

Houston Janitors and the Evolution of Union Organizing

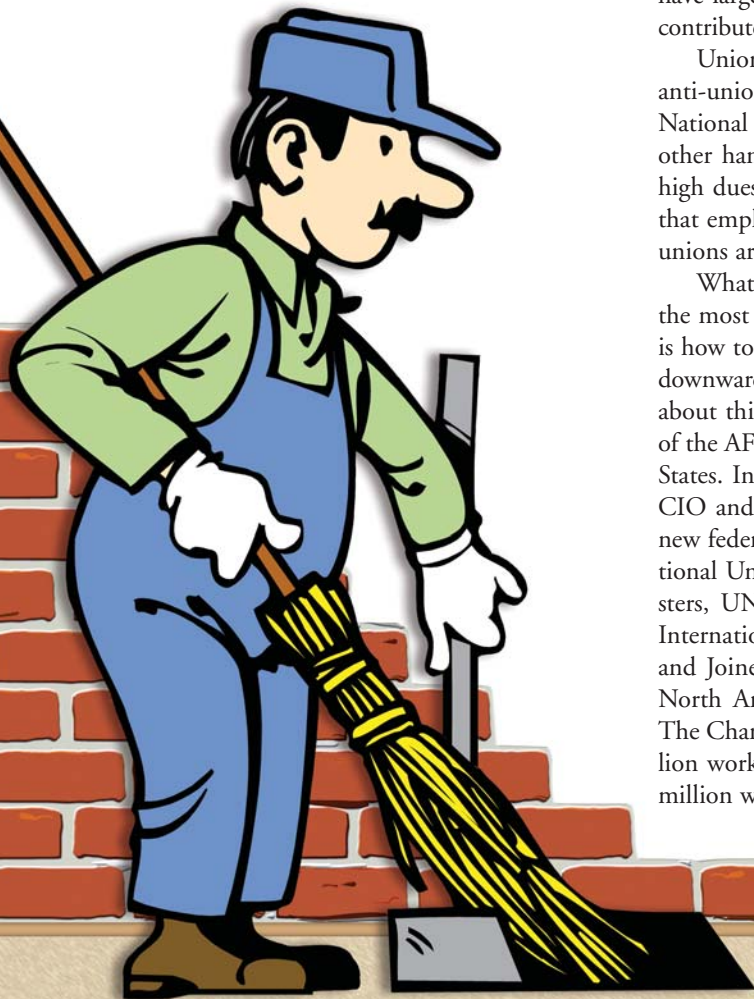
BY WILLIAM JOHN BUX AND MIRANDA TOLAR

Over the past 50 years, labor unions in the United States have experienced a significant downward spiral in union membership within private industry.¹ In 1953, more than one-third of all private sector workers in the United States were union members. By 2006, only 7.4 percent of private sector employees were members of a union.² Indeed, between 2005 and 2006, unions lost 326,000 members — 274,000 on private payrolls and 52,000 governmental employees.³ In Texas, the decline in union membership is even more pronounced — in 2006, only 4.9 percent of all workers, including private sector and public employees, were members of a union.⁴ Although there were 9,751,000 employed workers in Texas in 2006, only 476,000 of those workers were union members.⁵

There are a number of reasons why union membership has declined. Global competition, outsourcing to other countries, and deregulation of traditionally unionized industries are probable culprits in the decline in union membership. Improved personnel policies and practices by employers is another reason. Changes in the American economy and workforce demographics are also responsible for some of the losses in union membership. A rapidly expanding contingent workforce comprised of women, undocumented workers, and part-time workers has proven difficult for unions to organize. Additionally, federal employment laws designed to prohibit employment discrimination, establish safe and healthy work environments, provide workers with family and medical leave, and give workers notice of plant closings have largely supplanted the roles unions once filled, which has contributed to a perception that unions are unnecessary.

Union leaders blame the erosion of union membership on anti-union attitudes by employers and weaknesses in the National Labor Relations Act. Those in management, on the other hand, point to unions' lack of support among workers, high dues, and publicized scandals within unions. They assert that employees have weighed the options and determined that unions are unnecessary.

