



RHODE ISLAND WORKING FAMILIES PARTY

Representative Arthur Corvese, Chair

House Committee on Labor

Thursday, February 1, 2024

Support for H7106, Relating to Workers' Rights to Freely Organize

Chair Corvese and Members of the Committee,

I write on behalf of the RI Working Families Party to express our strong support for Rep. Craven's proposed H7106, which seeks to protect workers' free speech and assembly rights, and to ban "captive audience" meetings in Rhode Island. This legislation is a critical step towards ensuring that workers in our state are protected from coercive practices that undermine their rights to organize and engage in collective bargaining.

Research has consistently shown the detrimental impact of captive audience meetings on workers' rights and union organizing efforts. A study by the Economic Policy Institute and Dr. Kate Bronfenbrenner highlighted that employers held such meetings in 89% of union election campaigns between 1999 and 2003, significantly reducing the union election win rate from 73% to 47% when these tactics were employed.¹ This stark drop in success rates for unionization efforts underscores the role of captive audience meetings in stifling workers' voices. Additional research by Dr. Bronfenbrenner [included] presented to Congress has shown that 85% of employers forced workers to attend mandatory captive audience meetings during work hours as part of their anti-union campaigns, demonstrating the prevalence and impact of this union-busting tactic.²

RIWFP believes captive audience meetings are inherently coercive and simply un-American, depriving workers of their right to refuse participation in anti-union propaganda sessions without fear of retribution. Such practices not only infringe on workers' rights to free association and collective bargaining but also create an atmosphere of intimidation and fear, which is antithetical to the principles of democracy and fairness in the workplace.

¹ Bronfenbrenner, Kate. "No Holds Barred: The Intensification of Employer Opposition to Organizing," May 20, 2009. Accessed February 1, 2024. <https://files.epi.org/page/-/pdf/bp235.pdf>.

² "Testimony before the United States House Committee on Education and Labor: In Solidarity: Removing Barriers to Organizing," September 14, 2022. Accessed February 1, 2024. <https://ecommons.cornell.edu/server/api/core/bitstreams/f5d57fd7-ad19-4368-a46d-71046137185f/content>. [included]

The passage of H7106 would represent a significant victory for workers' rights in Rhode Island, aligning our state with others like Connecticut, Minnesota, New York, and Oregon that have recognized the need to protect employees from such coercive practices. By banning captive audience meetings and protecting workers' rights to free speech and freedom of assembly, Rhode Island can ensure a more equitable and just environment for all workers, fostering a climate where their rights are respected and their voices can be heard without fear of coercion or retaliation.

Sincerely,

M. Zachary Mezera
RI Organizing Director
Working Families Party

Testimony before the United States House Committee on Education and Labor
In Solidarity: Removing Barriers to Organizing
Dr. Kate Bronfenbrenner
Cornell School of Industrial and Labor Relation
September 14, 2022¹

Thank you, Chairman Scott, Ranking Member Foxx, and Members of the Committee for this opportunity to testify before you today about the current wave of worker organizing under the National Labor Relations Act (NLRA) and employer anti-union campaigns. I have recently completed the preliminary findings from my most recent research on the changing climate of organizing, which sheds insight on these recent developments.

My name is Kate Bronfenbrenner. I am a senior lecturer and the Director of Labor Education Research at the New York State School of Industrial Relations, in Ithaca, NY. The research findings I will present today are from the latest in a series of studies I have conducted on employer opposition in private and public sector organizing since 1986, including [No Holds Barred—The Intensification of Employer Opposition to Organizing](#), in 2009 (Bronfenbrenner K. , 1994; 2000; 2004; 2009). The 2009 study found that the majority of employers engaged in coercive and retaliatory practices such as threats of plant closure, interrogation, discharge, bribes, discipline, harassment, surveillance, and alteration of benefits and conditions and that employer opposition was intensifying over time. Employer campaigns grew more aggressive and sophisticated, as companies globalized and restructured, and gained access to new tools to monitor and surveil their workers. Many of you have quoted these findings in your discussions of labor law reform. This year I decided to update my research because of the political, economic, and cultural changes that have taken place in this country since I conducted that research and the importance of the findings for current debates on labor law reform.

The data I present to you today are the first cut descriptive findings of my new study on company characteristics and employer opposition. These data provide insight on whether and how employer opposition to unions has changed in the last two decades, how those changes have impacted union organizing and the implications for labor policy. The new study is a comprehensive analysis of employer behavior in representation elections supervised by the

¹ This study is a project of the Worker Empowerment Research Network (WERN), funded by grants from the WorkRise and Omidyar Foundations and the George Levy Award. The research team includes graduate and undergraduate researchers Ketchel Carey, Pranathi Charasala, Derrick Eckstein, Katy Habr, Tom Hegeman, Melissa Ruiz Hernandez, Natalie McCormick, George Millette, Tyler Pearce, Alejandra Quintero, Anders Rhodin, and Victor Yengle. For further information please contact Dr. Kate Bronfenbrenner at klb23@cornell.edu.

National Labor Relations Board (NLRB), on a random sample of 286 NLRB elections that occurred between January 1, 2016, and June 30, 2021.²

Organizing under the NLRB in 2022

We are at a pivotal moment for worker organizing. In July, the NLRB reported that union representation petitions increased 58 percent from October 1, 2021, to June 30, 2022—up to 1892, from 1,197 during the first nine months of NLRB fiscal year (FY) 2021. By the end of May, FY2022 petitions outstripped the total number of petitions filed by unions in all of FY2021. Unfair labor practices increased by 16 percent during this same period, up from 11,082 to 12,819 (NLRB, 2022). With a win rate of 77 percent in the first six months of 2022, unions are winning more elections than they have in any year since 2000 and organized twice as many workers between January and June 2022 as they did in the first six months of 2021 (Mola, 2022).

