

COMMENTS

YOUTH AND ORGANIZING: WHY UNIONS WILL STRUGGLE TO ORGANIZE THE MILLENNIALS¹

INTRODUCTION

When enacted in 1935, the National Labor Relations Act² (“NLRA”) drastically altered the relationship between management and workers³ by opening America’s businesses to unions and ushering in an unprecedented era of solidarity and enhanced bargaining power for employees at organized workplaces.⁴ By 1955, less than twenty years after the NLRA was enacted, 33.2% of the private workforce was unionized.⁵ However, this level of enthusiasm for unions was not sustained as both union membership and workplace representation have declined considerably since the 1950’s due to a host of national

¹ See Jean M. Twenge et al., *Generational Differences in Work Values: Leisure and Extrinsic Values Increasing, Social and Intrinsic Values Decreasing*, 36 J. MGMT. 1117, 1118 (2010) (defining “Millennials,” the most recent generation of Americans to join the workforce, as those born between 1982 and 1999); see generally Douglas L. Keene & Rita R. Handrich, *Tattoos, Tolerance, Technology and TMI: Welcome to the Land of the Millennials*, JURY EXPERT, July 2010, at 33, available at http://thejuryexpert.com/wp-content/uploads/TJEVol22Num4_Jul2010.pdf (describing the characteristics and qualities of those qualifying as part of the “Millennial” generation).

² 29 U.S.C. §§ 151-169 (2006).

³ See Kenneth G. Dau-Schmidt, *The Changing Face of Collective Representation: The Future of Collective Bargaining*, 82 CHI.-KENT L. REV. 903, 908 (2007) (“The failure of the corporate welfare programs made it clear that unions and the government played vital roles in administering and securing” pension benefits and securing employment, a role which was solidified by New Deal legislation, including the NLRA).

⁴ See generally Craig Becker, *Democracy in the Workplace: Union Representation Elections and Federal Labor Law*, 77 MINN. L. REV. 495 (1993) (providing an overview of the procedure and realities of obtaining union representation).

⁵ BRUCE E. KAUFMAN & JULIE L. HOTCHKISS, *THE ECONOMICS OF LABOR MARKETS* 720 tbl.3 (5th ed. 2000).

and global causes.⁶ Despite the fact that the NLRB's focus on the promotion of collective bargaining for higher wages and better benefits remains important to all,⁷ by 2010 only 6.9% of all workers in the private workforce were union members.⁸ This fascinating decline has produced an extensive scholarly corpus about the possibility of its reversal, the future of the NLRB, and the role of unions in the workplace. The rise of the Internet and personal technology has further complicated these scholarly considerations, influencing contemporary legal scholars' evaluations of the impact of 21st century technology on the effectiveness of the NLRB⁹ and of unions' web-based organizing efforts.¹⁰ However, one aspect of this changing equation seems to be relatively unexamined: how the Millennial worker's obsession with personal technology¹¹ may impact their interest in, or likelihood of, organizing traditionally non-unionized workplaces. The focus of this Comment is on non-unionized workplaces because of the additional barriers unions face in gaining the allegiance of young workers in workplaces lacking union institutionalization.

This Comment proposes that Millennials' use of 21st century personal technologies may further reduce the role of unions in the American workplace. While the prevailing opinion amongst union supporters is that unions must develop a ubiquitous web-presence to attract non-member workers,¹² this Comment contends that there are three interconnected developments that may devalue those efforts. First, an

⁶ See, e.g., Dau-Schmidt, *supra* note 3, at 912-13 (noting that there were many factors leading to the decline in union membership, including: the new role of international competition in the American economy, greater presence of women and African Americans in the workplace, shifts in educational opportunities, and rise of new information technology and globalization).

⁷ News Release, Bureau of Labor Statistics, U.S. Dep't of Labor, Union Members—2010 1 (Jan. 21, 2011), <http://www.bls.gov/news.release/pdf/union2.pdf>.

⁸ *Id.* ("In 2010, among full-time wage and salary workers, union members had median weekly earnings of \$917, while those who were not represented by unions had median weekly earnings of \$717.").

