections work, and you will hear just as many from the management side as you will hear from the union side, the one thing that I think everybody is pretty certain of is that at the end of the day, no matter how incompetent that NLRB agent was, those employees got to actually register their choice with no one looking over their shoulder, no one knowing how they marked their ballot. And I have never read an NLRB decision where that was a reason for overturning the decision. Those votes are always sacrosanct. And in fact 80 percent of those elections occur within 60 days, 95 percent within 90 days. So usually it is a pretty quick process.

In contrast, how does a card check work? Well, a union organizer, a pro-union co-employee, goes up to a worker and asks them to sign the card in their presence, and everyone knows how that employee registered their views. Even in the most innocent of circumstances, even when that organizer did not use coercive tactics, at a minimum, that employee is subjected to peer pressure from their co-employees. This led the Supreme Court to observe in a case that the unreliability of authorization cards is inherent in the absence of secrecy and the natural inclination of most people to avoid stands which appear to be nonconformist and antagonistic to friends and fellow employees.

Now, that is the innocent situation. The reality is there are numerous examples of the kind of coercion that Mr. Esgar suggested in his testimony and actually there are in many cases much worse. There is one case, the HCF, where a pro-union worker threatened that the union would come and get your children and it will also slash your tires if you don't sign this card. And in that case, the board refused to hold the union accountable for that. They said it was a pro-union worker that had made that threat.

In fact, attached to our testimony, we list over 100 cases that detail these kinds of threats and deception. It is rare that they get reported because, as I said, there is no supervision of what happens in a card signing process. It is usually anybody's guess as to how that signature was obtained.

I would close by saying that the decision of whether a group of employees is represented by a union should not be a deal between the employer and the union. It should be a decision made by the employees in the sacrosanct confines of an election booth, with no one looking over their shoulder as to how they cast their ballot. And we would encourage the Congress to look at mechanisms for correcting this abuse.

WRITTEN STATEMENT OF DANIEL V. YAGER, SENIOR VICE PRESIDENT AND GENERAL COUNSEL, LPA, THE LABOR POLICY ASSOCIATION, WASHINGTON, D.C. SEE APPENDIX H

Chairman Norwood. Thank you, Mr. Yager. And I want to thank each of our witnesses today for sharing their thoughts with us.

We will now begin the Subcommittee's questioning and we will proceed in 5-minute intervals, rotating between the Majority and Minority members.

I would like to begin our inquiry. Professor Manheim, you made some strong statements, "outright assaults on companies," I believe were some of the words you used. Can you prove that?

Professor Manheim. In a word, yes. I did a study over a period of years of about 200 of these corporate campaigns. And where I use the word "assault," I don't mean a physical assault, but there are a lot of different ways of waging war. There is economic warfare, regulatory warfare, legal warfare, psychological warfare, and in some combination, one or more of those will be a central component of a corporate campaign or an attack on a company.

Chairman Norwood. Professor Craver, we have heard a lot today about illegal activities, all up and down the table, and the fact that these illegal activities continue. You stated in your testimony if illegal activities are continuing what is going on? You pointed out all of these things were against the law. If they are against the law, why should they be occurring? My question is, they are against the law and I am told they are occurring; are we not enforcing the law?

Professor Craver. I would say what we have are anemic NLRA remedies. When I start teaching the remedies available under the National Labor Relations Act, my students sort of look shocked and say, what are the real remedies? I say well, if the union coerces somebody, there is cease-and-desist order. If an employer threatens someone, there is a cease-and-desist order. And they say, where is the disincentive? And I say there isn't any.

Now, if you are fired, you will be entitled to back pay. But that may be a year or two after you have been discharged. No compensatory damages for other losses or for the emotional trauma, no punitive damages, nothing of that type.

I think we need to have serious remedies so that when either side, labor organizations or employers, violates the law they should be sanctioned. What we are seeing now on a wholesale basis in this country with the economic situation, Enron and WorldCom and other companies, is that there is no penalty. I mean, what I want to see is anybody who has stolen hundreds of millions of dollars from their workers and their shareholders go to prison or we send them to prison camps.

Chairman Norwood. You need to testify before Mr. Oxley. He is doing that now in his Subcommittee. Let us try to stay on the subject here.

Professor Craver. But what I am saying is, we don't have the remedies. When I heard Mr. Kipling's testimony, if I were his lawyer and they said that this restaurant, their eating establishment is filthy, and they have rats running through it, I would have sued them for defamation in a minute. And I would have a good case if he can prove it, and I have every reason to believe that he can and that his kitchen is perfect. There are recourses available, when someone's wife and son are threatened.

Chairman Norwood. Mr. Kipling, how do you feel about that?

Mr. Kipling. Well, I actually have a copy of that flier here. But when we translated it, it also pointed out that all of the information they provided was based on anonymous comments from

anonymous hotel workers who could not be identified, and there was a possibility that they were not fact. But that was the fine print, printed on the corner.

So although it was obvious to us who was behind this, I don't believe in that particular situation they printed, "This flier is sponsored by Local 11." This is just a group of people handing out fliers. And so the legal issues are such that lawyers will in some cases advise you to take it to court; in other cases they won't.

The case I mentioned about the union representatives going to our employees' home late at night and intimidating them, we took to the NLRB twice, and twice it was denied. And finally, I think a year and a half later, it was taken to Los Angeles Superior Court where the administrative court judge found that the union representatives were guilty under the California Penal Code, and actually used a section of it that utilized the anti-stalking provision of the California Penal Code. And that is the only way we were able to get representatives to stay a reasonable distance from the employees at their homes.

They also stopped them at schools when they were trying to pick up their children and wouldn't let the cars leave unless they signed a card. Those kinds of things will occur sort of on a more minor basis. But in a lot of these, when we went to the local police, or instructed our employees to call the police, the police were very reticent to get involved in what they felt was a labor dispute and not something they should be involved in.

Chairman Norwood. Just one other quick thought, but I see my time is up. I will yield to Congressman Owens.

Mr. Owens. I want to yield my first 5 minutes to the gentlelady from California, Ms. Sanchez.

Ms. Sanchez. Thank you, Mr. Owens.

You know, I was sitting here and I was listening to a couple of these things, and as an elected official and also as a politician and also as a consumer, I wanted to ask a couple of questions of Professor Manheim and Mr. Yager.

You know, I don't shop at Wal-Mart, I don't buy Domino's Pizza, and I don't stay at the Marriott. I hold my events at hotels and restaurants that are good to their employees, in my opinion. I don't eat at Carl's Jr. I think it is my personal prerogative to spend my money with people who believe the same things I do.

I believe that unions are pretty good to their people, and I come from a long union family and I support unions. And when they ask me to go talk to an employer who is not interested at this point to have their members unionized, I do; I go and talk to them. They are usually friends in the business community with me. I don't intimidate them; I don't talk badly about them. I tell them I think it is a good thing for them to sit down at the table.

I believe I spend my money in a good way, and I put my money where my mouth is. And, you know, if I felt strongly enough, I probably would go and picket in front of the Ontani Hotel or

go to the airport and tell people that I don't think you are doing the right thing. I can see all of those things as an American: the right to assemble, the right of free choice, and the right to spend my money the way I want to. And, by the way, I have an MBA. I come from the corporate world. I have helped corporations decide how to be better companies, how to make more money.

I would like to ask you two gentlemen, why do you think that doing these types of things is a bad thing?

Professor Manheim. I don't think it is bad at all. I think that all citizens have those rights. My concern is that sometimes organizations have objectives, and they engage in communication strategies. I didn't go into that in the testimony today, though I have made some reference to it in my written statement. I believe that there are strategies available in the political process for managing opinion and managing organizations to get them to do things that you want them to do. And that kind of philosophy drives the corporate campaign.

The people who develop corporate campaigns are very, very smart about that, and they have learned a lot of ways to do it. They have manuals that describe how to organize people. Not to do anything that they wouldn't want to do, but to organize them to do the things where there is a commonality of interest.

Ms. Sanchez. To effect the change that one is trying to get.

Professor Manheim. From the citizen's perspective, yes, I agree with that.

Ms. Sanchez. So I think it is a pretty smart way.

Professor Manheim. I think it is an extremely smart way.

Ms. Sanchez. I mean it is what politicians do. We try to back people who we think are going to do and affect policy the way we want them to.

Professor Manheim. I think it is an exceptionally smart way. I think that it is a very, very sophisticated strategy. It has been thought out over many years, 25, 30 years. It has been fully developed. There is a supporting infrastructure; there is an educational process to teach people how to do this. It is very smart.

And that is actually the aspect of it that interests me as a scholar, how smart it is. I think that it has some applications that personally I find troubling. But I am not an expert on labor law, and so I only look at those from the perspective of what constitutes an effective or ineffective strategy in the campaign itself.

Mr. Yager. I have to disagree. I think it is a bad thing. And I think your suggestion that one of the things that you might do is go down and picket the New Ontani Hotel. And yet if you heard Mr. Kipling's testimony, he was saying that what that movement against that hotel represented had nothing to do with the sanitation of the facilities, had really nothing to do with the way they were treating their employees. You heard they had a very low turnover rate. It really had to do with

organized labor's agenda, the hotel union's agenda of trying to organize downtown Los Angeles.

And so it creates these kinds of effects. And, you know, for all we know, there may be a lot of other hotels out there that do have serious sanitation problems, perhaps mistreat their employees to a large extent. But because they aren't part of labor's agenda, the public doesn't focus on them; government officials don't focus on them. That is one of the reasons why I think it is bad.

I think the other reason is what I talked about in my testimony. Because at the end of the day, a lot of employers don't stand up to the unions like the New Ontani has. At the end of the day, they go along with what the union is asking, and their employees are therefore deprived a right to vote. And maybe the only way to prevent this is to make it so that the employees will only be represented where there is a secret ballot vote.

Ms. Sanchez. Well, you know many of us in Congress might vote differently if we didn't have to have an open vote on the House floor. So I think an open vote is a very good thing, because it lets us know where people are. But anyway, I have seen that my time has expired. And I thank the Ranking Member for allowing me to ask my questions ahead of time.

Chairman Norwood. Thank you, ma'am.

Mr. Kipling, you said that you petitioned the NLRB twice in order to have an election, and it was denied both times. Why did you petition them for an election to determine whether the employees wanted to unionize or not?

Mr. Kipling. Well, essentially because we wanted, obviously, to bring this long campaign to a conclusion. They portrayed us as an anti-union hotel. We are not that. We have a contract with the Local 501 Engineering Union that we have had for 24 years, and have an excellent working relationship with them. Management is not in any way anti-union.

Chairman Norwood. How did you think it was going to turn out?

Mr. Kipling. Our assumption is that the employees are happy with the working conditions, and would not prefer a change in the nature of that relationship with their employer.

Chairman Norwood. So it was your attitude that the people who were going to be involved in the union actually would vote no, not to unionize, and that would stop this outright assault on your hotel?

Mr. Kipling. Correct.

Chairman Norwood. Why did the NLRB not allow the vote?

Mr. Kipling. They essentially have stated that, and to some extent, Local 11 has been careful, in their literature at least in their earlier stages, to state that their campaign is of an informational nature and not actually an attempt to organize the hotel. They are trying to provide information to the general public that the hotel is not union, although this has been going on, as I said, for over a

decade, rather than actually organize the employees.

We, in our petition that we filed, pointed out that we had a number of letters from union officials asking for a neutrality agreement and a card check agreement. Well, we felt that their asking for a card check was ample evidence that they wished to organize the hotel, and therefore we attempted to petition for that election, but it was denied.

Chairman Norwood. So the employees of your hotel asked for the vote?

Mr. Kipling. No, no. The management of the hotel as was mentioned here previously. It is very difficult for the employees under the law to ask for a petition for a vote themselves; but management under certain conditions can petition for a vote with the National Labor Relations Board, and that is what we attempted to do. We pledged throughout the campaign that we obviously would abide by the results of that vote, and that we would negotiate a contract.

Chairman Norwood. Well, that is pretty clearly wrong to me. The employees ought to have had the opportunity, in my view by the way in case anybody wonders, to vote every time. There ought not to be any such thing as a card check. If the employees want to unionize, they need to be able to vote under the supervision of the NLRB.

Mr. Esgar, if 1,900 employees signed your petition, how could the union have obtained a real majority in their card count? Now, simple mathematics indicates that 400 or 500 people seemed to have signed both forms. What was the motivation there? What do you think could be behind this situation where so many people fundamentally signed both things? What was going on with that?

Mr. Esgar. One was asking for their right to vote. The other was, the union has pressured me into signing a card; the only way I can get back would be to ask for the vote; then I can honestly say what I want.

Chairman Norwood. Well, 1,900 signed the petition, but more than 50 percent had signed the corporate campaign cards, the card check. Why would they sign the card check if they wanted to sign the petition?

Mr. Esgar. Let us call that speculation on the union's card check. Because after the contract was signed and dues were taken out, people were saying, how come they are taking dues from me? I never signed a card. So we had them send in a resignation. They were taken out immediately, and dropped off the payroll. They were not required, as everybody else was, to wait the 15-day window period of the anniversary of the signing of the card.

Speculation. That is all I can give you.

Chairman Norwood. Mr. Yager, do you have any opinions on this? This is difficult for me to understand. Somebody is not telling something correctly somewhere.

Mr. Yager. And I think that gets to the point of this hearing; which is, we will never know because it is not supervised. No one really knows what is said to these individuals or what is going through their mind when they actually sign these cards. I mean, a lot of the cases that we cite to you are cases where the union was telling the employee, if you sign the card, we will get an election. We need these cards so we can file them with the NLRB to show sufficient interest for an election. And then the card winds up being used for something completely different.

It becomes kind of a "who shot John" type of situation. And that is the beauty of an NLRB-conducted election. You know, at the end of the day, what an employee wanted because they actually had the opportunity to register their views.

Chairman Norwood. But can you say the same thing with the 1,900 who signed the petition? We don't know what was said to them.

Mr. Yager. You could say that. I'm not saying that all of those were uncoerced. It gets back to how are you going to resolve it? Have an election. Find out what they want. And that is the only way you are going to resolve those kinds of situations. I would say the fact that 60 percent signed the petition says that there are some serious flaws.

Mr. Esgar. When you say, "What were they told?" you have got to remember, we were just talking to the workers. I can't tell you that you are going to lose your job. I can't tell you I am going to deport you. I can't tell you any of those things. All I can do is hand you a form. And on top, written in English and Spanish, this is what this petition is doing. You have the right to sign it or not." That is it.

Professor Craver. Could I just say one tragic thing? We assume that the election will be absolutely fair. When you think of a political election, it usually is. Most of us go in a booth and we decide how we are going to vote. In a labor election, tragically, the union can't very effectively threaten people. I mean, yes, we have heard they said you could lose your job.

Chairman Norwood. Did you say the union couldn't effectively threaten people?

Professor Craver. The union can't threaten my job. And the reason for that is they don't control my job. Yes, they could threaten me with physical harm or unfair labor practices. I realize there isn't much of a remedy but they can't really say you are going to lose your job. The employer has the power in every election, either explicitly or implicitly, to suggest your job will probably be gone.

Chairman Norwood. How does the employer know how you vote in a secret ballot? How do they know if I voted yes or no?

Professor Craver. Oh, they don't know how you vote. What they suggest is, and they do this in numerous elections today, if you vote for a union, the job will probably be gone.

So when I go in that booth conducted by the NLRB, I think despite what Mr. Yager says the Labor Board normally does an exceptionally good job of conducting elections, if I am an

employee. I mean, you read the book by Goldberg, Getman and Herman about the union representations, Law and Reality. While they say that most people don't remember the threats, they were affected by it.

If I heard a rumor that George Washington University might close, trust me, I would pay more attention to that than if I heard a rumor coming out of Congress or the White House, unless it was something about terror. My job is far more significant to me than whether we have a Democrat or Republican. Most of us really are so dependent economically and emotionally for our well being on our jobs.

If the party that has the most control over my job can suggest I might lose it if I vote the wrong way, and I don't mean me personally because they will not know how I voted in the booth. But if they suggest that if a majority votes for the union, the job may be gone or transferred, I am going to really think about that.

One thing I will also point out. In 1955, unions represented over 35 percent of private sector employees. Today it is about 9 percent. If unions are doing as well as everybody at this table is talking about, why does the decline continue?

Chairman Norwood. That is not the point, though, is it? It doesn't matter if it is 9 percent or 1 percent. The point of this hearing is what is right and fair for people who live in this country.

Are you telling me unions can't work? There is no way to have an election? There is no way to have anything without coercion? I have to believe that in an election, just like the one that I am elected by, both sides have an opportunity to make their point. And people go behind a closed curtain and they vote. And it ought to be up to the people who are in the union, going to be in the union or not be in the union to make that determination.

My time is long past due. Congressman Owens, you are now recognized.

Mr. Owens. In all fairness, Mr. Chairman, instead of picking our way through these minute details, would you like to join me in fostering a study of how union elections are conducted in some other industrialized nations, like France and Germany and a few others?

In my statement I quoted a summary by Human Rights Watch, Executive Director, Kenneth Roth of the election process under the NLRA: "Loophole-ridden laws, paralyzing delays, and feeble enforcement have led to a culture of impunity in many areas of the U.S. labor law and practice. Legal obstacles tilt the playing field so steeply against workers' freedom of association that the United States is in violation of international human rights standards for workers."

You know, the bulwark of democracy, when it comes to workers, is a hellhole in terms of getting workers organized. And it is significant that there has been a decline in the number of workers organized in private industry. There are great increases in the number of firms, commercial operations that work, in effect, to defeat union efforts to organize. When union cashiers make 37 percent more than non-union cashiers, or union library clerks earn 33 cents more than non-union, union textile sewing machine operators make 19 percent more, union janitors make

39 percent more, when you have this kind of obvious benefit flowing to the workers, is it reasonable that unions should only win half of the certification elections that they attempt, given the reputation that unions have?

A great deal of pressure is brought to bear by employers, and the simple matter of the neutrality, as you said, is that an employer should have a voice in this decision as to whether employees become union members or not. Is that not saying that the spouse you are divorcing should have a choice in choosing your divorce lawyer? Where is the harm in more effective laws that would make employers more neutral? Also, laws that would require that on the job site, where the employer can force employees to listen to arguments against having a union, why not mandate that they have the same kind of opportunity for union organizers to make the argument in favor of organizing unions?

Does the NLRA protect the right of employers to organize or not organize employees, or does it protect the right of workers to organize? Are they not really supposed to be there to protect the workers' right to organize?

Professor Craver, would you like to answer that?

Professor Craver. The one thing I would say, the recent study by Professors Richard Freeman and Joel Rogers found that a fairly high percentage of American workers would like to have some form of representation, less adversarial than the traditional labor management relationship, which I think is a good thing; but they would like to have some representation, because now they have none.

