

Why Labor Law Doesn't Work for Workers

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One year ago, Rite Aid employees voted to join a union. The obstacles they faced trying to unionize will be eased by passage of the Employee Free Choice Act. (Photo: VenturaPhoto.com)

Lancaster, California - After months of a media war supporting and condemning it, the Employee Free Choice Act was finally introduced into Congress again this week. The bill has been debated before, but with a larger Democratic majority, its chances of passage are much greater today, and President Obama has said he'll sign it. Employers, therefore, are fighting it as never before.

Behind the verbal fireworks, workers on the ground say that current labor law has no teeth and must be changed.

In Lancaster, California, one of the country's hardest-fought organizing drives highlights the obstacles they face. A year ago, employees at Rite Aid's huge drug warehouse there voted to join a union. On March 21, 2008, the National Labor Relations Board certified that union, giving it the right to negotiate a first union contract. But Rite Aid, workers say, has just been waiting for the year to expire. Once it does, the company can stop the pretense of negotiating.

But an even more serious problem lies beyond. When the year is up, a group of pro-company workers will likely petition for a new election, where the company can try to undo last year's pro-union vote.

These are just the latest maneuvers in Rite Aid's war against the union. For the last three years its employees have overcome one obstacle after another in their effort to join the International Longshore and Warehouse Union. Each obstacle has been placed in their path by this country's weak labor laws, a problem the Employee Free Choice Act was written to correct. That's why Rite Aid and other large employers are fighting the bill in Congress.

EFCA would go a long way toward solving the problems workers have at three crucial stages in union organizing efforts - anti-union firings at the beginning, getting their union recognized, and negotiating that first agreement. Says Angel Warner, one of Rite Aid's most vocal pro-union employees, "if we'd had EFCA, we'd have had our union and contract a long time ago."

Rite Aid opened its big new Lancaster warehouse in the high desert just northeast of Los Angeles in 1999, with tax breaks for locating in a local enterprise zone. The facility might have been new, but working in it was like stepping into the past. The cavernous building was freezing cold in the winter and broiling hot in the summer. The company installed a computerized, state-of-the-art

tracking system for the myriad products it sends out to stores everyday. But that system put punishing pressure on people to work faster, timing their every move.

Employees say they were pushed hard by their supervisors, getting rewards and advancement only if they got on the inside track. Ten-hour days are normal and mandatory overtime comes all the time. "If management likes you it's fine," Warner says, "but if you're not in good, you have to watch out because you're always on the chopping block. I've been there since Rite Aid opened, and I've watched a lot of people come and go."

"There's nothing out here in the Antelope Valley that could be considered a good wage," said Christine Martinez, another Rite Aid worker. "You start at minimum wage and don't go up."

It's little wonder that workers started thinking about a union - the company left them little alternative. "A lot of people think unions get organized over wages, and that's part of it," according to Warner. "But our main reasons were the working conditions, which are appalling and unreasonable. You almost feel like you're a slave, even though you're getting paid for it. And as for job security, we have none."

At their first meetings over three years ago, Warner and her coworkers talked over those conditions and began to organize a committee to spread the word. They got in touch with the ILWU, whose experienced organizers encourage workers to make the basic decisions about their own campaign.

If EFCA had been passed and signed when it was first introduced, it would have been in effect while those meetings were going on in the warehouse. Warner and the other union committee members could have begun asking their coworkers to sign union cards. When they got a majority, they could have presented the cards to the NLRB. The company would then have been obligated to recognize the union.

But EFCA didn't pass, and Bush wouldn't have signed it if it had. So Rite Aid workers had a far different experience.

As soon as the company understood that its workers were organizing, it adopted the all-out, scorched-earth hostility common among most private-sector employers facing organizing drives. Its opposition at the Lancaster warehouse was in fact very different from the attitude the company took towards unions in its stores. In New York City Rite Aid even signed an agreement with SEIU Local 1199 to recognize the union based on the same card-check process it rejected in Lancaster. Yet, company strategy at the warehouse, according to workers, rested on identifying, isolating and terminating pro-union employees and scaring the rest.