⁹ See, e.g., Jeffrey M. Hirsch, *The Silicon Bullet: Will the Internet Kill the NLRB*, 76 GEO. WASH. L. REV. 262, 272-73 (2008) (urging a reevaluation of Board precedent based on the expanding role of the Internet in the workplace).

¹⁰ See, e.g., Richard B. Freeman & M. Marit Rehavi, *Helping Workers Online and Offline: Innovations in Union and Worker Organization Using the Internet* (Nat'l Bureau of Econ. Research, Working Paper No. 13850, 2008).

¹¹ In this context, the term "personal technology" refers to computers, smartphones, video game consoles and their associated software, applications, and the Internet. In a nutshell, it includes those devices bringing users Web 2.0.

¹² See Richard B. Freeman, *From the Webb to the Web: The Contribution of the Internet to Reviving Union Fortunes 2* (Nat'l Bureau of Econ. Research, Working Paper No. 11298, 2005) (noting that "[m]any union leaders in the UK and US ha[ve] come to view the Internet as part of their strategy for the future").

employer's ability to lawfully surveil their at-will employees' Internet use may deter said employees from participating in otherwise protected activity, such as joining a union or promoting union causes online. Second, the possibility that an employer's surveillance may deter lawful organizing activity reinforces a preference amongst Millennials for use of the Internet as a diversion from work, rather than as a tool for promoting their interests vis-à-vis their employer. Finally, those Millennials who are compelled to challenge their employer may do so through those means most familiar to them, namely via online forums where they can freely express their discontent anonymously, as opposed to overtly joining a union which requires unyielding public support.

I. BACKGROUND: MILLENNIALS, TECHNOLOGY AND THE ECONOMIC BACKDROP

Millennials grew up during an era of economic prosperity¹³ derived in large part from America's growing emphasis on services and technology.¹⁴ This increasing investment in technology had a direct and substantial influence on the education and after-school activities of many young Millennials. For example, at school, most Millennials were taught to type, research and build websites on school computers. When many of these tech savvy students came home, they played video games, spoke with friends on AOL Instant Messenger (and other online chat services) and surfed the Internet.¹⁵ Perhaps the most significant fact is that this generation of minds is developing in concert with the Internet.¹⁶ Thus, it is of little surprise that today, Millennials are obsessed with social networking sites ("SNS"), web browsing, gaming and user-created content. According to a 2010 Pew Re-

¹³ See Dale W. Jorgensen & Kevin J. Stiroh, *Raising the Speed Limit: U.S. Economic Growth in the Information Age*, 2000 BROOKINGS PAPERS ON ECONOMIC ACTIVITY 125, 125 (2000), available at <http://www.jstor.org/stable/2667350> (discussing how information technology revitalized the American economy, "profoundly altering the nature of business, leading to permanently higher productivity growth").

¹⁴ See *id.* at 127 (Computers, for example, have played an important role for many Americans because after 1995 the price significantly declined, which had the subsequent effect of explosive consumer demand).

¹⁵ Margaret J. Cox, *Researching IT in Education*, 20 INTERNATIONAL HANDBOOK OF INFORMATION TECHNOLOGY IN PRIMARY AND SECONDARY EDUCATION 965, 969 (2008), available at <http://www.springerlink.com/content/pt62623017280612/fulltext.pdf>.

¹⁶ See Scott Keeter, *The Aging of the Boomers and the Rise of the Millennials* in RED BLUE AND PURPLE AMERICA: THE FUTURE OF ELECTION DEMOGRAPHICS 225, 230 (Ruy Teixeira ed. 2008) ("If most of the rest of us are merely profoundly affected by it, Millennials have lived and absorbed [the technological revolution].").

search Center poll, 93% of all Millennials use the Internet, 81% of that group use wireless Internet, 72% use social networking sites, 59% own a gaming console and 37% “share their personal creations online.”¹⁷

