

Why a Union Voice Makes a Real Difference for Women Workers: Then and Now

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ABSTRACT: Working women, labor unions, and collective action played a crucial role in passing and implementing the Pregnancy Discrimination Act. The Article describes how labor unions pushed for the passage of the Act and later made protections for pregnant workers real through collective bargaining, internal education efforts, and litigation. Finally, the Article discusses the fundamental improvements for working women that still must be achieved—and the need for strengthened worker organizations if those changes are to become a reality.

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INTRODUCTION

In this Article, I describe an important story behind the passage and implementation of the 1978 Pregnancy Discrimination Act (PDA)¹—one that has continuing implications for creating a society that delivers for poor and working families and rebuilds the middle class. It is the story of how the empowerment of working women and collective action were crucial to improving workplace culture and practices for pregnant workers thirty years ago, and why those same factors are necessary today if we are to dramatically

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1. Pub. L. No. 95-555, 92 Stat. 2076 (codified at 42 U.S.C. § 2000e(k) (2000)).

better the lives of working women. When our society has strong worker organizations, workers can mobilize themselves for change and negotiate their fair share with corporate America. Through their unions, women workers can assert collective strength to win workplace improvements at the bargaining table and in the legislative arena through effective political campaigning.

I am the General Counsel of the Service Employees International Union (SEIU), the nation's largest private sector union, with over two million members.² As a labor lawyer with over thirty-five years' experience, representing a wide range of unions in the industrial and service sectors, I come to this subject with a special perspective and passion.

I. THE FIRST STEP: THE ROLE OF UNIONS IN PASSING THE PDA

In 1978, I was a young labor lawyer at the United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) in Detroit, Michigan. UAW membership was at an all-time high of 1.5 million workers.³ The labor movement was one of the strong coalition partners behind the lobbying efforts to win passage of the PDA in that year.

Political conditions were conducive to making big advances for working families: Jimmy Carter was our thirty-ninth President, and Democratic majorities held sway in both the House of Representatives and the Senate. The forces of change in the civil rights and women's movements were such that we could think big and move an agenda that challenged cultural stereotypes and broke down barriers.

For many years unions had been at the forefront of the effort to make pregnancy discrimination unlawful in the United States. In fact, the case of *General Electric v. Gilbert* was brought and sponsored by a union—the International Union of Electrical Radio and Machine Workers—and argued in the Supreme Court by Ruth Weyand, an ardent labor-union lawyer.⁴ In its 1976 *Gilbert* opinion, the Supreme Court reversed a favorable lower court decision, holding instead that an employer could exclude pregnancy-related disability from its benefits plan without running afoul of Title VII. After that ruling, the delegates to the 1977 UAW Convention adopted a resolution on women's rights declaring: "Women's issues are also UAW issues . . . [including] affirmative action, child care, [and] pregnancy as it relates to maternity benefits

2. SEIU represents workers, approximately fifty-six percent of whom are women, in three main sectors of the economy. It is the nation's largest healthcare union, with members in most job categories in hospitals, nursing homes, and homecare. SEIU also organizes low-wage workers in the cleaning and security property services industries. Finally, SEIU has a broad range of public-sector members at all levels of government and among workers who provide services pursuant to government programs. See Service Employees International Union, *Our Union: Fast Facts*, <http://www.seiu.org/a/ourunion/fast-facts.php> (last visited Mar. 23, 2009).

3. *Today in Business*, N.Y. TIMES, Mar. 29, 2008, at C2.

4. 429 U.S. 125 (1976).