What is their biggest concern? They are afraid of retaliation by their employers if they support unions. And I think that is a very tragic thing. Because when I go vote in the election for President, I happen to be a city resident so I don't get to vote for Congress, but when I do vote for the President or I vote for members of the city commission, I really do have an unfettered right to go in there and vote any way I wish. No one can tell me if I voted the wrong way. I mean Mayor Williams isn't going to terminate my job.

On the other hand, if I am voting for or against the union, yes, the union can tell me to do this, and I am going to promise you all sorts of thing. But underneath it all, at the end I know one party controls my employment destiny: the employer, not the labor organization. And I am very intimidated when employers make it clear that a yes vote by a majority of people will have long-term consequences of a negative variety.

Mr. Owens. Two industrialized countries, Germany and France, what procedure do they follow?

Professor Craver. Many countries have faster elections. Canada is a classic example. Canada has several provinces that allow card check certification, and they don't seem to have any real problem. On the other hand, there is no country in the world where the antipathy towards unions by employers is greater than it is in the United States.

Mr. Owens. During congressional campaigns and congressional elections, we have both sides with the same opportunity to campaign. It is pretty clear that in a union election the employer has

the disproportionate ability to campaign. He has the advantage. And that explains why we have a decline in union participation. Employers are exercising those advantages in a more systemic way all the time, and using union-busting firms to accomplish it. And I think that we ought to take an objective look, Mr. Chairman, at what is going on here and see if we can establish a level playing field. Are we going to continue to explore this subject?

Chairman Norwood. Would the gentleman yield?

Mr. Owens. I am out of time.

Chairman Norwood. Well, you are out of time, and I am going to take you to heart. You confused me. You started out saying we were having too many of these hearings, and now you have convinced me we need a lot more to get to the bottom of this.

Mr. Owens. An objective study, I said.

Chairman Norwood. Professor Craver, I don't need a comment. But I would be very interested in written proof from you regarding your statements that employers coerce so many members of unions not to become a union site. You have stated that over and over again, as if it is a common occurrence; which I don't question you, I just know you will be able to back that statement up in writing.

Professor Manheim and Mr. Yager, I have a question aimed at the two of you. Is it more cost effective for a union to use a corporate campaign to leverage an employee's recognition of a union without using the secret ballot election? It seemed to me, in listening to the comments that both Mr. Esgar and Mr. Kipling shared with us, that it had to be a pretty darned expensive "PR" campaign that the union wages against them.

Talk to me a little bit about the economics of this. Somebody is spending a lot of money somewhere. And I don't question you gentlemen; I just wasn't there. But what they described to me, somebody went to a great deal of trouble and a great deal of expense to bring as many lawsuits, on and on and on. Talk to me about the economics.

Professor Manheim. I think organizing is an expensive undertaking no matter how you go about it. I saw a recent estimate that organizing within the election process costs approximately $1,000 a head. So at a large company that is serious money. Corporate campaigns vary a great deal in terms of how expensive they are, but they can run into millions of dollars as well.

I am not sure it is an economic decision. I think it is a question of weighing the economics against the likelihood of success. And that somewhere along the way someone has made the judgment that in a lot of instances, it is more cost effective to go the corporate campaign card check route than to go the election route.

Chairman Norwood. Do you understand that? I don't. It seems to me it costs a lot less for a union simply to go to the NLRB and say we want to unionize a certain hotel; let us have a vote. It would seem to me that would be less expensive than all the things that are going on in corporate

campaigns, of which I know only one personally at home.

Professor Manheim. I can't answer that. I don't have a basis for answering that. I could answer a question about the cost of the corporate campaign, but I really don't know more than having read the estimates.

Mr. Owens. Would the gentleman yield for a minute?

Chairman Norwood. I will.

Mr. Owens. While he is on the subject of cost, can you give us some figures on the fees charged by union-busting organizations?

Professor Manheim. I have never looked at that issue.

Mr. Owens. Union-busting firms?

Professor Manheim. I have no idea.

Mr. Owens. You have no idea?

Professor Manheim. [Indicating no.]

Chairman Norwood. Do you mean law firms when you say that? What do you mean?

Mr. Owens. I mean law firms that specialize in busting unions. They are pretty well known.

Professor Craver. And there are people that are just labor relations consultants who also do the same service.

Chairman Norwood. Mr. Yager, do you want to comment on that?

Mr. Yager. Well, lumped into that are also people that advise employers, because it can be a real minefield when you are being organized on how to comply with the law and make sure that there is a fair election where the results aren't going to get overturned.

To answer your question to Professor Manheim, I don't think it is a cost-driven decision made by the union, because I think more often than not it is going to be a situation where they just don't think there is sufficient interest or they are going to be able to organize those employees. But you should also realize, there is a vast array of weapons available in a corporate campaign, and a lot of them are not costly at all.

For example, filing charges with the NLRB; that is very easy. You can do it online now. You can file complaints with government agencies. And actually, using government agencies is one of the most effective tools that organized labor has learned how to use in waging a corporate

campaign. And that costs the taxpayer a lot, but it doesn't cost the union a whole lot.

Chairman Norwood. I am somewhat familiar with that part because of OSHA. I have watched some of that happen as well.

Mr. Yager. Exactly.

Chairman Norwood. Mr. Kipling, what do you mean by the statement in your testimony that it became not feasible financially for the New Ontani Hotel to contest all the charges that were filed by the union with the National Labor Relations Board. Is that a suggestion on your part that maybe some of these charges were used as harassment, or some of these charges were used to just spin you down?

Mr. Kipling. That was our opinion, obviously, that many of the charges had no basis for filing. We found out early in the campaign that legal expenses could be very, very costly if we fought all such charges individually.

We had a meeting with another company that was undergoing a corporate campaign in Northern California in the mid-1990s, and one of the first things they told us was, if you utilize your lawyers the way your lawyers would like you to utilize them, you will be out of business in 2 years. You need to put your lawyers on retainer, and you need to back up and take a good look at the overall situation because the problem with the corporate campaign is it becomes very personal. A lot of the attacks are directed at individuals of hotel management and at the way the company treats their workers. They accuse them of abusing their workers and such. So you tend to want to fight various charges to prove your innocence in this area.

But the result is at some point you have to say that we simply can't afford to do this and still run our company in an economically feasible manner. So what you do in a lot of cases, if the charges are such that they don't really concern how your company is run, you can simply reach a settlement. And the NLRB encourages you to reach a settlement. They prefer that you not, obviously, fight these charges. They encourage both parties to come together and reach some kind of a middle ground. So in many cases we have done so.

Chairman Norwood. In your case, you had an unusual number of charges.

Mr. Kipling. Yes. We have had them through the years.

Chairman Norwood. Do you see it that way, Professor? In their particular case, was it just a greater number of NLRB charges than you might normally see in other cases?

Professor Manheim. I don't remember the exact number of unfair labor practice charges in that case. That number does vary widely. But the New Ontani campaign was relatively typical in terms of the intensity of the attack and the attempt to define the company as a pariah within the economic system in Los Angeles. But from campaign to campaign, the mix of unfair labor practice charges versus other kinds of regulatory initiatives versus attacks on products or services and other lines of

attack on the business will vary quite a bit.

Chairman Norwood. Mr. Owens.

Mr. Owens. I have to go for another appointment, so I will just ask one question.

Professor Craver, do you have some idea of the percentage of NLRB cases that are never brought, that they refuse to even process?

Professor Craver. I don't know. Every year they have an annual report from the general counsel's office, and I don't know the percentage of charges where they don't issue a complaint. I don't happen to know that off the top of my head.

Mr. Owens. Well, I will just acknowledge that it is about two thirds that are never brought. Two thirds never brought; only one third are brought.

Professor Craver. Well, what they do is they initially investigate them; and if they don't find cause to believe there is a violation, they refuse to issue a complaint. And if the regional office makes that decision, you can appeal it to the advice branch in Washington.

But I think the Labor Board does an exceptionally good job of trying to work with the statute where the remedies are simply weak. And even when I have been on panels with board members, both Republicans and Democrats alike say the remedies are simply inadequate to deter illegal behavior by both labor organizations and employers who are willing to ignore their moral obligation to comply simply because it is illegal.

Mr. Owens. With that, Mr. Chairman, I have to depart. Thank you, sir.

Professor Craver. Mr. Chairman, can I just say one thing? You asked me earlier if I had any evidence on the coercion. I would cite three things.

Chairman Norwood. I would prefer it for the record. If you give it to me in great detail in writing, I would be grateful.

Professor Craver. I will do that.

Chairman Norwood. Mr. Yager, you have some experience in labor law, and I am learning a lot. Let us continue to talk about enforcement a little bit and the NLRB election process. How quickly are these elections held, for example, if someone requests that of NLRB?

Mr. Yager. As I indicated, the data on that is very good. You will frequently hear horror stories about elections that drag on for 2 or 3 years because of a lot of the legal complications associated with them. And no one would suggest that that doesn't happen. But according to data that was released a couple years ago actually by the NLRB general counsel, Fred Feinstein, 88 percent of all

elections take place within 52 days. So the norm is that it is going to happen very quickly.

And that is actually the same on enforcement. If an employee has been unjustly discharged or at least has filed a charge that they have been, that is usually resolved within a matter of a couple of months. So it is really not a good idea to allow a lot of these horror stories that you will hear and that have been raised in several congressional hearings over the year, to lead you to think that those are actually the norm.

Most of the times things happen pretty quickly. And, actually, a lot of times employees capitulate very quickly on unfair labor practices, because as the charging party, it doesn't cost them a cent. Well, it costs them whatever it costs to take the time to file the charge. The employer, on the other hand, is sitting there on the other side. They have got to retain their own attorney. The charging party has the NLRB general counsel as their attorney. It is not going to cost them anything. And a lot of employers look at those situations; they look at an ambiguous situation where they see there is going to be an argument that I violated the law; I don't think I did, but I just can't afford to retain a lawyer for the 1 or 2 years it might take to fight this thing. So they settle.

Chairman Norwood. It looks like the loser ought to pay. What percentage of these elections that happen fairly quickly result in an objection being filed by either party?

Mr. Yager. That is actually very low, and this status stayed pretty consistent over the years. The most recent year I looked at, which was I think 1999, unions only filed objections in about 1 out of every 20 elections that year, and actually only 1 in 50 were actually overturned. And that is actually pretty impressive, because there are a lot of pitfalls for an employer in the election process. Once that commences, every word they say, every action their supervisors take gets very, very closely supervised, scrutinized. And very frequently, if they tripped up at all and the union loses this election, they are going to file an objection. So those numbers show that most of the time, at least, they work pretty well.

Chairman Norwood. I am going to close this up, but I wanted to ask Mr. Getler a question.

As an employee, if you had the choice of a fairly quick election by secret ballot versus the card check agreement, that may or may not occur quickly because you have to have a certain amount of signatures and it may take time to get them, why wouldn't you want to take away any mystery from this by simply having a fair, closed, secret election and be done with it one way or the other? Let the folks who work there decide, period. Why wouldn't you want to choose that election? Or maybe you did. I don't want to put words in your mouth.

Mr. Getler. Well, I think where the problem comes is the hotel goes or the company goes so far on the offensive before the election, and basically individuals are scared into voting not possibly the way they wanted to vote. So there is no recourse for an employee. You basically get backed into a corner, and the hotel or the company has the opportunity to actually put you in that position.

In our particular case, when the hotel opened and we went through the casting center, they went from segment to segment to segment whether it was signing up for benefits or signing up for the 401(k). They took a tremendous amount of opportunities to let you know that you didn't need a

union and, in their opinion, this is why you didn't need a union.

Chairman Norwood. And are you saying with the card check, that the employer can't say anything to anybody? Is that what you liked about it?

Mr. Getler. With the card check and the neutrality, it is not as much. At least you have an opportunity to talk to the employees; the employees have an opportunity themselves to ask questions. If they are unclear about something, they can ask questions about it, and at least they can get some more information to make a good decision one way or the other. And with the neutrality, the company is not leaning on the employees to vote one way or the other.

Chairman Norwood. The employee can't ask questions prior to a secret ballot?

Mr. Getler. Well, I don't know if they can't ask questions. But you kind of get put in positions where you feel uncomfortable because they are leading you to believe you don't need a union, and there is no other side to the story.

Chairman Norwood. In your particular case, you had 51 percent of the people sign up that were asking for a union with a card check, or was it 52 or 58? What did it turn out to be?

Mr. Getler. I am actually not quite clear on what the number was. I know we had to have 50 percent plus 1, and we were over that number. And a neutral party checked the cards and the signatures were checked and the Social Security numbers were checked, and the cards were said to be accurate.

Chairman Norwood. Well, it is of interest, because clearly some people who were employed where you work didn't want to be unionized. It wasn't 100 percent.

Mr. Getler. That is correct. Yes.

Chairman Norwood. So that means some percent didn't really want to be unionized. Were they treated badly?

Mr. Getler. By whom?

Chairman Norwood. By those of you who did want to unionize.

Mr. Getler. I never witnessed any part of that. You either wanted to sign a card or you didn't want to sign a card, and there were pros and cons to both sides.

Chairman Norwood. They weren't considered anti-union?

Mr. Getler. Well, I am sure people had that perspective, just like I am sure from the other side that they considered the union people to be bad and the ones that were trying to get people to sign cards.

Chairman Norwood. Well, is it bad; fellow employees on one side are bad because they want to unionize or the other side is bad because they don't? I mean, it is a matter of opinion what the employees as a whole want to do in that group. And I have heard and read some testimony here, where there is some pretty heavy-handed stuff that goes on to get over that 51 percent.

Now, I don't know anything about your situation personally. I personally know about some stuff at home. But some heavy-handed stuff goes on in all of this. And when you can get a guy in a back room by himself, or with four or five other guys who want to unionize, you can convince him that signing that card is the right thing to do. And even if I am wrong, the perception is there.

Why not get rid of that perception and simply say if the employer doesn't want to unionize, he ought to have the right to try to convince his employees not to do that. If the union wants them to unionize, they ought to have the right to say let us do that. They ought to be able to give the employees all the information they want to, either side, and then at the end of the day go behind a closed door and vote. The employer doesn't know who voted yes and who voted no.

In your case, 49 voted no and 51 voted yes. Which 49 are they going to fire? Are they going to close the hotel or are they going to close down the entire establishment because of that? I think not.

We have heard some very interesting and informative testimony. And I mean this, I appreciate the effort all of you made to be here, particularly those of you that have come so far, because it is important that we hear from you. And I know there are not a lot of people here, but we pay attention to what we are hearing from you and what we are reading in this testimony.

The testimony today is further evidence to me that powerful interests for their own benefit are manipulating many of our laws. Now I didn't say one side or the other, I just said there are manipulations going on out there. And, as a result of this, the law does not benefit the average citizen, which it is about, the employee. That is absolutely what this is about. And it doesn't benefit correctly the average employee for whom the law was enacted to start with.

Congress enacted labor laws that give workers the right to organize themselves into unions. That is the law of the land. We said you could do that. And we did that because Congress wants to give workers a voice in their workplace so that they can have some say-so on what happens to them in their daily life. And I support that, as I suspect everyone in this room does.

However, with the increase of corporate campaigns, our labor laws are not benefiting workers and are benefiting union leaders who are seeking to gain the power and the money contributed to it. And that means something is not working, because that is not what Congress intended, ever. It was about the employee.

Professor Manheim, you quote from Monica Russo, the President of Service Employees International Union District 1199 in Florida. That quote tells me a lot. You quoted her as saying: “organizing is about power, not a 50-cents-per-hour wage increase.” One of you quoted Trumka when he said corporate campaigns are “the death of a thousand cuts.” I don't have to be a genius to

catch on to that; Professor Craver, you don't either. You know exactly what he means by that.

Well, excuse me, Ms. Russo; to most of the textile workers in my district, 50 cents per hour is important, those that are left. It pays the bills, it puts food on the table, and it buys the kids clothes. Where I come from, people go to work to earn a living, not to win power for a cause. Maybe that is why unions are losing elections. They are more interested in politics than they are in improving the lot of the ordinary working people whose dues money they live off of.

That is something I do know something about. I know how they have used their money, and I know how they use their money in my district, supporting causes that my constituents who happen to be union members don't agree with. I am beginning to believe that the reason unions are losing elections and are using corporate campaigns is that they don't have enough respect for the people they want to join them.

Professor Manheim, your quote from Joe Crump, the official of the United Food and Commercial Workers Union, is a real eye opener. He states in an article published by Labor Research Review: "Employees are complex and unpredictable. Employers are simple and predictable. Organize employers, not employees." Makes a lot of sense.

Well, sure, employees are complex and they are unpredictable, just like all of us sitting up here at this dais. We are all human beings. They are individuals with their own backgrounds, with their own needs, and their own desires. In the Soviet Union, they sent complex and unpredictable people to Siberia. In Cuba, they send complex and unpredictable people to mental institutions. In this country, we send those complex and unpredictable people to the voting booth. In this country the government is supposed to serve and to be accountable to the people. That is why we are here. That is why the Soviet Union is no longer, and Cuba is an island full of people praying for the death of a very old man.

In Washington everything becomes a battle between powerful interests and their lobbyists. Health care is seen from the perspective of insurance companies and trial lawyers, the only people not involved in health care. The only people in health care are the patient and the doctor. And we forget about the rights of the patients who need the health care. In this town, labor unions are viewed from the perspective of unions or employers. That is not why the laws were enacted. They were enacted to protect those complex and unpredictable workers and to give them a voice. There is no better way of assuring that the voices of the workers are heard than through the secret ballot election.

I did not get elected by getting people to sign authorization cards. I got elected at the ballot box, as does the President of the United States and all of my colleagues.

Corporate campaigns are nothing but an end run around the will of workers. I believe it is disgraceful when a union official brags that he puts a company out of business, as was the case with Family Foods in Michigan. I thought unions were supposed to help workers. I do not think that those unemployed workers at Family Food were better off because of the union's corporate campaign.

Our labor laws need to be brought back in line with their original purpose; that is, to give workers rights. That is why we have to put a stop to this certification through authorization cards. We need to have legislation that says a union cannot get certified as a collective bargaining representative unless it is elected. And I don't mind saying, the employer cannot coerce them in any way in that process. That is how democracy works, and that is the way America works.

I thank both the witnesses and the Members for their valuable time and participation. If there is no further business, this Subcommittee now stands adjourned.

Whereupon, at 3:49 p.m., the Subcommittee was adjourned.

APPENDIX A - WRITTEN OPENING STATEMENT OF CHAIRMAN CHARLIE NORWOOD, SUBCOMMITTEE ON WORKFORCE PROTECTIONS, COMMITTEE ON EDUCATION AND THE WORKFORCE

Chairman Norwood's Opening Statement

July 23, 2002

Good afternoon. Today's hearing continues the efforts of this Subcommittee to determine if workers are afforded their basic American rights.

In a previous hearing, we looked at the issue of whether the right of workers not to be forced to contribute to candidates and causes that they do not support is honored by unions and protected by the National Labor Relations Board.

During that hearing, we heard from witnesses that unions continually try to evade their responsibilities under the Supreme Court's decisions in the *Beck, Hudson* and *Street* cases.

