



Some of Them Are Brave

*The
Unfulfilled
Promise
of American
Labor Law*

AMERICAN RIGHTS AT WORK

**“If you are not brave,
you cannot get a union...
Some of them are brave,
some of them not.”**

**—Marie Suprinat,
(pictured on front cover)
fired for union activity
on May 23, 2001**



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Executive Summary

To gain a better understanding of the current state of U.S. labor law, American Rights at Work examined the experience of one, fairly typical local union that successfully assists workers who wish to organize. We chose Service Employees International Union (SEIU) 1199 Florida because it is a midsize union concentrated in one industry (nursing homes); it runs many campaigns using the National Labor Relations Board (NLRB) elections process; and, it attempts to negotiate many first contracts. Nursing home workers' low wages, limited benefits, safety problems, and lack of respect are representative of issues facing workers throughout the burgeoning service sector. Thus, the case of SEIU 1199 Florida serves as a microcosm of worker organizing under the NLRB today.

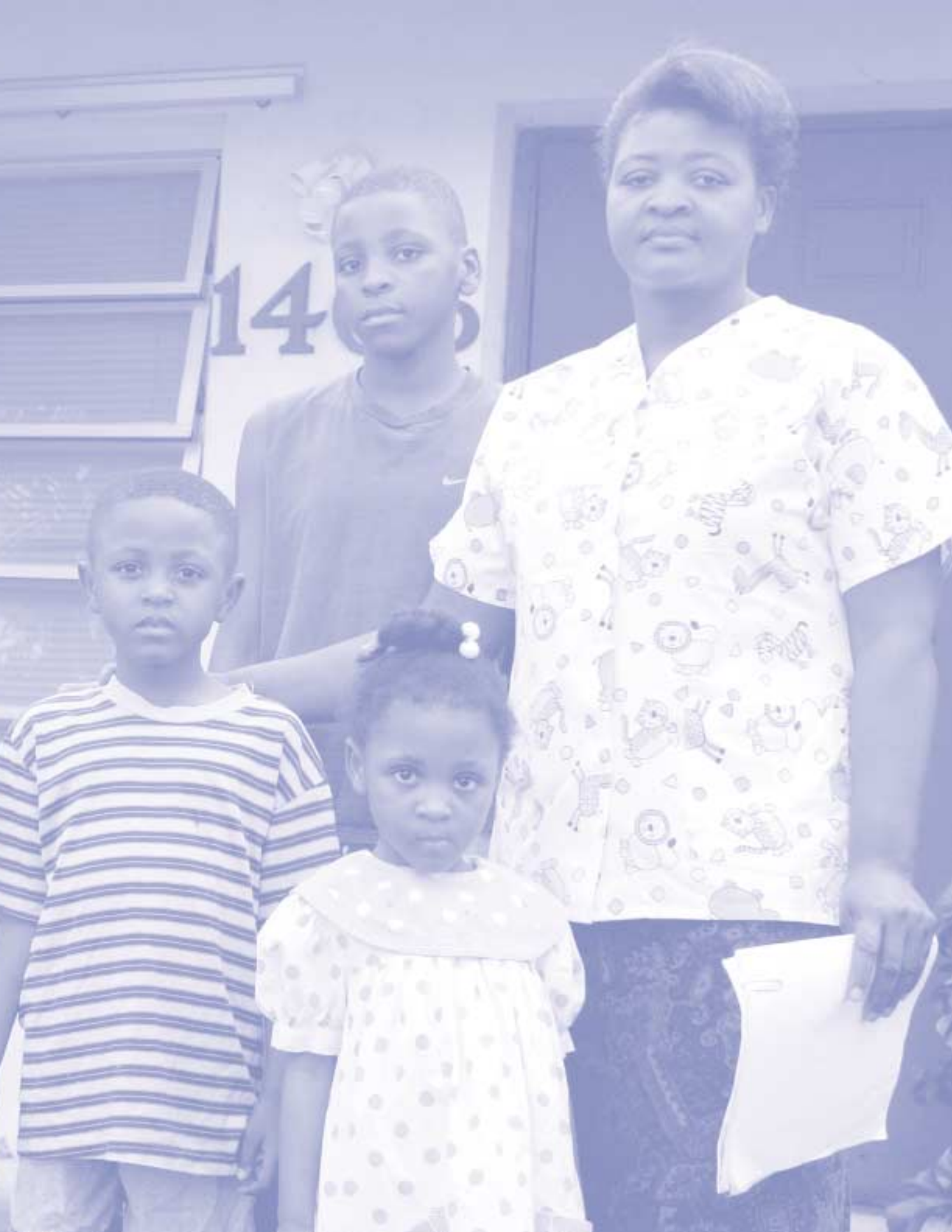
Utilizing NLRB records and worker interviews, we find that workers face widespread and systematic violations of their legal and human rights:

- Once a union organizing campaign becomes public, employers frequently react with both legal and illegal anti-union activities that exact an extremely heavy toll on workers and their families.

- The tactics used include suddenly increased surveillance and spying; harassment and intimidation of known union supporters; promises of additional benefits if the workers vote against the union; and, rampant, unfair discipline and firings.
- Employer tactics chill the organizing drive. The resulting “election” is anything but our idea of a fair and clean election. It is more akin to a marathon of harassment where only the bravest reach the finish line.
- If the union manages to win the election despite such tactics, the employer is allowed to repeatedly appeal the results. This delay denies the workers' democratic choice for many years.
- Delays have a demoralizing effect on the workers and erode the union organization, as key supporters are lost through turnover, harassment, and firings.
- When employers are found guilty of breaking the law, the penalties are so insubstantial that it actually pays for the employer to violate the law.

Illegally fired workers frequently receive little compensation for the intervening years since they were fired, and there are not punitive penalties for even openly violating the law.