. . . .” The Union “pledged a coalition effort to support legislation on the national and state levels to prevent private employer disability plans from this discrimination against women,” and advocated “follow[ing] Canada’s lead” in prohibiting “exclusion of disability benefits based on pregnancy.”⁵

In keeping with this commitment, the UAW joined numerous other unions, civil rights groups, and women’s groups in the legislative effort to win passage of the PDA. Many of these same groups had joined as amici curiae in the *General Electric* case, including the AFL-CIO, the Communications Workers of America, and a coalition led by the Women’s Law Project. The UAW submitted testimony and contributed its lobbying efforts to the cause. In her foreword to a 1977 book entitled *Women’s Work, Women’s Health: Myths and Realities*, UAW Vice President Odessa Komer described how the UAW had urged Congress to extend the provisions of Title VII to explicitly disallow discrimination on the basis of pregnancy, debunking employers’ prediction that this change would result in an economic disaster. “Most women seek and hold jobs for the same reasons men do. . . . Forcing women out of their jobs will only bring economic hardship to more Americans.”⁶

II. UNION ADVOCACY: MAKING THE PDA REAL FOR WORKERS

Policy makers may forget that, while it is a daunting task to win enactment of a law like the PDA, it can be just as rough to put the letter and spirit of the law into practice. To institute workplace change quickly and on a large scale, there is a need for a social movement organization with a communications and enforcement system that can penetrate the on-the-ground worksites of America. When functioning effectively, unions are that vital system. Often operating outside the public eye of courtroom litigation, workers’ unions were and remain vital change agents in implementing the PDA in two major ways.

First, unions helped enforce the basic job protections of the PDA by integrating the legislation into collective bargaining provisions, conducting internal education, and remedying violations through the contract grievance/arbitration procedure. The organizational strength of the labor movement kicked into action after passage of the PDA to make sure the law was actually converted into day-to-day employment practices, often through new contract provisions, and then put into practice on the shop floors of our factories, down in our coal mines, and in the offices and worksites of our service sector.⁷ In

5. UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, TWENTY-FIFTH CONSTITUTIONAL CONVENTION RESOLUTIONS 70-71 (1977).

6. Odessa Komer, *Foreword* to JEANNE MAGER STELLMAN, *WOMEN’S WORK, WOMEN’S HEALTH: MYTHS AND REALITIES*, at xvii, xviii (1977).

7. The PDA had two effective dates. The first, October 31, 1978, applied to discriminatory practices such as refusal to hire, employ, or promote a woman solely because she was pregnant. The second portion of the law became effective on April 29, 1979. By this date, all collective bargaining

these ways, union workplaces set a pattern for positive changes across entire industries.

Second, by carrying out their fundamental mission to improve workplace conditions, unions played a vital role in negotiating meaningful benefits that the PDA could extend to pregnant women workers. Collective bargaining is a major tool of a democratic civil society that provides working people with a say in how the wealth produced by their labor is shared in our economy. That includes how a worker will be treated when he or she is disabled. It is important to remember that the PDA's passage meant only that pregnant workers enjoyed the same rights and benefits as workers who were affected by other disabilities. In many union settings that meant immediate access to paid sick leave as well as an option for lighter duty work. In many non-union settings, unfortunately, the package of insurance benefits and workplace accommodations was often unacceptable for everyone. Thus, the PDA had much less impact on the lives of pregnant women at these worksites than it did on the lives of their unionized sisters, with one major exception: Regardless of unionization, a pregnant worker could no longer be fired from her job.

Over the years, the data show that unionization has had a dramatic positive impact on the quality of jobs. For example, women in unions earn nearly a third more than non-union women workers in the same industries.⁸ Union workers are more likely to have access to employer-provided health benefits than non-union workers and are more likely to be enrolled in an employer-offered pension plan.⁹ Union workers are more likely to receive better time-off benefits including sick leave, holiday and vacation time, employer-provided life insurance, and short-term disability coverage.¹⁰ This difference is also evident among workers of color. African-Americans in unions make thirty-seven percent more than their non-union counterparts; for Latino union members, the "union premium" is fifty-one percent.¹¹

I witnessed both aspects of the unions' role in implementing the PDA through the lens of the UAW. We were entering "Big Three" national auto negotiations in 1979—that meant bargaining with General Motors, Ford, and Chrysler over the working conditions of approximately 700,000 workers at auto plants throughout industrial America. At the time, one in five jobs in the United

agreements had to be in compliance with the provisions of the federal law with respect to benefit plans and lighter duty assignments. Pregnancy Discrimination Act, Pub. L. No. 95-555, 92 Stat. 2076 (codified at 42 U.S.C. § 2000e(k) (2000)).