Although a decade ago there were more elections and more eligible voters participating in the election, only 62 percent of those who voted in NLRB certification elections were organized, because win rates were lower, particularly in larger units.

Table 1: NLRB Election Statistics, 2011-22

Year	Number of elections	Number of wins	Number of losses	Percent union wins	Number of eligible voters	Number in union wins	Percent of workers organized
2011	1318	870	448	66%	95,810	59,577	62%
2016	1299	935	364	72%	73,982	36,716	50%
2021	1013	764	259	75%	51,019	36,942	72%
The first half of 2022	837	641	196	77%	54,260	43,150	80%

(NLRB, 2022, 2016, 2011)

² The data for this study originate from an in-depth survey of 286 lead organizers, supplemented by unfair labor practice documents and online company research from an initial random sample of 753 NLRB certification elections that took place between January 1, 2016 and June 30, 2021, stratified by union and win rate. The survey return rate was 47 percent for the 610 cases in the sample for which we were able to attain organizer contact information from the union or through our own research. The final sample is representative by union, win-rate, and industry. The results today are preliminary. We still have a few more surveys coming in and will be supplementing the survey data with unfair labor practice document analysis.

The organizing and strike activity occurs at a time when public approval for unions has grown to 71 percent, the highest since 1965. Notably, the approval rate is above 70 percent for all age groups, both white workers and workers of color, and as high as 54 percent for those who identify as conservative (Gallup, 2022).

Recent organizing growth has occurred across a variety of industries, with headline campaigns in giant retail firms, previously thought unorganizable such as Amazon, Chipotle, Starbucks, Dollar General, Trader Joes, REI, and Apple, (Brooks, 2022; Mola, 2022). Since December 2021, Starbucks workers have successfully organized more than 200 stores across the US, with more than 100 petitions still pending. In May, the NLRB issued a complaint against Starbucks, for twenty-nine unfair labor practice violations including more than 200 labor law violations, and there have been many more since (Bloomberg Law, 2022; Rogers, 2022). Retail workers are voting for unionization despite aggressive anti-union tactics such as discharging activists, captive audience meetings, surveillance, threats of wage and benefit cuts, and, in the case of Starbucks, shutting down newly organized stores. Starbucks and Amazon have gone so far as challenging the legitimacy of the NLRB, delaying bargaining of the first contract, while they appeal election certifications through the Board and the courts. (Sainoto, 2022; Sheiber, 2022)

The surge in organizing activity has been fueled by austerity, declining job quality, the COVID-19 pandemic, and the widening gap between worker wages and benefits and corporate profits. As “essential workers” faced the threat of exposure from COVID-19, without adequate PPE, paid leave time, health care, and childcare; interest in unions began to rise. The pandemic, combined with skyrocketing corporate profits, and an increasingly tight labor market created a “hot shop” condition for union organizing, where unorganized workers are contacting unions asking for support in their organizing efforts (Maffie 2022). Unorganized workers have also been inspired by the ongoing strike wave and the resultant bargaining gains in wages, safety and health, and other working conditions from companies whose profits soared during the pandemic (Greenhouse 2021).

Yet even with the surge, organizing gains remain insufficient to stem the tide of union decline and the widening “representation gap” between the percentage of workers who seek union representation and those who can organize. Although recent studies and polls have found that as many as 52 percent of unorganized workers would vote for a union if an election was held at their workplace, and 59 percent would support an increase in unionization at their employer, union density remains only 6.1 percent in the private sector and 10.3 overall (Hertel-Fernandez, 2018; Ewell, 2022; BLS, 2022).

Differences in organizing growth by industry

Organizing growth also varies across industries. Table 1 shows how unions have been shifting their organizing activity over the last decade. The percentage of elections in labor's traditional sectors of manufacturing, construction, and transportation dropped by more than 50 percent. Meanwhile, the percentage of elections increased in retail/wholesale, social services, and education. The growth in social services is in part due to increased focus on museums and grant-funded organizations, particularly by AFSCME and OPEIU. There were only three elections in museums in 2011 and 2016. That number increased to fifteen in 2021, and eight in the first half of 2022. Similarly, the number of campaigns in grant-funded non-profits and other non-governmental organizations (under social services) went from five in 2011 to twenty-nine in 2021, and eleven in the first half of 2022. Due to the burst of organizing at Starbucks, retail organizing surpassed health care, which dominated organizing up until the end of 2021.