- Unions can still win. However, absent genuine employer non-interference in the workers' choice, winning requires extraordinary perseverance and community support.
- Labor law in this country needs a major overhaul. At a minimum, unions should be recognized if a majority sign a card indicating support for the union. Penalties and damages should be increased so that they actually deter lawlessness. First contracts should be arbitrated if agreement can't be reached in a reasonable time.





CHAPTER I

"Some of them are brave..."

A Day in the Life of South Florida Nursing Home Workers

Marie Suprinat and her husband have 3 children. She started working at Avante-Lake Worth Nursing Home as a Certified Nursing Assistant (CNA) in 1993. "I like to take care of old people." She worked hard cleaning, dressing, escorting, lifting and generally caring for them. Marie talks fondly of the friendships she developed with her patients. But it was hard work for low pay—\$6.50 to start with \$80 a month deducted for health care. Wages and benefits were important to her, but most of all she felt a lack of respect from management. "They talk to us like we're trash...no respect."

She cared very much about providing good care to her patients but they were short staffed almost every day. She felt the only way to make a difference was to take a risk and join with her fellow employees to organize a union. Fighting for the union meant a lot of sacrifices. On top of working full time, Marie volunteered 20 hours a week talking to her co-workers about the union. Then, she hurried home to care for her children. Marie guesses that she was sleeping only 4 to 5 hours each night.

Yvonne Best started working in the laundry at Mt Sinai-St. Francis (MSSF) Nursing Home in 1993 for \$4.65 an hour. Born in Trinidad, she came to the U.S. from Venezuela to help support her son. The laundry is hard work that entails going from

room to room gathering personal clothing and bedding, and lifting and folding in a hot, loud room. She says her feet are swollen at the end of the day, "but we help each other." Early efforts to organize at MSSF fizzled out when the boss convinced workers that problems would be corrected. But over the years she believed "they broke their promises." She lost patience. Small raises didn't really make a difference in her paycheck and she was tired of the disrespect. "If the manager didn't like you, sorry for you."

Nelta Moline, mother of two, came to South Florida in 1985 because there were no jobs in Haiti and she "expected life would be better here." She works hard as a CNA at MSSF Nursing Home. Her routine is to clock in, make the rounds, provide breakfast, and take patients to activities, therapy and the bath. "It's not just your job, you love them. I love to take care of elderly people. We become like family."

But the job is harder than it has to be. Nelta says that there is so much to do and workers often don't take breaks. She feels like she is "treated like a slave." Wages are so low that she has to work two jobs on her feet all day—getting up at 5:00 am and often not returning home until midnight.

Marie, Yvonne and Nelta are typical of the women and men working in South Florida nursing homes who seek union representation. They need and deserve

better wages and benefits to support their families. They want to provide quality care to their patients; and, they want respect. These should be reasonable expectations in a country that holds dear its promise of opportunity and democracy. But as the stories that follow demonstrate, simple demands and the exercise of their legal rights are met with a fierce opposition.

Management knew that Nelta Moline was a strong supporter of the union.

"It's not just your job, you love them. I love to take care of elderly people. We become like family."

NELTA MOLINE

She spoke at a union rally and served as an observer at the NLRB election in her facility. As union activity increased, Nelta, who had never had a complaint before, was accused of being rough with a patient. The patient spoke up on her behalf and she hoped that was the end of it. Then, as Christmas approached she was accused of stealing from another patient. Management

It was hard to keep going when they lost so many of their co-workers through firings...Twelve workers were fired during the course of this campaign.

called the police. “They escorted me out...said, ‘I want nothing to do with you’...[and] suspended me.” Nelta was horrified. She was proud of her work and commitment to her patients. The groundless accusation offended her. The union demanded her reinstatement and she was exonerated. But Nelta was out of work for 18 days over the holidays.

Marie Suprinat paid an even greater price. She had worked at Avante-Lake Worth for eight years and after demonstrating support for the union, management harassed her. “They would ask, ‘Are you a union member?

The union is no good.’ I said, ‘I love the union.’” She had a fine record of service and liked caring for the patients, but as the union struggle continued, management came up with complaints. Marie was one of several workers fired after the workers voted to join the union. “They want to scare them, make them afraid—fire one of us to show they don’t care...”

Yvena Madeus, who began working at Avante-Lake Worth in 1982, was one of the leaders who did not get fired. But she says, “I was scared...my family was scared about me getting fired.” She states that it was hard to keep going when they lost so many of their co-workers through firings. “We lost all the girls—all these girls [who] were very strong got fired...” She saw it as a strategy to weaken the union. “If we all get fired, they win because they won’t have the girls who fight for the union no more.” Twelve workers were fired during the course of this campaign.

Marie says workers cannot be afraid of getting fired if they want a union. “If you are not brave, you cannot get a union...Some of them are brave, some of them not.” The women and men in this report clearly are brave. They are,

in fact, heroes fighting for their rights and a better life for their families. But providing for one’s family should not require heroic acts. Something is very wrong when great acts of courage are required for workers to exercise their democratic rights.

The National Labor Relations Act states that, “Employees shall have the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their choosing, and to engage in other mutual aid or protection.” A landmark Human Rights Watch study published in 2000, *Unfair Advantage*, documented that workers’ legal rights and human rights are violated routinely during organizing campaigns. Three years later, some of the same cases pro- filed still were not justly resolved.

This report, based on NLRB records and worker interviews, documents the efforts of workers to organize with one union local, SEIU 1199 Florida. Our aim is to determine how well the NLRB system serves these workers; to put a human face on the often abstract question of worker organizing; and, to tell the truth about the real effect of abuses on workers and their attempts to form unions, including:

- A. The impacts of legal and illegal anti-union activities on workers and their organizations once an election is scheduled and the campaign is public.
- B. The delays allowed under the law, which permit employers to put off for many years any implementation of the democratic will of the majority of the workers.
- C. The lack of effective remedies or sanctions against employers who break the law, thus making it “profitable” for them to violate legal requirements during organizing and collective bargaining.