Increased computer use was not the only impact this changing economy had on the lives of the Millennials. Researchers characterize the economic backdrop of the Millennials period of socialization as one of “increasing national wealth coupled with growing economic inequality and insecurity.”¹⁸ This sense of economic insecurity is attributable in part to the changing landscape of the American economy, a shift from manufacturing jobs, which were heavily unionized, to knowledge intensive jobs, which are not.¹⁹ These uncertain circumstances help explain why Millennials believe that “[l]ifelong employment with a single employer became a thing of the past... and [has been replaced by] a more dynamic and risky job market.”²⁰

Concerns over job security were exacerbated in 2008 when America entered its worst recession in decades. In an attempt to explain the economic downturn, pundits have put considerable emphasis on unions and union contracts as a source contributing to state deficits and employer anti-competitiveness.²¹ In the face of such opposition, unions struggle to attract Millennials to their ranks.²² It is against this

¹⁷ Amanda Lenhart et al., *Social Media & Mobile Internet Use Among Teens and Young Adults*, PEW RESEARCH CTR., 3, 4, 13, 23 (2010), available at <http://pewinternet.org/Reports/2010/Social-Media-and-Young-Adults.aspx>.

¹⁸ Keeter, *supra* note 16, at 228.

¹⁹ See Walter W. Powell & Kaisa Snellman, *The Knowledge Economy*, 30 ANN. REV. OF SOC. 199, 201 (2004) (“Since the 1970s, many researchers have noted the transition that has occurred in advanced industrial nations from a manufacturing-based to services-driven economy.”).

²⁰ Keeter, *supra* note 17, at 228.

²¹ See, e.g., Steven Greenhouse, *Ohio’s Anti-Union Law is Tougher than Wisconsin’s*, N.Y. TIMES, Mar. 31, 2011, <http://www.nytimes.com/2011/04/01/us/01/ohio.html?src=twrhp> (explaining that because “of huge budget deficits and of Republican dominance in many states, including states like Ohio and Wisconsin where unions once had swaggering power, the pendulum has swung toward the taxpayer instead of the government workers paid by the taxpayer”); Mark Whittington, *Labor Unions Hurt American Workers, State Budgets*, YAHOO, Feb. 23, 2011, http://news.yahoo.com/s/ac/20110223/bs_ac/7923332_labor_unions_hurt_american_workers_state_budgets_1 (describing how state legislators see curbing union costs as a way out of the budget crisis); see also Andrew Kohut, *Labor Unions Seen as Good for Workers, Not U.S. Competitiveness*, PEW RESEARCH CTR. (2011), available at <http://pewresearch.org/pubs/1897/favorability-labor-unions-salary-american-worker-productivity-public-sector> (noting that only 45% of Americans polled held a favorable view of labor unions).

²² See News Release, Bureau of Labor Statistics, U.S. Dep’t of Labor, *Union Members—2010 5 tbl.1* (Jan. 21, 2011), <http://www.bls.gov/news.release/pdf/union2.pdf> (In 2010, only 4.3% of all workers ages 16-24 were union members and 10.1% of

backdrop that Millennials enter the workforce, constantly connected and ever skeptical of their prospects for continued employment.

II. THE INTERNET DOES NOT “LIKE” UNIONS

A. Employees, Employers and Personal Technology

When examining personal technology in the employer-employee context, it is important to remember that the preferred employment relationship in America is “employment at-will.”²³ This easily terminable relationship is even more tenuous in the modern workplace where employers maintain the right to terminate the employment relationship because of otherwise lawful Internet activity,²⁴

In fact, employment is influenced by modern technology even before the employment relationship begins. According to a recent survey by Microsoft, 75% of recruiters and human resource professionals report that their companies perform some sort of online research about applicants for employment.²⁵ Thus, applicants recognize the need to maintain clean online personas so as not to alienate a potential employer during the pre-employment screening process. This requires some restraint on the part of the applicant, which may prevent many applicants from expressing their opinions on matters such as unionization. Unfortunately, such a reality may ultimately undermine their dedication to those causes. In addition, even after the employee is hired, there are currently few limits to an employer’s ongoing right to surveil an employee’s Internet activity.²⁶ Courts faced with these

those aged 25-34, a grouping which includes some Gen-X’ers as well, were union members).

