

THE ORIGINS, EFFECTIVENESS AND FUTURE OF NEUTRALITY AGREEMENTS By RICHARD W. HURD

UNITE-HERE's Hotel Workers Rising (HWR) campaign in 2006 drew the public's attention to the health and safety concerns of housekeepers, kitchen workers and other "back of the house" employees in first-class hotels. The union's report, *Creating Luxury, Enduring Pain*, highlighted the trend toward larger beds and multiple oversized pillows and its association with a notable rise in work-related injuries for members of the housekeeping staff. To make its case, UNITE-HERE used employers' own Occupational Safety and Health Administration (OSHA) reports, which revealed an annual workplace injury rate of 10.4 percent for housekeepers (Moriarty, 2007: 8). Based on the data, the union publicly exhorted the major hotel chains to agree to changes in work practices, such as increasing the time allotted to clean a room and having housekeepers work in pairs to handle oversized mattresses (Moriarty, 2007).

The plight of hotel housekeepers and the HWR campaign became national news because the union had succeeded in securing summer 2006 contract expirations in seven major cities: New York, Chicago, Los Angeles, San Francisco, Boston, Toronto, and Honolulu. The nearly common expiration dates had been an objective of union bargaining for several years and had been secured by insisting on shorter contracts, and in the case of San Francisco working without a contract (Sherwyn et al., 2006). UNITE-HERE's objective in establishing the 2006 expiration dates was to gain greater leverage in negotiations, which would help it address workplace concerns such as the health and safety issues. But the foundation of the bargaining strategy was to go beyond wages, benefits, and working conditions and develop leverage that would increase the potential to achieve another high priority—employer agreement to organizing neutrality. The plan succeeded.

In city after city without a strike, UNITE-HERE contracts were resolved on terms that met the union's economic and workplace goals; even more important to UNITE-HERE's own institutional health, organizing neutrality was established as the standard in the industry. A neutrality agreement states that the employer will remain neutral in the union organizing process and often that it will recognize unions based on union-authorization "card checks" by neutral third parties, as an alternative to National Labor Relations Board (NLRB) elections. Both Hilton and Starwood reached national agreements that assured neutrality in luxury and convention hotels in specified markets. In addition, several municipal hotel associations agreed to neutrality language covering both new properties and some existing hotels (Sherwyn et al., 2006). UNITE-HERE estimates that it has added almost 6,000 new members under the agreements (Raynor, 2006).

The 2006 hotel campaign epitomizes the contemporary union practice of *bargaining to organize*. As was the case with HWR, unions often use a comprehensive strategic approach that includes research, publicity, mobilization, and various forms of leverage to secure key bargaining objectives that address the concerns of current members and facilitate new organizing (Moberg, 2006). In particular, the neutrality agreements secured by UNITE-HERE are by no means unique, but reflect the established consensus that employer commitments to forsake standard union avoidance techniques are essential to organizing success. This article explains the recent trend toward such agreements, examines their effectiveness, and considers their likely impact on the future of organizing.



The Evolution of Union Organizing

As both industrial relations scholars and labor journalists have demonstrated in recent articles, the contemporary paradigm for union organizing in the United States combines employer neutrality and card

check recognition (see Moberg, 2006, and Becker et al., 2006). This represents a dramatic shift from the standard NLRB-based organizing framework that prevailed from the passage of Taft-Hartley in 1947 until at least the late 1980s. During that era most unions were content to recruit new members and attempt to add new bargaining units under the umbrella of the orderly NLRB representation election procedures. This style actually fit the dominant servicing model of unionism: organizers “sold the union” based on the services it delivered and the contractual improvements it could promise, and were content to let workers decide by secret ballot whether they wanted to collectively “purchase” the benefits associated with union representation.

Labor's embrace of the NLRB framework loosened during the 1980s in the face of membership decline and plummeting private sector union density. By the early 1990s, a new consensus had emerged in the form of what was referred to as “an organizing model of unionism.” The idea was that as flawed as the NLRB election procedures were, unions could overcome their disadvantage with a grassroots model of organizing rooted in building the union rather than selling the union. As argued by prominent advocates of this approach,

[D]espite the intensity of employer opposition, what unions do during organizing campaigns is what matters most...[T]he use of a grassroots, rank-and-file-intensive union building strategy is fundamental in significantly raising the probability of winning (Bronfenbrenner and Juravich, 1998: 33).