We also heard persuasive evidence that the National Labor Relations Board has been lax in its enforcement of the *Beck* case.

At another hearing, we looked at whether the religious rights of workers were being protected.

We heard from witnesses who have their religious rights denied by unions that forced them to pay dues as a condition of employment and then used their dues money to promote causes that are condemned by the Bible.

Today our inquiry continues into two other fundamental rights. One is the right to be represented by people whom we elect and are not appointed by others. The other is that money should not be taken from us without the vote of people who are held accountable to us in an election.

These are fundamental American rights. Our nation's founders dumped tea into Boston Harbor and risked their lives, fortunes and sacred honor to stop King George from taxing them without allowing them representation.

Today's workers, as the American colonists did in the eighteenth century, confront a situation whereby they can be forced to be represented by and contribute to, a union that they did not choose, and which they oppose.

I believe, that with a few exceptions, workers should have the right to choose whether they want union representation. I believe that choice should be left to the workers. It should not be imposed on them by deals made by other parties.

I especially believe that workers should not be forced to pay compulsory dues to a union that was not elected by them, their co-workers or the workers that preceded them in their

jobs. In that belief, I am guided by the democratic principles upon which this nation was founded and for which brave men took up arms and some made the ultimate sacrifice.

Ours is a great country because ordinary people from all backgrounds can choose their representatives in government in free and fair elections.

It is time that these basic American rights are extended to workers who should have the right to choose whether they want representation by a particular union in a government conducted secret ballot election.

With that said, I will turn to my colleague from New York, Mr. Owens, for his opening statement.

APPENDIX B - WRITTEN OPENING STATEMENT OF RANKING MEMBER MAJOR OWENS, SUBCOMMITTEE ON WORKFORCE PROTECTIONS, COMMITTEE ON EDUCATION AND THE WORKFORCE

Statement of the Hon. Major R. Owens
Hearing on "Compulsory Union Dues and Corporate Campaigns"
Subcommittee on Workforce Protections
July 23, 2002

Thank you Chairman Norwood for yielding to me. I want to welcome today's witnesses, especially Mr. Getler and Mr. Craver who are here on very short notice at my request.

Unions have long contended that the election process under the National Labor Relations Act is one-sided and unfair. Human Rights Watch Executive Director Kenneth Roth summarized a recent report by that organization on the right to organize in the United States as follows:

> Our findings are disturbing to say the least. Loophole-ridden laws, paralyzing delays, and feeble enforcement have led to a culture of impunity in many areas of U.S. labor law and practice. Legal obstacles tilt the playing field so steeply against workers' freedom of association that the United States is in violation of international human rights standards for workers.

Under the National Labor Relations Act (NLRA), employers may lawfully require employees as a condition of employment to attend meetings on paid time, sometimes these are large audience meetings and sometimes they are one-on-one meetings, at which the reasons the employee should oppose organizing efforts are explained to the worker. While employers may lawfully pay workers to hear the employer's views on organizing at the one place the workers congregate, the job site, employers may also deny the union access to employer property, unions cannot compel workers to listen to pro-union arguments, and it is unlawful for the union to attempt to buy votes.

The decision to be represented by a union should be an independent and autonomous choice by employees alone. Among the principle purposes of the NLRA is protecting the right of workers to freely choose to be represented by unions. In reality, however, employers have greater rights and access to attempt to influence workers than is afforded to unions. Furthermore, because the law's remedies are too weak to deter violation, unlawful tactics such as unlawful discharge can further magnify an employer's legal advantages.

Where an employer refuses to voluntarily recognize a union, the only way a union may be certified to represent workers is through a certification election, with all the pitfalls that process entails. In order to obtain an election, the union must show sufficient interest among the employees for an election. The minimum required showing is 30% -- that is the union must show that at least 30% of the employees the union seeks to represent have signed a petition or a card showing that they support union representation or desire an election to chose a union representative. In fact, because of the inevitable inroads that will be made into union support because of the one-sided election process, union organizers typically say they need to have support of 70% or more of the workers at the time they petition for an election in order to have a good chance of winning the election.

In 1999, 22,879 workers received backpay as result of employer unfair labor practices. Stated another way, 23,000 workers were unlawfully cheated out of pay because of anti-union efforts by employers. When workers try to form unions, 92% of employers force workers to attend mandatory anti-union meetings, 78% of employers require supervisors to conduct one-on-one anti-union meetings with workers, 51% of employers threaten that the company may have to close the plant if the union wins, and one in four employers illegally fires workers in order to prevent workers from organizing.

It is against this backdrop that some of my Republican colleagues want to contend that the real problem with labor law is that we allow employers to voluntarily recognize unions.

The right of workers to form and join unions and to organize for purposes of collective bargaining is a fundamental human right and among the most meaningful embodiments of freedom of association and speech. Unions enable workers to protect themselves, to achieve dignity and respect and to participate effectively in the economic and social decisions that affect their lives. Collective bargaining is also good for the community. It is an effective tool for combating poverty and ensuring equality of opportunity. It brings democracy to workplace and ensures that workers receive a fairer share of the wealth their labors generate. By lifting workers' earnings, collective bargaining promotes consumer demand; and by ensuring that workers are treated as partners rather than servants, collective bargaining promotes productivity. Unfortunately, it is apparent that the Chairman of the subcommittee has no interest whatsoever in protecting the right to organize, but is intent, instead on eliminating the figment of that right that still exists.

APPENDIX C - WRITTEN STATEMENT OF JAROL B. MANHEIM, PROFESSOR OF MEDIA AND PUBLIC AFFAIRS, AND OF POLITICAL SCIENCE, THE GEORGE WASHINGTON UNIVERSITY, WASHINGTON, D.C.

Testimony of Jarol B. Manheim
Professor of Media and Public Affairs and Political Science
The George Washington University

Before the
Subcommittee on Workforce Protections
Committee on Education and the Workforce
United States House of Representatives

July 23, 2002

SUMMARY: A corporate campaign is a systematic assault on the reputation of a corporation designed to undermine its relationships with such key stakeholders as its customers, shareholders, regulators, bankers and the general public. The idea is to convert these support constituencies into pressure points until the company yields on some issue. One of the most common uses of corporate campaigns by organized labor is in conjunction with organizing efforts at nonunion companies. Here the campaign is employed to create an incentive for the company to accept card check and neutrality agreements in lieu of secret-ballot elections as a basis for recognizing the union. Based on a study of more than 200 corporate campaigns waged over the last 25 years, I conclude that corporate campaigns represent an effective device for generating pressure on management in these situations.

Mr. Chairman and Distinguished Members of the Committee, thank you very much for inviting me to address you this afternoon.

For the past nine years or so, I have been examining the use of strategic political communication by organized labor and allied organizations as they attempt to recapture the positions of influence they occupied in earlier times through a package of strategies that have come to be known as the corporate campaign. That research has included interviews and conversations with a diversity of individuals who have conducted or experienced corporate campaigns as well as an extensive review and analysis of media coverage, news releases, union publications, campaign materials such as handbills and white-paper reports, correspondence, Internet postings, case law summaries, documents, videotapes and other materials. It has formed the basis for my recent book, *The Death of a Thousand Cuts: Corporate Campaigns and the Attack on the Corporation*,[1] and for my testimony today.

"Corporate Campaigns" Defined

A corporate campaign is an organized assault – involving economic, political, legal, regulatory and psychological warfare – on a company that has offended a labor union or some other group. The attack usually centers around the media, where the protagonists attempt to redefine the image – and tarnish the reputation – of the target company until it yields on whatever the issue in dispute might be. The central idea is to undermine the company's relationships with its key stakeholders: customers, employees, shareholders, bankers, insurers, regulators and the general public, among others. In effect, the goal of the campaign is to define the target company as a corporate outlaw – a pariah institution – that must be stopped before it does further damage to our society, and to make anyone who deals with the company feel a sense of personal embarrassment for having done so. I have identified and studied more than 200 such campaigns.

As a scholar, I find these campaigns to be exceptionally interesting because they represent what may be the least constrained application of pure communication strategy to be found anywhere in our political system. In contrast to campaigns for public office, for example, where some of the same strategies and tactics are widely employed, these corporate, or perhaps more appropriately, anti-corporate campaigns may be waged by principals who are hidden from public view and may be advanced by third parties whose real or apparent objectives may actually mask the true objectives of the campaign. There are no spending limits, no time limits, no sunshine laws. And where the public and the media both know that an electoral campaign with persuasive intent is underway and accept it as legitimate, in a corporate campaign the objective is often to hide the true nature and goals of the campaign precisely because doing so renders the public, public officials, the media and others more susceptible to influence. In the corporate campaign, more than in any other setting I can think of except perhaps wartime propaganda, strategy is king, and the freedom and willingness to do whatever works to obtain the desired end are paramount.

It is also important to understand that, in corporate campaigns, "communication" includes much more than simply issuing potentially persuasive messages. Identifying or creating *events* that highlight the campaign's principal lines of attack or otherwise contribute to the general vulnerability of the target company are essential parts of the communication strategy. So in addition to carefully shaped messages, these campaigns rely heavily on litigation, legislative and regulatory activities, shareholder actions, boycotts and demonstrations, and the like. Lawsuits (including every allegation, filing, hearing and decision), regulatory proceedings (inquiries, investigations, routine inspections or even non-actions), congressional or state legislative hearings, action requests from key legislators to regulatory agencies, policy and issue conferences, letters to corporate officials, third-party research reports – these and other "events" become the focal points of efforts by its antagonists to distract corporate

management from its day-to-day responsibilities of running the company and, in the process, to generate an image of risk and uncertainty associated with the target company. Collectively, they are designed to keep the pressure on. Some of these events are real and naturally occurring, but many of them are manufactured by or with the encouragement of those attacking the company. One early advocate of this technique, Robert Harbrant, at the time president of the AFL-CIO's Food and Allied Service Trades Department, put it this way: "We think you can rewrite the rules of the game by creating circumstances and exploiting them."[2]

An example of this strategy at work is provided by the campaign being waged by Local 250 of the Service Employees International Union (SEIU) against Sutter Health, a major West Coast hospital company targeted by the union in an ongoing organizing effort. Over the course of the last several years, Sutter has been drawn at the union's initiative into proceedings with the Internal Revenue Service (audit of alleged violations of nonprofit status and union allegations of tax fraud), Department of Defense (investigation of billing practices), Department of Health and Human Services (investigation of billing practices), Health Care Finance Administration (allegations of Medicare fraud), Federal Trade Commission (antitrust investigation of a proposed merger) and the National Labor Relations Board (multiple unfair labor practice claims), as well as more than a dozen state and local legislative and regulatory proceedings on matters ranging from alleged campaign spending violations to licensing proceedings and the issuance of state healthcare contracts. More often than not, the agencies in question have sided with the company, but that does not mean the campaign has been unsuccessful – at least in its intermediate goals of claiming the attention of Sutter's management and forcing the company to go to extraordinary lengths to justify and defend virtually every action that it takes.[3]

The Challenge of Organizing Workers

As at Sutter Health, one of the most common applications of the corporate campaign, and the one that lies closest to the focus of this hearing, is to pressure nonunion companies to accept representation of their employees through means not anticipated under, or covered by, the National Labor Relations Act. The increasing reliance on such campaigns is explained by the recent history of the labor movement in the United States.

As a percentage of the workforce – or what the unions term "labor density" – membership in unions peaked around the middle of the last century and has been declining more or less steadily ever since. Today labor density in the economy overall stands in the vicinity of 14 percent, and in the private sector at less than ten percent. Understandably, this is a matter of great concern to organized labor... philosophically – because too few workers are protected by union membership – economically – because the unions as de facto businesses are losing market share and sources of income – and politically – because along

with lost market share and income comes loss of political influence. For all of these reasons, since at least 1995 with the election of John Sweeney as President of the AFL-CIO, the labor movement and many of the nation's leading unions have committed themselves to energetic efforts at rebuilding their movement through increased organizing.

Traditionally, organizing has been accomplished through secret-ballot elections in which workers are offered the opportunity to select a union to represent them. But where the unions once claimed victory in a solid majority of such elections, today their chances of winning are at best even, and perhaps less than that. And the costs of such organizing drives are high – estimated by some union officials at as much as $1000 a head.[4] The unions attribute their reduced success rate in part to the increasing sophistication of so-called union-avoidance strategies by companies where they seek to organize workers. It is also the case that unions share with the corporations themselves a relatively low standing in public esteem as indicated by various public opinion surveys, and that may be a factor as well. But whatever the cause, it is clear that the risk entailed in a union's investing significant time and resources in a traditional organizing drive at a nonunion company is higher today than in years past.

This challenge of declining density and low public esteem, together with the trend toward globalization of the workforce and the virtual elimination of the strike as a useful weapon in the early 1980s, led labor leaders to seek an innovative strategy for organizing workers and rebuilding their movement. During the 1980s and 1990s, these leaders turned increasingly to the pressure tactics of the corporate campaign as one component of such a strategy. In a series of corporate campaigns at such companies as AT&T, Baltimore Gas & Electric, Beverly Enterprises, Blue Cross, Catholic Healthcare West, Federated Stores, IBM, K-Mart, Marriott International, Microsoft, New Otani Hotel, Nordstrom, Overnite Transportation, Perdue Farms, Sprint, Sutter Health and Wal-Mart, the unions developed a methodology of attack which they consolidated in a series of how-to manuals that covered such topics as researching the target company to identify its vulnerabilities, building coalitions with civic and religious leaders and various progressive advocacy groups who would legitimize the union's message, and managing media coverage of the company and the campaign to advantage. One of the early and most influential advocates of this effort was John Sweeney, then president of the Service Employees International Union (SEIU).

In a real sense, the 1995 contest for control of the AFL-CIO was a battle between advocates of traditional labor organizing and advocates of this new style of organizing. Mr. Sweeney's victory in that contest marked the ascendancy of the innovators, and a new focus on labor as a social cause and social movement. As Mr. Sweeney put it in his inaugural address that year, "We will use old fashioned demonstrations, as well as sophisticated corporate campaigns, to make worker rights the civil rights issue of the 1990s." Another labor leader, Monica Russo, now president of SEIU's District 1199 in Florida, put it more

bluntly a few years later when she observed that "Organizing is about power, not a 50 cent per hour wage increase."[5]

"Card Check" and "Neutrality"

While corporate campaigns gave labor a new and coherent approach to organizing at nonunion companies by generating immense pressure on management, they did not in and of themselves accomplish unionization or address the problem presented by the relatively low success rate the unions were experiencing in NLRB-supervised elections. For that, the unions decided to marry their campaigns to a tandem of organizing demands – card check and neutrality – on which they would insist as an alternative to any secret-ballot vote by workers.

Card check refers to a procedure in which workers are encouraged to sign cards expressing their desire to be represented by the union and in which the company agrees to recognize the union when a majority of workers has signed such cards. When successfully employed, card check legitimizes recognition of the union without the need for an election. In that way, it eliminates much of the cost and risk of an organizing campaign. More than that, it takes the campaign out of public view and outside of the process anticipated in the National Labor Relations Act. Elections must be conducted according to certain rules, the violation of which can constitute an unfair labor practice. In a card check procedure, these rules do not generally apply. The union's representatives can visit employees in their homes or elsewhere and can obtain signatures under a variety of circumstances that might not be permitted in a secret-ballot election. Thus, the union can avoid delays, and faces fewer barriers in contacting workers. Mirroring the union's claims about corporate union-avoidance activity, management often claims that card check procedures can lead to intimidation of workers, especially recent immigrants.

Whatever one's view of the dynamics, card check does increase the likelihood that organizing efforts will be successful. In a 1999 analysis prepared for the George Meany Center for Labor Studies, for example, Adrienne Eaton and Jill Kriesky reported that more than 70 percent of card-check organizing campaigns were successful – significantly better from labor's perspective than the outcomes of secret-ballot elections.[6]

To enhance the effectiveness of a card-check drive, unions generally insist that management adopt a position of neutrality, which is to say, that the company promises that it will not communicate to its workers any indication that it opposes the union. This demand represents the unions' direct response to the union-avoidance efforts of management, and is crucial to their success. In their 1999 analysis, Eaton and Kriesky found various implementations of neutrality including, among others,

- allowing managers to communicate the company's view of the "facts" only in response to direct inquiries,
- agreeing not to communicate opposition to the union in any way,
- not referring to the union as an adversary,
- not making any statements about the likely effect of unionization,
- not providing any support to anti-union individuals or groups, and
- not conducting one-on-one or group meetings with employees.[7]

Neutrality is clearly a device meant to freeze companies' ability to resist the union, with the result that workers will hear only one voice. It is the labor-management equivalent of unilateral disarmament. Together with card check, it effectively deprives companies of two key lines of defense against unwanted unionization – an open and balanced competition of ideas and a secret-ballot election.

The importance the unions attach to this one-two combination was evident as recently as June of this year when Ron Gettelfinger, the newly-elected president of the United Auto Workers Union, which has lost more than 700,000 members in the last twenty years, told his members at their annual convention that the union would emphasize card checks in its organizing drives and would use whatever leverage possible to pressure employers to remain neutral during these efforts.[8]

Role of Corporate Campaigns in Organizing Workers

The question then arises: *Why would a company that does not favor unionization of its employees agree to card check and neutrality?*

That is where the corporate campaign comes in. There are things that companies fear more than unionization of their workforce – loss of customers, loss of financing or insurance, balky institutional shareholders, overly zealous regulators and querulous media are but a few. The corporate campaign is designed to stimulate some number of these stakeholders to question their relationship with the company, and to convert them from supporters of the company into pressure points against it. To accomplish this, the unions often rely on a mixture of truth, allegation and hyperbole intended to raise the risk – whether economic, political or even psychological – of doing routine business with the company.

In the SEIU's Sutter Health campaign, for example, the union proffered the following statement in the first issue of its *Sutter Scam Sheet* – a broadsheet it

Conclusion

In my view, the issue before this subcommittee is simply this: Does the reliance on card check, neutrality and corporate campaigns that attack corporate reputations and stakeholder relationships for the purpose of pressuring nonunion employers into facilitating unionization protect and advance the interests of workers, as the unions argue, or does it deprive those workers and the companies that employ them of the rights and protections afforded them under the National Labor Relations Act? My research does not provide an answer to that question itself. Based on that research, however, I can attest that nonunion companies which have been targeted in corporate campaigns aimed at organizing workers have, in fact, felt considerable pressure to forgo their rights under that law in return for being permitted simply to conduct their daily business without the threat of continued damage to their reputations and financial well-being. Thus, whether it is legitimate or not, the corporate campaign as a pressure device to advance union organizing is certainly effective.

Thank you.

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[1] Jarol B. Manheim, *The Death of a Thousand Cuts: Corporate Campaigns and the Attack on the Corporation* (Mahwah, NJ: Lawrence Erlbaum Associates, 2001).

[2] Quoted in Bob Kuttner, "Can Labor Lead?", *New Republic*, March 12, 1984, p. 8.

