



Fact Sheet: Republicans Want to Keep the Rules Rigged Against Workers by Striking Down Union Election Reform

The National Labor Relations Board (NLRB) recently finalized a new rule that empowers hard-working Americans in the workplace. Under the new “representation-case procedures” rule, which took effect April 14, 2015, regulations for union election procedures are modernized and streamlined so that workers can better exercise their legal right to form a union if they choose. It improves a system that for too long allowed unscrupulous employers to unfairly interfere with workers’ rights to join together and bargain for better pay by delaying elections with frivolous litigation. The NLRB reforms strengthen workers’ rights by allowing American workers to vote for or against forming a union in a fair, transparent, and timely fashion. But Republicans are once again trying to rig the rules in favor of special interests and against workers by undoing these reforms.

Background on Union Election Reforms

Under the National Labor Relations Act, the NLRB is mandated to protect the rights of employees to form unions, which includes overseeing representation elections in which workers decide whether or not to form a union. Until now, however, there had been no substantial updates to the NLRB election process since the 1970s.

After a lengthy and comprehensive public comment process, the NLRB issued a final rule in December 2014. The rule is designed to help the NLRB to better fulfill its duty to protect employees’ rights by fairly, accurately, and expeditiously resolving questions of representation, and by preventing companies from interfering with employees’ free choice. The rule made the following changes: [NLRB, [accessed 2/24/15, 12/12/14](#); Senate HELP Committee, 2/15]

- Requires elections to be scheduled “for the earliest date practicable”;
- Eliminates the automatic 25 day waiting period following a regional director’s decision directing an election;
- Allows electronic filing of election petitions;
- Ensures that employees, employers, and unions receive timely information about the representation case process;

- Requires that additional contact information (such as personal telephone numbers and email addresses) be included in voter lists;
- Eliminates or reduces unnecessary litigation, duplication, and delay and,
- Allows parties to consolidate all election-related appeals to the NLRB into a single appeals process.

The Rule Updates an Election Process that was Rigged Against Workers

The election process has long been vulnerable to frivolous litigation, abuse, and delays. Under the old system, employers could delay a union election through litigation, appeals, and duplicative procedures. In cases where employers took advantage of every opportunity for delay, the average time before workers could vote was 198 days. In some extreme cases, election procedures were plagued by delays that ranged from 3 and a half years to 13 years. The new reforms will reduce unnecessary litigation of issues that do not affect the outcome of the election. [Senate HELP Committee, 2/15]

The old election process impeded workers' ability to organize. Although 58% of workers want representation in their workplace, the broken election process has discouraged unions and workers from relying on the NLRB to obtain union representation. Since 1959, the number of union election petitions filed with the NLRB has declined by 80%. In 2001, there were more than 4,100 petitions filed with NLRB compared to less than 2,000 in 2013. [Senate HELP Committee, 2/15]

The election process was plagued by coercion and hostility towards workers. One in five workers who openly advocated for a union was fired, and employees are fired in 34% of all private-sector union organizing campaigns. In 57% of campaigns, workers are threatened with plant closings and 47% are threatened with loss of wages and benefits. As a result of employer intimidation, 31-35% of workers give up and withdraw their petition for an election before the vote is held. In the face of extreme employer hostility and inadequate laws, workers perceive organizing to be a huge risk and do not see a safe and viable means to obtain the representation they want. By preventing unnecessary delays in the election period, the new rule will lessen coercive behavior and improve workplace relationships. [Senate HELP Committee 2/15; Columbia University, [1/11](#)]

Anti-union campaigns begin early in the election process. Under the old system, employers have had nearly unlimited opportunities to spread anti-union messages to workers while unions are often unable to speak directly to many employees about the benefits of joining a union. Nine out of 10 employers require their employees to attend anti-union meetings and presentations during working hours and about two-thirds of employers require their employees to attend weekly one-on-one antiunion meetings with their supervisors. [Senate HELP Committee, 2/15; University of California, Berkeley Center for Labor Research and Education, [6/11](#)]

The NLRB Reforms Create a Level Playing Field for Workers

The rule reduces opportunities for unnecessary delays and litigation. Under the old system, elections were often delayed by motivated employers who pursued frivolous appeals that are rarely granted. This is because the NLRB was required to hear appeals that are filed before the election – even if there were no compelling grounds for review. Under the new rule, the Board can schedule appeals hearings after the election, allowing workers to vote on whether they want a union first. Both parties are now required to state their positions on issues they want to litigate before the hearings take place or the issues will be waived (absent a good cause). The rule still preserves the right to challenge eligibility of individual voters at the time of the election. [Senate HELP Committee 2/15; [SEIU](#)]

The rule modernizes election procedures to allow for modern forms of communication. The new rule modernizes the election process by allowing employers and unions to file forms electronically and allowing employers and unions to use cellphones and email to communicate with workers about election proceedings instead of having to rely on the post office for all forms of communication. The rule also requires employers to provide a list of employees that are eligible for the union election in electronic form within two business days of the direction of election. This list must include telephone numbers, email addresses, work locations, shift schedules, and job descriptions. Under the old system, employers had seven business days to provide a paper list of employees' addresses, and frequently provided incomplete or inaccurate information. The new rule prohibits the use of employee information for any purpose other than the representation proceedings. [Senate HELP Committee 2/15; [SEIU](#)]