Providing for one’s family should not require heroic acts. Marie Suprinat, pictured here with her children, was fired for union organizing in 2001.



CHAPTER II

“Then the pressure started”

Employer Response to the Union Drive

One of the primary roles of the National Labor Relations Board (NLRB) is to conduct “elections” to verify whether a majority of workers want a union. If they do, according to the law the employer is obligated to “recognize” the union and bargain a contract. There is a long history of struggles for justice and fairness in voting and elections. Nonetheless, the word “election” brings to mind a fair and democratic process that yields a timely and definitive answer. Typically, when we vote in U.S. elections, we go to the polls, cast our ballot and know the results that evening.

These workers’ experience of NLRB elections is anything but fair or democratic. When a union election is scheduled, employers wage a war of intimidation, harassment and firing. Managers with the power to hire, fire, set schedules, evaluate and discipline are often actively campaigning against the union to the point where workers are afraid to let their support for the union be known.

Yvonne Best, a laundry worker at MSSF, states that once they filed for a union election, “then the pressure started...I cried because of so much pressure.” She was given more work to do, wasn’t allowed to receive a call from family members, which had been standard practice before. “My son would call me and they wouldn’t let me speak to him.” She describes that “people

were scared. They didn’t want management to know that they had voted for the union.” Then the employer tried a different tactic. Yvonne was approached with an offer. “I could make you a supervisor, but we don’t want [the] union, I want you on my side.” She declined. Yvonne said that management got out the employee handbook and said, “See this, this book will be your Bible. Every rule will be followed by the book’...they tried to see if they could just melt everyone away.”

Ernest Duval, who worked as a CNA at King David Nursing Home, describes that once he and co-workers filed for a union election, he was “on the spot...they were watching me, tried to write me up, find things.” As another way to pressure him, he said, “Now they try to get my wife.” Both Ernest and his wife, Lude, worked at King David. They needed both incomes to support their family and for 2 years had been allowed to balance their work shifts to allow one of them to be home to care for their two sons. Now that changed. Lude was told this arrangement was no longer possible.

Ernest describes that there were new rules. The workers were told they couldn’t speak to each other in their native language, Haitian “Creole.” They could no longer trade shifts to accommodate family or personal needs. “The tension was so high.”

The violation of these workers’ individual democratic and human rights is outrageous enough. But this intimidation and harassment has a powerfully chilling effect on the organizing campaign, as well. The message sent to workers is that “you could be next.” Management conveys that a union means pressure, tension and risk. This, in and of itself, compromises any real promise of the right to organize and bargain collectively.

The message to workers is, “you could be next.” This has a powerful, chilling effect on the organizing.

Many management tactics are perfectly legal and frightfully common. For example, Kate Bronfenbrenner’s 2000 report for the U.S. Trade Deficit Review Commission documented that in a sample of 400 union representation elections, 78% of private-sector employers forced employees to attend one-on-one anti-union meetings with managers. Additionally, 92% of employers forced employees to attend mandatory anti-union presentations or “captive audience meetings.”

These workers' experience of NLRB elections is anything but fair or democratic. When a union election is scheduled, employers wage a war of intimidation, harassment and firing.

The cases in this report highlight a particularly aggressive level of illegal anti-union activity. Documenting and arbitrating these violations is a time consuming and resource intensive task. And in the meantime, as we shall see, the tactics are brutally effective while the system slowly moves towards justice.

In addition to outright firing workers, employers frequently use other measures that are illegal, common, and sometimes difficult to prove. These include: (a) interrogation about attitudes toward unions; (b) surveillance of workers' union activities; (c) promises based on one's vote for or against a union; (d) direct, unmistakable threats of retaliation if the workers vote for the union; (e) harassment and discrimination against individual union supporters, including discharge; (f) raises or benefits to entice workers to vote no.

The case of Evanette Cyriaque, a Haitian-American CNA who began working for the Avante-Boca Raton nursing facility in September 1992, is a clear example of many violations. On July 26, 1996, she signed a union authorization card and became actively involved in the union organizing drive. On November 26, she was subpoenaed to appear before an NLRB hearing to

determine the appropriate union bargaining unit. The nursing home's administrator was surprised to see her at that hearing. Apparently, this was management's first knowledge that she was actively involved with the union. From that point forward, she would be subjected to discriminatory and unfounded discipline.

On December 4, 1996, an administrator chastised Evanette for retrieving a pen from her car while she was on break. Later, the administrator called her into his office and accused her of falsely calling in sick when she went to the NLRB hearing nine days earlier. She explained that she had not called in "sick," but had a problem and could not come to work. The administrator then took her up to her workstation on the second floor and told her supervisor to "write her up" (a warning, which could eventually lead to being fired) for being outside without permission. When the supervisor asked why she should be disciplined, the administrator replied, "Anyway, write her up." Evanette was written up for being away from her station, even though she was on break and did not need permission to be away.

On December 9, the union filed charges with the NLRB claiming that management had discriminatorily disciplined Evanette because of her union activities. On February 25, the company's attorney, apparently realizing that the nursing home would be found guilty of breaking the law, sent a letter rescinding the warning and promised to remove all reference to it from Evanette's personnel file. The charges were dropped.

However, the company did not remove the disciplinary action from her file. On April 2, 1997, Evanette and four co-workers were involved in a dispute over inadequate staffing levels in their unit. Many nursing home workers want a union out of concern for

patient care. Working "short" means they are spread too thin and can't provide quality care. Although all five CNAs were involved in this discussion, management singled out Evanette, saying they could easily replace her. In an afternoon meeting the administrator accused her of being the person who "sold the place to the union." He stated that God was telling him to suspend her, and he did so.

