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The Impact of Employer Opposition on Union Certification Win Rates: A Private/Public Sector Comparison

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The Impact of Employer Opposition on Union Certification Win Rates: A Private/ Public Sector Comparison

Abstract

"This report represents the first part of a larger study of public sector organizing that will include a detailed examination of certification, decertification and multi-union challenge elections."

Keywords

collective bargaining, ilr, industrial, labor, relations, movement, strike, NLRB, union, employer, employee, certification, public sector, private sector, legal, wage, coercion, labor law, certification

Disciplines

Collective Bargaining | Labor and Employment Law | Unions

Comments

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**THE IMPACT OF EMPLOYER OPPOSITION
ON UNION CERTIFICATION WIN RATES:
A Private/Public Sector Comparison**

by
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Working Paper No. 113
October 1994

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This report represents the first part of a larger study of public sector organizing that will include a detailed examination of certification, decertification and multi-union challenge elections. Support for this research was provided by the AFL-CIO Department of Field Services and Organization, AFSCME, AFT, CWA, SEIU, UAW, the Economic Policy Institute, the Fund for Labor Relations Studies, and the Institute for the Study of Labor Organizations. Research assistance was provided by Pam Mackesey, Katie Briggs, Diana Scarselletta-Straut, Katherine Smith, Ian Campbell, and Ian Boyle, with clerical assistance provided by Beth Berry and Penny Bolt.

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EXECUTIVE SUMMARY

This study explains why unions are winning 85% of certification elections in the public sector compared to 48% in the private sector. Detailed information was gathered from state labor boards and lead organizers for a sample of 181 public sector elections in 1991-92. We assess the relative importance of employer background, labor-board practices and procedures, bargaining-unit demographics, union tactics, and employer behavior on the certification election win rate. By comparing these findings with Bronfenbrenner's earlier study of private sector union campaigns (1993), we suggest that employer tactics play a primary role in explaining the 37-percentage-point difference in public and private sector win rates.

Highlights of the study include:

- Overall, differences in employer background, board practices and procedures, bargaining-unit demographics, and union tactics cannot account for the large difference in win rates between the public and private sectors. In fact, these differences would suggest that unions should be winning fewer elections in the public sector.
- Employers in the private sector utilize significantly more aggressive anti-union campaigns than do their public sector counterparts and use a combination of legal and illegal methods. In almost one quarter of all campaigns in the public sector, the employer did not campaign at all against the union.
- Private sector employers are six times more likely to commit unfair labor practices such as discharges for union activity, and more than twice as likely to use other tactics such as captive-audience meetings, employer leaflets and mailings, supervisor one-on-ones, and illegal wage increases.
- The formal and informal constraints on public employers create an environment where workers are able to choose unions largely free from the coercion and intimidation that is so pervasive in the private sector.
- These results suggest that the only way to curb aggressive employer behavior in the private sector is through the significant expansion of union and worker rights in the organizing process, coupled with more aggressive enforcement and stringent penalties for employer violations.

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INTRODUCTION

An examination of union certification elections provides dramatic evidence of the changing fortune of American trade unions over the past several decades. During the years 1965-69, on average 7,374 certification elections were held annually in the private sector, with unions winning 59.9% of the elections each year. Over 300,000 new workers gained union representation through these elections each year. By 1990 the number of union elections had declined to 3,623. Unions won 49.5% of the elections in 1990, adding only 79,814 new members. Given the loss of membership through manufacturing decline, technological change, work restructuring, and contracting out, it is clear that this level of organizing is not sufficient to halt the continuing decline of the labor movement.

While there is little disagreement about the serious implications that declining organizing success has for American unions, there is considerable debate as to why these changes have taken place. Some have seen these numbers as a clear indictment of the labor movement—that unions are no longer relevant to a rapidly changing workforce in a constantly changing world economy. Many trade unionists and academics, however, point to the explosion of illegal and legal employer anti-union behavior as a major determinant of labor's decline. Both of these perspectives have contributed to a growing public policy debate on the labor movement, labor-management relations, and the possibility for labor-law reform.

What is striking about this debate is that it has focused almost exclusively on private sector organizing. It has virtually ignored the tremendous growth of public sector employment and unionization over this same period. According to a new national database on public sector organizing (Bronfenbrenner and Juravich 1994), unions are winning 85% of certification elections in state and local units. Clearly some very different dynamics are in operation in the public sector. What accounts for these dramatic differences in the union win rates in the public and private sectors?

This research is designed to answer this question through an intensive examination of a national sample of public sector organizing campaigns. Through information gathered from state labor-relations agencies and a survey of union organizers, we are able to create the first detailed portrait of public sector organizing.