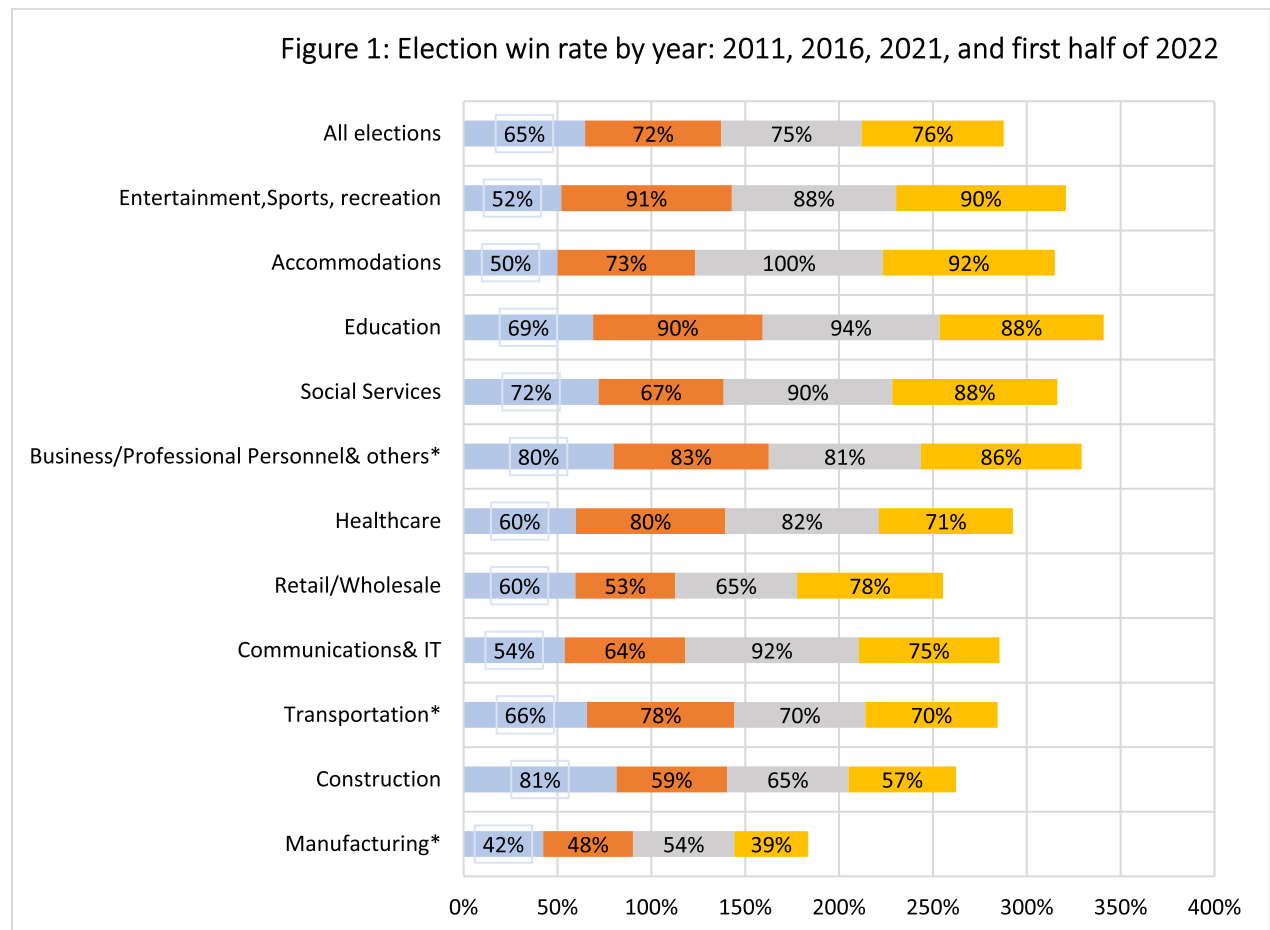
Table 2: NLRB elections by industry: 2011-2022

	2011		2016		2021		First half 2022	
Industry	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Manufacturing and mining	177	13%	163	12%	111	11%	51	6%
Construction	129	9%	56	4%	54	5%	28	3%
Transportation, warehousing, & utilities	225	17%	204	15%	156	15%	81	10%
Communications & IT	26	2%	14	1%	26	3%	12	1%
Retail/Wholesale	126	9%	154	11%	148	15%	355	42%
Healthcare	303	22%	261	19%	181	18%	105	12%
Business, professional & other services	278	20%	353	26%	221	22%	118	14%
Social Services	32	2%	45	3%	59	6%	33	4%
Education	29	2%	52	4%	34	3%	32	4%
Accommodations	12	1%	45	3%	13	1%	12	1%
Entertainment, sports, & recreation	25	2%	22	2%	16	2%	21	2%
Total elections	1362	100%	1369	100%	992	100%	849	100%

Elections in retail/wholesale jumped from 148 to 355 in the first half of 2022, most of which were Starbucks elections. In education and accommodations, the number of workers organized in the first half of 2022 is close to the number organized during all of 2021.

For social services and communications and IT, the growth began in 2021 and continued through the first half of this year. Wins in these sectors include victories in museums and other non-profits such as the Art Institute of Chicago, Minnesota Council of Nonprofits, and the Audubon Society (Robinson, 2021; Channick, 2022; CWA, 2021; Bloomberg Law, 2022). In the media, more than 200 firms have been organized since 2015. While more than half of those have been through voluntary recognition, card check, and community monitored elections; NLRB elections in digital media are also on the rise, ranging from the New York Times and MSNBC to Thrillist and Raven/Activision (Fu, 2021; Liao, 2022; Jamieson, 2022).

Figure 1: Election win rate by year: 2011, 2016, 2021, and first half of 2022



Industry win rates also have changed over time. As shown in Figure 1, although the overall win rates and the win rate for most industries have been gradually increasing by a few percentage points a year, win rates dropped in manufacturing, construction, health care, and communications and IT. Win rates average above 90 percent in museums and other small non-profits.

Company characteristics

While the corporate structure and characteristics of companies being organized are similar to those we found in our previous research, there have also been some notable changes.

As described in Table 3, NLRB campaigns continue to be concentrated in large, profitable, US-based firms (60 percent) that are subsidiaries of large parent companies (59 percent), with all sites and operations in the US (60 percent). Sixteen percent have annual revenue above \$5 billion. The list of parent companies includes some of the world's most well-known firms such as Compass Group, Sodexo, MGM, HNA, Disney, Cargill, Magna, HCA, NBC Universal, and Comcast.

The percent of foreign-owned companies increased from 11 percent in the mid-1980s to 15 percent in 2021, reflecting the growing number of foreign companies investing in US firms, particularly from Europe and the UK, such as Johnsons Control, Suez, Sodexo, and First Group. The greatest growth was in the percent of elections in non-profit firms, which doubled in the last decade, from 13 percent to 28 percent, and in units where the petitioning union already represents workers at the same location. The gains in the non-profit sector reflect expanded organizing efforts in museums, education, and social services. Win rates for both non-profits and other units organized at the same location, average 86 percent. The lowest win rates are among more mobile and global employers, such as manufacturing companies and multinational firms, where the threat of capital mobility has been shown to have a significant impact on election outcomes (Bronfenbrenner 2000). In contrast, union win rates are much higher in non-profits and companies with all sites and operations in the US. The findings suggest, that as corporate structure changes, unions are shifting their focus towards the kinds of companies

they believe they will have the most success in organizing, and moving away from those that are the most challenging.