[3] Manheim, op. cit., pp. 79-80.

[4] Francis X. Donnelly, "Unions struggle to survive: As membership drops, organizers seek to broaden base," *Seattle Times*, September 24, 2001, p. C2.

[5] Monica Russo, presentation at the Annual Meeting of the American Political Science Association, Atlanta, Georgia, September 3, 1999.

[6] Adrienne E. Eaton and Jill Kriesky, "Organizing Experiences Under Union-Management Neutrality and Card Check Agreements," Report to the Institute for the Study of Labor Organizations, George Meany Center for Labor Studies, February 1999.

[7] Eaton and Kriesky, op. cit., pp. 9-13.

[8] "Auto Union Chief Vows to Bolster Ranks," Reuters, June 8, 2002.

[9] *Sutter Scam Sheet*, No. 1, July 10, 1997, published by SEIU Local 250.

[10] Bruce Raynor, presentation at the Annual Meeting of the American Political Science Association, Atlanta, Georgia, September 3, 1999.

[11] Joe Crump, " The Pressure Is On: Organizing Without the NLRB," *Labor Research Review* (1991/1992).

APPENDIX D - WRITTEN STATEMENT OF TERRY GETLER, CHIEF SHOP STEWARD, HOTEL EMPLOYEES AND RESTAURANT EMPLOYEES INTERNATIONAL UNION, MGM GRAN D HOTEL, LAS VEGAS, NV

Testimony of Terry Getler
Bellman, MGM Grand Hotel

July 23, 2002

Good afternoon, Mr. Chairman and members of the subcommittee. Thank you for inviting me here to tell you about the success of our card check neutrality agreement with the MGM Grand Hotel in Las Vegas, Nevada.

My name is Terry Getler. I have worked as a bellman at the MGM Grand since December 10, 1993, when the hotel first opened. I was actively involved in the MGM workers' original decision to form a union. I am now chief shop steward, and I have been involved in negotiating both contracts with the hotel.

Workers at the MGM Grand wanted a union because they began to realize that the company, which was then under different management, was breaking promises it made to them when they were hired. Management was beginning to make decisions about things like seniority and health benefits and guaranteed tips without consulting with the workers. Their management style was changing, and we were afraid we were going to lose what we had. Nothing was in writing. We felt we needed representation.

Whenever we raised concerns with hotel management, it fell on deaf ears. Problems we brought to human resources were neither addressed nor resolved. The company's informal dispute resolution procedure was called a "guarantee of fairness," but out of about 26 "guarantee of fairness" hearings, only one was decided in favor of employees. The company's guarantee of fairness turned out to be not so fair.

Workers were upset. We had public demonstrations in the streets. At one point, the MGM was having union demonstrators arrested whenever they stepped up onto the sidewalks. A person could be out there leafleting pornography and be left alone, but union leafleting got you arrested. So one day about 5,000 union members gathered in the street to say "these are our sidewalks too," and 500 of them were arrested. The union later filed a lawsuit over those arrests and won.

We asked for a neutrality-card check agreement, which means a free choice for all the workers. With a neutrality agreement, there is little or no pressure from the employer on individual workers. There are no "captive audience" meetings, where management locks you into a room and tells you why you shouldn't join the union. We felt that neutrality was the only way to get a level playing field with hotel management.

Another reason why we wanted a neutrality-card check agreement was because we knew that winning an NLRB election was no guarantee that we would ever get a contract. For instance, we all knew about the Santa Fe hotel, where workers agreed to an NLRB election

and won, despite the obstacles. But it turned out that they lost in the end, because they never got a contract. For seven years the company filed one frivolous appeal after another. Then they sold the hotel and new management fired all the workers.

In our case, fortunately, a new management team came on board at the MGM Grand and they agreed to a neutrality-card check agreement. I think they made the right choice for themselves, and for workers. Among other things, card check-neutrality meant that workers would have access to union representatives to ask questions and get information. The atmosphere was still tense, but we made steady headway until over 50% of the workers signed union authorization cards.

The card check agreement also meant that once we got cards from more than 50% of the workers, then a neutral arbitrator was selected to count the cards and compare signatures from information the company had provided. The arbitrator declared that the union did have a majority and ordered us to begin the collective bargaining process.

We started by meeting with other workers to find out what they wanted from our contract. Some of the most important issues were our vacation package and the need to solve problems at the lowest possible level. We wanted to negotiate what we called a "living contract": not a rigid set of rules, but a process of labor-management cooperation that would adapt to changing circumstances.

I was at the negotiating table. We had to start from scratch because the company didn't want anything that resembled a contract from any other hotel. At the same time, we heard that a handful of workers who were very strongly anti-union were starting to collect signatures to decertify the union.

We felt that these decertification petitions were undermining our bargaining position. The company knew that this small group of anti-union workers was working against us. The longer it took for us to finish negotiations, the more chances there would be for workers to lose confidence in the union. This meant that management had an interest in dragging their feet, and they were benefiting from all the activities of the anti-union group. For whatever reason, negotiations dragged on for a year.

During the time we were trying to negotiate a contract, the anti-union group went to the NLRB three times to try and get the union decertified. The last time, in November 1997, they claimed they had signatures from 1900, or about 60%, of the workers. We couldn't figure out how they could possibly get signatures from 60% of the workers when more than 50% of us had signed union authorization cards.

I think one explanation is that each union authorization card tells you on its face exactly what it is you're signing. These decertification petitions, on the other hand, were just pieces of paper with rows of signatures, and some people had no idea what it was they were signing.

Another explanation is that the signatures on the decertification petition were never verified by anybody, as far as I know. By contrast, the union authorization cards were

closely scrutinized by the neutral arbitrator, Prof. Hardbeck. He and his students compared signatures and Social Security numbers on the cards with information supplied by the company. If there was ever any intimidation from union organizers, the anti-union group could always nullify the cards by filing a complaint with the NLRB. In fact, that's exactly what they tried to do. But the NLRB dismissed every single one of those groundless complaints.

Fortunately, the NLRB decided not to interfere with our contract negotiations because we had already demonstrated a majority and we needed time to negotiate a contract without being undermined. In fact, we completed negotiations just days after the third decertification petition was filed. Workers at the MGM Grand were obviously happy with the contract and with the union. They ratified the contract by a ratio of 7 to 1, by a vote of 740 to 103.

We were very happy with our accomplishment. Though the contract may not have been perfect, it was very creative and it dealt with all the issues workers had said were important to them. We succeeded in creating a "living contract" and in ensuring problem-solving at the lowest possible level.

One of the most important successes of our contract was in establishing mutual respect between management and labor. If we had never gotten card check and neutrality, I don't think we would ever have been able to negotiate this good of a contract. I think an NLRB election would have led to a pitched battle between workers and the company, with an unlevel playing field tilted in favor of the company, and it would have poisoned our relationship for years.

While we were back at the bargaining table to negotiate our second contract in 2000, the anti-union group again starting collecting signatures for yet another decertification petition. They were lying to workers, telling them they had to sign the decertification petition in order to keep their vacation package. But even so, the anti-union group didn't even come close to getting the 30% necessary for a decertification election—they got something more like 18%. And in fact, our second contract was ratified by an overwhelming majority.

We will be negotiating our third contract next year. I doubt there will be another decertification petition. I've heard that the anti-union group has thrown in the towel. They know people are happy with our union and happy with our contract. About 75% of our bargaining unit are union members—and that's in a right-to-work state. The number of union members is still growing, and I'm confident even more will come on board after we negotiate our next contract.

In the case of the MGM Grand, I think the card check-neutrality process worked very well. The company agreed voluntarily. The workers freely made their own decision to form a union. We were able to productively negotiate two good contracts, which were both ratified overwhelmingly. And again, more than 75% of the workers have freely chosen to join the union.

APPENDIX E - WRITTEN STATEMENT OF BRUCE G. ESGAR, EMPLOYEE, MGM GRAND HOTEL, LAS VEGAS, NV

Testimony of Bruce G. Esgar

When the MGM Grand Hotel, Inc. opened its doors it announced that it was going to be a "non-union" house. However, if the employees wanted to be represented by a union, management would only recognize a National Labor Relations Board [NLRB] secret ballot vote.

The MGM Grand Hotel, Inc. was offering to its employees [Cast Members] wages, health benefits and a 401k-retirement plan that far exceeded any union contract in the Las Vegas area. In fact it set a new standard in the industry.

Working under this understanding, the MGM Grand was a very friendly and relaxed place to work. Cast Members became friends, and helped each other out, as did the different departments.

When the MGM decided to change directions and marketing strategy, they also changed their upper management. The management team that had promised that they would only recognize an NLRB secret ballot was replaced, but the Cast Members were told that there would be "no changes" in its stand on an NLRB secret ballot election for unionism.

When the new management announced that they were going to pursue a market in the Detroit area, it was soon followed by the announcement that they were now going to recognize a "card count" by the Culinary Workers Union, Local 226. At that point the nightmares began for the Cast Members.

Many of the Cast Members had come to the MGM to get away from the Culinary Union, while others were there to get away from other unions and there were those that the unions had asked to go there to work. The Culinary Union's history in the city was not one that showed that it cared about the workers they represented or had the power to do anything for them.

They [the Culinary Union] had an eight-year stretch of not getting any raises for the workers. They were in a three-year strike against a family owned casino and showed no signs of strength to break management down. [They finally say they "won" when they found a sympathetic person towards unionism to buy the casino after the strike had gone on for five and one half years.] They had not gotten a raise in their pension plan for the workers since 1984, which was 42¢ per hour for every hour worked up to 2,000 hours.

The local press in previous years had flirted with the Culinary Union's ties with organized crime.

All though the leaders of the Culinary Union were decrying that they no longer had ties to organized crime, they did seem to enjoy the reputation of organized crime's intimidation methods of control. Even while the leaders were denouncing any ties to the Mob, U.S. District Judge Garret E. Brown, Jr. appointed Kurt Muellenberg as a Monitor overseeing

Hotel Employees and Restaurant Employees International Union [HEREIU]. Mr. Muellenberg found and documented many instances of corruption and Mob affiliations within the HEREIU.

When the monitor ship ended, and the then HEREIU President, the late Edward T. Hanely, was disbarred for life from the union, the newly "elected" HEREIU President, John Wilhelm, proudly proclaimed basically, "See I told you we were squeaky clean with no ties to organized crime." Yet in April, 2002, Judge Brown has once again appointed Mr. Muellenberg as a Monitor to run and reform HEREIU Local 69, in New Jersey under the civil RICO Act [Racketeer and Corrupt Organization].

When the Culinary Union walked through the door they immediately began telling union followers whom they could talk to and whom they could not associate with. The union representatives had soon divided the workers into two groups, union and non-union, which they quickly labeled as 'anti-union'. This label was quickly followed by 'welfare recipients', 'freeloaders' and of course 'liars', were a few of the many.

When the employees wanted to ask questions about the pros and cons about unionizing they soon found that they could only "hear" about the pros. To find out about the cons, they learned that no one was able to help them. The management had signed a neutrality contract with the union that meant they could not/would not say a word about aspects of unionizing or not unionizing. There was no group that they could turn to seek help. These groups the unions had labeled "Union Busters" and the laws governing them meant basically that only management could hire them. These groups we soon learned cannot advise employees on their own without suffering fines and/or loss of license.

In order for the union to collect a signature on a card, we quickly learned their methods of obtaining them. Cast Members began telling each other what union representatives were telling them. Some of these promises, statements and actions union representative made were:

- Have supervisors fired
- Loose your job if you were not union or had not signed the card when they [the union] got in
- Loose your health benefits if you did not sign the card
- Loose your 401k if you did not sign the card
- Give them a turkey if they signed a "union yes" card
- Signing the card was *calling* for a vote
- "Hound" them in the privacy of the employee dressing room to sign a card, while they were dressing for work
- Keep "hounding" them to sign a card once they were told that they did not want to sign the card.
- The signing of the card only meant that you would be sent information about the union
- Invade the privacy of your home when you did not give them your address and/or telephone number [and keep coming back time after time after being told "NO"]

- Count a card that they had signed at another property in the past
- Stop the MGM from deporting one by signing the card
- They tore the "NO UNION" buttons off our uniforms
- If you sign the card we [the union] will help you get your "green card"

One Cast Member told us that union representatives had come to him and stated that if he did not sign the card his wife who worked at another property would be fired.

Another gentleman came to me and apologized for signing the card because union representatives had told him, "We know where you live, we know where your kids go to school and we know where your wife works. If you do not sign the card, 'accidents' can happen."

While breaking in the Cast Members' cafeteria, groups of the union followers would come to our tables chanting different slogans. Since management was never sure when one of us *non*-union Cast Members would strike back, they had security sanding by to calm the situation. [Remarkably, the non-union group stayed calm and did not start any incidents throughout the entire 2-year campaign asking for their right to vote.]

The Culinary Union also targeted three of us that worked on the casino floor and had union members from other properties come and threaten us on our stations. Subsequently two ladies were detained by MGM security and they admitted to the fact that they had been sent by organizers from the Culinary Union.

Those of us that tried to answer and educate those that were asking questions about the benefits of unionizing vs. staying non-union, had to face daily the hatred from the union representatives and anyone else they could incorporate into their way of "the end justifies the means". For eleven months we had to endure the tactics of the union to obtain signatures on their cards.

With less than one month left in the unions one-year time span to acquire the required number of signatures, the union announced they had achieved the goal. To the shock of many of the Cast Members at the MGM, we did not see how they could have gotten the majority of the bargaining unit to sign a "union yes" card.

So many of the Cast Members could not believe that the Culinary Union had obtained the required signatures, we wanted the vote we had been promised. We all believed that if we were given the right to vote in a secret ballot, we would win. We also were willing to accept the fact that if the union was right and they had the majority, we could accept it. That was the American way that we all had grown up with, one wins or looses by a majority vote.

In order to try to get to the truth of the "numbers" a group of us formed an organization that we called: "Organized Non-Union Cast Members" [O.N.U.C.M.]. We immediately started circulating a petition asking for an NLRB sanctioned election. While circulating this petition, we began to self educate ourselves as to what options and steps we must

take to get what we believed was our American right to vote. Through the NLRB we learned that we had little precious time left for any steps left open to us. They showed us a form that we must fill out and even helped us fill it out. We went in search of a lawyer that would be willing to help us. That is when we met Gregory E. Smith, of Smith & Kotchka, who was willing to help us.

When he looked at everything that we had done on our own, he stated that he was impressed. When he looked at the form that the NLRB had us fill out, he informed us that if it had made it to an NLRB hearing it would have done us no good. He also was impressed that by this time, about one month, that we had been getting signatures asking for an NLRB vote, we had approximately 900 out of a 3,000 member bargaining unit. But he pointed out to us that there was no provision in the National Labor Relations Act[s] [NLRA] that permitted the employees a right to call for an NLRB vote. He went on to explain that under the NLRA the employer could call for a vote at anytime and that the union could call for a vote at anytime. But the employees that unionizing would affect their futures had no rights to call for a vote.

In explaining to us that since there was no right for us to call for a vote, the only option left for us was to file for a decertification. This being the case, we could not use our petition asking for a vote, but would have to start a new petition asking for a decertification. In filing for a decertification we would also have to follow the rules and regulations established for decertification. Again, these rules and regulations had nothing to do with simply asking for our right to vote. He said the good news was that we only needed 30% of the bargaining unit to file. The bad news was that we had even less time now to get them.

When we got our 30% in less time than our deadline, we notified our lawyer and we filed for a decertification. We continued to collect signatures on our petition and submitted them on the deadline date. We then learned that we had collected approximately 1,900 signatures out of the 3,000 member bargaining unit.

At the local NLRB hearing for a decertification in Las Vegas, we presented them with our petition and case histories that in some cases the NLRB had ruled that as little as three to four months was enough time to get a contract between the employer and the union. We were at about six or seven months without getting a contract.

The local board's decision was based on that they did not feel that this amount of time was enough for the two sides to achieve a contract. They granted them a one-year period to work out a contract. Little emphasis, if any, was placed on the fact that over 60% of the employees was asking not to be represented by the Culinary Union and wanted to vote on it.

As an interesting side note, I would like to add that the union was telling their people not to sign our petition asking for an NLRB election. If the union truly had the majority, they would win the election and settle the matter. Why not prove it?

When union dues began to be deducted from the bargaining units Cast Members' pay checks, many Cast Members came to us asking: "How could they be taking dues from them as they had never signed a authorization card from the union?" As no Cast Member was asked to verify their 'signature' on an authorization card, there is still speculation on how the union had a card 'signed' by some Cast Members.

When these Cast Members sent in letters of resignation, the Culinary Union immediately let them resign. The union did not make them meet the union's 15-day window period of their date of signing the card before they could accept their resignations.

In the last Presidential election there are a great many American voters in the state of Florida that firmly believe that their vote did not count on the direction they wanted their country to take. In Las Vegas, Nevada there are approximately 3,000 Americans that were never given their right to vote on the direction that their lives would take.

On November 15, the MGM recognized the Union after the Union demonstrated majority support on authorization cards. This recognition bars the filing of any election petition, under National Labor Relations Board law.

No election petition can be filed where the employer has "extended recognition to the union in good faith on the basis of a previously demonstrated showing of majority." Sound Contractors Association, 162 NLRB 364. And in Dale's Super Valu, 181 NLRB 698, the National Labor Relations Board refused to accept an election petition filed by employees after the employer recognized the union on the basis of a showing of majority support, and refused to consider contentions that employees were misled when they signed cards.

A recent news story in the Review-Journal has misleading information about employee petitions. This notice sets forth the true information. This can be confirmed by calling the NLRB at 388-6416.

c:\msoffice\winword\hotels\mgm\elecpet.emp

Where Does It Come From?

The money that is. It's no secret that the money for Union representation comes from Union dues. It is used for bargaining, arbitration cases, grievance procedure, representatives salaries, lawyers fees, salaries of clerical people working in the Union office, materials used in the office, copy machines, computers etc.

Now the big question? Where does their money come from? The anti-union people that is. Does it come from a certain casino owner who would like to see the Union out of this town so he can pay minimum wage and no benefits. Does it come from the pockets of a few cast members or are some of these anti-union people on someone else's payroll doing the dirty work for some big businessman. Just ask yourself, how can porters, change people, and housemen, some of which are single parents afford to wage a 2 year campaign against the Union and why? Are certain people benefiting from this? You certainly will not benefit from this kind of thinking. **So think Union. Be Union.**

Enough is Enough!

I've heard enough of the lies and half truths that Bruce Esgar and his bunch of mindless followers have put out there for all my fellow Cast Members. They have said that all the minorities signed Union cards because they were offered a free turkey by Union reps or were threatened to be deported. They assured people that if the Union got in, they would lose their flextime and their 401k's. They have just told one lie after another

Well, guess what, Bruce, we are not as stupid as you portray us to be. We want the Union in the MGM! Yes, the MGM gave us great wages and benefits, but we had no security in keeping them without a Union contract. A lot of departments were run by favoritism, not fairness! What would happen if the MGM were sold? Would a new owner keep our wages the same? Or would we even be allowed to keep our jobs?