In addition to examining public sector organizing, we will compare this sample with a similar sample of private sector certification elections (Bronfenbrenner 1993). This in-depth comparison will illustrate significant differences between public and private sector organizing and demonstrate that employer behavior is a primary determinant of why private sector unions are faring so poorly in certification elections.

UNION CERTIFICATION IN THE PRIVATE SECTOR

Table 1 presents summary information on all certification elections in both the private and public sectors for 1991 and 1992. In the private sector, approximately 3,000 certification elections were held annually, with unions winning slightly less than half. Although approximately 190,000 eligible voters participated in these elections, the low win rate, especially in larger units, resulted in unions winning representation rights for about 75,000 previously unorganized workers each year (NLRB Reports 1991-92). In contrast, there were slightly less than a thousand elections a year in the public sector, yet the 85% win rate added approximately 45,000 workers annually to those already covered by collective bargaining.

Table 2 provides a more detailed look at private sector elections during this same period. Although more than a third of the NLRB elections were concentrated in manufacturing industries, there were also a large number of elections in the service and retail sectors. Win rates varied by industry, from a low of 34% in mining to above 50% in education, health care, and other service sector industries. Despite this variation, win rates in all industries remained below 60%, and hovered around 50% across all unit types.¹

There has been a great deal of debate as to the factors contributing to this low win rate. Some suggest that its root may be the changing view of unions by American workers (Farber

TABLE 1
Summary of National Private and Public Sector Elections,
1991-92

	Number of Elections	Union Win Rate	Average Unit Size*	Net Gain
Private Sector Certifications				
<i>(NLRB)</i>				
1991	3345	47%	61.3	76,749
1992	2949	49	67.8	73,977
1991-92 Total	6294	48	64.3	150,726
Public Sector Certifications				
<i>(State and Local LRBs)</i>				
1991	956	85%	58.3	44,911
1992	956	85	55.9	45,304
1991-92 Total	1912	85	57.1	90,215

* Number of persons in bargaining unit.

Source: NLRB Reports 1991-92; Bronfenbrenner and Juravich (1994).

TABLE 2
Characteristics of National Private Sector Certification Elections,
1991-92

	Number in 1991	Number in 1992	Percent Wins 1991-92
Industry			
Manufacturing	1200	1074	40%
Transportation/Warehouse	436	419	45
Wholesale/Retail	577	501	40
Communications	77	79	43
Utilities	116	135	41
Health Care	342	299	53
Education	26	28	55
Other Services	468	520	57
Hotel/Restaurant	68	56	44
Recreation/Entertainment	49	47	53
Bank/Finance/Real Estate	71	74	55
Mining	43	30	34
Construction	279	337	50
Unit			
Production and Maintenance	1546	1196	48%
Craft	186	143	54
Cross Department	203	166	51
Guards	43	36	59
Professional/Technical	70	90	54
Production/Maintenance/Clerical	15	19	50
Truck Drivers	536	403	44
White Collar/Office (Nonprofessional)	89	74	58
All Others*	244	206	52
Election Type			
Consent	28	28	NA**
Ordered	527	576	NA
Stipulated	2739	2490	NA
Unit Size			
1-9	676	676	60%
10-49	1550	1392	49
50-99	491	501	42
100-499	418	381	35
500-999	33	32	25
1,000-10,000	11	11	32
<i>Total Elections</i>	3179	2993	48

* Includes service and maintenance units.

** Not available in NLRB annual reports.

Source: NLRB Reports 1991-92.

1987; Farber and Krueger 1993) . Using survey data, Farber suggests that "... much of the decline in the unionization rate is due to a decrease in worker demand for union representation and that relatively little is due to increased employer resistance to unions" (Farber 1994, 2). Yet he asserts this relationship without even considering data on employer behavior, and fails to consider fully that employer behavior can have a direct impact on public opinion.

Others suggest that it is aggressive anti-union behavior by employers during organizing campaigns that have kept the win rates low, not the general attitudes of American workers (Freeman 1988; Weiler 1983, 1990). There are numerous case studies that illustrate the nature of employer anti-union tactics. Judy Ray's story about her attempt to organize a union at Jordan Marsh is one example.