It began when three workers testified at a hearing to decide who would be able to vote in a union election. One was suspended and the other two were written up. The scariest experience came when union supporters began to get fired. First four lost their jobs for small disciplinary infractions. Then Mike Frescas was terminated after he spoke at a union meeting. Managers and security guards in red shirts hustled him out of the warehouse without even giving him a reason. Christine Martinez, who suffers from arthritis, was canned for not making her production quota.

The ILWU filed charges with the NLRB, accusing the company of firing people for their union activity, a serious violation of federal law. After a long investigation, the NLRB announced it was ready to issue a complaint against Rite Aid, specifying 49 separate violations of the National Labor Relations Act. Included were the illegal suspensions and discipline directed against Sylvia Estrada, Joey Celaya, Lorena Ortiz and Tim Patrick. Other counts included charges that Rite Aid managers had illegally tried to stop workers from asking each other to sign union cards, that General Manager Gary Konopka had said he'd deny wage increases if the union came in, and had asked employees to report on union activity, and that several managers had threatened employees for their union activity. Konopka was charged also with offering to finance a committee of workers to conduct anti-union activity, and with telling workers that the initiative in forming that committee came from employees, not from the company.

But then the board offered to settle the charges without filing a complaint, if the company agreed to rehire two of the workers, Ignacio Mesa and Deborah Fontaine. The company agreed. The board required the company to post a notice as well, but Rite Aid didn't even have to admit that it had broken the law - just to promise that it wouldn't do so in the future. ILWU organizer Carlos Cardon points out that "although [Mesa and Fontaine] got back pay, there was really no penalty on the employer for what had happened. The way things are set up, it's like robbing the bank and getting caught, but the only penalty is that you have to put the money back. Nothing happens to them." In fact, companies forced to rehire workers are even entitled to deduct any unemployment payments they receive while they're fired.

The NLRB says it uses the settlement procedure to avoid long and expensive hearings, followed by appeals that can last years. And it's true that had the board decided to hold a hearing, the process might have lasted much longer, and there still would have been no fines at the end. Just one extreme example - Smithfield Foods fired union supporter Kieth Ludlum at its huge North Carolina slaughterhouse in 1994. Ludlum didn't walk back through the factory doors until 2006.

Fear of firing is probably the single biggest reason why workers don't organize unions. According to a recent report from the Center for Economic and Policy Research, "Dropping the Ax: Illegal Firings During Union Election Campaigns, 1951-2007," by John Schmitt and Ben Zipperer, workers were fired for union activity in thirty percent of all union campaigns, so fear isn't unreasonable. "Aggressive actions by employers - often including illegal firings -- have significantly undermined the ability of US workers to unionize their workplaces," according to report co-author John Schmitt. "The financial penalties for illegal actions, including firing pro-union workers, are minimal, so it makes perfect sense for employers to break the law to derail union-organizing efforts." That percentage has gone up from 16 percent in the last 1990's, to 26 percent in the early 2000's and to 30 percent in 2007.

If EFCA had been in effect during the Rite Aid campaign, the company would have had to pay triple back wages for its illegal firings. "That would dissuade a lot of employers from breaking the law," Cardon predicts. But with no fines and no card-check recognition process, it took over two years to overcome the fear and get a majority of the workers to face the company's hostility. Every supporter recruited to the union cause had to weigh the possibility that he or she might lose his or her job. Union supporters say it felt like working in a war zone.

Nevertheless, the union committee did finally win the support of a majority, and when the election was held, the vote was 283 in favor, and 261 against representation. A slim margin, but enough.

The company could have appealed the election results, a common tactic that can sometimes delay bargaining for years. Rite Aid, however, adopted another strategy. For the year following the election, it sat in negotiations and agreed to virtually nothing. "Since June 6 we've had 18 sit-down sessions," Cardon explained in late February. "We presented Rite Aid with 43 articles for a proposed contract - wages, working conditions, seniority. We've only been able to reach agreement on six, and the most meaningful was where to put up our union bulletin board."