Whatever the reason for the decline in union membership, the most urgent and important question among union leaders is how to stop the losses in union membership and reverse the downward spiral. Differences of opinion among union leaders about this very question led to the monumental split in 2006 of the AFL-CIO, the largest federation of unions in the United States. In July 2006, seven unions broke away from the AFL-CIO and formed a new coalition called Change to Win. The new federation is comprised of the Service Employees International Union (SEIU), the International Brotherhood of Teamsters, UNITE HERE, United Food & Commercial Workers International Union, the United Brotherhood of Carpenters and Joiners of America, the Laborers' International Union of North America, and the United Farm Workers of America.⁶ The Change to Win federation represents approximately 6 million workers while the AFL-CIO represents approximately 10 million workers.⁷





The new Change to Win federation, led by the SEIU, intends to focus on union organizing and become an “organizing machine.”⁸ Change to Win has explained that it broke off from the AFL-CIO because the AFL-CIO and its president, John Sweeny, were too focused on trying to influence political campaigns and not focused enough on the long-term development of the labor movement. Change to Win leaders say that their goal is to collaborate and mount much larger and more aggressive recruitment drives. Indeed, one of the stated pledges of Change to Win is to “devote maximum resources, including at least three-quarters of the resources of our new federation, to the central task of uniting millions more workers in strong, democratic unions.”⁹

It is clear that companies, including those in Texas, should expect more organizing activity in the near future and companies that are already partially unionized are likely to be key targets. Perhaps one of the best examples of the new organizing strategies used by unions is the Justice for Janitors campaign, in which the SEIU was able to organize more than 5,300 janitors in Houston, a historic victory in a right-to-work state. This article will discuss recent union organizing trends, the methods unions are using and will likely use in the future to organize workers, and what employers can expect in terms of organizing activity in Texas.

Top-Down Organizing

One of the more effective organizing methods used by unions is a shift from federally supervised, secret-ballot elections¹⁰ to top-down organizing. Indeed, the unions in the Change to Win federation, especially the SEIU, have largely abandoned the traditional framework and instead are focusing on top-down organizing.

Under the traditional framework for union organizing, a union’s organizers would meet with workers with a goal of having as many workers as possible sign union authorization cards to obtain an election. At some point, the employer would find union authorization cards in its workplace or individual employees would advise the employer about the union organizing effort and the employer would conduct its own union avoidance campaign with employees. If the union was able to establish workers’ support of the union by a showing of signed union authorization cards from at least 30 percent of workers, it could petition the National Labor Relations Board (NLRB) for an election. However, because employee support for unions typically wanes in the weeks leading up to an election, unions

generally sought to obtain 50 percent to 70 percent or more of the signed union authorization cards before seeking an election. The NLRB would then come to the employer’s worksite and conduct a secret-ballot election in which employees vote for or against the union. If the union received a majority of the votes of the workers who voted, the NLRB would certify the union as the exclusive bargaining representative for all of the employees in the bargaining unit.

Unions claim that this type of traditional union organizing is not very favorable to the union, even when the union has 50 to 70 percent of the signed union authorization cards. From October 2005 through September 2006, unions won approximately 60 percent of the representation elections filed with the NLRB.¹¹

In top-down organizing, a union focuses on the management of the employer and the employer is pressured by the union into signing a neutrality agreement. A neutrality agreement is a contract between a union and an employer under which the employer agrees not to oppose a union’s attempt to organize the employer’s workforce. Unions typically engage in





corporate campaigns to pressure the employer into signing the neutrality agreement. For example, unions may launch campaigns against employers' executives in handbills and media campaigns, stage weekend protests at the homes of executives or engage in demonstrations, street theater, vigils, hunger strikes, or other creative actions to achieve their goals. Additionally, unions may file health and safety complaints or corporate governance complaints and oppose favorable tax rulings with the government to put pressure on employers. Where employers have both union and non-union operations in different cities or states, unions also put pressure on the employer's unionized operations to convince the employer to sign a neutrality agreement with respect to its non-unionized operations. Some employers are pressured into neutrality agreements by their shareholders, investors, or customers. A neutrality agreement itself may require an employer to impose the neutrality agreement on other companies with which it affiliates. Once the employer agrees to the neutrality agreement, though, the union generally ceases its corporate campaign.

Neutrality agreements come in a variety of forms, but most neutrality agreements prohibit the employer or its supervisors from saying anything negative about the union or unionization to employees, require the employer to provide the union with access to employee information, and allow the union to have access to the employer's property during working hours for the purpose of talking to employees and obtaining signed authorization cards. This differs from the guidelines set by the NLRB and courts under which an employer has no obligation to provide the union with such sweeping access to its employees.

Most neutrality agreements also include a "card check" agreement. Card check agreements are controversial. Under a card check agreement, the employees do not vote on the union in a secret ballot election supervised by the NLRB. Instead, the employer agrees to recognize the union without an election if the union presents the employer with a specific number of signed union authorization cards representing a majority of the employer's workforce. Managers and employees have expressed concern that employees are coerced or misled into signing union authorization cards due to its unsupervised nature.