Table 3: Corporate structure and company characteristics over time

	NLRB 1986-1987		NLRB 1993-1995		NLRB 1999-2003		NLRB 2016-2021	
	Percent or mean of elections	Win Rate	Percent or mean of elections	Win Rate	Percent or mean of elections	Win Rate	Percent or mean of elections	Win Rate
<i>Manufacturing</i>	.66	.39	.38	.27	.35	.40	.17	.36
<i>A subsidiary of a larger parent company</i>	.55	.42	.56	.39	.60	.46	.59	.65
<i>Non-profit company</i>	.12	0.50	.13	.64	.25	.61	.28	.86
<i>Publicly traded for profit</i>	--	--	.36	.44	.37	.64	.36	.62
<i>Privately held for profit</i>	--	--	.39	.47	.38	.60	.39	.54
<i>All sites and operations in the US</i>	--	--	.52	.39	.61	.54	.60	.75
<i>US-based multinational</i>	--	--	.26	.33	.28	.40	.24	.62
<i>Foreign-based multinationals</i>	--	--	.11	.30	.11	.49	.15	.54
<i>Any other organized sites or locations</i>	.46	0.49	.47	.50	.48	.50	.47	.76
<i>Other organized units at the same site</i>	--	--	.12	.48	.11	.57	.25	.86
<i>Other organized units at different sites</i>	--	--	.42	.40	.43	.43	.37	.71
<i>Annual revenue \$5 bill or more</i>	--	--	.32	.29	.16	.51	.16	.46
<i>Net income \$100 million or more</i>	--	--	--	--	.22	.31	.40	.59
<i>Ownership change before the campaign</i>	.22	0.51	--	--	.12	.58	.18	.79
<i>Pre-campaign employee involvement</i>	.07	0.22	.25	.30	.31	.44	.25	.79
<i>Number of employees in the parent company</i>	--		35843.0	35082.4		32565.9		

Bronfenbrenner 1997; 1994; 2009³

Employer opposition

Contemporary employer antiunion campaigns originated in the 1970 and 1980s as the management consultants assembled the key elements of the antiunion tool kit that we are so familiar with today: threats, interrogation, promises, intimidation, coercion, retaliation, communication, and delay. In the years since, employer campaigns have intensified and become much more sophisticated, adapting to a changing political, economic, financial, and

³ Differences in data presented for each of the four time periods are due to differences in data collected in each of the four studies.

regulatory landscape. As unions develop new strategies, employers adapt as well, hoping to blunt the effect of the union initiatives.

Today, as unions organize in new industries with new kinds of employers we see a bifurcation in employer responses. A majority of firms continue to mount aggressive anti-union campaigns, while a smaller number do little or no campaigning against the union. This latter group is concentrated in non-profits, the media, and other front-facing businesses where customers and the community can exert more leverage to restrain an anti-union campaign. As shown in Table 4(a), the percentage of campaigns with neutrality agreements tripled in the last two decades, from 3 percent to 9 percent, while the number of employers who engaged in no opposition, increased from 3 percent to 13 percent. That is not to say there are not non-profits that aggressively oppose unions, particularly in health care and higher education, but rather that unions have had more success in restraining employer opposition in the non-profit sector than in the for-profit sector. Win rates averaged as high as 93 percent for units with neutrality agreements and 86 percent for those that did not mount a campaign. To better assess the impact of this trend, in Tables 4a-d we compare the findings for all elections, including those with no employer opposition, with the elections where the employer mounted a campaign.

Threats, Interrogation, Promises, and Surveillance

There are several distinct stages to a union organizing campaign. First, there is the initial period where the first contact is made between the workers and the union, leaders are identified and an organizing committee is established. The second phase is when the union, through the organizing committee, reaches out to the bargaining unit members and gradually builds up support until the workers are ready to petition for an election. The third phase is the period between the date the petition is filed and the election date. This is when both the union and employer campaigns are most out in the open. Finally, the fourth phase is the period between the date of election and the date of certification, which can include waiting for election objections, ULPs, and possible rerun elections to be resolved (Bronfenbrenner 2009, 2014).

Table 4(a): Employer opposition and election outcome: Threats, interrogation, and promises