On April 24, 1997, the union arranged for Avante employees to speak to an NLRB staff person at a nearby Denny's restaurant regarding charges against the company. Evanette asked for and was granted emergency permission to leave work. As she was giving her statement to the NLRB person, a management representative saw her at the Denny's. The following morning Evanette was fired, allegedly for lying. At the time of her firing, Evanette's most recent evaluation of her performance was "exceptional."

The union filed charges over her dismissal. Through a variety of maneuvers the company succeeded in delaying the hearing on these charges. Finally, **almost two years later** (March

In the NLRB ruling, the judge found, "These supervisors went to the rooftop to make certain the employees knew their activities were being observed. This is a clear case of unlawful surveillance of their union activity."

31, 1999), an NLRB hearing officer found that the company had violated the law, and ordered that Evanette be reinstated with back pay to compensate for lost earnings.

The company appealed this ruling. Finally, on January 10, 2001, **nearly four years after** she was wrongfully fired, the national NLRB issued a final order returning her to work.

Evanette Cyriaque did not give up her determination to bring a union into the Avante-Boca Raton Nursing Home. Because of this, she continued to experience harassment. After being suspended she was terminated again on August 20, 2002. Presently, she works elsewhere and will not be around to see her dream of a united worker voice through a union at the Boca Raton facility. But she is not sorry for what she did or how she conducted herself. She states, “They can’t fire me anymore.” Bargaining finally began in the fall of 2003—a total of 2,497 days after the union originally petitioned for representation rights and 6 years after workers voted “yes.”

Beyond impacts on individual workers, there is a systematic effect on workplace governance. Workers are thwarted in their desire to have a collective voice and an independent organization of their own to help determine their working conditions. Unions as institutions are weakened and destroyed. To be successful, as SEIU 1199 Florida often is, unions must rely on enormous displays of worker determination and courage, and extraordinary measures of community and public pressure rather than the law.

A clear example of how illegal employer behavior can deny workers their right to a union is Villa Maria Nursing



“The tension was so high,” says Ernest Duval, a former CNA at the King David Nursing Home.

and Rehabilitation Center, owned by the Catholic Archdiocese in North Miami. In late 1995, the union began an organizing campaign. In mid-January the union held a meeting with interested workers in a nearby Howard Johnson hotel. A supervisor lurked in the hallway, tried to hide his identity, entered the meeting pretending to be interested in the union, and signed a false name on a union authorization card. Workers attending recognized him and were intimidated. He also noticed which workers were present and talking to union organizers.

Further surveillance ensued. The employer more than doubled the number of security guards. Security was assigned to the parking lot during shift changes when union supporters were handing out handbills and talking about the union. Managers stood on the roof of the facility, taking pictures. Union supporters meeting at a Subway restaurant across the street from the nursing home were spied upon. In the NLRB ruling, the judge found, “These supervisors went to the rooftop to make certain the employees knew their activities were being

observed. This is a clear case of unlawful surveillance of their union activity.”

In addition, threats were made at a “captive audience meeting” that unionization would mean loss of employment benefits. Again, the NLRB found this activity to be illegal. The employer promised that conditions would improve if the workers rejected the union. Again, this was found to be illegal coercion. Several additional illegal practices were also employed, and on May 31, 1996, the union lost the election 59 to 65.

Due to the employer’s illegal conduct, the NLRB has set aside the results of the election and attempted to hold another one. However, due to legal appeals by the employer, a date for the new election was not set until the fall of 2003. An election is now set for December 4, 2003, 2,743 days after the first election. In the seven and a half years since the first election, demoralization had become relatively widespread and many of the workers have since been fired, retired, quit or passed away.



CHAPTER III

“Why does this take so long?”

The Strategy and Impact of Delays and Appeals

The examples chronicled in Chapter 2 illustrate how delay works to management’s advantage. Ernest Duval recalls, “People were so discouraged. They feel the union’s no good, why does this take so long? There is not justice in this country, the government is on management’s side.” Claudette Brown,

Employers have an extremely easy way to delay every element of the process leading to a union contract. They simply make a legal appeal of everything possible...

who has worked as a CNA at Sunrise Nursing Home for 15 years, understands the strategy. “They drag it out ‘til no one’s interested anymore and [they’ve gotten] rid of everyone interested in the union...you can walk that floor and I’m the only one still there that was active with the union.” Claudette voted in an NLRB election in May 1997 and still waits for the election.

Even when the workers succeed in demonstrating to the NLRB that laws have been broken, delay allows the employer to thwart the will of the majority. Turnover in the workforce erodes union support. Frustration and despair set in after months and years of fruitless attempts to achieve a union, often making negotiating a first contract impossible.

Employers have an extremely easy way to delay every element of the process leading to a union contract. They simply make a legal appeal of everything possible, and continue appealing until they have exhausted the process. (Imagine if the resources diverted to costly legal battles were invested in providing quality patient care!) If workers succeed in voting for a union,

multiple years can then elapse before the employer is required to bargain with the union. And even then, the employer can further delay the process for months or years by simply going through the motions and essentially refusing to bargain in good faith with the union.

Delays and appeals are routine, as seen in the following table on a number of SEIU 1199 Florida cases.

To understand the impact of these delays, imagine waiting many years for the results of a political election to be implemented. A contract was achieved within a year in only one of these cases. And in that case, it was not because the legal system compelled promptness. Rather, it was because the



“They drag it out ‘til no one’s interested anymore and [they’ve gotten] rid of everyone interested in the union,” says Claudette Brown, who has worked as a CNA at Sunrise Nursing Home for 15 years.