Throughout the 1990s, many unions aggressively pursued grassroots organizing. But in spite of some notable successes, union density continued to decline in the private sector. There were two basic problems. First, although most union strategists voiced support for grassroots organizing, few unions fully implemented the rank-and-file union-building tactics central to the new model. Radical organizational change is difficult, and it was particularly hard to win support for the wholesale shift of resources needed to fund grassroots organizing on a scale sufficient to counteract the economic and political forces that were contributing to union decline. Second, employers proved adept at exploiting the weaknesses in (and lax enforcement of) the NLRB union representation process, and increased the intensity and sophistication of their avoidance efforts. This increased the cost of organizing and added to the financial burden on unions as they attempted to maintain campaign activism throughout prolonged organizing fights.

Frustration with the NLRB gave birth to a modified approach. Employer neutrality agreements had been around in one form or another for decades; for example, construction unions had used top-down organizing to secure work for union members based on company-union agreements, and the United Auto Workers (UAW) and the United Food and Commercial Workers (UFCW) had negotiated accretion agreements with unionized employers that provided for membership growth as new facilities were opened. Some unions had also been experimenting with neutrality agreements as an adjunct to grassroots organizing (see for example Krump, 1991; Hurd and Rouse, 1990). By the late 1990s several unions actively engaged in what came to be known as “bargaining to organize.” The Communications Workers of America (CWA) openly advocated this approach, negotiating neutrality clauses with Southwestern Bell (SBC) and AT&T (Benz, 2002). The SBC agreement has been particularly successful, with the CWA adding nearly 40,000 members at the company's Cingular Wireless division over the past ten years (Acuff, 2007).

Other unions – most visibly the Service Employees International Union (SEIU), UNITE and HERE, but also UAW and the United Steelworkers of America – have utilized corporate campaign techniques from the start of specific organizing initiatives. Their greatest successes came when the leverage afforded by corporate campaigns made it possible to secure both employer neutrality and card check in order to skip the NLRB election process altogether. By 2001, the AFL-CIO (which had been promoting grassroots organizing and a shift of resources since John Sweeney's election as President in 1995) began “pushing affiliates to avoid the NLRB process when and where possible” (Acuff, 2007). Neutrality and card check was thus established as the new organizing paradigm for the U.S. labor movement (Moberg, 2006), and today the NLRB has been displaced as “most new members come in through alternative approaches”

(Acuff, 2007). The perspective of Teamsters organizing director Jeff Farmer is typical: "In our national organizing strategy, neutrality with card check is always the goal" (Farmer, 2007).

Neutrality Agreements

There are two broad categories of neutrality agreements: Those that are the product of collective bargaining and those that are negotiated as stand-alone agreements with no connection to existing collective bargaining relationships. The stand-alone agreements are usually secured by unions through the application of corporate campaign pressures, as has been the practice in the SEIU's Justice for Janitors initiative (Baird, 2007). Bargaining to organize may also rely on comprehensive pressure tactics, as was the case in the HWR campaign. Alternatively, neutrality may be secured at the bargaining table as a product of efforts to develop labor-management partnerships, as exemplified by the CWA's agreement with SBC.

Based on mixed experience with the effectiveness of neutrality agreements, unions have, in the last ten years, refined their expectations regarding what such agreements should include. Typically, the employer agrees to limits on coercive activities such as one-on-one sessions with employees and captive-audience meetings. The most effective agreements not only limit negative communications from employers, but also specify that employees will be notified in writing that the employer will remain neutral. The union is usually provided with an accurate list of workers in the unit and granted some degree of access to the worksite. The employer accepts either card check certification or a timely election conducted by a mutually accepted neutral. Stand-alone neutrality agreements that accept the standard NLRB *contested* election framework have not been particularly effective and are now avoided. However, in a relatively recent development, the parties may accept a *consent* election conducted by the NLRB, as is the practice pursued by the SEIU's healthcare division. A final common provision is for arbitration of all disputes under the agreement (Scott, 2004; Eaton and Kriesky, 2001).