8. U.S. DEP'T OF LABOR, UNION MEMBERS IN 2007 6 (2008), available at http://www.bls.gov/news.release/archives/union2_01252008.pdf.

9. See JOHN SCHMITT, CTR. FOR ECON. & POLICY RESEARCH, UNIONS AND UPWARD MOBILITY FOR WOMEN WORKERS 4 (2008) (finding that even after controlling for differences in workers' characteristics, unionized workers were 18.8% more likely to have health insurance and 24.7% more likely to have a pension than non-unionized workers).

10. LAWRENCE MISHLE ET AL., ECON. POL'Y INST., UNIONS AND THE ECONOMY 3-4 (2008), available at <http://www.stateofworkingamerica.org/swa08-union.pdf>.

11. See U.S. DEP'T OF LABOR, *supra* note 8, at 6.

States was associated with the auto industry. Big Three auto bargaining affected the working standards at the auto supply factories and myriad other manufacturing worksites—from electronics to upholstery—that fed into the auto industry. When PDA changes were made in the Big Three contracts, they set a pattern for bargaining similar improvements at thousands of other locations across the country.¹²

At the national collective bargaining tables that rotated between the three auto corporate headquarters in 1979, I was assigned the role of explaining the legal implications of the PDA and how existing benefits programs and work assignments had to change in order to incorporate the new requirements. We negotiated over changes in the Big Three contract language and schooled corporate management at the very top about the PDA. Then the tough part began: spreading the word about the meaning of the PDA through the system of local union leaders and worksite stewards who dealt with local management every day, and working to give the law teeth in contract provisions, grievance/arbitration procedures, and ongoing worker education programs. This task was difficult because it was often met with resistance by local management (and sometimes local union representatives) who harbored deeply held sexual stereotypes about women workers' ability to do their jobs.

Looking over the published highlights of the UAW-GM September 1979 tentative settlement, which outlined the contract's extensive economic benefits package, I stand in awe of the incredible impact the labor movement had on achieving quality manufacturing jobs. The UAW paved the way for America's middle class in our industrial heartlands. Auto workers could afford to buy homes, cover their healthcare expenses, put their children through college, and retire with basic income security. These achievements made the implementation of the PDA particularly meaningful. Why? Because the PDA guaranteed that pregnant workers were entitled to treatment equal to that provided to other disabled workers. But that still left open the critical question: equal to what?

In the UAW-represented auto plants, the answer was truly impressive. Because the union had expertly fulfilled its collective bargaining mission, UAW members enjoyed a comprehensive insurance and pension benefit package—one that provided hard-working factory workers a ticket to the middle class. For example, the 1979 UAW-GM contract summary reported that

12. In 1979, the number of women members of the UAW averaged 12.5% of the membership or approximately 191,000 workers. See UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, TWENTY-SIXTH UAW CONSTITUTIONAL CONVENTION RESOLUTIONS ADOPTED 58 (1980). While the number of UAW members at these auto companies has dramatically declined today to approximately 150,000, the critical role that these employers still play in the U.S. economy is clear from the major bail-out negotiations taking place on Capitol Hill in 2008-2009. See, e.g., Edmund L. Andrews & Bill Vlasic, *White House Explores Aid for Auto Deal*, N.Y. TIMES, Oct. 27, 2008, at A1; Bob Hebert, *Putting a Face on Big Auto*, N.Y. TIMES, Nov. 28, 2008, at A28.

a woman worker disabled because of pregnancy complications would now have her disability treated like any other disability, in terms of receiving sickness and accident (S&A) and extended disability benefits. While previously she could receive only six weeks of S&A benefits, she would now be eligible for up to fifty-two weeks of paid benefits if her pregnancy resulted in a longer disability period. The contract further assisted women workers in fully accessing the UAW pension plan—a defined benefit pension that guaranteed its participants decent income security in retirement. After the PDA, women workers at GM could obtain lost pension credits that were previously denied them during a pregnancy disability period. This change allowed a significant increase in future pension benefits for some women.¹³

I also saw the impact of internal union education and workplace grievance processes in UAW settings. In the months that followed the passage of the PDA, I participated in some of the many workshops and labor education programs where union leaders and workplace stewards learned about the law and its power to protect working people, thus preparing themselves to take on the cause of pregnant co-workers, stand up to management at the bargaining table, and pursue contract grievances or even strikes to enforce the rights established in the PDA. The union also used its internal communications network to spread the word about the PDA.