TABLE I

SEIU 1199 Florida election dates and subsequent events, 1996 to the present

Name of facility and date union filed for election*	Date workers voted YES for union	Reason for Delay	Current Status (as of November 2003)
Avante-Boca Raton Nov 13, 1996	Jan. 17, 1997	Employer files objections to union election victory and then refuses to bargain; files numerous appeals.	Almost 7 years until negotiations finally begin Sept 2003; ongoing.
Avante-Lake Worth Oct 15, 1998	Nov. 23, 1998	Employer challenges first union victory; union wins second election; employer files objections again.	Over 2 years before negotiations begin Feb 2001; signed contract in 2002.
Villa Maria April 22, 1996	May 31, 1996	NLRB orders second election due to massive employer abuses; employer appeals all the way to the U.S. Supreme Court.	Union election pending Dec. 2003, 7½ years later.
King David/Greenwood Jan 25 and 28, 1994	Aug. 5, 1994	Employer refuses to bargain with union after election victory and files numerous appeals.	6 years until negotiations begin in 2000; fruitless until facility closed 2002.
Glades May 24, 1999	July 7, 1999	Employer files objections to union election victory.	Fired workers receive monetary settlement in April 2001, 2 years later; negotiations fruitless; employer withdraws recognition and union disclaims representational interest July 2003.
Sunrise Feb 21, 1997	May 9, 1997	Employer files objections to union victory; refuses to bargain when objections are dismissed.	Almost 5 years later, no result as of Nov 2003; union election still subject to litigation by employer.
Mt. Sinai-St. Francis (MSSF) Jan 24, 2002	Feb. 28, 2002	Employer files objections to union election victory—claims “voodoo” used; massive community outcry.	Negotiations begin Jan 2003; contract signed Feb 2003 and fired workers reinstated 1 year after the election.
Excel Nov 21, 2000	Jan. 31, 2001	Employer files objections to union election victory.	3 years later, no result; union election still subject to litigation by employer.
Holmes (LPN unit) Aug 13, 1999	Oct. 26, 1999	Employer files objections to union election victory—says LPNs are not covered by law; NLRB orders company to bargain as of August 2003.	4 years later, employer has not responded to union request for bargaining.

* To “file for an election” the NLRB requires proof that 30% of workers have signed union authorization cards, but SEIU 1199 Florida insists on having majority support before they file a petition for an election.

It does not matter that these flimsy charges were usually overturned in repeated and final judicial determinations. They achieved at least one of their purposes—delay in the process to the detriment of the workers involved.

union brought to bear public pressure on the employer.

When employees have to wait 4 to 7 years after voting for a union to even begin bargaining, or even wait 2½ to 3

years, it is hard to argue that they have the effective right to organize a union. Beyond the wait, it is apparent that the delay affects the ultimate outcome in many instances—causing destruction of the union as an organization within the workplace (Glades), or seemingly endless litigation (Sunrise and Excel). What should be a simple process of workers coming together to improve working conditions is mired in a cynical strategy of manipulating the law and the bureaucracy.

The basis for the legal appeals used to delay union recognition or contract negotiations can be quite insubstantial, but as long as there are endless appeals, long delay can result. For example, Sunrise Nursing Home filed an appeal of the union's election victory because the ballot was not printed in "Creole." Claudette Brown scoffed at the charge. "We all thought it was stupid. Everybody understood the ballot." English was the language management used to communicate with workers in the workplace and

what employees used to communicate with most nursing home residents.

At the Avante-Boca Raton facility, management challenged SEIU 1199 Florida's affiliation with the national union, as a delaying tactic. At the Avante-Lake Worth facility, the first election results were thrown out because the NLRB translator arrived late on election day. At Glades, management filed to overturn the results because they claimed an election day union rally was prejudicial. And, in a case that garnered national publicity, management at MSSF alleged that the union's organizers used "voodoo" to intimidate the workers into voting for the union (as detailed in Chapter 5). It does not matter that these flimsy charges were usually overturned in repeated and final judicial determinations. They achieved at least one of their purposes—delay in the process to the detriment of the workers involved.



Ernest Duval received only \$1,797.58 in lost back pay 5½ years after his illegal firing. For many workers, reinstatement is a moral victory but a rather empty reward.

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CHAPTER IV

“They can do whatever they want”

The Lack of Consequences for Breaking American Laws

A groundbreaking study by Human Rights Watch (HRW), in 2000 documented workers rights abuses in a wide range of campaigns. Kenneth Roth, HRW Executive Director summarized the report: “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.”

Even when employers are found guilty of violating the law, the remedies available to enforce workers’ rights are so insubstantial that they provide little deterrence against the illegal behavior. The results are gross violations of workers’ rights that frequently thwart their will to have an independent, collective voice at work. Additionally, they actually encourage unlawful employer behavior. It reinforces the notion that employers have all the power, or as Nelta Moline says, “they can do whatever they want.”

Two cases illustrate the inadequacy of current legal remedies to protect workers from an egregious denial of basic human rights to individuals, and a saga of no real consequences for an employer who prevents them from achieving a first contract.

Similar to Evanette Cyriaque, the case of Ernest Duval demonstrates how badly individual workers may be mistreated with little sanction for blatantly illegal behavior. Ernest Duval was one of the workers who organized a union at the King David Nursing Home in West Palm Beach, Florida in 1994. By all accounts, he was the most prominent union advocate in the campaign. It is also undisputed that he was a good worker and had no major disciplinary problems prior to the organizing drive. During the campaign, Ernest and several workers were fired. In this economy, most families can relate to the fear of losing a job. Most of us live paycheck to paycheck. For Ernest and his family it was very hard because he and his wife were both out of work. They had to run up credit cards to pay their bills.

In 1996, the NLRB upheld a number of complaints against the owner for these discharges. Specifically, it found that Ernest Duval had been “set up” and was actually fired for his enthusiastic support for the union. However, the employer kept appealing the ruling, delaying any reinstatement for years.