You have put out a flier stating the Union told us they could get us better wages I got a 25 cent raise for the last four years in a row from the MGM. I just got a 30 cent raise. I call that "better wages". And according to the papers, the MGM is making less profits today than they have since they opened. Now since the contract says that the MGM will meet or beat the other hotels, why didn't they give us more? That doesn't sound like the Union's fault to me.

You sound very concerned about the housekeeping department, Bruce But if my math serves me right, they didn't lose 10 cents, they gained 30 cents What are you doing for those Cast Members, Bruce? Are you doing anything to help the slave conditions that they work under? Are you getting them money if they get sent home? Do you get people's job back if they are terminated unfairly?

How dare you say that the Union didn't have anything to do with winning the IRS meal tax The Union is the workers and the workers filled out the cards and letters by the ten of thousands and sent them to Washington. The politicians had to listen to us. Now I know you didn't sign a card or letter, Bruce, because you said, "The Union can't beat the IRS". Now isn't it amazing that you gave the Union credit until we won!

I proudly pay my dues, Bruce! You keep trying to tell people they are going to get something for nothing. Well, I've never got something for nothing, yet, and this is my livelihood -- it's how I put food in my kids' mouths and a roof over there heads. The only way we continue to grow and protect our standard of living is by each of us taking the responsibility of paying our fair share.

Bruce, who are you, anyway? Don't you think workers wonder how a porter can afford an office, computers, radio ads, glossy fliers, mass mailings and high dollar polling firms? Do they know you work for Sheldon Adelson, Bruce, the owner of the Venetian? He wants to subcontract all our jobs and bring minimum wage to Las Vegas. Why are you helping him try to break our Union from the inside out? He's taking care of you, Bruce, but what about the rest of us? We have a great Union standard of living, and we won't let you or Adelson destroy that.

A Member of Workers for Truth and Fairness

Attention Union Cast Members

Beware that the Anti-Union people have recently filed complaints against Spanish-speaking workers who speak their native language at work. This is an attempt to get back at workers that signed for the union.

Don't be afraid of this intimidation. Let them know that you have the right to speak your own language. If you have a problem with this, let a Union committee leader know about it. They will assist you with this issue.

SMITH & KOTCHKA

ATTORNEYS AT LAW

MALANI L. KOTCHKA
GREGORY E. SMITH
KEITH E. KIZER
ROSE MARIE REYNOLDS

317 SOUTH SIXTH STR
LAS VEGAS, NV 89101-5
TELEPHONE (702) 382-1
TELECOPIER (702) 382-5

June 3, 1997

TELECOPIED (388-6248)
and U.S. MAIL

Mike Chavez
National Labor Relations Board
600 Las Vegas Boulevard South
Las Vegas, NV 89101

Re: MGM and Culinary Workers Union Local 226
Case Nos. 28-CA-14322
28-CB-4711
28-RD-776

Dear Mr. Chavez:

Please find enclosed a photocopy of two sides of a pre-printed postcard, obviously printed by Culinary Workers Union Local 226 and addressed to my client, employees of the MGM. On the back side, the Union has solicited individuals allegedly from various hotels around the city to fill in the blanks in the card and send them to MGM employees. Each of these cards contain the following identical language:

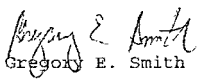
> To the MGM anti-Union committee:
>
> I've been a Union member for ____ years and I work at the _____. We built the standard of living in Las Vegas. If you like working non-Union, go back to low wage, low benefit, and no job security jobs. We will not let you destroy the standard of living in this town.
>
> (signature) _____

More than 800 of these cards have been sent to MGM employees. The last phrase, "we will not let you destroy the standard of living in this town" is a threat. The obvious question arises as to how these individuals and the Union intend to prevent MGM employees from doing anything. Given the fact that the Union has been shown to engage in threats of physical violence, of termination of jobs and of deportation, it is fairly inferrable that the threat here includes the same sort of thing.

This is especially true in light of the fact that on February 27, 1997, the Board affirmed an Administrative Law Judge's finding that this same Union "unlawfully engaged in several threatening acts and one physical assault" in Local Joint Executive Board of Las Vegas, 323 NLRB No. 16 (1997). In that case, the Board affirmed the ALJ's finding that this Union violated the Act by "stating that it knew where the employees . . . lived and that it was going to get them, thereby implicitly threatening employees . . . with bodily harm because they failed to support Respondent's picketing . . . ." Here, the Union has requested the names and addresses of the employees from the MGM, the MGM has notified the employees that the Union will obtain their names and addresses, and the Union is saying to the employees that it "will not let you" do certain things. Thus, the impact is the same as that in the recent case. The Union knows where the employees live, and it is stating that it will prohibit them from doing something. Just as those facts created an implicit threat in the recent case, they create an implicit threat here, especially when there is corroborating hard evidence of those threats.

Moreover, the fact that there are more than 800 such cards being mailed to the very employees who do not support the Union makes these threats more than pervasive; they become almost universal. I have the originals of the cards in my office and am able and willing to supply them upon your request.

Sincerely yours,



Gregory E. Smith

GES:sdt

cc: Bruce Esgar
Jane Reidhead

To the MGM anti-Union committee:

I've been a Union member for 2 years and I work at the Pioneer (6.00 P/H IN PANtry.)
We built the standard of living in Las Vegas.
If you like working non-Union, go back to low wage, low benefit, and no job security jobs.
We will not let you destroy the standard of living in this town.

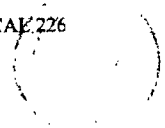
(signature) James L Guiney

Al comite anti-Unión del MGM:

Yo he sido miembro de Unión por 2 años, trabajo en Pioneer (7.00 P/H Frontline cook)
Nosotros creamos el nivel de vida aquí en Las Vegas.
Sí a ustedes les gusta trabajar sin Unión, regresen a los trabajos que pagan salarios bajos, dan beneficios bajos, y no ofrecen seguridad de trabajo.
No vamos a dejar que ustedes destruyan el nivel de vida en ésta ciudad.

(firma) [illegible]

CULINARY WORKERS UNION LOCAL 226
1630 South Commerce
Las Vegas, NV 89102



73

MGM anti-Union committee (o.n.u.c.m.)
3230 E. Flamingo Road
Mail Boxes, etc. -- Box # 253
Las Vegas, NV 89121

McCRACKEN, STEMERMAN, BOWEN & HOLSBERRY
ATTORNEYS AT LAW
LAS VEGAS, NEVADA 89102
(702) [illegible]
FAX (702) [illegible]

November 11, 1997

VIA FAX
382-9370

Gregory Smith, Esq.
Smith & Kotchka
317 S. 6th Street
Las Vegas, NV 89101

Dear Mr. Smith:

This is in reply to your letters of November 10 concerning the ratification vote which will be held on November 13 among workers in the bargaining unit represented by the Local Joint Executive Board of Las Vegas, my client. It is somewhat amusing for you to say that by writing to me on the subject of the ratification meeting, your nominal clients do not mean to suggest that they agree that the Union is validly the collective bargaining representative for the unit. Your nominal clients have no legal standing whatsoever to say or do anything about the ratification vote, and the Union and I have no obligation to give you the time of day. The Union, on the other hand, is the collective bargaining representative of the bargaining unit as a matter of law and nothing you say, or position you reserve in a letter, can change that. You and your nominal clients have already challenged the Union's representative status and failed. Even if a decertification election were to be held, the Union would remain the legal representative of bargaining unit employees at the MGM until the NLRB certified that a majority of the bargaining unit employees voting in a valid election casts their votes against representation by the Union. Consequently, I suggest that you save space and time, and the money of whomever is paying you, by cutting out the meaningless rhetoric casting aspersions on the Union's status.

I need to straighten you out on a couple of other matters, as well. No law requires the Union to have the MGM contract, or any other contract it negotiates, ratified. Many other unions do not have ratification votes. (In these other unions, the test of whether the workers like the contract comes when the officers who negotiated it are up for reelection). This Union has a long-standing, voluntary policy of submitting all of its contracts to a ratification vote. If the Union was really trying to avoid letting the MGM workers vote on the contracts, it could simply not

C:\[illegible]\Letter to smith re contract ratification

hold a vote at all. But it will not sacrifice its principles for what may be perceived as narrow, short-term tactical gain. It will submit the contract for ratification, come what may. That is why its members are so proud and supportive of it – and why I am so proud to be its counsel.

Because ratification is not required by any law, the Union is free to organize the ratification meetings. It can limit participation in the meetings to its members and those who have given it authorization cards. It could exclude your nominal clients and their friends altogether. Although there is some justifiable concern that your clients will attempt to disrupt the ratification meetings instead of participating rationally, the Union has nevertheless decided that it is in the best interests of everyone – the hotel, the workers and the Union – that these ratification meetings be open to all bargaining unit employees regardless of whether they are members or have signed authorization cards. There has been much divisiveness and it is time to bring everyone together. A ratification meeting that excluded those who have been opposed to the Union would work against this objective, so the Union will throw the meetings open to all bargaining unit employees.

I am writing to you principally to explain the law since you seem to be under an illusion that you and your nominal clients have some right to be involved in planning the ratification process. With one exception, none of the points you have made have any merit. The one exception is having Arbitrator George Hardbeck present during the ratification meetings and the tabulation of the votes. In fact, Jim Arnold decided this past Sunday to invite Dr. Hardbeck to serve in this capacity.

The times of the meetings, however, are good ones. The Union has always held its meetings at 11:00 a.m. and 7:00 p.m. This includes not only ratification meetings but organizing committee and negotiating committee meetings. Its lengthy experience in holding membership meetings has confirmed that these are the most convenient times for workers in the Las Vegas hotel-casino industry, and result in the best turnouts. In fact, ratification votes on contracts for employers you represent have been held at these times and this is the first occasion anyone has suggested that the times might be inconvenient. For these MGM ratification meetings, the Union has actually added another meeting at 5:00 p.m., which is unusual, in order to increase the level of participation. The reason why these meeting times work is the very thing you point out as a flaw: the meetings are not close to the shift beginning and ending times. Workers can therefore attend without worrying that they won't be able to get to work on time. There is one small group for which this is not true. This group begins work at 12:00 Noon. The Union has asked MGM to allow workers whose shifts begin at Noon to report late, to enable them to attend the 11:00 a.m. meeting. Your accusation that the times have been selected to inconvenience people and reduce participation is just a product of ignorance and paranoia.

There will be no security problems at the Union hall. Your statements about threats to MGM workers are merely repetition of groundless charges you have made in the past. You have filed charges alleging union misconduct but you have never been able to support them with evidence. In fact, the biggest security concern for the meetings on Thursday is that your nominal clients and their friends will attempt some form of disruption of the meetings, so that other employees who want to seriously consider the contract will be prevented from doing so. The Union has taken precautions to avoid any security problems. In addition to the Union's normal

security force, uniformed Metro officers will be present throughout the meetings to ensure everyone's safety and orderliness. I encourage you to advise your nominal clients and their friends to cancel any disruptions they have planned.

Voting on the contract will occur at the end of each meeting. The meeting is for the tentative contract to be explained and for the workers to have the opportunity to ask questions and express their views. Not only does the Union want the MGM workers to vote on the contract, it wants them to be able to make an informed choice. Again, we hope that you will advise those workers with whom you are in contact not to try to prevent their fellow workers from being able to give the tentative contract serious consideration.

This is the Union's final communication to you on this subject.

Very truly yours,

Richard G. McCracken

RGM/rw

C:\[illegible]\letter to smith re contract ratification

APPENDIX F - WRITTEN STATEMENT OF RON KIPLING, DIRECTOR OF ROOM OPERATIONS, THE NEW ONTANI HOTEL AND GARDEN, LOS ANGELES, CA

TESTIMONY OF

RON KIPLING
DIRECTOR OF ROOM OPERATIONS
THE NEW OTANI HOTEL & GARDEN
LOS ANGELES, CALIFORNIA

TESTIMONY BEFORE THE
COMMITTEE ON EDUCATION AND THE WORKFORCE
U.S. HOUSE OF REPRESENTATIVES

HEARING ON
COMPULSORY UNION DUES
AND
CORPORATE CAMPAIGNS

WASHINGTON, DC
JULY 23, 2002

New Otani Hotel Testimony

I would like to thank the Chairman and members of the Committee for allowing me to appear hear today. I appreciate the opportunity to offer the support of my company in your attempt to ensure that the wishes of our country's workers are given full consideration by the nation's labor laws which govern the workplace environment.

My name is Ron Kipling and I am the Director of Room Operations for The New Otani Hotel & Garden in Los Angeles, California. I have been employed in that capacity with the hotel for over seven years. I am responsible for all of the non food and beverage operations within the hotel. The New Otani Hotel & Garden is a 434-room hotel in the heart of the Civic Center of downtown Los Angeles. The hotel derives its name from the half acre Japanese garden which overlooks the two Japanese restaurants on the third level of the hotel. The hotel lies on the border of the area termed "Little Tokyo", and in fact was built in the mid 1970's as the cornerstone of the revitalization of the Little Tokyo community.

The New Otani Hotel & Garden is operated by New Otani America which was formed as a division of New Otani Hotels based in Tokyo, Japan. New Otani America operates the hotel under a renewed 20-year contract for management of the New Otani Hotel & Garden. The Hotel is owned by East West Development Corporation which was formed to oversee the opening of the hotel and the Weller Court Shopping Plaza located adjacent to the hotel property.

The hotel opened in the fall of 1977 and has been operated since that time to serve both the Japanese and American markets. The employee base has traditionally been made up of over 90% minority workers both in the line staff and on supervisory and management levels. In an industry noted for its very high turnover and seasonal hiring practices, it is noteworthy that over a third of the hotel employees have over ten years of service, and many of them have been employed over twenty years. These employees have been a loyal and highly recognized part of the New Otani's proud tradition of service over the last 25 years, and are the primary reason that so many of our clients are return guests.

It is precisely because we feel so strongly about our family of employees that we wished to appear before the committee today. Hotel Employees & Restaurant Employees' Local 11 has been attempting to organize a group of our employees since the hotel opened in 1977. The employees voted in an NLRB approved election in 1982 by a margin of nearly 90% against representation by Local 11. The union began to renew this organizing attempt in 1991 and in 1994 the campaign began to gather momentum. However this time the union seemingly wanted no part of an election, and entered into a corporate campaign against the hotel management and its ownership. The union began a series of activities designed to force the hotel management to enter into an agreement to recognize the union as the collective bargaining agent for hotel employees without an election being held. To this day that campaign continues, and our hotel employees have yet been

provided no opportunity to make their feelings known on a subject which is of paramount importance to them.

The intent of this campaign was explained on November 20, 1995, by Maria Elena Durazo, the Local 11 President. She declared to La Opinion newspaper that "It has not worked to do it in the traditional way of election. Each time there is a bigger number of unions that are not going by the election method. Now we use the economic pressure. Before we initiate a campaign, we investigate who we are dealing with and who are their sources of income." She also stated that finding where companies get their profits is a system that could prove useful to pressure the companies into accepting the union.

This set the stage for a campaign against The New Otani Hotel & Garden which involved every form of economic pressure. The premise was that if Local 11's actions could cause our revenues to be drastically reduced while our legal expenses were dramatically increasing, the hotel might look favorably upon the union's proposition of recognizing them via the card check method.

However from the very start of this campaign, the hotel's management has made it clear that the decision whether to recognize a union and operate under a collective bargaining agreement was strictly up to the hotel's employees. Many had been working at the property for a long period of time, and they deserved the opportunity to have a voice in a decision that would have a direct effect on their lives and workplace relationships. To this day there has been absolutely no change in the view of hotel management toward this subject.

Local 11 has made a point to emphasize throughout their campaign that the New Otani Hotel is a "non-union" hotel, and has an anti-union bias. This could not be farther from the truth. The hotel has had a long standing relationship with Operating Engineers Local 501, and our engineering staff has worked under a collective bargaining agreement with this organization for over two decades. Our working relationship with Local 501 has been cordial and professional in every way, and we have welcomed the opportunity to work with them. When the Democratic National Convention was held in Los Angeles in 2000, the Democratic National Convention Committee advised convention delegates not to stay at The New Otani Hotel & Garden. Don Mears, the President of Local 501, wrote a letter on December 16, 1999, to Ms. Lydia Camarillo, Chief Executive Officer of the DNCC, advising Ms. Camarillo that she had erred in telling delegates that the New Otani was a "non-union' hotel. He also asked that she apply the principle she was expounding in a fair and consistent manner.

Initially the union applied pressure on hotel employees in an attempt to gain their signatures on union authorization cards. High pressure tactics were utilized including having groups of eight to ten people show up at employee's homes late at night and

demand to be let in. This intimidating tactic was terrifying to many of our employees, and we instructed them to call the police when it occurred. However the union representatives usually had left by the time police arrived, and local authorities were very hesitant to become involved in what they saw as a labor issue. Attorneys representing the hotel filed an unfair labor charge against this practice on March 29, 1994 and again on November 2, 1995. Region 21 of the National Labor Relations Board chose not to act on the matter. It was not until February of 1996 that the hotel took the matter to Los Angeles Superior Court where Commissioner William Allen issued an order setting limits on tactics used by the union, including visits by union organizers to the homes of New Otani workers. Commissioner Allen referred to the stalking prohibition of the California Penal Code in ordering organizers to stay a specified distance from New Otani employees at their residences and when they entered their workplace.

It was during this same period that Local 11 announced a formal boycott of The New Otani Hotel and began recruiting support for their campaign. Local 11 began writing letters to Tour Operator specializing in bringing Japanese tourists to Los Angeles. They warned them that their clients would not necessarily have an enjoyable experience if they stayed at the New Otani due to the existence of a labor dispute. Although this gave the impression of workers on strike, the only "labor dispute" that actually existed was that Local 11 wanted to represent our employees but did not want those same employees to be involved in the process.

This same tactic was used in sending wedding planners notices advising them that if they wanted to ensure a beautiful once in a lifetime event, then they should be aware of the ongoing "labor dispute" at the New Otani. Their flyer stated, "And if your goal is customer satisfaction, labor disputes and weddings don't mix." This "Special Service" was expanded to other market segments as it proved its value to the union corporate campaign.

Another means of encouraging Japanese visitors from coming to the hotel was to spread the word that the hotel restaurants and kitchens had insect problems. Flyers printed in Japanese were handed out to arriving guests as they passed through customs at Los Angeles International Airport, as well as those stepping off buses at the hotel. Anonymous employees were quoted as saying that there were roaches in the kitchens, that they served left over food to other patrons, and used chemicals to hide the smell of bad food. They stated that the hotel had received numerous health code violations. They of course failed to point out that these were the sum of over two years worth of inspections in four different dining facilities, that they were far less than most competitors received, and that most were the result of minor violations such as the height of a sneeze guard or the clearance of a drain unit.