	1999-2003		2016-2021		2016-2021	
					Elections with employer	
	All Elections		All Elections		campaign	
	Proportion of elections	Win Rate ⁴	Proportion of elections	Win rate	Proportion of elections	Win rate
Agreed to neutrality	.03	.82(.48)	.09	.93 (.66)	.06	.87(.64)
No employer campaign	.03	.72(.48)	.13	.90 (.65)	.00	.83(.65)
Employer mounted a campaign	.97	.48(.72)	.87	.65 (.90)	1.00	.65(.00)
Threats and Interrogation						
Hired management consultant	.75	.45 (.63)	.65	.60 (.85)	.74	.60(.82)
Held captive audience meetings	.89	.47 (.72)	.75	.61 (.90)	.85	.60(.82)
Number of meetings	10.36	-	15.42	---	.15.42	--)
More than 5 Meetings	.53	.47 (.48)	.38	.57 (.76)	.43	.61(.89)
Held Supervisor One-on-Ones	.77	.48 (.57)	.62	.62 (.79)	.71	.62(.73)
One-on-Ones at Least Weekly	.66	.47 (.54)	.44	.56 (.79)	.50	.56(.75)
Used them to interrogate workers	.63	.48 (.57)	.39	.61 (.73)	.44	.61(.69)
Used them to threaten workers	.54	.49 (.52)	.28	.60 (.72)	.32	.60(.68)
Threatened cuts in benefits or wages	.47	.49 (.50)	.27	.58 (.72)	.30	.58(.67)
Threatened full or partial closure	.57	.45 (.53)	.39	.63 (.72)	.45	.63(.68)
Closed plant after the election	.15	.74 (.79)	.03	.50 (.69)	.03	.50(.69)
Threatened to outsource work	.20	.51 (.73)	.20	.51(.73)	.23	.51(.70)
Employer threatened to file for bankruptcy	.03	.69 (.49)	.01	.75 (.68)	.02	.75(.65)
Filed for bankruptcy	.00	.33 (.50)	.00	.00 (.69)	.00	.00(.66)
Threatened to report workers to INS	.07	.34 (.51)	.04	.17 (.71)	.05	.17(.68)
Referred workers to INS	.01	.17 (.50)	.01	.00 (.69)	.01	.00(.66)
Made random document checks	.03	.56 (.49)	.02	.00 (.70)	.02	.00(.67)
Promises and improvements						
Made positive personnel changes	.27	.38 (.52)	.22	.57 (.72)	.25	.57(.68)
Made promises of improvement	.46	.47 (.51)	.43	.60 (.75)	.49	.60(.71)
Granted unscheduled raises	.18	.42 (.56)	.16	.53 (.72)	.19	.53(.68)
Distributed union promise coupon books	.22	.45 (.51)	.09	.46 (.71)	.10	.46(.68)
Distributed pay stubs with dues deducted	.23	.43 (.52)	.10	.48 (.71)	.12	.48(.68)
Held raffles relating to union dues	.03	.35 (.50)	.01	.25 (.69)	15.42	.25(.66)
Held company social events	.16	.48 (.50)	.08	.50 (.70)	.10	.50(.67)
Upgraded health & safety conditions	.01	.57 (.50)	.06	.63 (.69)	.06	.63(.66)

Threats, interrogation, promises of improvement, and surveillance are the building blocks of employer anti-union campaigns, starting in the earliest phases of the campaign before the filing

⁴ Numbers in the tables in parenthesis are the win rate when the tactic or characteristic is not present.

of the petition, and continuing through the election and certification. Doled out by managers and supervisors in captive audience meetings, supervisor one-on-ones, letters, leaflets, videos, billboards, social media, and more, by management consultants, managers, supervisors, anti-union committee members, public officials, and community and business leaders-they are effective, albeit illegal, vehicles to intimidate and coerce workers from exercising their rights to organize (Bronfenbrenner K. , 2009).

Our new data suggest that these tactics continue to be a pervasive and effective element of employer anti-union strategies. In those elections where the employer mounted a campaign, 74 percent of elections utilized one or more management consultants to lead the campaign. Eighty-five percent of the employers held mandatory captive audience meetings, where workers were forced to listen to management anti-union messages during work time. We found an average of 16 captive meetings per campaign, up from ten meetings two decades ago. Seventy-one percent used supervisor one-on-one meetings with workers. Half held them at least weekly. Forty-four percent used supervisor meetings to interrogate workers about their union activity and just under a third used them to threaten workers. if they supported the union.

Employers threatened workers in thirty percent of elections with loss of wages and benefits, 40 percent with full or partial plant closings, and 23 percent with outsourcing. Threat rate rates are lower than they were 20 years ago. This is not surprising given the shift in organizing to firms with all sites and operations in the US, away from more mobile industries such as manufacturing to less mobile firms in retail, education, and social services, with director worker-customer engagement.

In the early 2000s, employers responded to increased organizing activity by putting more emphasis on threats and retaliation, moving away from tactics such as promises of improvement and promotion of union activists (Bronfenbrenner, 2009). Today as unions shift into new industries, employers are once again embracing softer tactics that are less disturbing

to customers and funders. These include positive personnel changes (25 percent), promises of improvement (25 percent), unscheduled raises (19 percent), company social events (10 percent), and upgrading health and safety (6 percent) are at the same levels or slightly higher than they were in the 2000s. Except for threats of bankruptcy, all of these tactics are associated with win rates ten to forty points lower than in campaigns where they are not used.

Surveillance

Employer use of surveillance more than doubled, going from 14 percent to 32 percent of all elections and 36 percent of elections where the employer mounted a campaign.

Table 4(b) Employer opposition and election outcome: Surveillance						
	1999-2003		2016-2021		2016-2021	
	All Elections		All Elections		Elections with employer campaign	
	Proportion of elections	Win Rate*	Proportion of elections	Win rate	Proportion of elections	Win rate
All types of surveillance	.14		.32	.59 (.73)	.36	.56 (.68)
Surveilled workers' social media	NA		.13	.63 (.69)	.14	.63 (.66)
Surveilled workers' phones and key cards	NA		.04	.60 (.69)	.04	.60 (.66)
Surveilled workers using cameras	NA		.18	.65 (.69)	.20	.65 (.66)
			.00.			
Used electronic surveillance	NA	11		.61 (.69)	.12	.59 (.69)
Employee key cards			.05	.50 (.69)	.06	.50 (.66)
Employee ID badges			.05	.57 (.69)	.06	.57 (.66)
Employee phones or app technologies			.03	.79 (.68)	.04	.77 (.65)
Computer log-in authentication			.03	.86 (.68)	.04	.89 (.65)
Employer computer or phones			.02	.66 (.68)	.03	.86 (.64)
Searches upon exits and entry			.02	.33 (.69)	.02	.33 (.66)
Worker footsteps or movements			.03	.75 (.68)	.03	.75 (.65)
Wearable devices that monitor speed			.01	1.00 (.68)	.01	1.00 (.65)
GPS technology that monitors the location			.02		.03	
				.43 (.69)		.43 (.66)

The increase in workplace surveillance is likely a consequence of developments in electronic surveillance and the widespread use of social media. Fourteen percent of employers who mounted campaigns surveilled social media, and 20 percent used cameras to spy on their employees. Twelve percent used a combination of electronic surveillance techniques such as employee key cards, ID badges, phone and computer apps, GPS location devices, and tracking of movements, speed, and exit and entry. Given the ability of firms to use surveillance without the knowledge of workers or the union, it is likely that these statistics greatly undercount the use of surveillance.