²³ “Employment at-will” is characterized by the employer and employee’s right to terminate the employment relationship for any reason. *See generally* Katherine V.W. Stone, *Revisiting the At-Will Employment Doctrine: Imposed Terms, Implied Terms, and the Normative World of the Workplace*, 36 *INDUS. L.J.* 84 (2007) (providing a definition for the “at-will employment” relationship and examining the exceptions to the general rule).

²⁴ *See* Richard A. Paul & Lisa Hird Chung, *Brave New Cyberworld: The Employer’s Legal Guide to the Interactive Internet*, 24 *LAB. LAW.* 109, 127-28 (2008) (“Some cases and statutes suggest that it is impermissible for an employer to use or consider legal off-work activity in making personnel decisions, though this concept is far from being firmly embraced by the courts since it runs so contrary to the at-will employment doctrine.”).

²⁵ *See* Jeffrey Rosen, *The Web Means the End of Forgetting*, *N.Y. TIMES MAG.*, July 21, 2010, at MM30, available at http://www.nytimes.com/2010/07/25/magazine/25privacy-t2.html?_r=2&pagewanted=all.

²⁶ *See* Corey A. Ciocchetti, *The Eavesdropping Employer: A Twenty-First Century Framework for Employee Monitoring*, 48 *AM. BUS. L.J.* (forthcoming May 2011) (“It is legal and common for employers to monitor the actions and expressions of their employees.”).

questions have concluded that private employers are generally free to surveil their employees' use of employer owned electronic devices.²⁷ This includes, but is not limited to review of: an employee's Internet browsing history;²⁸ instant messages sent between employees; text messages sent from employer-owned phones²⁹; and e-mails sent from the employee's work e-mail address.³⁰

While this leaves employees free to surf the web and publish content they desire from their *own* electronic devices and e-mail accounts, the very nature of the Internet, as an easily accessed public forum means that employers are able to view much of what the employee chooses to publish in his or her own time.³¹ In reality, employers often have legitimate reasons for surveiling their employees' Internet activities. Employers concerned about protecting their image, or a market advantage, may scan employees' profiles on SNS and blogs to ensure they are not defaming the company, publishing trade secrets, embarrassing the company with inappropriate online behavior or harassing co-workers (sexually or otherwise).³² Despite these legitimate concerns, it is the terminations resulting from seemingly minor transgressions that are so disconcerting for employees living in an Internet age.³³ While the long-term impact these terminations will have on

²⁷ See Robert J. Aalberts, David S. Hames & Paul D. Thistle, *Detours & Frolics on the Internet: Employer Liability and Management Control of Cybertorts*, 62 J. BUS. RES. 1335, 1335-36 (2009) (Surveillance is nearly unchallengeable when the employee consents to an employer electronic monitoring policy.).

²⁸ See, e.g., *United States v. Simons*, 206 F.3d. 392, 398 (4th Cir. 2000) (holding that the employment policy at issue put the employee on notice that the Internet files and browsing history were not private and could be audited at any time by the employer).

²⁹ See, e.g., *City of Ontario, Cal. v. Quon*, 130 S.Ct. 2619, 2631 (2010) (holding that the review of text-messages sent by employee from employer-owned pager did not violate the Fourth Amendment because the employer had a legitimate government interest in performing the search).

³⁰ See, e.g., *Smyth v. Pillsbury Co.*, 914 F.Supp. 97, 101 (E.D. Pa. 1996) (holding that there is no "reasonable expectation of privacy in e-mail communications voluntarily made by an employee to his supervisor over the company e-mail system notwithstanding any assurances that such communications would not be intercepted by management").

³¹ Paul & Chung, *supra* note 24, at 109 (explaining that "[n]ow information isn't just viewed. It's user-created. These narrow alleyways have yielded to a matrix of two-way streets.").

³² *Id.* at 116-21.