New Otani Hotel Testimony

A significant aspect of the union's campaign was to press the image that minority workers were mistreated and not respected at the New Otani. This belief became widely accepted even though at the time 40 of the 48 supervisory and management personnel at the hotel were members of minority groups themselves. Yet the continuing volume of newspaper articles quoting the union leaders in conjunction with loud demonstrations at the hotel created a rising tide of politicians supporting the union boycott. Nearly every minority member of the city council and state assembly joined in the boycott, and they were soon joined by Jesse Jackson, Secretary of Housing & Urban Development Henry Censors, and a host of city and national government officials. Joining this coalition were clergy from throughout the city, and labor organizations from around the world. During this period, we were visited by several city councilpersons and clergy. All were invited to speak directly to our employees who they had been told were being mistreated. Not one of them chose to do so. They just wanted us to know their feelings, and obviously wanted their constituents to know they had called upon hotel management on behalf of the boycott movement.

Union leadership expanded the boycott when a delegation flew to Tokyo to meet with New Otani management there. New Otani officials on different occasions met with both John Sweeney and Jesse Jackson, but in both cases explained that the issue was up to the employees and also that they Los Angeles property made their own management decisions. Soon the boycott included all New Otani Hotels around the world.

Another important aspect of the corporate campaign against the New Otani was to inform governmental agencies of the boycott and to prevent them from utilizing the hotel for their meeting or overnight needs. Our hotel is located in the heart of the Civic Center of Los Angeles, within easy walking distance of city, state and federal office buildings. By effecting both our overseas tourist trade and our regular government business, the union could make a serious impact in our business model and our revenue flow. This was evident from the accompanying flyer advertising "Internships Available at HERE Union Local 11", "Assistant Boycott Organizers for New Otani Hotel Campaign". The positions included researching the Japanese customer base of the hotel, researching government agencies that used the hotel, and building support for the boycott among the various religious communities in Los Angeles. The intent of course was to be in a position to convince hotel clients to no longer patronize the New Otani.

The next step for the corporate campaign waged against the New Otani Hotel was to attack the credibility of the hotel management and ownership. The General Manager & Executive Vice President of The New Otani Hotel & Garden, Mr. Kenji Yoshimoto, soon came under personal attacks from the union. He was accused of being a racist, and an individual who had no consideration for his employees. With handouts and news articles reprinting these accusations, he had to be content with the knowledge that whose who had worked with him and alongside him through the years knew him to be a gentleman and a

man of his word. The General Manager responded to the attacks in the following fashion:

"I urge the leadership of Local 11 to move to a vote in a law-abiding way. If the end result is a fairly-supervised election, then I will accept whatever the decision of the employees is. What I cannot accept and sit quietly listening to is the constant barrage of misinformation produced by Local 11, which claims that our employees want to join this union, but aggressively acts to prevent them from exercising their independent right to express their own views on the matter in the voting booth. To this end, I ask community and business leaders to support our position and ignore Local 11's call for a boycott."

The next victim of the corporate campaign became the majority shareholder of East West Development Corporation, Kajima Corporation. One of the world's largest construction company, Kajima assisted in the financing and building of the New Otani 25 years ago at the request of Japanese and Los Angeles officials. They had no idea that this very insignificant holding of theirs in relation to their world wide interests would become such a thorn in their side. For over five years, they have been attacked and vilified by labor organizations due to their relationship to the New Otani Hotel in Los Angeles.

Their name has become so controversial in Los Angeles due to union propaganda that they have refused to bid on projects that would under normal circumstances welcome their participation, including the Japanese American National Museum expansion in the heart of Little Tokyo. In cities across America. politicians friendly to labor have attacked them even before they had the opportunity to enter the bidding process. To their great credit, they have stood firmly behind the hotel's position through the years that union membership is an employee issue to be determined by the employees. They also have pointed out that New Otani America is the contracted operator of the hotel, and they leave operational decisions with the management team.

Another tactic typically used by unions engaged in corporate campaigns is to attempt to overwhelm the company with nuisance law suits and filing complaints of unfair labor practices with the National Labor Relations Board's regional office. The cost of having attorneys defend you against these sometimes outrageous charges can be astronomical if left unchecked. In our particular case, we eventually were forced to accept the fact that it was not financially feasible or advisable to contest all of these charges.

Local 11's campaign has made great use of this tactic through the years, and in many instances we have agreed to stop doing something that we were never doing in the first place. This of course meant that we have to post the NLRB settlement agreement and notice for thirty days where our employees can clearly see it, and that it will become another source of fodder for the Local 11 propaganda machine. Nevertheless we must

carefully select what NLRB filings warrant the cost and effort to fight, and realize that both economics and principle will continue to dictate our choices in these matters. Yet this philosophy enables us to continue running our business in an economically responsible manner, and that enables us to continue to protect both the jobs and the rights of our employees.

Our most recent settlement of such charges with the NLRB, Region 21, occurred last year when we agreed to alter certain phrasing and ignore specific rules in our employee handbook. Four cases (21-CA-31147; 21-CA-32213; 21-CA-33534; 21-CA-33823) were combined into one settlement for economic reasons. These rules included a ban on Profanity and Abusive Language, directing employees to follow their departmental chain of command when they wish to discuss a problem, prohibiting employees from discussing or releasing information about the company, and prohibiting employees from making derogatory remarks or engaging in idle gossip about co-workers and superiors.

The increase in the popularity of the internet through the last decade has introduced a new element into the corporate campaign. The effective use of websites and domain names has enabled the unions to reach a new market in a number of ways. There are now a number of websites which provide information of ongoing labor disputes and labor declared boycotts. These sites can be linked to other sites and will often appear as a result of name searches for hotels and destinations. They will also be linked to subject matter which enables them to reach people around the world who are interested or sympathetic to their causes.

If your travel agent books a reservation at the New Otani, you may want to look up information on the hotel. If you search for the New Otani, you are more likely to get a choice of websites set up by union programmers than you are to get our website. You will then, of course, be the recipient of a variety of propaganda regarding our "anti-union stance", "our treatment of minorities", and be provided a list of alternate accommodations in the area. As union leaders continue to improve their use and understanding of the potential of the web, the challenge is for small businesses to find a way to effectively utilize this technology themselves.

Our ongoing battle against the corporate campaign of HERE Local 11 has always been based on our belief that our employees must share in a decision which is of most importance to them. We have stated throughout the years of this campaign that we would like our employees to decide this important issue in the universally recognized manner of a secret ballot election supervised by the National Labor Relations Board. We have not even insisted that Local 11 obtain the necessary signatures required by the NLRB to call an election.

New Otani Hotel Testimony

Instead we first filed a petition in August 26, 1997, demanding that the NLRB acknowledge the extensive campaign of Local 11 for what is - a demand for recognition. The repeated letters from the President of Local 11 asking us to negotiate a neutrality agreement and accept a card check process date back to June 12, 1996. Certainly these documents seemed to acknowledge the intent of Local 11 to gain recognition. Yet the NLRB denied the petition on October 16, 1997 finding that the union had not exhibited a present demand for recognition. We asked for a review of this decision on October 29, 1997, and then filed a second petition on April 24, 1998 based on new evidence received. That was again turned down on the regional level on June 8, 1998, and we subsequently filed a request for review of that decision on June 17, 1998. This appeal was undertaken at the national level by a three-member panel, and on August 24, 2000 the appeal was denied on a 2 to 1 vote.

Thus after a decade of economic and legal battles, the issues have essentially remain unchanged. HERE Local 11 wants a card check to be the acceptable means of recognizing them as the bargaining agent of our employees. However we can not agree with this request. Card checks are rife with abuse, a lack of oversight, and a result which leaves both parties with the knowledge of how specific employees feel about union membership. Through the years, Local 11 has time and again stated that hotel management treats employees who favor the union unfairly. I can speak from seven years of experience that there is no truth whatsoever to those accusations. In fact it is our view that we have no desire to know how any employee feels about union membership. Yet if our having knowledge of an employee's feelings toward union representation could affect our treatment of that employee, then why would the union insist upon a card check procedure which provides that very information in the process.

The New Otani Hotel & Garden insists that an NLRB supervised secret ballot election is the only acceptable means to achieve a result which is fair and objective. I don't think there is anyone in this room who would deny that the strength of this country is the willingness of our citizens to accept the ballot box as a means to lawfully and peacefully determine those issues most dear to us as a society. And for that reason, I simply cannot understand why our workers should not be granted those same privileges. It is time that the nation's labor laws reflected that their intent is not only to protect the worker's rights, but also to protect their right to choose.

Thank you for the opportunity to speak before the committee today.

APPENDIX G - WRITTEN STATEMENT OF CHARLES B. CRAVER, MERRIFIELD RESEARCH PROFESSOR OF LAW, THE GEORGE WASHINGTON UNIVERSITY, WASHINGTON, D.C.

TESTIMONY OF CHARLES B. CRAVER
MERRIFIELD RESEARCH PROFESSOR OF LAW
GEORGE WASHINGTON UNIVERSITY LAW SCHOOL

TESTIMONY BEFORE SUBCOMMITTEE ON WORK FORCE PROTECTIONS
COMMITTEE ON EDUCATION AND THE WORK FORCE
UNITED STATES HOUSE OF REPRESENTATIVES

HEARING ON PROPOSED BILL ON "WORKERS BILL OF RIGHTS"

WASHINGTON, DC
JULY 23, 2002

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to address this Committee. I appear here as an academic who specializes in the Labor and Employment Law field, and not as a representative of any organization. The views expressed by me are solely my own and should not be attributed to any organization or political party.

A House Bill would prohibit both neutrality agreements between labor organization and employers and the use of card checks to determine whether a majority of employees in an appropriate bargaining unit wish to obtain voluntary recognition from their employer on behalf of a labor organization they wish to have represent them for collective bargaining purposes. I would urge this Committee to reject these proposals.

Under the original NLRA, when a labor organization or group of employees petitioned for certification of a bargaining representative, the NLRB was authorized to "take a secret ballot of employees, *or utilize any other suitable method to ascertain such representatives*." [Emphasis supplied] The Labor Board was thus empowered to resort to secret ballot elections *or* to rely on card checks, employee union membership applications, or other similar indicators of employee support for labor organizations. In 1947, Congress amended the NLRA to require secret ballot elections for labor organizations seeking *certification* by the NLRB, but it did not prohibit *voluntary recognition* by employers who used non-secret ballot means to determine whether a majority of employees desired collective bargaining representation. There was no evidence of real abuse by employers and labor organizations pertaining to the grant of voluntary recognition without resort to secret ballot elections.

During the 1940s, 1950s, and even 1960s, a number of employers agreed to use different card-check mechanisms to determine if groups of their employees desired bargaining representation. In some cases, the employers also entered into neutrality agreements under which they promised not to influence employee sentiment through anti-union campaigns. When I was in practice in San Francisco almost thirty years ago, this practice was occasionally done by hospitals, then excluded from NLRA coverage. They would enter into neutrality agreements, in exchange for union promises not to try to organize the same employees for one or two years if they were unable to achieve majority support now. In some cases, secret ballot elections were conducted by respected neutrals or card checks were undertaken by such neutrals. If a majority of employees indicated support for the requesting labor organization, voluntary recognition was extended.

Although some employer organizations apparently believe that labor organizations may resort to improper tactics to coerce employers into voluntary recognition of unions that do not actually possess majority support, this is unlikely. Even when employers grant such recognition with a good faith belief that a majority of workers actually support the requesting labor organization, if the union does not really have majority support, the union accepting exclusive representation rights is guilty of a Section 8(b)(1)(A) violation and the employer is guilty of violations of Sections 8(a)(2) and 8(a)(1). [*ILGWU v. NLRB*, 366 U.S. 731 (1961)]

Employers that do not desire union representation, can easily challenge the organizing activities by labor unions. They have a Section 8(c) free speech right to oppose unions, so long as they do not resort to coercive threats of reprisals or promises of benefits. When a union requests voluntary recognition, an employer may reject that request and require the union to petition the NLRB for a secret ballot election. [*Linden Lumber Div.,Summer & Co. v. NLRB*, 419 U.S. 301 (1974)] As a result, employers only agree to make their own determination regarding union claims to majority support in cases in which they believe unions have lawfully obtained authorization cards from a majority of proposed bargaining unit members. If an employer had any reason to think that cards had been improperly obtained through misrepresentations or coercive measures, it would have a lawful duty to reject the union's request for voluntary recognition. In addition, any employer that did not wish to have union representation could reject the request for voluntary recognition and require the union to petition the NLRB for a secret ballot election. It would be under no obligation to enter into a neutrality agreement and would have the legally protected right to campaign against union representation.

Corporations usually enter into neutrality agreements only with labor organizations that currently represent other groups of their employees. The recent UPS-Teamsters Union bargaining agreement is typical in this regard. [Daily Labor Report (BNA) (July 17, 2002) at AA-1] UPS has agreed to remain neutral with respect to presently unrepresented workers the Teamsters Union would like to represent. Why would UPS agree to such an arrangement? To maintain good relations with the union that represents thousands of its other employees. If the Teamsters Union can obtain authorization cards from a majority of the unrepresented personnel, UPS will grant it voluntary recognition with respect to those individuals. If, on the other hand, the Teamsters Union is unable to do so, UPS will be obliged to refrain from granting recognition to that labor organization.

American employers have historically opposed union representation for their employees, preferring to have unfettered discretion to determine employee wages, hours, and working conditions without input from the employees or from representative labor organizations. Although union density peaked at about thirty-five percent of private sector workers by the late 1950s, union membership has declined sharply since that time to below ten percent of private sector workers today. While industrial and demographic changes have contributed to that decline, employer opposition has also been a significant factor. Many firms have lawfully exercised their right to oppose unionization, but other firms have resorted to unlawful coercive tactics and a number have discharged key organizers. These anti-union tactics have made it extremely difficult for union organizers to induce employees to support organizing efforts. Although a national survey by Professors Richard Freeman and Joel Rogers found that many employees would like some form of collective representation, most fear employer reprisals if they go against the anti-union wishes of their employers. [Richard Freeman & Joel Rogers, *Worker Representation and Participation Survey: Report on the Findings* (1994)]

Unlike employees in other industrial countries, American workers are generally employed on an "at-will" basis which allows their employers to terminate them for good cause, bad cause,

or no cause. They must either accept the terms of employment formulated by their employer or look for work elsewhere. They have no meaningful input regarding their wages, hours, and working conditions. As a result, while the real earnings of average workers have remained relatively constant over the past twenty-five years, shareholder wealth (even with the stock market declines of the past two years) and executive compensation have risen dramatically. CEOs of major corporations who used to earn forty times the average annual wage of rank-and-file employees now earn over five hundred times that figure.

Recent economic developments have starkly demonstrated the impotence of individual workers vis-a-vis their corporate employers. As firms like Enron, Worldcom, and Arthur Anderson have destroyed pension fund accumulations and employee job security, top executives have often sold their stock for millions as their firms began to decline. Workers were denied this right and deprived of the information they would have needed to appreciate the precarious nature of their stock holdings. Had they been represented by effective labor organizations, those unions may have more carefully monitored questionable firm accounting practices and demanded greater employee freedom when it came to the ability to sell company stock contained in their retirement accounts. If anything, Congress should be considering ways to make it easier for employees seeking collective bargaining representation to attain that goal rather than contemplating ways to make it easier for corporate leaders to deny their employees that fundamental human right.

I cannot understand this Committee's desire to prohibit reliance upon card checks as a basis for voluntary employer recognition of labor organizations. Even the U.S. Supreme Court has recognized the validity of card-based remedial bargaining orders. [*NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969)] Had the Court doubted the validity of such cards as indicators of employee sentiment, it would not have permitted the Labor Board to issue bargaining orders requiring employers to recognize and bargain with unions that had demonstrated majority support though authorization cards. There are undoubtedly instances in which individual employees are induced to sign authorization cards because of overt misrepresentations or even threats, but these few instances of improper – and unlawful – behavior should not be used as a basis to ignore the thousands of authorization cards signed by employees who clearly wish to obtain representation. Several Canadian Provinces permit the use of authorization-card based certification, and they have not encountered serious difficulties with respect to this procedure.

Every few years, Congressional testimony indicates that government agents working for such departments as the IRS have overstepped their authority. On rare occasions, House or Senate members are found to have engaged in improper conduct. When these abuses are discovered, no one would seriously suggest that the IRS be disbanded or that all members of Congress be held personally accountable for the aberrational behavior of a few persons. The current provisions in the NLRA prohibit coercive behavior by representatives of labor organizations.

Over the past several decades, the primary abuses of employee rights have not been accomplished by labor organizations whose membership roles have been declining, but by

employers who have worked diligently to prevent workers from having any meaningful voice with respect to their terms and conditions of employment. Immoral employers can resort to unlawful threats without any significant monetary cost. Union organizers do not possess the authority to threaten employee job security. Only employers have the power to threaten plant relocations, plant closures, and retaliatory discharges. The most the NLRB is likely to do to employers making unlawful threats is to order them to refrain from such conduct in the future.

Every year, employers that are targets of union organizing campaigns terminate thousands of employees who support those campaigns. Over the past several decades, different Congressional committees have heard tragic testimony from individuals who have been illegally terminated because of their exercise of organizing rights protected under the NLRA. Although employers that illegally discharge key organizers during union recognition drives may be required to reimburse those workers for their lost wages, no other monetary penalty is imposed. It only takes one or two illegal discharges during organizing campaigns to chill the statutory rights of all other employees who may truly desire bargaining representation. The minimal back pay cost to the firms involved is considered a cheap cost of remaining non-union.

If this Committee really wishes to protect the rights of individual employees, it should amend the NLRA to require employers who unlawfully discharge employees during organizing campaigns to pay the adversely affected workers three or four times the wages they have lost. It might also authorize the award of compensatory damages to cover the emotional distress suffered by illegally discharged workers and even punitive damages – both of which may now be recovered by victims of discriminatory treatment under Section 1981A of the civil rights statutes. In addition, Section 10(l) of the NLRA which requires the Labor Board to seek temporary restraining orders against certain union unfair labor practices should be amended to require the NLRB to seek temporary reinstatement orders for individual employees unlawfully discharged for protected activity during union organizing campaigns. This would greatly diminish the chilling effect of such terminations.

Thank you again for permitting me to express my views to this Committee.

APPENDIX H - WRITTEN STATEMENT OF DANIEL V. YAGER, SENIOR VICE PRESIDENT AND GENERAL COUNSEL, LPA, THE LABOR POLICY ASSOCIATION, WASHINGTON, D.C.