Rite Aid claimed the union was demanding "exorbitant" wage and benefit increases, which the company can't afford, according to company representative Cheryl Slavinsky. A Rite Aid statement asserts that "our wages currently are very competitive, and we offer our associates a good health plan, which is the same health plan that covers many of our other union associates."

In the meantime, though, Rite Aid hired an anti-union consultant, Bell and Associates, to engage in what is politely called "persuasion activities." Translation: convince workers that it was useless to organize since the union can't get a contract.

"People are really exhausted now," Warner says. "They're tired. They say, 'We voted this union in, but what has it done for us?' Employees who were against the union before are going around getting decertification petitions filled out. The company is wearing the employees down, and systematically picking them off." Given that the NLRB was ready to charge Rite Aid earlier with setting up an employee committee to fight the union, it's not unreasonable to suspect that the circulation of decertification petitions would have company support as well.

And in October, Rite Aid began to lay workers off, citing the bad economy. The company had never laid off any of its warehouse employees before. Although the law requires the company to bargain over layoffs too, it terminated 19 workers on October 21, cut the jobs of 29 others to 10 hours a week, and bargained only after its fait accompli. "The Union also contends that Rite Aid violated Section 8(a)(3) when it retained individuals outside the Union's bargaining unit to perform the same work," claimed a new charge the ILWU's attorneys filed with the NLRB. Warner says, "Since the election I've seen 36 union supporters let go."

Especially on top of the firings before the election, the fall layoffs had a devastating impact. Lancaster is a city in crisis, where the economic meltdown has produced a foreclosure rate far in excess of most other California cities. It's not hard for workers to understand the cost of losing a job by just looking at the sale signs on their neighbors' lawns.

The net result is more fear. While the union can't rely on the legal process to force the company to negotiate, that fear is a potent barrier to any action the workers might consider to force the issue. "We were starting to hold lunch meetings in the cafeteria," Warner recalls. "More and more employees were getting involved. We did a rally right in front of the building. Managers could see it happening. The next thing you know, they're laying off people. That works. It's effective. Now they've got everybody scared about losing their jobs with the economy the way it is. They beat the people back in line with this fear of 'you're not going to have a job anymore.'"

EFCA's third provision would have avoided this situation too. After ninety days of fruitless negotiations, the bill would require both parties to submit the issues still in dispute to an arbitrator. The arbitrator would then be empowered to come up with a compromise, and the company would have to sign the resulting contract.

Instead, Rite Aid workers are likely to get a second "democratic election" - this one intended to get rid of union representation, and return matters to where they were when workers started to organize.

The right to such secret ballot elections has won a wave of corporate protectors. The US Chamber of Commerce, trade and manufacturer associations like the American Meat Institute and large corporations have lined up to condemn EFCA. The National Right-to-Work Committee, famous for its extreme anti-union rhetoric, says, "It goes without saying that in order to have a true democratic election, the voters should be free from coercion, intimidation, irregularity, or illegality. The only way to guarantee this is to make sure the voting is done in secret, safe from the prying eyes of union officials."

Rite Aid agrees. "We believe that our associates have the right to choose to be represented or not represented by a union. We just think that it's fair for them to vote by secret ballot, just as all of us vote by secret ballot for the elected officials who represent us," Slavinsky told The Daily News of Washington State.

"If NLRB elections were run like normal elections, that would be fine," Warner counters. "But they're not. From an employee's point of view, we would have loved not to have had to go to that secret ballot election. If we had been able to do it by card check, we would have had our union and contract a long time ago, and we wouldn't have lost so many of our people."

Employers have even proposed their own bill to kill EFCA, the Secret Ballot Protection Act, whose sponsor, US Sen. Jim DeMint (R-South Carolina), claims "voting by secret ballot is a fundamental principle of American democracy, and it's time to guarantee this basic right for every American worker. The Secret Ballot Protection Act is urgently needed to stop the growing attacks on workers' rights."

You can almost hear the Rite Aid workers laughing.

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