Several years later, ownership of the facility changed hands, and the name was changed from King David Nursing Home to Greenwood Rehabilitation Center. In late 1999, the new owner finally agreed to reinstate the fired workers and to get rid of any internal

The remedies available to enforce workers’ rights are so insubstantial that they provide little deterrence against the illegal behavior.

company documents making reference to their having been disciplined. The delay in reinstatement, which lasted almost six years, forced Ernest and the other fired workers to get other jobs simply to survive. Because the National Labor Relations Act allows no punitive damages and requires that all subsequent earnings be deducted from back pay awards, Ernest Duval received a grand total of \$1,797.58 in lost back pay for the 5½ years since his illegal firing. For many workers, reinstatement is a moral victory but a rather empty reward. Most have had to find other work in the meantime; and, they frequently face the same or increased hostility when the company is forced to take them back.

Ernest went back to the job in December 1999. When it was apparent that he continued to support the union and to speak openly in its favor,

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the company once again retaliated. On February 2, 2000, he was called into his supervisor's office and told that he should give up on continuing his efforts for the union; and, that he was being given a disciplinary warning for

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inadequate work. Fed up and unable to take the pressure any longer, he asked for a leave of absence and left the job two days later.

In the aforementioned case of Evanette Cyriaque, the NLRB ruled that her firing also had been illegal. Because she had been forced to get a job in the almost four years since she was fired, she received less than \$500 for her back pay award. Understandably, Evanette's reaction was, "That was nothing to me!"

In both cases, this illegal firing had its desired effect for a very small price to the company. A key leader was removed and people were intimidated.

Even though the law requires the employer to bargain in good faith with the workers and their union, there are

no real penalties for not doing so. Cornell University researcher Kate Bronfenbrenner's study found that more than a year after voting for union representation, workers are unable to negotiate an initial collective bargaining agreement 32% of the time.

A clear example is the Palm Court Nursing Home in Ft. Lauderdale, Florida, which is owned by Greystone Health Care Management. SEIU 1199 Florida has contracts with six other Greystone facilities in Florida. After the union successfully organized the Ft. Lauderdale nursing home in April 2002, the company refused to meet for bargaining until September 2002. At the one bargaining session held in September, the company refused to bargain at all because it objected to one member of the union's bargaining team (one of its own employees). The union then filed charges with the NLRB, charging the company with a failure to bargain as required by the law.

While these charges were slowly winding their way through the NLRB, in January 2003 the company radically changed its benefits plan for the worse without prior notice to the union or the employees. Their action was in complete contempt of the bargaining process. Employees lost two sick days, two paid holidays and had reductions in jury duty pay, overtime, and in prescription drug and health insurance benefits. Once again, the union filed charges with the NLRB on the grounds that the company changed the very things that they were legally obliged to negotiate with the union.

Again, with no resolution in sight on the previous violations, the two sides began negotiations in February 2003. The company proposed even further reductions in sick days, vacations and holidays. Throughout the summer and fall of 2003, futile "negotiations" of this nature ensued. Finally in September 2003, the NLRB conducted a hearing on all of SEIU 1199 Florida's charges. In mid-November 2003, the NLRB official ruled in favor of the union on all of the charges. However, the employer can appeal this decision through multiple appeal processes, further delaying final resolution for months or years.

This could be very simple. The company has union contracts with SEIU 1199 Florida at other facilities. Yet, the company repeatedly refused the union's offer to model the Palm Court agreement on the contracts that both the union and company had found acceptable for years. Instead, the company illegally took away benefits and proposed more cuts on top of that—a strategy aimed at avoiding an agreement, not reaching one.

Because she had been forced to get a job in the almost four years since she was fired, she received less than \$500 for her back pay award. Said Evanette, "That's nothing to me!"



CHAPTER V

“We won!”

Still the Union Manages to Win

In spite of these incredible obstacles, determined nursing home workers and their union still do win victories. SEIU 1199 Florida engages in a wide array of creative and persistent tactics to put the necessary pressure on employers that the legal system fails to provide.

Since January 1996, SEIU 1199 Florida has brought 73 elections to the NLRB. Of these, 60 were victories, for an 82% success rate. (The average win rate for unions as a whole over these years was between 45% and 50%.) Thirteen of the elections resulted in a loss. Four of the election victories are still tied up in the courts (Sunrise, Holmes LPN, Pavilion and Excel), and two of the units lost recognition after lengthy delays and anti-union tactics destroyed the pro-union majority (Glades and Lifecare of Melbourne). Two of the losses were overturned by the NLRB and re-run elections were scheduled. Fourteen of the units are in active negotiations for first contracts. Even more remarkable than its longer-term win rate is SEIU 1199 Florida's most recent success rate. Since 2001, the overall win rate has been 23 victories and 3 losses.

Hard won victories come in spite of the law that purports to protect worker rights but does not. Two examples are the MSSF campaign that inspired widespread community pressure, and the Fair Havens Center campaign that entailed an explicit alternative to the legal process: a neutrality/card check agreement.

Mt. Sinai-St. Francis (MSSF) Nursing and Rehabilitation Center: An Example of Community Outcry

There had been a 10-year struggle to organize the workers at MSSF. Two previous attempts had failed. In January 2002, SEIU 1199 Florida began a third organizing campaign at the facility. In an election on February 28, 2002, the employees voted 49 to 37 in favor of the union. Five days later, MSSF filed objections to the election results, claiming that organizers and pro-union employees in this predominantly Haitian workforce had used “voodoo” to intimidate the other workers into voting for the union. Among other things, management alleged that pennies had been left in the streets and hallways; that a union organizer had worn intimidating perfume and danced in delight when the union victory was announced; and, that she was rubbing a pair of beads in her hand. (Said beads were the rosary that Marie Jean Phillip carried as a devout Catholic!) A hearing was set for March 25.

On March 20, a group of religious, community and political leaders joined with SEIU 1199 Florida at a press conference in front of the MSSF facility to urge management to drop these bogus and racist charges. Several workers were fired for union activity, including Ulrich Antoine, who was out of work for over a year.