For example, the *UAW Washington Report* of November 27, 1978—a publication sent to all UAW activists and local union leaders throughout the country—devoted a full page to “[h]ow the new pregnancy bill works for working women,” with basic Q & A information.¹⁴ The UAW Women’s Department also kicked into gear with brochures and training workshops on how to implement the PDA changes.¹⁵ UAW women leaders worked closely with the Coalition of Labor Union Women that had formed in 1974. CLUW, as it is known, championed the enforcement of the PDA as one of its goals. CLUW was a place where activist union women came together to devise strategies to convince reluctant male union leaders to get on board with the program. Those re-education efforts proved extremely important to implementing and enforcing the law as litigation. Again, when unions function well, they create a safe place where workers can confront the bias of their own leadership or co-workers that may stand in the way of real change.

In my years as a labor union lawyer, I have been challenged to change workplace culture numerous times: in efforts to implement the PDA, in the

13. Another portion of the contract summary explained that, under the new agreement, a UAW-GM worker who took personal leave in the early stages of pregnancy could switch to paid disability leave if an approved physician certified total disability. For a major auto assembler at that time, this change meant an S&A benefit of \$220 per week. See *UAW Wins Substantial Increases for Workers at General Motors*, UAW REPORT ON THE UAW-GM 1979 TENTATIVE SETTLEMENT, Sep. 18, 1979, at 5.

14. *Id.* at 9.

15. *Id.*

fight against sexual harassment, and in the move to end employment discrimination based on sexual orientation, to name a few. I remember one bizarre post-PDA grievance that graphically highlighted the cultural battle we faced. The plant management tried to exclude a nursing mother from returning to work on the production line based on the argument that her breast milk would leak onto the factory floor and cause people to slip and injure themselves. In all cases, it was crucial that top union leaders stressed that civil rights violations would not be tolerated in the workplace and that these actions would be taken seriously.

Internal union education efforts were not exclusive to the UAW. After leaving the UAW, for example, I joined the legal staff of the United Mine Workers of America (UMWA) union; at the time, I was six months pregnant with my second child. The 1970s saw an influx of determined and brave women into the coal mines who, after Title VII, were finally able to get well-paying union jobs in the otherwise desolate economy of the Appalachian coalfields. The Coal Employment Project (CEP) was formed as a group of community and union activists to lend support to this pioneering group of women coal miners. As a UMWA attorney, I participated in several CEP events in the Appalachian coalfields to learn firsthand from women miners about the challenges they faced and to lend a hand providing legal resources. Top UMWA officials supported the CEP programs and often turned to CEP as a resource in difficult organizing and contract campaigns.

In preparing for Yale Law School's PDA symposium, I managed to find a 1982 booklet entitled *Pregnant and Mining: A Handbook for Pregnant Miners*.¹⁶ It underscored the important role of the union network in enforcing the PDA. This 1982 CEP brochure reported on a study of pregnant miners and outlined a full program on how pregnant women could survive while working in the mines. The report focused on women's rights under the National Bituminous Coal Wage Agreement that was bargained for by their union, the UMWA. The handbook included general information about pregnancy, including how to adapt a miner's wardrobe to the demands of a changing body:

The miners we interviewed had some problems with clothing and protective equipment, depending on how far into their pregnancies they worked. All who said they had problems said the belt was the biggest inconvenience. The belt was "too snug," said a woman who worked until her fifth month. "[I] used handmade straps over my shoulders rather than around my stomach."¹⁷

The handbook went on to provide further words of advice from sister miners, including: "Fight for paid maternity leave when you can. Get light duty work. Never put yourself in a strain," and "[s]tick to your guns once you've made