Although neutrality has become the standard for private sector organizing, not all agreements are effective. The CWA's apparent agreement with Verizon for neutrality in the company's wireless division has been the source of great acrimony in the form of open resistance from management (Patriciam and Raab, 2007). Even where national commitment is secured from an employer, unions often encounter resistance in the workplace from supervisors who have not been adequately briefed. Most unions now seek neutrality language that is "strict and straightforward" (Baird, 2007). Even with neutrality, union strategists agree that unions must conduct thorough campaigns with effective targeting, assessment and grassroots organizing.

Neutrality, the Employee Free Choice Act, and the Future

Given the accumulating evidence of success associated with neutrality agreements and card check, it is not surprising that labor's top political priority is the Employee Free Choice Act (EFCA). As the readers of *Perspectives on Work* are undoubtedly aware, the effect of the EFCA would be: to augment the NLRB certification process with the addition of limitations on employer conduct parallel to those in most neutrality agreements; 3 to formalize the process for securing card check certification; and to provide for arbitration of first contracts. Although the EFCA failed to pass the Senate in 2007 and is unlikely to be enacted without a change in the White House and in the composition of the Senate, it is appropriate to speculate on the likely impact of the proposed legislation in light of unions' experiences with voluntarily negotiated neutrality agreements.

There is a widespread presumption among national labor leaders that enactment of the EFCA would cause a reversal in unions' private sector fortunes. Even a cursory review of the Canadian experience under provincial laws that parallel the EFCA indicates that it is wise to be cautious. It is true that private sector union density in Canada stands at 17.0 percent, more than double the U.S. share of 7.4 percent. However, union density is declining at a similar rate in both countries: a 21 percent relative decline over the past ten years in Canada compared to a 26 percent relative decline in the United States . As

Canadian labor relations scholar Roy Adams points out, “union density and bargaining coverage are falling even in such provinces as Saskatchewan and Quebec that have card-check and first-contract arbitration clauses in effect” (Adams, 2006). Adams concludes that the net impact of the EFCA would be minimal in the face of employer opposition, which would undoubtedly continue, albeit in an altered, form under the new law.

Based on the Canadian experience, then, expectations that the EFCA will deliver unions from organizing purgatory may prove to be overly optimistic. This is really no surprise. Recall that in the 1990s there were many analysts and union strategists who believed that the grassroots, union-building model of organizing could overcome the disadvantages of the NLRB representation process. Just as intensifying employer opposition undermined the effectiveness of grassroots organizing, it seems likely that continuing employer antagonism will limit the ability of unions to take full advantage of legislated neutrality.

As Orrin Baird of SEIU observes, “Even with the EFCA we will continue doing what we are doing. We will have to whip employers, get employers to accept the union” (Baird, 2007). American Federation of State, County and Municipal Employees organizing director Jim Schmitz adds the following caution: “I hope [the EFCA] doesn't lead to less disciplined organizing” (Schmitz, 2007). In short, even with EFCA unions will need to build on the experiences of effective “bargaining to organize” and corporate campaigns that have secured enforceable neutrality. UNITE-HERE's success with Hotel Workers Rising and CWA's card check organizing at Cingular Wireless provide examples that need to be replicated broadly throughout the labor movement. They represent remarkable accomplishments in the context of an extremely unfriendly NLRB and its interpretation of an already weak set of labor laws.

If political fortunes pave the way for passage of the EFCA, this indeed has the potential to benefit labor by establishing a less contentious legal framework. But whatever happens to the law, private sector density will rebound only when unions develop sufficient leverage to win collective bargaining rights from reluctant employers. Where unions succeed in securing effective neutrality, organizers will be able to turn their attention to the somewhat less complex challenge of building enthusiasm for union representation among workers. There is no silver bullet, and no substitute for strategic sophistication in union organizing programs. The unions that rise to the challenge of implementing organizational change, exploiting synergies between bargaining and organizing, and building the capacity to secure enforceable neutrality agreements will be in the best position to thrive.

Notes

1. Card-check recognition involves “presentation to an employer of signed cards authorizing union representation for a majority of employees in a unit” (Eaton and Kriesky 2003: 19). The details of card-check and neutrality agreements can vary widely.
2. An accretion agreement states that when a company opens a facility in a new geographic area or a new unit in an existing facility, those new workers are automatically covered under the employer's existing collective bargaining agreement.
3. The legislation would require employers to recognize and bargain with their employees' union when the NLRB determines that a majority of employees have signed valid authorizations expressing their desire to form a union.

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