TESTIMONY OF

DANIEL V. YAGER
SENIOR VICE PRESIDENT AND GENERAL COUNSEL
LPA, THE LABOR POLICY ASSOCIATION

TESTIMONY BEFORE THE
SUBCOMMITTEE ON WORKFORCE PROTECTIONS
COMMITTEE ON EDUCATION AND THE WORKFORCE
UNITED STATES HOUSE OF REPRESENTATIVES

HEARING ON
COMPULSORY UNION DUES AND CORPORATE CAMPAIGNS

WASHINGTON, DC
JULY 23, 2002
(02-88)

1015 FIFTEENTH STREET | SUITE 1200
WASHINGTON DC 20005
202.789.8670 | FAX 202.789.0064 | WWW.LPA.ORG

Mr. Chairman, and Members of the Subcommittee:

My name is Daniel V. Yager and I serve as Senior Vice President and General Counsel for LPA, the Labor Policy Association. I am pleased to appear before you today to present the views of LPA regarding compulsory union dues and corporate campaigns. This hearing provides a long overdue examination by Congress of one of the most serious weaknesses in our labor laws today: the erosion of employee choice on the issue of union representation because of so-called card check recognition agreements forced on employers through ruthless "corporate campaigns." Because we believe this practice should be discontinued, we strongly support Chairman Norwood's legislation—H.R. 4636, the "Workers' Bill of Rights," which would make card check recognition an unfair labor practice.

As you may know, LPA is a public policy advocacy organization representing senior human resource executives of over 200 leading employers doing business in the United States. LPA provides in-depth information, analysis, and opinion regarding current situations and emerging trends in labor and employment policy among its member companies, policy makers, and the general public. Collectively, LPA members employ over 19 million people worldwide and over 12 percent of the U.S. private sector workforce. LPA's members are employers—with both represented and non-represented workforces—covered by the National Labor Relations Act. LPA has played an active role over the years in congressional consideration of statutory changes in the labor laws. We also seek to help shape the law through *amicus curiae* briefs filed with the National Labor Relations Board and the courts. In addition, we report extensively on labor law developments through our newsletter *NLRB Watch* and other publications.

One of the cornerstones of American labor policy has been that unionization is a matter of employee choice manifested through a secret ballot election where every employee has a chance to register his or her position in a confidential manner. Yet, because in recent years fewer employees have chosen to elect unions in traditional secret ballot elections, organized labor has adopted a different approach called card check organizing.[1] Using this approach, employers are pressured—typically through a strategy called a "corporate campaign"—into recognizing unions on the basis of union authorization cards signed in the presence of a union organizer. These agreements are often accompanied by the employer's agreement to remain neutral while the union seeks the employees' signatures. Where a union is recognized on the basis of a card check, the result may be viewed as a deal between the employer and the union that the latter will represent employees who have never had an opportunity to declare their position in a confidential manner.

How Card Check Organizing Works

Historically, under the National Labor Relations Act, the decision as to whether a union will serve as a collective bargaining representative of a group of employees is made through a secret ballot election. The election typically takes place after the union has made a required showing of sufficient interest among the employees—at least 30 percent of those it is seeking to represent—in having an election. This interest is usually demonstrated by signed union authorization cards that indicate a desire by the employee to be represented by the union or to have an election to determine that issue. When the

election is held—usually within 60 days—it is supervised by the National Labor Relations Board, which ensures that employees cast their ballot in a confidential manner with no coercion by either management or the union.

However, the law has allowed an exception in situations where an election may be superfluous because it is clear to the employer that the union enjoys the support of a majority of the employees. Thus, under current law, when presented with union authorization cards signed by more than 50 percent of the employees, the employer may voluntarily recognize the union. This has been tolerated under the law despite the absence of numerous safeguards in the so-called card check process compared to those that exist in an NLRB representation election [see Chart 1].

How Unions Get Employees to Sign Cards

Unlike a secret ballot election, union authorization cards are signed in the presence of an interested party—a pro-union co-worker or an outside union organizer—with no governmental supervision. There is no question that this absence of supervision has resulted in deceptions, coercion, and other abuses over the years. Even in the best of circumstances, an employee is likely to be subject to peer pressure from other pro-union employees to sign the card. At worst, the employee may be subjected to deception and even threats of physical harm by organizers to get them to sign the cards. The card-signing process is loosely regulated and almost always escapes the attention of authorities. However, on occasion, a courageous employee has brought to the attention of the NLRB or the courts coercive activity, which has been documented in numerous decisions over the years [see Appendix].

For example, in *HCF, Inc. d/b/a Shawnee Manor*,[2] an employee testified that a co-employee soliciting signatures on union authorization cards threatened that, if she refused to sign, "the union would come and get her children and it would also slash her tires." Incredibly, the Clinton Board refused to find the union responsible for the misconduct of the employee card solicitor. While acknowledging that workers assisting a union in card solicitations are typically acting as union agents, the Board concluded that "alleged threats of violence, even when made in the course of card solicitation, cannot be construed by any reasonable person as representing 'purported union policies.'"

Yet, even where abuses such as those in *Shawnee Manor* do not occur, union authorization cards are an inadequate method for determining employee choice, as the U.S. Supreme Court has acknowledged:

> The unreliability of the cards is not dependent upon the possible use of threats.... It is inherent, as we have noted, in the absence of secrecy and the natural inclination of most people to avoid stands which appear to be nonconformist and antagonistic to friends and fellow employees.[3]

Thus, the Court, in an opinion authored by Justice William O. Douglas, concluded that "in terms of getting on with the problems of inaugurating regimes of industrial peace, the policy of encouraging secret elections under the Act is favored."[4]

Indeed, even organized labor has sung the virtues of secret ballot elections when the issue has been whether or not a union should continue to represent a group of employees

Chart 1: Procedural Safeguards: Election v. Card Check

The following side-by-side comparison explains some of the procedural safeguards found in the NLRB election process along with any counterpart card check protections:

Election: An NLRB-approved notice that explains the workers' rights must be posted by the employer at least three days prior to the election.

Card Check: *Workers are informed of their rights only to the extent articulated by the union organizer.*

Election: "Captive audience" speeches within 24 hours of the election are prohibited.

Card Check: *Employees are subject to unrebutted, pro-union speeches up until the time they sign an authorization card.*

Election: The election is conducted by an agent of the NLRB in conjunction with an equal number of observers selected by the union and employer.

Card Check: *Union authorization cards are solicited in the presence of union organizers.*

Election: The names of prospective voters are compared against a previously established eligibility list before they may cast their ballots.

Card Check: *Anyone may sign union authorization cards. Although forgery of authorization cards is prohibited, there is no safeguard that prevents forgeries before the fact.*

Election: The election ballot box is physically inspected and sealed by the NLRB agent immediately prior to voting.

Card Check: *The union maintains control over signed authorization cards.*

Election: The NLRB agent retains positive control over the ballots at all times.

Card Check: *The union retains control over authorization cards at all times.*

Election: The ballots are secret: no name or other identifying information appears on the ballot to indicate how an employee voted.

Card Check: *Both the employer and the union know which employees signed authorization cards.*

Election: Employees may not be assisted in casting their votes by agents of the union or employer.

Card check: *Union organizers may fill out and sign authorization cards on behalf of the workers with their express or implied permission, regardless of whether they have read the cards.*

Election: Electioneering near the polls is prohibited.

Card Check: *Solicitation of authorization cards may be accompanied by any pro-union propaganda that does not rise to a material misrepresentation regarding the consequences of signing the card.*

Election: Neither the employer nor the union may engage in coercive or threatening conduct prior to the election.

Card Check: *The union may not use threats or coercion in order to obtain signed cards nor may the employer use threats or coercion to prevent cards from being signed.*

Election: Neither the employer nor the union may grant or promise benefits prior to the election.

Card Check: *The union may not promise or grant benefits in order to obtain signed cards nor may the employer make promises or grant benefits to prevent cards from being signed.*

Election: The ballot box is opened, and the votes are counted, by the NLRB agent in the presence of the employer and union observers.

Card Check: *The employer may, but is not required to, request that a neutral party compare the names on authorization cards to the employer's payroll list.*

who apparently no longer support it. In a recent brief, the AFL-CIO, quoting the U.S. Supreme Court, asserted to the NLRB:

> a representation election "is a solemn...occasion, conducted under safeguards to voluntary choice," ...other means of decision-making are "not comparable to the privacy and independence of the voting booth," and [the secret ballot] election system provides the surest means of avoiding decisions which are "the result of group pressures and not individual decision[s]."[5]

Organized labor has also been quick to embrace the secret ballot election abroad. For example, on February 28, 2001, AFL-CIO President John Sweeney wrote that "The secret ballot is a fundamental, democratic right...and the denial of a secret ballot in this election will mean the denial of the freedom of association."[6] Mr. Sweeney was writing about a union election in Mexico during which employees were required to vote by declaring their preference in front of union and employer representatives. Likewise, some members of Congress have heralded the secret ballot election in similar cases. For example, in a letter sent on August 29, 2001, Rep. George Miller (D-CA) and 15 other Members of Congress wrote: "[W]e feel the secret ballot election is absolutely necessary in order to ensure that workers are not intimidated into voting for a union they might not otherwise choose."[7]

A recent incident in upstate New York highlights how union leaders hold out secret ballot elections as sacrosanct when it suits their purposes. Frontier Communications recently agreed to recognize the Rochester Telephone Workers Association, an independent union.[8] This did not sit well with the Communications Workers of America, which filed a charge with the NLRB. CWA Local 1170 President Linda McGrath stated: "Ordinarily, the employees of a facility...would be allowed to hold an election to choose their own union, not to have one chosen for them by the company.... By choosing a union to represent them, the company violated the employees' rights."[9]

Ms. McGrath's point is that it should be employees—and not the employer—who decide who should represent them. This point applies equally as to whether the employees should be represented by a union at all: the NLRA should empower employees to decide issues of representation, not employers and unions.

Use of Corporate Campaigns to Get Employers to Agree to Card Checks

Historically, card check recognition has been tolerated because of an assumption that, with a legal right to refuse card check recognition, an employer would only agree to forego an election if it was clear to the employer that such an election would be superfluous because of the strong employee support for the union. Regardless of whether this assumption was valid in previous years, in recent years, employers are more likely to be forced into recognition by a strategy called a "corporate campaign."[10]

Although there is no simple definition for the term "corporate campaign," the substance of the strategy is now well documented by academics, the courts, and the unions themselves.[11] The U.S. Court of Appeals for the District of Columbia Circuit summed up the term well when it stated that a corporate campaign:

> encompasses a wide and indefinite range of legal and potentially illegal tactics used by unions to exert pressure on an employer. These tactics may include, but are not limited to, litigation, political appeals, requests that regulatory agencies investigate and pursue employer violations of state or federal law, and negative publicity campaigns aimed at reducing the employer's good will with employees, investors, or the general public.[12]

The AFL-CIO likewise explains the process as follows:

> A coordinated corporate campaign applies pressure to many points of vulnerability to convince the company to deal fairly and equitably with the union. In such a campaign, the strategy includes workplace actions, but also extends beyond the workplace to other areas where pressure can be brought to bear on the company. It means seeking vulnerabilities in all of the company's political and economic relationships--with other unions, shareholders, customers, creditors and government agencies--to achieve union goals.[13]

A more graphic description of a corporate campaign has been provided by AFL-CIO Secretary-Treasurer Richard Trumka:

> Corporate campaigns swarm the target employer from every angle, great and small, with an eye toward inflicting upon the employer the death of a thousand cuts rather than a single blow.[14]

Corporate campaigns can involve a seemingly unlimited number of individual pressure tactics. For example, one common tactic is the use of legal and regulatory harassment, as described in *A Troublemaker's Handbook*--a veritable how-to manual for corporate campaigns:

> Private companies are subject to all sorts of laws and regulations, from the Securities and Exchange Commission to the Occupational Safety and Health Act, from the Civil Rights Act to the local fire codes. Every law or regulation is a potential net in which management can be snared and entangled. A complaint to a regulatory agency can cause the company managerial time, public embarrassment, potential fines, and the cost of compliance. One well-placed phone call can do a lot of damage.[15]

One UFCW official, in an article about how his union drove a grocery concern out of business, explained this strategy as "putting enough pressure on employers, costing them enough time, energy and money to either *eliminate them* or get them to surrender to the union."[16]

Examples of Card Check Organizing

There are numerous examples in recent years of unions using corporate campaigns to try to coerce employers into granting card check recognition. Three in particular—Family Foods, Levi Strauss & Co., and MGM Grand -- are noteworthy.

Family Foods. The Family Foods supermarket chain, based in Kalamazoo, was faced with a union organizing campaign by the UFCW in the late 1980's. In 1988, the UFCW lost a representation election conducted by the NLRB. The union filed charges with the

NLRB alleging that the employer had committed unfair labor practices during the organizing drive, and the NLRB agreed, ordering a new election.

However, the union opted not to pursue traditional organizing. Instead, the union decided to pursue a corporate campaign against Family Foods seeking to force them to recognize the union or drive them out of business.[17] The union began by organizing a boycott and focused on various customer groups that would be sensitive to the union's pressure campaign.

The result was not unionization of the facility. As stated by Joe Crump, a former union official:

> After a three-year struggle, the battle with Family Foods is over. Do we represent the employees? No. The company went out of business. The good news is that some of the stores were purchased by companies already under a [union] contract. A couple stores are empty, but I am sure that many of their former patrons are now shopping in unionized stores. Perhaps even more important is the message that had been sent to nonunion competitors: There is no "free lunch" in our jurisdiction.[18]

Consequently, the union decided to forgo an NLRB election and instead opted to wage a corporate campaign against the company. When the company refused to meet union demands for recognition, the union drove the company out of business, thus sending a strong signal to other employers that if they refuse the union's demand for recognition they could face the same type of corporate campaign.

Levi Strauss & Co. The 1994 acceptance by Levi Strauss & Co. of a card check agreement proposed by UNITE shows how employees can be pressured into signing authorization cards and denied their right to vote on representation. Under the agreement, the company agreed to recognize the union without an election at any plant where the union could demonstrate majority support, verified by an independent third party. After the agreement was signed, UNITE claimed to have organized three Levi plants or roughly 1,900 workers through card checks.

Many Levi Strauss employees bitterly resisted UNITE's card check strategy. At Levi's Roswell, New Mexico, plant, UNITE began organizing employees under the card check agreement in December 1996. The company provided the union access to the plant, as was required under the national card check agreement, and UNITE visited many employees at their homes in the evenings.[19]

According to employee accounts, the UNITE representatives played down the importance of the cards. They argued that the cards only demonstrated the employee's interest in having a union and did not commit them to unionization. Thus, the union was able to gather a large number of signatures quickly.

A group of Levi's employees discovered that the union and the company had a card check agreement and that by signing the authorization card, they had committed themselves to being represented by UNITE. On February 12, 1997, plant management received a petition signed by over half of the employees in the plant, indicating that they did not want a union. A smaller group of these employees sent letters to UNITE, requesting that the union return their signed cards, a request the union refused. In

response to the petition, the union and the company held a joint meeting at the plant regarding the authorization cards and card revocation. On March 7, 1997, UNITE and Levi's brought in a Roman Catholic priest to count the cards, pursuant to the national card check agreement. More than 50 percent of the employees had signed cards, even though many of these employees had later signed the petition as well.

Several employees who had signed the petition filed an unfair labor practice charge, claiming that the petition served as a revocation of the cards. The NLRB Regional Director in Phoenix rejected the charge, even though he acknowledged that Levi's "received a petition signed by a majority of employees...stating that the signers did not want to be represented by the Union."[20] The employees' appeal was ultimately rejected by NLRB General Counsel Fred Feinstein.[21]

MGM Grand. In the case of the MGM Grand Hotel, the hotel had opened for business in December 1993 and, for nearly three years, operated nonunion while the Hotel Employees & Restaurant Employees International Union (HERE) waged an extensive corporate campaign against the company demanding that it agree to a card check recognition. The tactics HERE used to pressure MGM Grand included the union's use of its political clout in Detroit to threaten to deny the MGM Grand a license necessary to open a major new casino in that city. The campaign also included negative reports issued to investment analysts, a sit-in of 500 people in the hotel's lobby, and numerous public demonstrations.[22]

Ultimately, on November 15, 1996, the company voluntarily recognized HERE as the exclusive collective bargaining representative of its employees on the basis of a card check. At that time, there were approximately 2,900 employees. This number increased to approximately 3,100 employees by October 1997.

The hotel's recognition of the union was not well received by the employees. Many believed that their co-employees had been coerced into signing the cards, including threats of being fired or deported. One employee was reportedly even told that if management learned she was gay, she would be fired by the company if she didn't sign a card so that the union could protect her.[23] Events soon made it clear that a majority of the employees did not support the union. Petitions for an election—signed by over 60 percent of the employees—were filed by the employees with the NLRB regional office on April 17, 1997, September 16, 1997, and November 6, 1997. These were dismissed on the basis that a "reasonable time to bargain" had not elapsed.

Finally, on November 8, 1997, two days after the employees filed the third petition, the company announced to its employees that it had reached a tentative collective-bargaining agreement with HERE and on November 13, 1997, two days before the one-year anniversary of the company's recognition of HERE, the union held a ratification vote at its headquarters. Although the voting was open to all employees, fewer than one-third of the bargaining unit employees participated in the ratification vote, and the collective bargaining agreement was approved by a vote of 740 to 103.

Eventually, a divided National Labor Relations Board upheld the decisions by the regional office to deny the employees a secret ballot election.[24] Under the law, the employees could not appeal the Board's decision, because federal courts are barred from considering appeals from employees in cases involving NLRB election processes.

Furthermore, once the hotel and the union signed a collective bargaining agreement, the employees were barred by the so-called contract bar doctrine from seeking an election for the life of the contract.

Why Organized Labor Prefers Card Checks

Organized labor has made no secret about its pursuit of card check organizing. Recently, in his maiden speech as the new President of the UAW, Ron Gettelfinger reportedly pledged that the union "would use its leverage whenever possible to pressure employers to remain neutral during union recruiting drives and [agree to] so-called 'card checks'...."[25] Meanwhile, HERE claims that 80 percent of the 9,000 workers the union organized last year never cast a ballot.[26]

A 1999 study undertaken for the AFL-CIO's George Meany Center for Labor Studies, entitled "Organizing Experiences Under Union-Management Neutrality and Card Check Agreements," shows why card checks are so important to organized labor. Using a traditional NLRB secret ballot election, unions only win about half the time (53.6 percent in 2001). The study, which examined union organizing experiences under 114 card check/neutrality agreements, found that unions scored victories in 78 percent of the campaigns where card checks were used and 86 percent where this was coupled with employer neutrality.

Secret Ballot Surest Means for Ensuring Employee Choice

The decision by a unit of employees regarding representation by a union is a decision that should be made by a majority of those individual employees after hearing views on as many sides of the issue as possible. The American industrial relations system is founded on this principle. While not without flaws, the best way for resolving the question of representation continues to be by employees expressing their opinion in a secret ballot election conducted by the National Labor Relations Board. The secret ballot election process, which in the vast majority of situations occurs within 60 days after it commences, guarantees confidentiality and protection against coercion, threats, peer pressure, and improper solicitations and inducements by either the employer or the union.

