

Sixteen for '16 - Number 8: Workplace Democracy

Michael Cantrell, an assembly line worker, at the Volkswagen plant in Chattanooga, Tennessee, January 28, 2014. Chappell believes that a German-style works council would benefit both employees and management, and VW has hinted that they would welcome one at the plant, but the mere discussion of organized labor is a political lightning rod in the fiercely antiunion South.

On Valentine's Day 2014, German automaker Volkswagen offered a sweetheart deal to the United Automobile Workers (UAW) union: Please come represent workers at our assembly plant in Chattanooga, Tennessee.

Volkswagen offered their workers a German-style works council through which workers could participate in decision-making at the plant, guarantees that unionization would not affect the future of the plant, and broad support for a pro-union vote.

The workers voted no by a margin of 712-626.

Clearly, unions are not very popular in Tennessee. Still, the UAW did better in Tennessee than President Obama. Obama polled just 39 percent in the state in 2012. The UAW managed 47 percent in 2014. Maybe that's not so bad for a bunch of out-of-towners from Detroit.

The strange thing is that the UAW faced many of the same opponents in 2014 as President Obama faced in 2012. Tennessee Governor Bill Haslam, Tennessee's junior US Senator Bob Corker, and ubiquitous Washington insider Grover Norquist all lined up to oppose the unionization of the Volkswagen plant.

After the UAW's defeat, Tennessee's senior US senator, Lamar Alexander, weighed in to remind everyone that Tennessee workers "have decided in almost every case that they are better off union-free. The UAW may not like this, but that is the right of employees in a right-to-work state like Tennessee."(1)

Why are big-time politicians like Haslam, Corker and Alexander getting involved in a workplace decision about union representation? Politicians don't usually try to influence other private workplace decisions at private companies.

Their involvement is even more mysterious considering that Tennessee is, as Senator Alexander says, a "right-to-work" state.

Unfortunately, living in a "right-to-work" state does not mean that you have a right to work. In Tennessee, only 55.6 percent of the working-age population has a job of any kind, compared to 58.6 percent for the country as a whole.(2) Work is as hard to find in "right-to-work" states as anywhere else.

No, in the business-friendly parlance of conservative America the "right to work" means the "right not to join a union or pay union dues despite the fact that your co-workers have democratically voted for union representation."

Under federal law, once a union has won the right to represent the workers in a workplace, it has a duty of representation to fairly and without prejudice represent all workers in that workplace, whether or not they are union members.

In "right-to-work" states, recognized unions must fairly represent even those workers who refuse to join them or even to pay modest representation fees.

Given the legal duty of fair representation, the problem with granting workers this dubious "right to work" is obvious. No union can survive for long in a "right-to-work" environment. Inevitably, workers who are facing financial difficulties, lazy about paying their dues, or just plain jerks decide it would be easier not to pay dues than to pay them.

Unions are not secret societies dripping in undisclosed private wealth. They are highly regulated membership organizations that are subjected to exceptional levels of public scrutiny. The right to work in "right-to-work" states is a right to freeload on your coworkers who pay union dues so you don't have to.

This is a right generously granted to workers in 24 states, including all 11 states of the Old Confederacy.⁽³⁾ In 2012 and 2013, labor heartland states Indiana and Michigan joined the "right to work" club, though Indiana's law is the subject of an ongoing legal battle. Federal law explicitly gives states the power to pass "right-to-work" laws if they so choose.

There seems no point in conservative politicians mobilizing national business support to defeat a union representation vote in "right-to-work" Tennessee. Even if the UAW had won the vote, any Volkswagen worker could simply refuse to pay dues to the UAW - with no negative consequences.

Imagine if people could collect all the benefits of American citizenship without paying taxes. How many would still join the tax-me club? The likely answer is: not many.

Similarly, just 3.4 percent of Tennessee's private sector workers are union members.⁽⁴⁾ Almost certainly, most of these 73,000 workers work in industries that are not subject to state "right-to-work" laws: railroads, aviation, and certain business activities related to the federal government.

The story is the same all across the South, and increasingly in the rest of the country as well. A huge industry has grown up around advising companies and governments on how to defeat unions. The aggressively vituperative vilification of unions by conservatives and business groups borders on hate speech.

If conservatives hate unions, shouldn't progressives love them? Conservative politicians and political operatives pulled out all the stops to convince Chattanooga Volkswagen workers to reject UAW representation. Where were the progressive politicians and political operatives? Notably absent.

And that's how it should be. Union representation votes are no place for party politics. In fact, the UAW has asked the National Labor Relations Board to set aside the February 14 vote against union representation on the grounds that it was unduly influenced by inappropriate political intimidation.

Unsurprisingly, the stridently antiunion National Right to Work Legal Defense Foundation disagrees. It prepared a legal brief on behalf of five antiunion Volkswagen workers in Chattanooga defending political interference in union representation votes.