SEIU 1199 Florida engages in a wide array of creative and persistent tactics to put pressure on employers that the legal system fails to provide.



MSSF laundry worker Yvonne Best proudly wears her SEIU 1199 Florida t-shirt.

Hundreds of people put in thousands of hours so that these workers were able to obtain a first contract one year after they voted for the union.

When the March 25 and 26 hearing occurred, national publicity ensued, much of it making the nursing home look foolish at best. Articles appeared in the *Miami Herald*, the *Atlanta Journal-Constitution*, the *New York Times*, the *Seattle Times*, *USA Today*, and other newspapers. The “All Things Considered” news program on National Public Radio ran a story on the “voodoo” charges.



AFL-CIO Secretary-Treasurer Richard Trumka lends support to Nelta Moline, a CNA at the MSSF Nursing Home.

Throughout the spring, rallies, candle-light vigils and prayer sessions kept the issue in the forefront. The community embraced the union recognition battle as struggle for economic justice and a stand against racist stereotyping of Haitian immigrants.

On May 17, the NLRB hearing officer ruled that the “voodoo” charges were without merit and recommended that the election results be certified. On June 7, Mt. Sinai appealed the case to the national NLRB office in Washington, D.C., thus ensuring that the issue would not be resolved for a much longer time. The next edition of the *Haitian Times* newspaper editorial was titled, “Shame on Mount Sinai.”

Activities escalated into the hot Miami summer. In June, Haitian pastors and community leaders called an emergency town hall meeting denouncing the discrimination and disrespect shown by management. Scores of elected leaders were there to pledge their support. A wide array of groups including the AFL-CIO and other unions, the NAACP, and Haitian community groups also stood with MSSF workers. The meeting ended in a spirited march undaunted by pouring rain.

In July, South Florida Jobs with Justice organized a Workers Rights Board (WRB) composed of prominent political, civic and religious leaders to hear public testimony from MSSF workers. Nationally known actor Danny Glover addressed a crowd of over 400 and served as an honorary WRB member. There was a protest rally outside the MSSF facility following the testimony. These activities garnered enormous publicity in the local media, virtually all of it unfavorable to the nursing home. This event, and the massive publicity that followed, were probably

the major turning point in the battle to get management to accept the will of the workers.

Monica Russo, president of SEIU 1199 Florida, has worked for years to build strong relationships with the community. She states, “Unions by themselves can’t win economic justice for workers, given the brutal reality of vicious employer anti-union campaigns and toothless ‘labor’ laws. That’s why we helped build a South Florida chapter of Jobs with Justice to bring community and faith-based organizations, progressive elected officials, and labor together to achieve our common goal of worker justice.”

The combined pressure of continuing bad publicity, future actions, and a growing array of political figures weighing in against management eventually had an effect. On December 20, the nursing center and the union agreed to bargain and to put aside their differences.

Bargaining began and on February 7, 2003, Mt. Sinai employees won a landmark first union contract. Rev. Dr. Jonas Georges, Secretary-Treasurer of the Haitian American Christian Council, stated, “Many hours of hard work by countless people in our community have produced extraordinary results. This is a tremendous boost for perseverance.”

This could have been another story of years of delay. A strong, sustained barrage of community, political, and public exposure of the employer’s behavior made the difference. Hundreds of people put in thousands of hours so that these workers were able to obtain a first contract one year after they voted in the union. However, not every group of workers can count on celebrities and massive community campaigns to champion their cause.

Fair Havens Center: The Difference Neutrality/Card Check Can Make

The Fair Havens Center case illustrates the difference made when an employer stays out of the workers' decision to unionize. SEIU 1199 Florida ran an election campaign at the Fair Havens Center in Miami Springs in mid 1998. The employer ran a vicious anti-union campaign including "captive audience" speeches where a manager denigrated the union; letters to workers' homes calling for a "no" vote; and, firing of a visible union supporter. The union lost the election on September 2, 1998.

SEIU 1199 Florida was never able to recover from the effects of the anti-union campaign that had been conducted by the facility's management. However, several years later the facility was sold to new management that ran other unionized nursing home facilities. Through that relationship, the new management agreed to not interfere if the union tried to unionize any of its other facilities. It agreed to recognize SEIU 1199 Florida if it was able to obtain signatures on cards requesting union representation from a majority of the workers. This is called a neutrality/card check agreement.

Under these conditions of employer "neutrality," the workers were more easily able to organize. As Fair Havens worker Carmen Ruiz puts it, the old owner would "intimidate the workers. They're afraid of losing their jobs." The union was thwarted due to fear. But the new owner "is not against the union...He knows better...(we) have a right to join a union." Thanks to the employer's attitude and agreement to not interfere with the workers' decision, the majority of workers signed union

authorization cards and organized their union peacefully and easily.

These two examples—massive and sustained community pressure, and genuine employer neutrality—show that to win, unions pursue strategies that do not depend on the current legal system.

A final point must be made: this union is as successful as it is mainly because of the extraordinary courage and stamina of the workers in these nursing homes. They are willing to face firings as a routine price to pay for organizing. They wait many years to obtain the union they wanted. They are the heroes and heroines who care for our loved ones. Their bravery in the face of threats and mistreatment is exceptional, and no union could make headway without such heroic workers determined to stand up for their rights.

With a neutrality/card check agreement, the workers organized their union peacefully and easily.



Actor/activist Danny Glover (center) and SEIU 1199 Florida President Monica Russo (far right) join community leaders at a Jobs with Justice rally supporting the MSSF workers.