Table 4(c) Employer Oppositions: Harassment, coercion, and retaliation

	1999-2003		2016-2021		2016-2021	
	All Elections		All Elections		Elections with employer campaign	
	Proportion of elections	Win Rate*	Proportion of elections	Win rate	Proportion of elections	Win rate
Discharged Union Activists	.34	.54 (.47)	.14	.54 (.71)	.16	.54(.68)
Number Discharged	2.38	--	3.66	---	3.66	---
Other Harassment and Discipline of Union Activists	.41	.49 (.50)	.25	.61 (.71)	.28	.61(.67)
Promoted pro-Union activists	.11	.38 (.51)	.06	.50 (.70)	.07	.50(.67)
Transferred activists out of the unit	.05	.58 (.49)	.03	.56 (.69)	.04	.57(.66)
Made unilateral changes	.22	.48 (.50)	.15	.57 (.71)	.18	.57(.67)
Tried to infiltrate the organizing committee	.28	.44 (.51)	.16	.38 (.75)	.19	.36(.71)
Used guards, security fencing, or cameras	.14	.49 (.50)	.07	.57 (.69)	.08	.57(.66)
Brought police into the workplace	.21	.46 (.51)	.08	.33 (.72)	.10	.33(.69)
Employer instigated violence and blamed the union	.07	.49 (.50)	.02	.80 (.68)	.02	.80(.65)
Used bribes and special favors	.22	.49 (.50)	.20	.56 (.72)	.23	.56(.58)
Assisted anti-union committee	.30	.40 (.54)	.25	.47 (.76)	.28	.47(.52)
The number on the antiunion committee	NA	--	9.65		16	--
Downgraded health & safety conditions	.07	.34 (.51)	.01	.50 (.69)	.01	.50(.66)
Laid-off bargaining unit members	.03	.77 (.49)	.05	.85 (.68)	.05	.85(.64)
Number laid off	31.73	-	12.55	-	12.55	-
Contracted out bargaining unit work	.41	.39 (.57)	.02	.80 (.68)	.02	.80(.65)
Number of jobs contracted out	37.50	-	15.67	-	15.67	-
Employers used 9/11 or national security	.03	.59 (.49)	0.01	.50 (.69)	.01	.50(.66)
Involved community leaders/ politicians	.06	.47 (.50)	.02	.00 (.70)	.02	.47 (.50)
The employer used an NLRB-like front group	.11	.54 (.49)	.13	.58 (.70)	.14	.54 (.49)
Filed ULP charges against the union	.03	.77 (.49)	.02	.40 (.69)	.02	.77 (.49)

Coercion and retaliation

Employers continue to try to thwart union organizing efforts through a combination of retaliatory and coercive actions such as discharges (16 percent), layoffs (5 percent), unilateral changes in conditions (18 percent), and transfers (4 percent), but at a much lower rate than in previous years. A small number of employers also continue to use more extreme tactics such as bringing police into the workplace (10 percent), using security guards, fencing and/or cameras (8 percent), instigating violence, and then blaming the union (2 percent).

As described in Table 4 c) above, these more coercive tactics are being used with less frequency than they were in previous years. The exception is bribes and special favors (23 percent), promoting union activists (7 percent), and assisting the anti-union committee (28 percent), which have remained constant.

Employer communications

Employers begin communicating their anti-union message from the earliest days of the organizing campaign, as soon as they are aware of any union activity in the workplace. Although most communications are in person-to-person at the workplace in supervisor one-on-ones and captive audience meetings, companies turn to a variety of other mediums to put out their message. Forty-three percent use email, 18 percent use texts, 3 percent use the internet or social media, and 19 percent used DVDs and videos. This compares to 1999-2003 when smartphones and social media were not yet ubiquitous among the workforce, and only 3 percent used email, and none of the Employers begin communicating their anti-union message from the earliest days of the organizing campaign, as soon as they are aware of any union activity in the workplace. Although most communications are in person-to-person at the workplace in supervisor one-on-ones and captive audience meetings, companies turn to a variety of other mediums to put out their message. Forty-three percent use email, 18 percent use texts, 3 percent use the internet or social media, and 19 percent used DVDs and videos. This compares to 1999-2003 when smartphones and social media campaigns used text messaging or social media. The email

appears to have supplanted more traditional methods of communication, as the use of media dropped from 12 percent to 5 percent. Fewer employers are mailing letters (39 percent) and leaflets (27 percent) than they did in the past.