I cannot impress upon you what an organizer, what an employee who is just fighting for their rights in a campaign, goes through this day and age. I wouldn't have believed it myself. I have been followed on my day off, to restaurants, by security guards with walkie talkies. I had an employee, a management person, assigned to work with me eight hours a day, five days a week, who was told he was there solely to work on me, to change my ideas about union. (Commission on the Future of Worker-Management Relations 1994, 89)

In another example, on July 14, at the culmination of a zealous union avoidance campaign, Sprint Corporation fired the entire workforce at La Conexion Familiar, its telemarketing operation for the Hispanic community in San Francisco, just eight days prior to a scheduled National Labor Relations Board election. The NLRB complaint against Sprint charged them with over 50 violations including threats, surveillance, interrogation, harassment of union supporters, as well as the discharge of 235 workers without notice (NLRB 1994, 15-16).

The Industrial Union Department-AFL-CIO has compiled information from all its affiliates on how employers use both illegal and legal tactics to destroy workers' organizations, fight unionization, and evade first contracts (Industrial Union Department 1994; Hurd and Uehlein 1994). One of the cases it discusses is the Amalgamated Clothing and Textile Workers Union drive at Surgical Appliance Inc. in Cincinnati.

Nearly half of 120 employees were visited in their homes over two days in early February 1993. Approximately 70 percent of those visited signed union authorization cards. Eight workers passed out leaflets at the plant gate the next morning. An hour later all eight were either laid off or had their hours reduced. This scenario was repeated over the next few days until twenty-six union supporters were laid off. The organizing campaign had been stopped cold (Hurd and Uehlein 1994, 66-67).

The difficulty of this case-study approach, however, is that it provides little information on how widespread these practices are. The most common quantitative information used to measure employer behavior is NLRB data on unfair labor practices. The research findings on the impact of unfair labor practices (ULPs) on organizing, however, have been mixed.²

Freeman (1985), for example, suggests that from 1960 to 1980 the number of workers fired by their employers for union activity and then reinstated by the NLRB rose five times. Freeman goes on to suggest that these increases in ULPs led directly to the decline in the union win rate. Similarly, Cooke suggests that ULPs reduce union win rates by as much as 10%. Others, however, such as Maranto and Fiorito (1987), and Lawler and West (1985), contend that unfair labor practices can have a positive effect on organizing, tending to crystalize workers' solidarity, which in turn backfires on the employer.

These contradictory findings reflect that charges of unfair labor practices are poor indicators of employer behavior during the certification process. First, they capture only reported illegal behavior by employers. In cases where illegal behavior destroyed a campaign before it was viable, there may be no union left to file charges. Many union charges are also lost or never filed because of the difficulty in supplying corroborating evidence and bringing in supportive witnesses in a climate of fear and intimidation. Also, because penalties for employers found to be committing unfair labor practices are inadequate and because ULP charges can delay elections and first contracts for many months, if not years, unions are often hesitant to file charges, even in the most egregious cases.

Furthermore, ULPs cannot capture the employer campaigns that, although technically inside the law, stretch the law far beyond its original intention. For example, when the American Federation of State, County, and Municipal Employees attempted to organize professional employees at Fountain Valley Regional Hospital in California in 1986, the employer was able to use legal challenges and election objections to delay the election until 1987 and further delay certification until 1991 (Hurd and Uehlein 1994, 24-26).

One of the few studies that went beyond ULP data to examine legal and illegal employer tactics was conducted by Bronfenbrenner (1994). Bronfenbrenner found that more than 75% of employers studied engaged in aggressive anti-union tactics, including some combination of discharge for union activity, captive audience meetings, supervisor one-on-ones, promises of improvements, anti-union committees, leaflets, and letters. Most of these tactics were associated with win rates 10-20% lower than in units where they were not utilized. In addition, when included in a regression equation controlling for the influence of election background, bargaining-unit demographics, and union-tactic variables, these individual employer actions were found to decrease the probability that the union would win the election by between 3% and 22%.

UNION CERTIFICATION IN THE PUBLIC SECTOR

Our recently established national database of all state and local public sector certification elections for 1991-92 in the 35 states that have some form of collective-bargaining legislation provides additional insights into the impact of employer opposition in certification elections. **Table 3** provides an overview of these elections. What is surprising is the consistency of win rates across a wide variety of entities, employers, bargaining units, and election types. Unions won by substantial margins, receiving, on average, 83.2% of votes cast. Despite the high likelihood of union victory, the average election turnout was 87.7% in these public sector campaigns (Bronfenbrenner and Juravich 1994).

On a macro level, these data present a very different picture of the union election process than the suggestion that workers are uninterested in organizing. In sharp contrast to the private sector and some public opinion polling results, all types of public sector workers are enthusiastically joining unions. What these data do not tell us is why.