An example of an effective use of top-down organizing is the SEIU's recent Justice for Janitors' campaign in Houston. On Aug. 3, 2005, the SEIU and five national janitorial cleaning contractors, which between them account for 80 percent of the Houston high-rise commercial cleaning market, signed a neutrality agreement whereby the cleaning contractors agreed not to oppose the SEIU's organizing effort. The cleaning contractors also agreed to forego an NLRB-supervised election in favor of a card count and further agreed to provide the SEIU the names and home addresses of janitorial employees so that the SEIU could solicit them to sign cards agreeing to be represented by the union. The SEIU was able to obtain signed union

authorization cards from a majority of the janitors and organized the janitors. A contract was announced in November 2006 (although implementation was delayed due to technicalities).

The Employee Free Choice Act

One of the most important recent developments in the area of union organizing is the Employee Free Choice Act (EFCA), which the U.S. House of Representatives passed. The bill is currently before the U.S. Senate.¹² If passed, the act would revolutionize the labor movement in the United States.

The EFCA would amend the National Labor Relations Act to eliminate secret ballot elections where a union is able to obtain signed authorization cards from 50 percent plus one employee within a proposed unit. Instead, the EFCA would require certification of the union as the exclusive bargaining representative as soon as a majority of workers signed union authorization cards. Currently, employers can require secret ballot elections supervised by the NLRB.

The EFCA also would require the parties to submit to mediation and binding interest arbitration if the parties are not able to reach a collective bargaining agreement after 90 days of bargaining. The contract terms decided by the arbitrator would remain in effect for up to two years. This means that a third-party arbitrator, not the employer and the union through bargaining, would have the power to dictate what wages the employer would pay its employees and what other terms and conditions of employment would control the workplace. The EFCA also provides for treble back pay awards and civil penalties up to \$20,000 against employers that commit unfair labor practices during an organizing campaign or during the period between certification and the first contract.

Unions claim that the EFCA is necessary because the current system is tilted in favor of companies against unions and workers. Unions contend that companies can legally hold "captive audience" speeches to advise their employees about the negative aspects of unionization. Unions claim that companies intimidate employees by threatening to close facilities or firing pro-union employees. Further, unions assert that existing penalties do not deter violators because the punishment for firing a pro-union employee, typically back pay, is considered by the employer to be a bargain if it has the effect of deterring other employees from voting for the union. Unions also point out that card checks are allowed under the current system.

However, those opposed to the EFCA point out that it denies workers a free and fair election by secret ballot. They assert that by eliminating the secret ballot election, the EFCA removes any protection of anonymity for an employee who actually opposes union organization, but initially signs an authorization card due to peer pressure, fear, or to stop union organizers who may be using threats, bullying, or intimidation. Additionally, because the EFCA, unlike the NLRB's direction



of an election, provides no notice to the employer of the organizing campaign, the EFCA would also eliminate an employer's ability to share its viewpoint with employees about unionization. Further, opponents contend that it is fundamentally unfair to force a business to operate with a contract that has been imposed on it by some third party who has no real understanding of all of the aspects of the employer's business. Finally, opponents point out that the EFCA is not mutual. For example, while unions can conduct a card check to certify a union, the EFCA does not allow employees to conduct a card check to de-certify a union when the employees decide that they no longer want union representation. The EFCA also does not impose increased penalties on unions that engage in unfair labor practices during an organizing campaign.

The U.S. Department of Labor, a government agency whose mission is to foster and promote the rights of workers, is opposed to the EFCA. As U.S. Secretary of Labor Elaine L. Chao explained:

[This bill] effectively takes away a worker's freedom to vote in a private ballot election. ... The right of a worker to a private ballot election is a fundamental right in our democracy that should not be negotiated away by either management or labor, nor legislated away at the behest of special interest groups. ... This administration rejects any attempt to deprive the rights of workers. And we will defend a worker's right to vote yes or no in a private ballot and a worker's right to fair bargaining. ... People who care about fairness in the workplace need to pay attention to this issue.¹³

It is anticipated that the Senate may filibuster a motion to proceed to the bill, thus preventing it from reaching the Senate floor for a vote. The Bush administration has also stated that it would veto the bill.¹⁴ However, a veto does not end the issue because the bill could be modified and attached to other legislation of particular significance to the president. Additionally, even if the bill were to fail or be vetoed, it will likely reappear as an issue in the 2008 presidential elections.