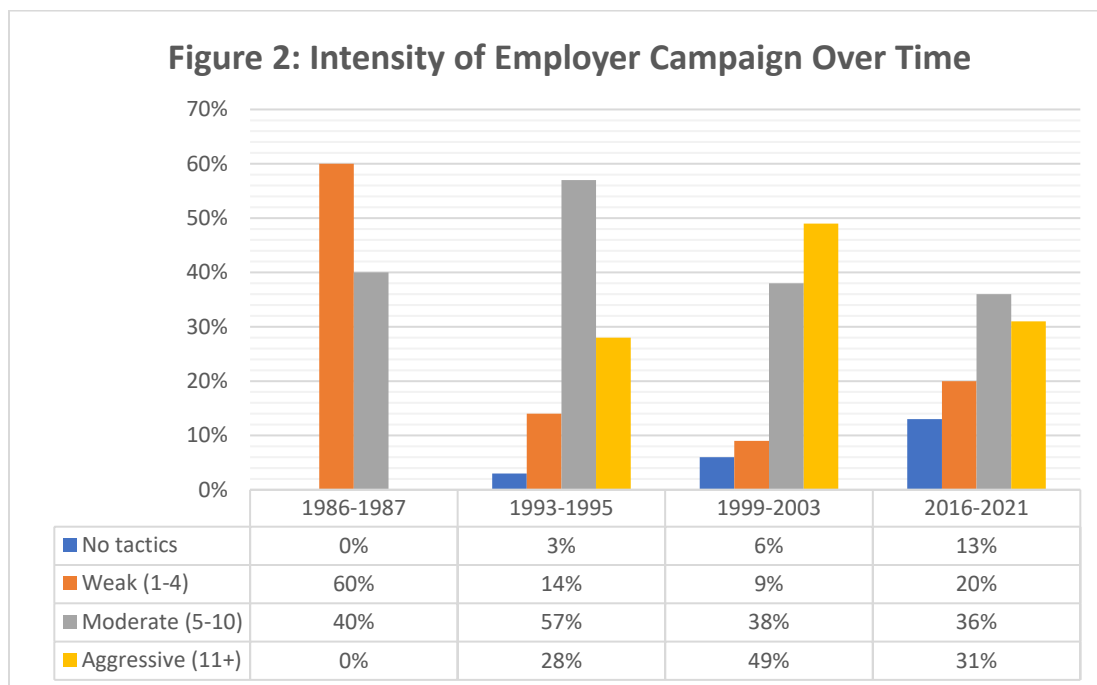
Table 4 d) Employer Oppositions: Communications

	1999-2003		2016-2021		2016-2021	
	All Elections		All Elections		Elections with employer campaign	
	Proportion of elections	Win Rate*	Proportion of elections	Win rate	Proportion of elections	Win rate
Employer communications with workers						
Used E-mail communications	.07	.49 (.50)	.38	.72 (.67)	.43	.72(.61)
Sent personal text messages	NA	--	.16	.76 (.67)	.18	.76(.63)
Used internet or social media	NA	--	.03	.71(.69)	.03	.74(.65)
Conducted home visits	NA	--	.01	.25 (.69)	.02	.25(.66)
Established employee involvement program	.15	.39(.50)		.55 (.70)	.09	.55(.66)
Ran media campaign	.12	.43(.51)	.05	.71 (.68)	.06	.71(.65)
Use free mass media	.03	.41 (.50)	.05	.69 (.69)	.05	.69(.65)
Purchased time on paid media	.05	.50 (.50)	.01	1.00 (.68)	.01	1.00(.65)
Used anti-union DVDs/videos/Internet	.41	.07 (.25)	.19	.56 (.72)	.22	.56(.68)
Mailed anti-union letters	.70	.46 (.59)	.39	.59 (.75)	.45	.59(.71)
Number of letters	6.54	-	18.43	-	18.43	-
More than 5 letters	.28	.49 (.45)	.07	.57 (.69)	.08	.57(.66)
Distributed anti-union leaflets	.74	.46 (.59)	.53	.60 (.78)	.60	.60(.73)
Number of leaflets	16.19	-	61.65	-	61.65	-
More than 5 leaflets	.61	.45 (.51)	.24	.53 (.73)	.27	.53(.70)

Campaign intensity over time

To better understand the evolution of employer opposition we also examined the change in campaign intensity over time. Previous research has shown that the probability of union success declines with each additional anti-union tactic used (Bronfenbrenner K. &, 2004; Bronfenbrenner K. , 1994). Figure 2 presents the number of tactics for each of our studies, showing aggressive (more than ten tactics), moderate (five to ten tactics), weak campaigns (one to five), as well as campaigns where the employer did not mount a campaign (no tactics).