Unfortunately, this system is being threatened by an alternative procedure, known as card check recognition, which lacks these same protections. On the critical issue of union representation, employers should not be allowed to substitute their own judgment for that of their employees. There is simply no acceptable alternative to a secret ballot election for assessing those employees' views. If the employer and the union ignore those procedures, union representation becomes nothing more than a deal between the employer and the union that the latter will represent the former's employees. Ideally, the law should prohibit such agreements, and we would encourage this committee to consider legislation, such as H.R. 4636, to provide this prohibition.

Thank you for giving me the opportunity to express our organization's position on these issues and I will be happy to answer any questions.

Endnotes

[1] For a more thorough discussion of card check organizing and its implications, *see* DANIEL V. YAGER, TIMOTHY J. BARTL, JOSEPH L. LOBUE, EMPLOYEE FREE CHOICE: IT'S NOT IN THE CARDS (1998).

[2] 321 N.L.R.B. 1320 (1996)

[3] *NLRB v. Logan Packing Co.*, 386 F.2d 562, 566 (4th Cir. 1967), *cited in NLRB v. Gissel*, 395 U.S. 575, 602 n.20 (1969).

[4] *Linden Lumber v. NLRB*, 419 U.S. 301, 307 (1974).

[5] Joint brief of the AFL-CIO *et al.* in *Chelsea Industries & Levitz Furniture Co. of the Pacific, Inc.*, Nos. 7-CA-36846, *et al.* at 13 (May 18, 1998), *quoting NLRB v. Gissel Packing Co.*, 395 U.S. 575, 602 (1969) and *Brooks v. NLRB*, 348 U.S. 96, 99, 100 (1954).

[6] Mark Stevenson, *Fox Faces Test on Labor Policy*, AP ONLINE, March 2, 2001.
[7] Letter from Rep. George Miller et al. to Junta Local de Conciliacion y Arbitraje del Estado de Puebla, Aug. 29, 2001.
[8] Eric Walter, *Frontier, Union Face Off*, HENRIETTA POST, Jul. 19, 2002.
[9] *Id.*
[10] For a comprehensive study of corporate campaigns, *see* JAROL B. MANHEIM, THE DEATH OF A THOUSAND CUTS (2001).

[11] *See, e.g.*, *Diamond Walnut Growers v. NLRB*, 113 F.2d 1259 (D.C. Cir. 1997), *cert. denied*, 118 S. Ct. . 1299 1998) (generally discussing union corporate campaign tactics); *Food Lion v. United Food & Commercial Workers Int'l Union*, 103 F.3d 1007, 1014 n.9 (D.C. Cir. 1997) (defining the term "corporate campaign"). *See also* INDUSTRIAL UNION DEPARTMENT, AFL-CIO, DEVELOPING NEW TACTICS: WINNING WITH COORDINATED CORPORATE CAMPAIGNS (1985); DAN LA BOLTZ, A TROUBLEMAKERS HANDBOOK (1991); SERVICE EMPLOYEES INTERNATIONAL UNION, CONTRACT CAMPAIGN MANUAL (1988); Herbert R. Northrup, *Union Corporate Campaigns and Inside Games as a Strike Form*, 19 EMPL. REL. L.J. 507 (1994); Herbert R. Northrup, *Corporate Campaigns: The Perversion of the Regulatory Process*, 17 J. LAB. RES. 345 (1996).

[12] *Food Lion*, 103 F.3d at 1014 n.9.

[13] Industrial Union Department, AFL-CIO, *supra* note 11, at 1.

[14] *Union Officials Stress International Scope of Organizing, Bargaining Campaigns*, DAILY LAB. REP. (BNA), A-5 (Nov. 16, 1992).

[15] La Botz, *supra* note 11, at 127 (emphasis in original).

[16] Joe Crump, *The Pressure is On: Organizing Without the NLRB*, 18 LAB. REL. REV. 33, 35-36 (1991) (emphasis added).

[17] *See* Crump, *supra*, note 16.
[18] *Id.* at 35.
[19] *Levi Strauss Agrees to Recognize UNITE As Agent for 550 Roswell, N.M., Employees*, DAILY LAB. REP. (BNA), A-2 (Mar. 11, 1997); *Levi Plant Zipped Up*, WORK IN PROGRESS [AFL-CIO weekly online newsletter] (Jan. 28, 1997).
[20] Letter from Cornele A. Overstreet, Regional Director, NLRB Region 28 to David Locke, Levi Employee (May 29, 1997).
[21] Letter from Yvonne T. Dixon, Director, NLRB Office of Appeals, to David Locke, Levi's Employee (Mar. 9, 1998).
[22] Michelle Amber, *First Pact Between HERE, MGM Grand Calls for On-site Child Care Facility*, DAILY LAB. REP. (BNA), No. 225, A-1 (Nov. 21, 1997); Aaron Bernstein, *Sweeney's Blitz*, BUS. WEEK, Feb. 17, 1997, at 56; Steven Greenhouse, *Unions, Bruised in Direct Battles With Companies, Try a Roundabout Tactic*, N.Y. TIMES, Mar. 10, 1997, at B-7.

[23] Lisa Kim Bach, *MGM Workers Seek to Oust Culinary*, LAS VEGAS REV. J., Apr. 23, 1997, at D-1.

[24] *MGM Grand Hotel, Inc.*, 329 NLRB No. 50 (Sept. 30, 1999).

[25] *Auto Union Chief Vows to Bolster Ranks*, REUTERS, June 8, 2002.

[26] David Wessel, *Aggressive Tactics by Unions Target Lower-Paid Workers*, WALL STREET J., Jan. 31, 2002, at A-1.

POLICYBRIEF

Labor Policy Association

Growing Use of Card Check Recognition Cuts Employee Choice Out of Union Organizing

H.R. 4636, the "Workers' Bill of Rights," Would Ban Company-Union Deals Which Impose Union Representation Without a Secret Ballot Election

One of the cornerstones of American labor policy has been that unionization is a matter of employee choice. Yet, because in recent years fewer employees have chosen to elect unions in traditional secret ballot elections, organized labor has adopted a different approach called card check organizing. Using this approach, employers are pressured into recognizing unions on the basis of union authorization cards signed in the presence of a union organizer. The result is a deal between the employer and the union that the latter will represent employees who have never had an opportunity to declare their position in a confidential, uncoerced manner. H.R. 4636, the "Workers' Bill of Rights," introduced by Rep. Charlie Norwood (R-GA), would make card check agreements between employers and unions an unfair labor practice.

How Card Check Organizing Works Historically, under the National Labor Relations Act, the decision as to whether a union will serve as a collective bargaining representative of a group of employees is made through a secret ballot election. This election is supervised by the National Labor Relations Board, which ensures that employees cast their ballot in a confidential manner with no coercion by either management or the union. However, the law has allowed an exception in situations where an election may be superfluous because it is clear to the employer that the union enjoys the support of a majority of the employees. Thus, under current law, when presented with union authorization cards signed by more than 50% of the employees, the employer may voluntarily recognize the union.

How Unions Get Employees to Sign Cards Unlike a secret ballot election, union authorization cards are signed in the presence of an interested party—a union organizer—with no governmental supervision. At best, the employee may be subject to peer pressure from other pro-union employees to sign the card. At worst, the employee may be subjected to deception and threats by organizers to get them to sign the cards, as has been documented in numerous court decisions over the years (see attached list). In one recent case, an employee was told by a co-employee that, if she refused to sign a card, "the union would come and get her children and it would also slash her car tires." *HCF, Inc. d/b/a Shawnee Manor*, 321 NLRB No. 171 (Aug. 27, 1996).

How Unions Get Employers to Agree to Card Checks While the employer has a legal right to refuse card check recognition, recognition has usually been forced in recent years by pressure put on the employer by a so-called "corporate campaign." One UFCW official, in an article about how his union drove a grocery concern out of business, explained this strategy as "putting enough pressure on employers, costing them enough time, energy and money to either *eliminate them* or get them to surrender to the union." Joe Crump, *The Pressure is On: Organizing Without the NLRB*, 18 Lab. Relations Rev. 33, 35-36 (1991) (emphasis added).

WWW.LPA.ORG 1015 FIFTEENTH STREET, NW SUITE 1200 WASHINGTON, DC 20005-2605
TEL 202.789.8670 FAX 202.789.0064 INFO@LPA.ORG

POLICYBRIEF

Corporate campaigns—described by AFL-CIO Secretary-Treasurer Richard Trumka as "inflicting upon the employer the death of a thousand cuts"—involve harassment of customers, lawsuits, complaints filed with government agencies, negative publicity and numerous other tactics.

Why Organized Labor Prefers Card Checks Organized labor has made no secret of its interest in card check organizing. Recently, in his maiden speech as the new President of the UAW, Ron Gettelfinger pledged that the union "would use its leverage whenever possible to pressure employers to remain neutral during union recruiting drives and [agree to] so-called 'card checks'...." A 1999 study performed for the AFL-CIO's George Meany Center for Labor Studies, entitled "Organizing Experiences Under Union-Management Neutrality and Card Check Agreements," shows why card checks are so important to organized labor. Using a traditional, NLRB secret ballot election, unions only win about half the time (50.4% in FY 1998). The study, which examined union organizing experiences under 114 card check/neutrality agreements, found that unions scored victories in 78 percent of the campaigns where card checks were used and 86 percent where this was coupled with employer neutrality.

NLRB Denies Employees Elections Where Card Check Agreements in Place If the employer voluntarily recognizes the union on the basis of a card check, any attempt by the employees to obtain an NLRB-conducted secret ballot election to get rid of the union can be barred for a year or more while the employer and union are engaged in bargaining. While the employer and the union are negotiating the first collective bargaining agreement, the NLRB will bar any election from occurring, even if a majority of the employees sign a petition for an election. *MGM Grand Hotel*, 329 NLRB No. 50 (Sept. 30, 1999). Once the collective bargaining agreement is signed, the NLRB's "contract bar" rule prevents any election from occurring during the first three years of the contract. Similarly, an employer who is being pressured by a union to agree to a card check may not obtain an NLRB-conducted election to resolve the issue unless the union formally asks the employer for recognition. *New Otani Hotel & Garden*, 325 NLRB No. 168 (June 17, 1998).

AFL-CIO Support for Secret Ballot Elections Organized labor has embraced the concept of requiring secret ballot elections where the issue is whether or not a union should continue to represent a group of employees who no longer support it. In a recent brief, the AFL-CIO, quoting the U.S. Supreme Court, asserted to the NLRB: "a representation election "is a solemn...occasion, conducted under safeguards to voluntary choice," ...other means of decision-making are "not comparable to the privacy and independence of the voting booth," and [the secret ballot] election system provides the surest means of avoiding decisions which are "the result of group pressures and not individual decision[s]." Joint brief of the AFL-CIO *et al.* in *Chelsea Industries and Levitz Furniture Co. of the Pacific, Inc.*, Nos. 7-CA-36846, *et al.* at 13 (May 18, 1998), *quoting NLRB v. Gissel Packing Co.*, 395 U.S. 575, 602 (1969) and *Brooks v. NLRB*, 348 U.S. 96, 99, 100 (1954). Yet, labor continues to resist secret ballot when the issue is whether to *choose* a union.

Secret Ballot Ensures Employee Choice Because the secret ballot election system provides the surest means of guaranteeing that union representation is a decision made by the employees—not the employer and the union—Congress should pass H.R. 4636, the "Workers' Bill of Rights," to restore employee choice to the union representation process.

APPENDIX I – SUBMITTED FOR THE RECORD, STATEMENT OF CONGRESSMAN DENNIS KUCINICH, SUBCOMMITTEE ON WORKFORCE PROTECTIONS, COMMITTEE ON EDUCATION AND THE WORKFORCE

Congressman Dennis Kucinich
Opening Statement
Compulsory Union Dues and Corporate Campaigns
July 23, 2002

- Thank you Mr. Chairman, and let me welcome all of our witnesses.

- The rights of workers to organize themselves into a union and bargain collectively are fundamental rights. These rights have been guaranteed by international laws, and by basic, longstanding US laws. The National Labor Relations Act, signed in 1935, guarantees employees the right to organize and chose their bargaining representative. The Act also protects employees from retaliation by their employer for exercising their rights under the NLRA. Section 8 of the Act makes it an Unfair Labor Practice for an employer to "interfere with, restrain, or coerce employees" in the exercise of their rights to organize and bargain collectively. Specifically, employers are barred from discharging or otherwise discriminating against an employee because he or she has engaged in union activity or has filed charges or given testimony under the NLRA.

- Unfortunately, there is a large disconnect between the laws on the books and the laws as they exist for workers in their day to day lives. Each year, thousands of workers are fired for exercising their right to organize. There is little recourse for workers whose rights are violated, and the law imposes little penalty on those who choose to ignore the law. Human Rights Watch Executive Director Kenneth

Roth summarized a recent report by that organization on the right to organize in the United States as follows:

- Our findings are disturbing to say the least. Loophole-ridden laws, paralyzing delays, and feeble enforcement have led to a culture of impunity in many areas of U.S. labor law and practice. Legal obstacles tilt the playing field so steeply against workers' freedom of association that the United States is in violation of international human rights standards for workers.

- The decision for employees to be represented by a union should be an independent choice by the employees. Card check certification is a typical way that employees can show majority support to be represented by a union. Employers have always had the right to voluntarily recognize a union.

- Even if employees do show majority support with a card check, employers still have the upper hand. Employers can exercise their right to free speech to urge against union representation. If an employer had any reason to think that cards had been improperly obtained through misrepresentations or coercive measures, it could reject the union's request for voluntary recognition. In addition, any employer that did not wish to have union representation could reject the request for voluntary recognition and require the union to petition the NLRB for a secret ballot election. <u>There is no legitimate need for Congress to prohibit card check certification or infringe on the voluntary decision of an employers to recognize a union</u>.

- Legislation that would forbid card check recognition, HR 4636, is merely a thinly veiled attack on unions, which seems to be an increasingly prevalent theme in this subcommittee. Last November, this subcommittee held a hearing on the enforcement of *Beck* rights. At the same time as the committee questioned that *Beck* rights were being adequately enforced, just the opposite is the case. It explored the notion that organizing costs are an expense unrelated to collective bargaining – even though it defies logic how workers in an unorganized industry can possibly collectively bargain successfully.

- And now, this committee is going down the same road again. Not only that, but some on the committee have gone so far as to draw parallels between accounting practices at unions, and the accounting scandals at Enron and WorldCom. This is an outrageous, wholly unrealistic comparison. The financial collapses of Enron and WorldCom have resulted in the loss of millions of dollars in employee and retiree pensions. They have resulted in the loss of tens of thousands of jobs. Enron and WorldCom were not accountable to their workers, and when all is said and done, no worker is likely ever to receive what they were due. Individuals lost thousands and thousands of dollars. Total losses number in the billions.

- On the other hand, union dues are mere pennies per hour. The two situations cannot even be measured on the same scale. Workers and their families are facing financial ruin because of corporate

mismanagement. And this committee is trying to assert that workers are losing because of union dues?

- If we learn anything from recent wave of corporate bankruptcies, it is that it is the workers who have lost. The executives who held the biggest stake in the companies have not lost. This committee's thinly veiled attempts to fight unionization only serve to harm workers by weakening labor laws, pension protections, and other laws that workers desperately need when the Enrons and WorldComs of the world go bankrupt.

- History has long since demonstrated that where labor laws are enforced and unions are strong, workers get paid more, receive improved benefits, and live better lives.

- Mr. Chairman, it seems to me that *this* is what our subcommittee should be working tirelessly towards – not the parochial interests of certain groups looking to make greater profits on the backs of workers.

- Thank you.

APPENDIX J – SUBMITTED FOR THE RECORD, LETTER TO CHAIRMAN CHARLIE NORWOOD AND RANKING MEMBER MAJOR OWENS, SUBCOMMITTEE ON WORKFORCE PROTECTIONS, FROM ALAN REUTHER, LEGISLATIVE DIRECTOR, INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA – UAW, WASHINGTON, D.C., JULY 23, 2002

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA - UAW

STEPHEN P. YOKICH, President RUBEN BURKS, Secretary-Treasurer

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ELIZABETH BUNN • RON GETTELFINGER • NATE GOODEN • BOB KING • RICHARD SHOEMAKER

IN REPLY REFER TO

1757 N STREET, N.W.
WASHINGTON, D.C. 20036
TELEPHONE: (202) 828-8500
FAX (202) 293-3457

July 23, 2002

Charles Norwood, Chairman
Major Owens, Ranking Member
Subcommittee on Workforce Protections
House Education and the Workforce Committee
Washington, D.C. 20515

Dear Chairman Norwood and Ranking Member Owens:

The Subcommittee on Workforce Protections has scheduled a hearing for July 23 to hear testimony on, among other matters, card check recognition for collective bargaining representatives. On behalf of the International Union, United Automobile, Aerospace & Agricultural Implement Workers of America (UAW), I request that this letter be included in the hearing record.

The use of card check recognition predates enactment of the National Labor Relations Act in 1935. Since that time, card check has existed alongside of the Act's secret ballot election procedure as an alternate route to recognition for workers seeking to be represented by a collective bargaining agent. In recent years there has been an increase in the use of card check by many unions for the simple reason that employers and so-called management consultants have so abused the processes of the National Labor Relations Act that a Board election is often no longer a viable option for many workers seeking to organize.

While the NLRA contemplates that union representation elections be held swiftly and such was generally the case for several decades, over the last twenty years data and experience show that the time from a request for an election until final union certification has stretched to unacceptable levels, often several years. Employers determined to fight off union representation now routinely use every available legal tool to delay an NLRB election and, subsequent to the election, to delay union certification, dragging cases through the Regional office, to the full Board in Washington and often to the U.S. Courts of Appeals. These appeals take years -- years during which a union organizing campaign often withers and dies.

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Increasingly, many employers use illegal methods to thwart unionization as well. Over recent years, thanks largely to the "management consultant" industry, we have seen an alarming upsurge in unlawful employer tactics of all kinds: threats and promises to individual employees; threats of plant closure or relocation of work; and discrimination against union supporters, including discharge. Because the Act's penalties are so weak, consisting only of notice posting and back pay, it pays employers to flaunt the statute and thwart employees' desire to join a union.

Finally, it bears emphasizing that card check recognition relies on the voluntary agreement of the employer. An employer who does not want to acknowledge a card check does not have to. In light of this irrefutable fact, the UAW fails to see why any Congressional action to restrict card check recognition is needed or warranted.

A fundamental purpose of the National Labor Relations Act is to protect employees' rights to organize and bargain collectively. But, unfortunately, the Board is currently almost powerless to protect employees in the face of an employer determined to defeat unionization. We respectfully request that the Subcommittee redirect its attention from card check recognition to the underlying reason for its resurgence: the inadequacy of the penalties and election procedures under the NLRA. The UAW would be pleased to provide the Subcommittee with suggested amendments to remedy these deficiencies when a hearing on these matters is held.

Sincerely,

Alan Reuther
Legislative Director

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cc: Members, Subcommittee on
Workforce Protections

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