³³ See, e.g., Jeanette Borzo, *Employers Tread a Minefield: Firings for Alleged Social-Media Infractions Sometimes Backfire on Companies*, WALL ST. J., Jan. 21, 2011, <http://online.wsj.com/article/SB10001424052748703954004576089850685724570.html> (describing how a teacher alleged she was forced to resign because of pictures of her holding a glass of wine posted on her Facebook page); *Facebook Post Gets Worker Fired*, ESPN, Mar. 9, 2009, <http://sports.espn.go.com/nfl/news/story>

employees' web-activities remains unclear, it is conceivable that they will have the effect of discouraging employees from participating in otherwise protected expression for fear that it will result in retaliation by their employer.

Furthermore, while the NLRA protects an employee from discrimination or retaliation based on her decision to join a union and speak openly about the perceived benefits of unionization,³⁴ employees and employers unfamiliar with the NLRA may improperly assume that pro-union online activity can result in lawful termination. This unfamiliarity with the scope of the NLRA's protection decreases an employee's likelihood of promoting their union support online as well as increases the likelihood of wrongful termination in violation of the NLRA. Such unlawful actions may even discourage those employees who are aware that union affiliation and promotion is protected because they may prefer to keep quiet rather than face unlawful retaliatory discharge and the headaches associated with righting that wrong.³⁵

Each of these realities may justifiably give employees pause before posting their affiliation with a union on social networking sites such as Facebook, posting links on their wall to articles supporting unions, making pleas for unionization to co-workers through SNS and via Twitter, or openly publishing public blog posts about the benefits of unionization. It is this concern for employment security in an otherwise unstable economic environment that may reinforce the Internet as a means of diversion for workers rather than as a source of collective action.

B. The Internet is a Nearly Limitless Source of Entertainment

In *Republic Aviation Corp. v. NLRB*, the U.S. Supreme Court held that employers could not prohibit employees from discussing union matters, in non-work locations, during off-hours.³⁶ Despite the theoretical value of such a holding, its true value is only realized if workers care to spend their free time debating the merits of unionization.

³⁴ *See generally* Katherine M. Scott, Note, *When is Employee Blogging Protected by Section 7 of the NLRA?*, 2006 DUKE L. & TECH. REV. 17, 21-26 (2006) (providing background information regarding what kind of activity is protected under the NLRA).

³⁵ Dau-Schmidt, *supra* note 3, at 916 (noting that "[s]tatistics suggest that [in 2005] employers engaged in approximately 28,000 instances of reprisals against union proponents last year, with an average back pay award of only \$2,700").

³⁶ *Republic Aviation Corp. v. NLRB*, 324 U.S. 793, 805 (1945).

For it is a simple truism that unions cannot organize a workplace if workers do not discuss, or care about, the possibility of unionizing. Examining the likelihood that Millennials will use the Internet as a device for learning about unions is an important question that should not be overlooked.

As stated in the Introduction, the NLRA's focus on enhancing employee collective bargaining power remains of value to all American workers. However, that does not mean it is a driving concern of most American workers today. As explained in a recently published article in the *New Yorker*, "[r]esearch over the past thirty years makes it clear that what the inner mind really wants is connection.... Joining a group that meets just once a month produces the same increase in happiness as doubling your income."³⁷ Such findings reinforce the conclusion that "frequent interactions with friends and neighbours [sic] are both associated with systematically higher assessments of subjective well-being."³⁸

In many ways, personal technologies help Millennials enhance the complexity and breadth of the connections that researchers believe are immensely important to happiness.³⁹ For instance, social dating websites help connect individuals who have struggled to connect with their peers, SNS help old friends keep in touch years after moving apart, and video game communities foster the creation of online friendships amongst fanboys (and girls) living in countries around the world. Unlike the media that dominated the 20th Century, current personal technology devices provide users with an interactive experience that is both engaging and creative. With such possibilities, it seems plausible that Millennials who come home from a long day at work would rather use personal technology to foster social connections than as a means of promoting change in the workplace. This preference is,

³⁷ David Brooks, *Social Animal: How the New Sciences of Human Nature Can Help Make Sense of a Life*, *NEW YORKER*, Jan. 17, 2011, at 26, available at http://www.newyorker.com/reporting/2011/01/17/110117fa_fact_brooks?currentPage=2.