16. COAL EMPLOYMENT PROJECT, *PREGNANT AND MINING: A HANDBOOK FOR PREGNANT MINERS* (1982).

17. *Id.* at 23.

your decision about working. Don't lose your job over it. I am sure companies would like women who get pregnant to quit."¹⁸

Coal mining jobs were not the only places with special occupational hazards for pregnant workers. Women working in manufacturing areas where they were exposed to lead, a substance that could harm women's reproductive systems, encountered a terrible dilemma. Data from the Occupational Safety and Health Administration¹⁹ revealed that these work environments had a similarly harmful impact on male reproductive health, but instead of cleaning up the workplace, some employers simply barred women from jobs with lead exposure unless they could prove they were sterile.²⁰ In December 1975, for instance, General Motors of Canada banned women of childbearing age from working in a storage-battery operation in a plant where there could be exposure to lead.²¹ In at least one tragic development, some women at a chemical factory in West Virginia decided to undergo sterilization in order to keep their jobs.²² As the phenomenon became more widespread, the collective bargaining process could no longer adequately address the situation, and unions had to turn to litigation under the PDA and other regulatory regimes.

I was assigned by the UAW to help sponsor and support the Coalition for Reproductive Rights for Workers (CRROW) to ban discriminatory policies like that of General Motors of Canada and substitute occupational safety improvements instead. The unions relied not only on the PDA but also on the Occupational Safety and Health Act (OSHA). We fought hard for the adoption of an OSHA lead standard that recognized that lead exposure adversely impacted both sexes and that the only right way to address this problem was to dramatically reduce or eliminate lead from the workplace, not to pick classes of workers to exclude from the workplace. The 1991 Supreme Court decision in *International Union, UAW v. Johnson Controls*,²³ a case that was argued by union lawyer Marsha Berzon, now a judge of the U.S. Court Appeals for the Ninth Circuit, finally put an end to this discriminatory policy as a violation of the PDA.

18. *Id.* at 29.

19. The Occupational Safety and Health Administration enforces the Occupational Safety and Health Act, conducting inspections of workplaces for violations of workplace safety standards. See U.S. Dep't of Labor, Occupational Safety & Health Administration, <http://www.osha.gov> (last visited Mar. 23, 2009).

20. U.S. CONGRESS OFFICE OF TECHNOLOGY ASSESSMENT, REPRODUCTIVE HEALTH HAZARDS IN THE WORKPLACE 249-91 (1985).

21. Komer, *supra* note 6, at xvii.

22. See Philip Shabecoff, *Issue and Debate: Industry and Women Clash Over Hazards in Workplace*, N.Y. TIMES, Jan. 3, 1981, at 9 (describing the plight of four women workers who voluntarily underwent sterilization to keep their jobs at an American Cyanamid Company lead-pigment plant in West Virginia).

23. 499 U.S. 187 (1991).

III. BEYOND THE PDA: THE FUTURE ROLE OF UNIONS IN SECURING THE RIGHTS OF WOMEN WORKERS

Years after the passage of the PDA, this symposium issue of the *Yale Journal of Law and Feminism* identifies some of the fundamental improvements we must still achieve for working women. For example, we need to provide paid family and medical leave if working people will truly be able to afford to take full advantage of leave time. We need universal access to quality affordable healthcare coverage and the creation of a universal pension system that offers true retirement security. We need quality affordable childcare services in our communities and at appropriate workplaces, delivered through a system that ensures decent income and benefits to the many women who work as child care providers. And finally, we need to advance the emerging and important legal claim known as “family responsibilities discrimination” so that the workplace does not systematically discriminate against workers with family responsibilities—be they men or women.²⁴ These goals require not only governmental action but also the mass mobilization of workers through unions that can organize political pressure and insert these goals into the collective bargaining agenda.