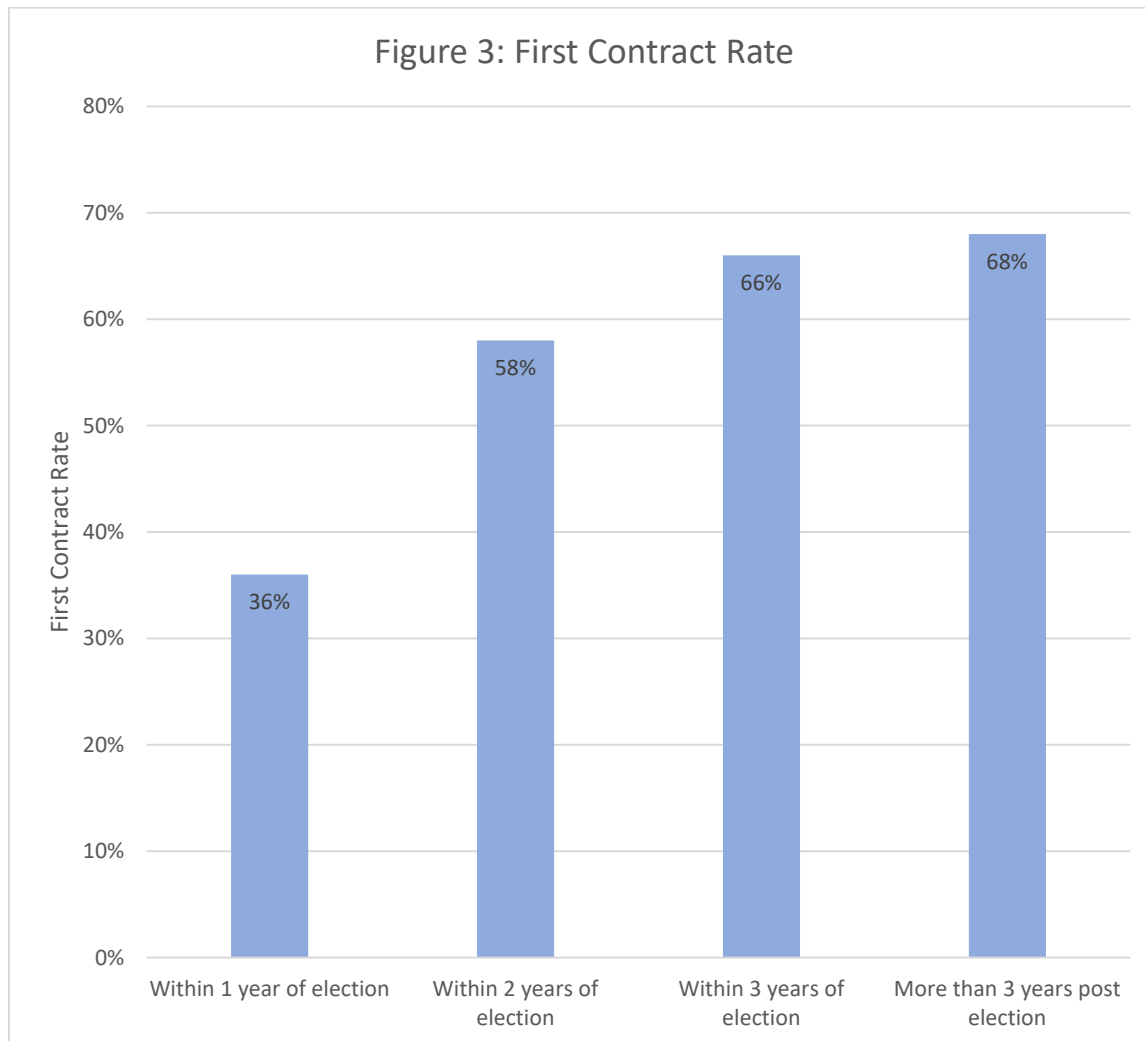
In the 1980s, 60 percent of employers ran weak campaigns, while 40 percent ran moderate campaigns. In subsequent decades, fewer employers ran moderate and weak campaigns and more ran aggressive campaigns or no campaigns at all. In our current study, these trends changed again. The percent running aggressive campaigns dropped to 31 percent and the percent running no or moderate campaigns increased to 13 percent and 20 percent, respectively. Again, this drop reflects unions shifting organizing targets away from industries and firms where employer opposition is highest.



First Contracts

Unions won 69 percent of the elections in our sample, but winning the election is only the first step of the organizing process. Election wins must be certified by the NLRB and then the parties must bargain a first agreement. As shown in Figure 3 below, only 36 percent of elections result in a first contract within one year, 56 percent gained contracts in two years, 66 percent in three years, and 68 percent in more than three years. That means that 44 percent of the workers who

voted in the election still do not have a union. First contract rates have dropped since our last study, down from 48 percent within a year, 63 percent within two years, 70 percent within three years, and 75 percent in more than three years. The longer bargaining time may be a consequence of the many construction, manufacturing, and transportation unions, responding to more aggressive anti-union campaigns in their sectors by moving to firms and industries where they had less bargaining power and influence to negotiate a first agreement.



Conclusion

US employers have spent decades perfecting an anti-union strategy that works, so much so that unions are shifting their organizing to industries and firms where more coercive and retaliatory

tactics may backfire. More unions are also choosing targets where they have the power to restrain the employer campaign, enough so that in 13 percent of the campaigns in our sample the employer did not run any campaign at all. While this may be a smart organizing strategy for unions, it means that workers in the industries and sectors where employer opposition is highest, are left waiting to organize.

While employers may adjust the permutations and combination of tactics in their toolkit to adapt to a changing economic or political environment and new union organizing targets, the essential elements remain the same. Our data show that in elections where the employer mounted a campaign:

- 74 percent brought in one or more management consultants to run the campaign
- 85 percent forced workers to attend mandatory captive audience meetings during work hours
- 71 percent had supervisors regularly talk with workers one-on-one about the campaign
- 44 percent used the meetings to interrogate workers about their or other's support for the union
- 32 percent used them to interrogate workers
- 45 percent threatened workers with plant closings, outsourcing, or contracting out of their work
- 49 percent made promises of improvement in return for not supporting the union
- 36 percent surveilled workers using cameras, social media, phones, and key cards
- 23 percent offered bribes to worker
- 16 percent discharged union activists
- 31 percent ran an aggressive campaign using ten or more tactics
- 42 percent of workers in units where the election was won by the union, still do not have a first contract four years after the election

Many of these tactics are blatant violations of labor law⁵ and are associated with win rates 10 to 40 percent lower than in elections where they are not used. Singly and in combination they effectively thwart workers' attempts to exercise their rights to organize under the NLRA. The current NLRB is making a courageous effort to restrain the most egregious violators but they have neither the funding nor the enforcement powers to curtail illegal behavior or deal with the influx of new petitions, elections, and first contract disputes.

Although unions have seen an increase in their NLRB election wins these past recent years, this does not mean workers in the US do not continue to face numerous major barriers to organizing at the hands of their employers. Because there is an influx of workers organizing, these protections must be strengthened by legally binding and true financial penalties for employers who are found to violate workers' rights to organize. For all of these reasons, Congress must pass the Pro-Act as swiftly as possible. The following labor reforms are imperative:

- Either outlaw captive audience meetings or allow unions equal time in meetings
- Establish punitive penalties for labor law violations, with super-compounding penalties for multiple labor law violations and violations of multiple labor and employment laws
- Enforce first contract arbitration where parties are unable to negotiate a first contract within a year of the election
- Provide full and adequate funding to the NLRB
- Authorize card certification
- Provide for automatic certification and bargaining order in cases when there are multiple serious Unfair Labor Practice violations

⁵ In a later version of this paper we will update our findings with data from our FOIA request on ULP violations.

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