³⁸ John F. Helliwell & Robert D. Putnam, *The Social Context of Well-Being*, *PHIL. TRANS R. SOC. LON. B.* 1435, 1441 (2004), <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1693420/pdf/15347534.pdf>.

³⁹ See Yair Amichai-Hamburger & Zack Hayat, *The Impact of the Internet on the Social Lives of Users: A Representative Sample from 13 Countries*, 27 *COMPUTERS IN HUMAN BEHAVIOR* 585, 588 (2011), available at <http://portal.acm.org/citation.cfm?id=1890071> (describing how "heavy Internet users have larger and more diverse social networks, and... they interact with the members of those networks more frequently.... Thus, [the] results show that Internet usage does not have a negative impact on the social lives of users and, in some aspects, it may even have positive effects").

to an extent, exemplified in a quick (and incomprehensive) comparison of the popularity of websites and Facebook pages.

In terms of web popularity, the AFL-CIO webpage (aflcio.org) ranks 14,118 in terms of U.S. web traffic.⁴⁰ This means there are 14,117 sites that average more web traffic than the website of America's largest union.⁴¹ Perhaps more telling is that the average user who does visit the site spends only about 2.2 minutes there.⁴² By comparison, YouTube is the fourth most viewed website in America and the average users spend 18 minutes browsing the site per visit.⁴³ Of course, YouTube is not dedicated solely to entertainment videos; unions and their supporters can and do post videos there as well. But the disparity between the popularity of union videos and entertaining videos is quite dramatic. For example, a general search on YouTube for "unions in America" returns 2,970 results.⁴⁴ While this may seem like a substantial number of videos, its impressiveness is diminished when considered within the larger context of YouTube generally. Specifically, of the videos on the first page of these results (which the search engine organizes based on relevance to the search query) the most watched video has only 38,241 views.⁴⁵ In comparison, a YouTube search for Lady Gaga's music video for the song "Bad Romance" reveals that the video has over 367 million views.⁴⁶ Additionally, the "Charlie bit my Finger- again!" home video of a British boy being bitten by his infant brother has over 304 million YouTube views.⁴⁷ The sheer difference in number of views highlights the preferences of users of these sites.

⁴⁰ *Afl-cio.org*, ALEXA.COM, <http://www.alexa.com/siteinfo/aflcio.org#> (last visited Apr. 14, 2011) (Alexa.com provides statistics regarding the popularity and web traffic of all Internet sites).

⁴¹ *Id.*

⁴² *Id.* (from the main page select "Traffic Stats" and then click on "Time on Site").

⁴³ *Youtube.com*, ALEXA.COM, <http://www.alexa.com/siteinfo/youtube.com#> (last visited Apr. 14, 2011) (from the main page select "Traffic Stats" and then click on "Time on Site").

⁴⁴ I used these search terms in April 2011 because it seemed like a straightforward search that someone without any preconceived notions about unions might search for if looking for videos about the role of unions in America.

⁴⁵ *Mnmajoritydotorg*, *Public Sector Unions vs. America*, YOUTUBE (Feb. 23, 2011), http://www.youtube.com/watch?v=ss4r8czKL_A (The video actually has an anti-union message, which says something about the popularity of unions in America at this time).

⁴⁶ *LadyGagaVEVO*, *Lady Gaga-Bad Romance*, YOUTUBE (Nov. 23, 2009), <http://www.youtube.com/watch?v=qrO4YZeYl0I>.

⁴⁷ *HDCYT*, *Charlie Bit My Finger-Again!*, YOUTUBE (May 22, 2007), http://www.youtube.com/watch?v=_OB1gSz8sSM.