Women today have never had a greater stake in having their voices heard at work. From 1975 to 2000, the labor force participation rate of mothers with children under age 18 rose from forty-seven to seventy-three percent.²⁵ Women are overrepresented in the low-wage workforce and in part-time and temporary jobs. Women make up forty-seven percent of the workforce, but fully sixty percent of the low-wage workforce.²⁶ Few workers today have the basic benefits that we bargained for in 1979. Healthcare and pension plans are faltering; paid sick leave and comprehensive insurance benefits programs are not available to many workers.²⁷

Over the last thirty years, unfortunately, we have not been able to achieve much more significant legislation to promote the needs of working families. The one major breakthrough was the 1992 Family and Medical Leave Act (FMLA) that guaranteed time off for new parents, one’s own illness, and the

24. For a comprehensive resource on family responsibilities discrimination, see Work Life Law, <http://www.worklifelaw.org> (last visited Mar. 10, 2009).

25. U.S. DEP’T OF LABOR, *WOMEN IN THE LABOR FORCE: A DATABOOK 1* (2007).

26. BETH SHULMAN, *THE BETRAYAL OF WORK: HOW LOW-WAGE JOBS FAIL 30 MILLION AMERICANS AND THEIR FAMILIES 5* (2003).

27. See, e.g., VICKY LOVELL, *NO TIME TO BE SICK 1* (2004) (noting that 59 million workers had no access to paid sick leave coverage and 86 million had no access to paid leave when their children are ill); BUREAU OF LABOR STATISTICS, *HEALTH CARE BENEFITS: ACCESS, PARTICIPATION, AND TAKE-UP RATES 1* (2008) (showing that twenty-six percent of civilian workers had no access to medical care benefits in 2007); BUREAU OF LABOR STATISTICS, *ESTABLISHMENTS OFFERING RETIREMENT AND HEALTH CARE BENEFITS 1* (2008) (noting that forty-seven percent of private sector employers offered retirement plan benefits and sixty-two percent offered health care benefits in 2007).

care of a seriously ill family member. But the FMLA only guarantees unpaid leave.²⁸ The lack of paid leave remains a national travesty. Forty-five million workers are without healthcare. Many older retired women workers are living in poverty without decent pensions to rely on. The union premium is still the gold standard, with union workers more likely to have paid sick leave, health care, and retirement benefits than their non-union counterparts.²⁹

As more women find themselves in low wage jobs or so-called independent contractor positions, we need a major overhaul of federal labor law so that women workers have ready access to the union premium and a collective voice to negotiate for what they need. With all due respect to the EEOC and my own legal community, a reliance only on government agencies and lawyers to get the job done would consign millions of workers to years of waiting for change despite good legislation on the books and broad-minded economic policy makers. It takes a combination of dynamic actors to change workplace culture and employment practices. Without a strong and vibrant labor movement in our workplaces, the process will be much slower and far less effective. Unless we revitalize this pillar of our civil society, we cannot achieve a just and fair economy that works for ordinary working people. We need the collective strength of working people organized through their unions to engage top management in corporate boardrooms and local management at the worksite.

We have an essential task ahead of us as we enter the first four years of the Obama administration. We must ask ourselves: What is the organizational structure in our civil society for actually transforming progressive entitlement and anti-discrimination laws into decent, well-paying jobs at hundreds of thousands of worksites throughout America? How do we engage the top management of the large corporate employers in order to improve the U.S. economy for everyone? Who are the activist worksite leaders who can mobilize the worker base and help to enable working women to collectively assert their demands for workplace economic justice?

In 1978, our civil society in the United States had more organized agents for change than we have today. The women's movement was strong. So was the civil rights movement. But, just as importantly, labor unions represented significantly more workers than they do today. In 1978, approximately twenty percent of workers in the private sector enjoyed union representation; in 2007, less than eight percent of the overall private sector workforce has a union

28. The FMLA entitles qualified workers to take up to twelve weeks of unpaid, job-protected leave to care for new children or seriously ill family members, or to recover from their own illnesses. See 29 U.S.C. §§ 2601-2654 (2000). As the National Partnership for Women and Families and other organizations have documented, the lack of legal entitlement to any amount of paid leave is a global embarrassment for the United States. See, e.g., JODY HEYMANN ET AL., *THE WORK, FAMILY AND EQUITY INDEX: WHERE DOES THE UNITED STATES STAND GLOBALLY?* 44 (2004).