Globalization

Another trend used by unions to organize workers involves globalization of the unions' efforts. As companies become more global with fewer and more powerful owners, unions have also become global by building alliances with unions in the countries where U.S. employers operate. Thus, decisions made by an employer in the United States may affect that employer's operations in another country, and unions may put pressure on the employer to sign a neutrality agreement in the United States by having their international partner unions put pressure on the employer abroad. This may be particularly true in Europe where the European unions are typically stronger and more powerful than their counterparts in the United States. For

example, Bruce Raynor, president of UNITE HERE, explained in a March 5, 2006, conference that he and Andrew Stern, president of the SEIU, have formed an alliance with seven international partner unions.¹⁵ These union leaders meet every few months to discuss their experiences with the companies that they have in common. UNITE HERE and SEIU have staff in other countries and their international partner unions have staff in the United States.

The Fight For Hispanic/Latino and Undocumented Workers

Another key trend used by unions to increase membership involves a renewed focus on undocumented workers. Unions recognize that Hispanic and Latino workers have traditionally been under-represented by labor unions. For example, while 14.5 percent of African American workers were union members in 2006, only 9.8 percent of Hispanic/Latino workers were union members.¹⁶ One possible reason for the underrepresentation in this growing demographic may be explained by the undocumented workers who, fearing deportation, are less likely to get involved in union organizing campaigns.

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To target this key demographic, unions have effectively utilized religious leaders to influence the Hispanic and Latino community during organizing campaigns. In the Houston Justice for Janitor's Campaign, key supporters of the campaign included Archbishop Joseph Fiorenza of the Archdiocese of Houston-Galveston, along with other religious and political leaders in Houston. The SEIU also held meetings, roundtables, and masses for the janitors at various Houston-area churches.

Further, Change to Win is pushing for comprehensive immigration reform. The SEIU has explained that it will consider any proposal that will "bring out of the shadows an estimated 12 million undocumented individuals," provide "the most expansive earned legalization provisions that would make eligible the largest number of undocumented persons," and craft a new worker program.¹⁷ Change to Win likewise has pledged to "unite the strength of all working people in America, including fighting for full legal rights for immigrant workers."¹⁸ The fight for undocumented workers is likely to be another key issue for unions and their members in the 2008 presidential election.

Conclusion

Unions are in a survival mode and are using innovative ways to expand their membership. One such technique is to forego traditional organizing through secret ballot elections conducted by the NLRB and instead to use card check, top-down organizing in which the employers recognize the union based on a majority of workers signing authorization cards. In 2006, the card check organizing method was successfully used by the SEIU to organize janitors in Houston. Unions are also trying to change federal labor laws to further expand the use of card checks. In light of these activities, Texas employers can anticipate increased union organizing in the years to come.

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Notes

1. Section 7 of the National Labor Relations Act, 29 U.S.C. §157, recognizes the right of employees to join labor unions and also recognizes the right of employees to refrain from joining labor unions: "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158(a)(3) of this title."
2. Bureau of Labor Statistics, "Union Members in 2006," Jan. 25, 2007, available at www.bls.gov.
3. Id., Table 1.
4. Id., Table 5.
5. Id.
6. Information about the Change to Win Federation can be found at www.changetowin.org.
7. Id.; www.aflcio.org.
8. Sept. 27, 2005 Hoffa statement on Change to Win Founding Convention, available at www.teamster.org.
9. The Change to Win Federation's pledge is available at www.changetowin.org.
10. As the U.S. Supreme Court explained in *NLRB v. Gissel Packaging Company*, 395 U.S. 575, 576 (1969): "The most commonly traveled route for a union to obtain recognition as the exclusive bargaining representative of an unorganized group of employees is through the Board's election procedures under §9(c) of the Act (29 U.S.C. §159(c)); it is also, from the Board's perspective, the preferred route."
11. NLRB Election Report, Six Month Summary — October 2005 through March 2006; NLRB Election Report, Six Month Summary — March 2006 through September 2006. These election reports are available at www.nlr.gov.
12. The Employee Free Choice Act, H.R. 800, 110th Cong. (2007).
13. March 13, 2007 remarks by Secretary of Labor Elaine Chao at the Society for Human Resources Management Conference, available at www.dol.gov.
14. Feb. 28, 2007 statement of Administration Policy, H.R. 800 — Employee Free Choice Act of 2007, available at www.whitehouse.gov.
15. Michelle Amber, Effect of Employee Free Choice Act Debated by Industry, Union Speakers at Conference, (BNA) March 13, 2007.
16. Supra at note 4.
17. Jan. 16, 2007 letter to Sen. Kennedy from Andrew Stern, Anna Burger, and Eliseo Medina, available at www.seiu.org.
18. Supra at note 9.

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