The brief claims that the UAW "proceeds from the misguided premise that it is objectionable if any entity campaigned or spoke against the union in the election. While this belief may reflect how elections are conducted in Venezuela or North Korea, it does not reflect how elections are conducted in this free nation."(5)

Leaving aside the issue of Venezuela's robust democracy, the National Right to Work Legal Defense Foundation and others who share its point of view fail to recognize that union representation votes are nothing like national elections. Unions are membership organizations. It is hard to see why nonmembers should be involved at all.

It is especially difficult to see why companies should be involved at all. Volkswagen aside, the US business community is vehemently antiunion for the obvious reason that unions empower workers vis-à-vis their employers. Few American employers are as hands-off as Volkswagen when it comes to union representation votes.

Representation is a matter for the workers to decide, not for their employers. Once workers have professional union representation, employers have a right to professional bargaining representation as well. But for employers to hire professional union-busting firms to prevent their workers from joining a union seems patently unfair.

It seems even more unfair for elected political leaders to seek to influence union representation votes.

Maybe the National Right to Work Legal Defense Foundation is right. Maybe union representation votes should be more like national elections.

National elections are held on a regular basis every two years. The people who want to represent you merely have to fill out some pro forma paperwork to appear on the ballot. It is strictly illegal to seek to intimidate, threaten, or coerce voters.

Crucially, in a democracy, all citizens must pay the taxes imposed by their elected representatives - even if they voted for a different representative, never voted, or never registered to vote. People who are not even eligible to vote still have to pay taxes.

For unions used to dealing with ruthless and well-funded opponents, a system as simple and transparent as a federal election would be a blessing beyond their wildest dreams.

Every two years workers at all large companies could simply be asked: "Which of these candidates do you want to represent you?" Any person or organization that registered as a candidate could run, perhaps including the employer itself. Workers could decide.

After a workplace election, all workers should be held responsible for abiding by the outcome. If the majority votes for a union that charges dues, all workers should be forced to pay their dues. Minority protections might allow workers to opt out of some union programs on moral grounds, but these should be the exception, not the rule.

If a majority of workers vote in a fair workplace election free from company or outside intimidation that they would prefer not to join a union, let the unions take their lumps and come back in two years for a rematch.

Regular elections for workplace representation would require a whole new approach to labor law in the United States. Given the enormous influence businesses have over politics, they are unlikely to pass in this, or any future, Congress.

But it is hard to argue with the idea that workers should be able to vote in a secure, democratic way about whether or not they want union representation, free of coercion from employers, politicians - or even Grover Norquist.

The labor unions themselves have proposed a limited fix: the Employee Free Choice Act (EFCA). The EFCA would enshrine the "card check" system, whereby unions can be empowered to represent workers when over 50 percent of the workers at a plant sign a card requesting union representation.

The card check system avoids the need for a subsequent election once workers have expressed their pro-union preferences in writing. This prevents employers and outsiders putting undue pressure on workers to vote against union representation in an election, for example by threatening to close the plant if the workers unionize.

Card check is better than the system we have now, but it is far too modest and not sufficiently democratic. It gets around the problem of political and economic coercion in representation votes by doing away with the votes. That is baby with the bathwater thinking.

Workers need more freedom and democracy in the workplace, not less.

Our current system is extraordinarily un-free. It prohibits workers from engaging in strikes to support workers at other firms, prohibits supervisors from joining unions along with the workers they supervise, and authorizes states to prohibit companies from agreeing to closed union-only shops.

Together these prohibitions represent substantial infringements on workers' rights to free association and freedom of action. They are fundamentally untenable, unfair and un-American. Our current regulation of unions is anything but democratic.

There are many possible models for workplace democracy, but some form of workplace democracy is a progressive must-have for 2016. Signing up for a union should be as easy as open enrollment for health and pension plans. Every year or two, all workers in all workplaces - in all states - should be given the opportunity to vote for representation.

And if workers vote for representation, they should be free to take all reasonable actions that they perceive to be in their own interests. A free economy in a free society requires free workers. Everyone should have the opportunity to join a union, every year. If they did, you can bet that employers would be much more civil in their behavior toward those who make their businesses work.

Notes:

1. Press release of the US Senate Committee on Health, Education, Labor, and Pensions, February 21, 2014, "Alexander Statement on UAW Appeal of Chattanooga VW Vote."
2. BLS Local Area Employment Statistics, Employment Status of the Civilian Noninstitutional Population, Annual Averages, 2013.
3. National Right to Work Legal Defense Foundation, [Right to Work States](#), retrieved April 4, 2014.
4. Barry Hirsch and David Macpherson, [unionstats.com](#), Union Membership, Coverage, Density and Employment by State, 2013.
5. National Right to Work Legal Defense Foundation press release, Volkswagen Workers' Brief Blasts UAW Bosses' Desperate and Delusional Attempt to Silence Dissenting Employees, April 3, 2014.