29. See, e.g., SCHMITT, *supra* note 9, at 3-4.

voice.³⁰ In massive numbers, modern-day workers face their corporate employers without a collective voice or bargaining strength.

The national labor laws that should protect worker organizing have so badly deteriorated over the years that they are virtually worthless for protecting women workers who stand up and want to organize a union. Human Rights Watch, a global organization acknowledged for its painstaking studies and reports on world-wide human rights issues, summarized its year-2000 analysis of U.S. labor laws as follows: "Researching workers' exercise of these rights in different industries, occupations, and regions of the United States to prepare this report, Human Rights Watch found that freedom of association is a right under severe, often buckling pressure when workers in the United States try to exercise it."³¹

The reality most working people who seek to organize a union encounter is a combat zone of employers attacking employees who initiate union organizing campaigns. Every twenty-three minutes a worker is illegally fired or discriminated against for her or his support of a union.³² Twenty-five percent of employers illegally fire pro-union employees during organizing campaigns.³³ Fifty-one percent of companies illegally threaten to close down worksites if employees vote for union representation.³⁴

That is why we need Congress to pass the Employee Free Choice Act³⁵ as one of the features of our nation's economic recovery package in 2009. The Employee Free Choice Act helps eliminate employer intimidation by letting workers choose to join unions in the same way that the National Labor Relations Act originally permitted, that is, through an NLRB election or through a majority sign-up procedure.³⁶ The Act would also improve the remedies for employer violation of workers' organizing rights and provide for resolution of first contracts through an arbitration process if the parties needed this assistance to conclude their initial round of bargaining.³⁷

If passed, this Act would make it far easier for workers to form a union and claim a stakeholder position for working people in the critical debate over economic reforms. It would make a huge difference for working women. If we

30. See U.S. DEP'T OF LABOR, *supra* note 8, at 1; see also AMERICAN RIGHTS AT WORK, THE HAVES AND THE HAVE-NOTS: HOW AMERICAN LABOR LAW DENIES A QUARTER OF THE WORKFORCE COLLECTIVE BARGAINING RIGHTS 2-3 (2008).

31. LANCE COMPA, HUMAN RIGHTS WATCH, UNFAIR ADVANTAGE 7 (2000).

32. See NAT'L LABOR RELATIONS BD., ANNUAL REPORT (2003), available at http://www.nlr.gov/publications/reports/annual_reports.aspx.

33. See KATE BRONFENBRENNER, UNEASY TERRAIN: THE IMPACT OF CAPITAL MOBILITY ON WORKERS, WAGES AND UNION ORGANIZING: REPORT FOR US TRADE DEFICIT REVIEW COMMISSION 52 (2000); see also H.R. Rep. No. 110-23 (2007) (the 2007 House Committee on Education and Labor report on the Employee Free Choice Act).

34. See BRONFENBRENNER, *supra* note 33, at 52.

35. Employee Free Choice Act of 2009, S. 560, 111th Cong., 1st Sess. (2009).

36. *Id.* § 2.

37. *Id.* §§ 3, 4.

ever hope to implement the workplace changes needed to provide a humane place for working families and address the unfettered power of corporations over the welfare of our communities, we need the labor movement apparatuses of collective bargaining, worker mobilization, communications, and education to make it happen.

CONCLUSION

I end my story about the early days of the PDA with this challenge: Can we truly effect permanent and major change for working women if we fail to tackle the bigger question of how to realign our society so that working women are empowered through unions to assert their collective voice in the management decisions of their employers?

If we are really going to improve our world, we must strengthen the ability of working women to play a meaningful role in the decisions ahead through their own worker organizations and the right of collective bargaining. With Barack Obama in the White House and a Democratic Congress, now is the time to enact fundamental changes so that we can finally finish the task we began with the PDA and FMLA to support working families. Enactment of civil rights legislation cannot do it alone. The faster we spread the union tool to working women in this country through passage of the Employee Free Choice Act, the faster we can usher in an era that revitalizes our American workforce and makes sure our legislative advances are truly enforced in our workplaces.