CHAPTER VI — CONCLUSION

“I hope one day the government will do something for the workers”

There are two, basic conclusions to be drawn from these cases. First, workers have to be exceptionally heroic if they wish to achieve an independent, collective voice at their place of work. Some of them have to be willing to be martyrs, because gross violations of human and worker rights, including firings, are commonplace. The workers we have highlighted here are that brave. Evanette Cyriaque is such a person. Despite having been fired, she states, “I feel pride even though I am not there.” She is hopeful that her willingness to stand up will mean improvements for her previous co-workers. People like Evanette deserve enormous respect.

A worker desiring a union is not trying to declare war on management,

but is simply attempting to achieve a voice at work. Lude Duval insists, “We don’t want the union [because we want] to fight with management. We want safety, health care, dignity...[and the ability] to take a sick day to care for my son...” In virtually all cases, it is management that turns a union election campaign into a battleground or war zone. Workers simply want a voice, not to battle their employer.

But something is very wrong if the laws of our country allow, or perhaps even encourage, employers to violate basic human rights in the employment relationship. As Lude Duval puts it, “I hope one day the government will do something for the workers.” Regarding management she adds, “The govern-

ment has to be tougher with them... it’s on management’s side.”

If we want our labor laws to further the cause of justice, they must be changed. At minimum, changes in labor law should correct the most extreme injustices built into our current system.

First, the law should provide a way for workers to make up their own minds about unionization, **with no employer interference whatsoever.** One way to do this would be to provide for “card check,” whereby an employer is required to recognize the union and begin bargaining if a majority of their workers sign a card stating that they desire the union to represent them in negotiations.

Second, the law should place **real penalties on employers who break the law.** For example, back pay awards should be more substantial. Employers who violate the law should pay penalties beyond just posting notices apologizing for their bad behavior. This would begin to put the economic incentive in the direction of obeying the law, rather than breaking it. This could go a long way in curbing unfair employer behavior.

Third, the law should **prevent employers from refusing to agree to a first collective bargaining agreement.** This could be achieved by requiring that the terms of the first contract be decided by a neutral third-party arbitrator if the two parties are unable to reach agreement within a reasonable period of time.



Says Lude Duval, “We want safety, health care, dignity...[and the ability] to take a sick day to care for my son...”

Afterword

By Fred Feinstein, NLRB General Counsel, 1994–1999

The stories told in this report should by themselves be cause for serious concern. No person in this country should be subject to what these brave people have endured. But these are neither rare stories nor isolated examples of a few rogue employers acting in extreme and unexpected ways. Unfortunately, what is described in this report happens frequently across the country.

When I was General Counsel of the National Labor Relations Board (NLRB) from 1994 through 1999, we saw cases with stories like these almost every day. The NLRB is the federal agency charged with enforcing the law that protects the right of workers to organize. One need look no further than NLRB cases to find tens of thousands of stories like the ones told in this report. Such stories typify what workers experience when they try to improve working conditions by seeking union representation.

Anti-union consultants, advisors and lawyers for many years have been developing and refining aggressive approaches to fighting unionization that rely on an employer's ability to scare and punish workers. The more sophisticated accomplish this by practices determined to be lawful. Others find ways to intimidate and harass that are close to the often blurry line that separates lawful from unlawful conduct, making it difficult to prove a violation. Still others

clearly cross the line and violate the law, but rarely experience significant sanctions for their violations.

Not only does intimidating and harassing conduct usually escape sanction, it also is rarely criticized because most of these stories are seldom told and often go unnoticed. They are not reported and happen in places that command little attention. Communities frequently are not aware of what takes place in organizing campaigns, even when there are significant violations of the law.

Part of the problem is the law. As demonstrated by many of the stories in this report, sanctions for violating the legal right to seek union representation are often too little and come too late. In 2001, the NLRB took more than 1,124 days after the filing of a charge to issue decisions in half of unfair labor practice cases decided. In addition to extensive delay, the remedies provided often do little to compensate the victims of unlawful conduct. For example, a worker illegally fired is eventually entitled to reinstatement with back pay. But earnings from other jobs that unlawfully terminated employees are required to diligently pursue offset back pay. Employees like Evanette Cyriaque often receive only a few hundred dollars when offered reinstatement three years after an illegal firing. The other requirement imposed on employers who illegally terminate workers is the posting of a notice saying they won't commit the

These are neither rare stories nor isolated examples of a few rogue employers acting in extreme and unexpected ways. Unfortunately what is described in this report happens frequently across the country.

same violation again. Remedies like these provide little deterrence for those inclined to violate the law.

The potential delays in deciding the outcome of a representation election are also very troubling. When a majority of the workforce votes to support unionization, an employer can always stall the implementation of that result by appealing the result to the Board.

- In 2001, the NLRB met its goal to handle post-election appeals in the regions within 100 days in 81% of the cases, nearly a fifth of the cases taking longer.

- The region's decision is appealable to the Board. In 2001, the Board took more than 142 days to decide the appeal from the region in half of the post-election challenge cases. In September 2003, there were sixty such cases pending before the Board for more than a year.
- After a Board decision upholds a union victory, an employer can continue to refuse to bargain to "test certification." This process, which ends with an appeal to the federal courts, typically adds at least a year more of delay.

If you add it together, by merely exercising available rights of appeal, the finality of a union election result can readily be delayed for more than two years and often much longer. Remember the crisis and trauma caused by the five-week delay in the outcome of the Bush-Gore election? In union representation elec-

tions, an employer can usually assure a delay that is twenty times longer.

It is true that employers don't always take advantage of their ability to drag out the legal process. But delay also means that those who violate the law have significant leverage to force settlements that undermine the protections in the law. These settlements further contribute to the widespread perception that even those caught violating the law have little cause for concern.

As told in this report, sometimes workers—through enough courage, persistence and luck—overcome the odds and win bargaining rights notwithstanding strenuous and protracted opposition by the employer. But that hardly justifies the reality that far too often workers have to run a gauntlet of fear, intimidation and reprisal to exercise fundamental legal rights.

Sources for Further Reading

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