Similarly, when considering the popularity of union Facebook pages to other pages, it becomes abundantly clear that Millennials are not focused on promoting union organization via popular social media. For instance, the Service Employees International Union (“SEIU”) Facebook page has a meager 7,899⁴⁸ “likes”⁴⁹ and the American Federation of Labor and Congress of Industrial Organizations (“AFL-CIO”) Facebook Page has only 24,995 “likes.”⁵⁰ Interestingly, these numbers are substantially lower than the total membership of either union, both of which are in the millions.⁵¹ Given that roughly 150 million Americans use Facebook,⁵² it seems unlikely that the majority of these union members do not. The more likely conclusion is that union members either do not want to promote their union affiliation online for fear of employer retaliation or simply prefer to spend their free time on these popular sites participating in non-union, non-work activities. A comparison of union Facebook pages to entertainment and consumer-oriented Facebook pages reveals a rather remarkable disparity in popularity. For instance, over 4 million users “like” Target’s Facebook page and over 8 million users “like” the band U2’s Facebook page.⁵³ Though not aimed specifically at Millennials, these numbers suggest that what Internet users generally want to see on their Facebook News Feed⁵⁴ is information about deals in stores and the ramblings of their friends, acquaintances, favorite celebrities, and athletes. These findings, while not comprehensive, suggest a trend towards use of the Internet and personal technology as a preferred

⁴⁸ *SEIU Facebook Page*, <http://www.facebook.com/SEIU> (last visited Apr. 14, 2011).

⁴⁹ The “Like” feature offers users a way to “give positive feedback or to connect with things [they] care about on Facebook.” See *Facebook Help Center: What is the Like Feature?*, FACEBOOK, <https://www.facebook.com/help/?faq=13942> (last visited Apr. 14, 2011).

⁵⁰ *AFL-CIO Facebook Page*, <http://www.facebook.com/aflcio> (last visited Apr. 14, 2011).

⁵¹ See *Our Union*, SEIU, <http://www.seiu.org/our-union/> (last visited Apr. 14, 2011) (listing SEIU membership at 2.2 million); *Unions FAQs*, AFL-CIO, <http://www.aflcio.org/aboutus/faq/> (last visited Apr. 14, 2011) (listing AFL-CIO membership at 12.2 million).

⁵² See *Facebook Press Room Statistics*, FACEBOOK, <http://www.facebook.com/press/info.php?statistics> (last visited Apr. 14, 2011) (Facebook has over 500 million active users worldwide, roughly 30% of which are located in America).

⁵³ *Target Facebook Page*, <https://www.facebook.com/target> (last visited Apr. 14, 2011); *U2 Facebook page*, <https://www.facebook.com/u2> (last visited Apr. 14, 2011).

⁵⁴ See *Facebook Help Center: What is News Feed?*, FACEBOOK, <https://www.facebook.com/help/?faq=18898> (last visited Apr. 14, 2011) (The “News Feed—the center column of [the] home page—is a constantly updating list of stories from people and Pages that [users] follow on Facebook.”).

means of escaping from the toils of the 21st century workplace rather than as a means of altering it.

Critics of this assessment may contend that the use of personal technology and SNS in Wisconsin⁵⁵ is a prime example of the potential for unions to inspire collective action through use of the Internet. Wisconsin union organizers were quite successful utilizing social media as a means of rallying support for Wisconsin's public unions during their fight with state legislators over the fate of the union's collective bargaining rights. During the debate, The Daily Page posted a list of social media blogs, twitter accounts and Facebook applications (as well as live events) promoting pro-union positions in an effort to further energize those impacted by the debate.⁵⁶ While the potential for using personal technology to inspire collective action exists, the recent events in Wisconsin are not indicative of the likelihood that Millennials will use personal technologies to initiate their own unionization drives. For one, the experience in Wisconsin involved a heavily entrenched union with workers deeply committed to unionization and their right to collectively bargain. These union members are familiar with union organizing efforts and therefore logically relied on personal technology to promote the union cause. In contrast, it seems plausible that Millennials in non-unionized workplaces will use personal technology and web 2.0 as a means of individually altering those terms and conditions of employment that have traditionally been the responsibility of the union.

C. Employees May Use the Internet to Directly Further Their Own Interests

Resourceful Millennials with workplace complaints may simply prefer to bypass unions and use the Internet in an anonymous capacity to force changes in their workplace.