Employers Will Still Have a Voice

Even before an election process begins, employees have already received relevant information. The election process is triggered when at least 30% of employees sign a petition expressing their interest in voting for union representation. Usually, the signature-gathering process lasts for an extended period of time, and both the employer and the union are communicating with workers during that time period. Therefore, employees have already had the opportunity to consider the issue before the official election period even begins. [Senate HELP Committee, 2/15]

Eliminating delays in the election process will not affect employers' ability to communicate with workers. With increasing frequency, corporations are incorporating anti-union communication into new hire orientations, employee manuals, and training sessions. A recent study found that 47% of serious unfair labor practices and instances where employers retaliated against union supporters occurred before an election petition was filed even filed. [Senate HELP Committee, 2/15; Columbia University, [1/11](#)]

Employers will still have the right to communicate with workers about the drawbacks of unions. Employers can still require workers to meet one-on-one with supervisors, or to participate in repeated large group meetings to watch anti-union videos, and employers can still say anything they want to workers that is legal under current law. [Senate HELP Committee, 2/15]

The new procedures apply to decertification elections as well. Since the same rules apply to decertification elections, the proposed rule ensures that employees who have union representation are able to have a timely up-or-down vote to get rid of the union. [University of California, Berkeley Center for Labor Research and Education, [6/11](#)]

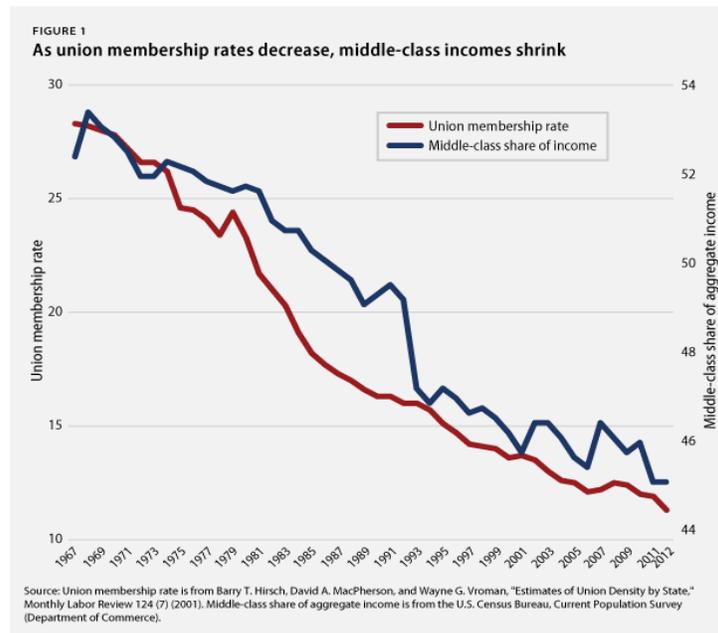
Middle-Class Workers Benefit from Union Representation

Unions are vital for a strong middle class. Union representation provides workers with a voice in the workplace – helping increase wages, improving workplace safety, and increasing access to retirement savings and health benefits for both union and nonunion workers. Research has repeatedly shown that being part of a union substantially increases workers’ wages and improves the likelihood that workers will have pensions and health care coverage: [BLS, [1/25/15](#); CAP, [9/17/13](#); CEPR; EPI, [8/29/12](#)]

- In 2014, union members received a median weekly earnings of \$970 compared to only \$763 for non-union members;
- Unionized workers are 28.2% more likely to be covered by employer-provided health insurance and 53.9% more likely to have employer-provided pension;
- For the typical U.S. worker, unionization raises wages by 13.6% overall (17.3% for men and 9.1% for women);
- For women workers, unionization raises the likelihood of having a pension by almost 25% – a larger percentage than the corresponding effects of obtaining a four-year college degree and,
- For African American workers, unionization raises wages by about \$2.00 per hour.

Declining unionization has coincided with a decline of the middle class. Although worker productivity is at an all-time high, Americans are struggling with stagnant wages and the middle class accounts for the smallest share of the nation’s income since World War II. Since the late 1960s, the decline in union participation is highly correlated with the decrease in the share of the nation’s total income going to the middle class, while the share of income going to the top 10% has continued to rise.

- Between 1967 and 2012, union membership fell from 28.3% of all workers to 11.3% nationwide, with significant drops in every state. During the same time period, the share of the nation’s income going to the middle 60% of households, decreased from 53.2% to 45.7% – the lowest level since the data was first reported. [CAP, [9/17/13](#); EPI, [2/3/15](#)]



[CAP, [9/17/13](#)]

The erosion of collective bargaining hurts all workers. The decline of collective bargaining has lowered the wages of both union and nonunion workers. From 1979 to 2012, inflation-adjusted median hourly compensation grew less in the states where collective bargaining coverage fell the most. Specifically, the 10 states that had the least erosion of collective bargaining saw their inflation-adjusted median hourly compensation grow by 23.1%, compared to the 5.2% growth of the 10 states that suffered the largest erosion of collective bargaining — a 17.9% gap in compensation growth. [EPI, [1/6/15](#); [1/6/15](#)]