One obvious problem with unions is that their organizing efforts are slow to develop. In an Internet age, wading through the logistical difficulties and procedural requirements associated with union organizing is entirely inefficient for a Millennial hell-bent on changing their working conditions now. The difficulties of organizing are exacerbated by the fact that employees today change jobs frequently, thereby

⁵⁵ See Kristian Knutsen, *A Guide to Social Media Campaigns Against Scott Walker's Agenda for Wisconsin Public Unions*, DAILY PAGE, Feb. 13, 2011, available at <http://www.thedailypage.com/daily/article.php?article=32233> (describing how union members used social media to coordinate protests).

⁵⁶ *Id.*

making it more difficult to maintain union support amongst the rank and file employees.

In today's information economy, workers are more educated and thus better able to articulate their workplace concerns than in previous generations. Traditionally, workers have relied on unions to help spread their message and pressure employers for change. In some regard, the Internet undercuts the need for these union activities by serving as a forum for any employee with a compelling story to quickly reach large audiences. No longer are employees with grievances beholden to unions and their access to local or national media outlets, for the Internet provides a wholly new outlet for employees to gain the employer's attention and the backing of the general public by anonymously airing grievances therein.⁵⁷ The viral nature of the Internet allows for compelling stories to reach large audiences in a very short time, a reality that likely terrifies image-conscious employers.

For Millennials, their first reaction to an unfavorable employment reality might be to anonymously publish something about that grievance online. Such publicity has the potential to create the same discomfort for employers as collective action drummed up through a union press campaign or protest.⁵⁸ Faced with this bad publicity, employers may prefer to quickly address the worker's concern so as to limit the damage to their public image, recruiting efforts, or employee morale.⁵⁹ Employers may also respond to such actions because refusal to do so may further alienate employees and get them thinking about contacting a union. Surely, responding (in some capacity) to an employee's anonymous requests is less burdensome and more cost-effective than dealing with a union on an everyday basis. In this regard, the Internet has the capacity to expand employees bargaining power without the direct and unwelcome intrusion of a third-party into the workplace.

⁵⁷ See EDELMAN AND INTELLISEEK, TALKING FROM THE INSIDE OUT: THE RISE OF EMPLOYEE BLOGGERS, Edelman & Intelliseek 6 (2005), <http://www.edelman.com/image/insights/content/EdelmanIntelliseek%20Employee%20Blogging%20White%20Paper.pdf> (noting that a "study of consumer-generated media behavior revealed that up to 9 percent of people posted on blogs (others or their own) to comment on or defend their employer").

⁵⁸ See *id.* at 7 (David Weinberger of the Harvard Berkman Center commented that "[m]any corporations are afraid of Weblogs because they are afraid of the sound of the human voice.").

⁵⁹ See, e.g., Daphne Taras & A. Gesser, *How New Lawyers Use E-Voice to Drive Firm Compensation: The "Greedy Associates" Phenomenon*, 24 J. LAB. RES. 9, 23 (2003) (noting how remarks made by greedy law firm associates influenced summer associates' perceptions of the firm they were working for, which concerned big law firms looking to attract the best talent coming out of law school).

Because of its accessibility, wide-ranging audience, potential for anonymity and ease of use, the Internet has the potential to become the preferred means of altering wages or working conditions for Millennials working in non-unionized workplaces.

III. CONCLUSION

It is undeniable that Millennials and 21st century personal technologies will influence the American labor market, relationships between employers and employees, and the role of the union as an arbiter for the American employee. As the law is not created in a vacuum, it must respond to the changes in the preferences, perceptions and knowledge of the population it aims to protect. That being the case, any legislative action intended to influence the rights of Millennial workers must account for their use of personal technologies. Our reliance on personal technologies is drastically altering the workplace. The speed at which something can be published for virtually everyone to see is a complicated reality that involves balancing both employer and employee interests. As previously mentioned, the Millennials have grown up with the Internet and that reality puts them in a different position than past generations. It is likely that we will not fully understand their use of personal technology devices and the Internet in the employer-employee context until they hold positions of authority and represent a majority of the American labor market.

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