As the Presidential Commission's *Fact Finding Report* suggests, "Union representatives testified before the Commission that they believed an important reason was that public employers seldom campaign against union organizing and that employees believe that if they vote union the outcome will be a collective-bargaining contract" (Commission on the Future of Worker-Management Relations 1994, 77). The commission report continues, "Many factors are undoubtedly at work behind these trends, including management actions, union actions, government regulations, and the changing needs of workers and their assessment of how best to meet those needs. The relative influence of these (and other) factors would be very difficult to determine, including the significance of unfair labor practices" (1994, 77).

This research was designed with that challenge in mind. By providing a detailed examination of certification elections in the public sector, this study will assess the factors behind the dramatic difference in win rates between the public and private sectors, focusing particularly on the impact of employer behavior.

TABLE 3
Characteristics of State and Local Public Sector Certification Elections,
1991-92

	Number in 1991	Number in 1992	Percent Wins 1991-92
Public Entity			
State	32	28	88%
City	191	228	89
County	193	182	81
Town	211	193	87
School District	229	236	85
Special District	58	56	78
Higher Education	42	33	81
Employer Division			
All or Cross/Entity	144	154	89%
School District	229	236	85
Public Works	129	121	82
Courts	35	36	75
College/University	42	33	81
Social Services	65	57	72
Hospital	15	12	85
Police	188	192	91
Fire/EMT	50	47	89
Administrative	32	36	75
Corrections	8	15	87
Transit	19	17	86
Bargaining-Unit Type			
Clerical	55	50	80%
Blue Collar	111	95	86
Support Staff	249	276	80
Security	6	10	88
Technical	40	51	90
Combined Tech/Prof/Clerical	35	37	82
Professional	101	91	85
Wall-to-Wall	113	109	86
Police/Fire	152	155	92
Supervisory	94	82	86
Election Type			
Consent	655	623	85%
Stipulated	93	118	86
Ordered	150	178	87
Unit Size			
1-9	335	310	88%
10-49	444	453	85
50-99	94	105	81
100-499	68	75	76
500-999	5	5	80
1,000-10,000	10	8	88
<i>Total Elections</i>	956	956	85

Source: Bronfenbrenner and Juravich (1994).

RESEARCH METHODS

This research is based on a random sample of single union certification elections in units of 50 or larger. The sample of 250 elections was drawn from our database of all state and local public sector elections held in 1991-92 in the 35 states that have some form of collective bargaining (Bronfenbrenner and Juravich 1994).³ A comparison of the sample with the population indicates that this is a representative sample across states, units, unions, and employers.

We gathered information on the elections from two different sources. First, we contacted the appropriate state and local labor-relations board for each of the elections in our sample to gather information on unfair labor practices committed by employers during organizing campaigns. For each of the cases in our sample the appropriate state board provided us with documentation of all ULP charges filed during the election campaign, as well as the disposition of each case.

We also gathered information from the lead organizer in each of the elections in our sample through an extensive survey on union tactics, bargaining-unit demographics, and employer behavior. This report is based on 181 survey responses, which represent a 77% response rate.

A comparison of elections where we have survey responses with the total sample indicates no bias in terms of geographical distribution, unit size, bargaining-unit type, or public entity when compared to the total population of single union certification elections in units over 50 in 1991-92. **Table 4** describes the characteristics of the sample. As in the total population, the elections are concentrated in professional and support-staff units in school districts. There are also a significant number of campaigns in city- and county-wide blue-collar, clerical, and wall-to-wall units. The overall win rate for the final sample of 181 elections was 70%. Although there is some variation in win rates across unit type, our final sample, like the population of elections as a whole, shows consistently high win rates across a broad range of public entities, election types, and unit sizes.

TABLE 4
Characteristics of Sample of State and Local Public Sector Certification Elections,
1991-92

	Number of Elections	Percent Wins 91-92
Year		
1991	83	69%
1992	98	71
Public Entity		
State	12	67%
City	32	84
County	32	63
Town	6	83
School District	72	64
Special District	10	80
Higher Education	17	76
Employer Division		
All or Cross/Entity	32	84%
School District	72	64
Public Works	15	60
Courts	7	86
College/University	17	76
Social Services	14	50
Hospital	5	80
Police	4	100
Fire/EMT	4	100
Administrative	6	67
Corrections	3	67
Transit	2	50
Bargaining-Unit Type		
Clerical	17	82%
Blue Collar	11	90
Support Staff/ Service Maintenance	76	59
Security	3	67
Technical	1	00
Combined Tech/Prof/Clerical	8	63
Professional	29	69
Wall-to-Wall	15	80
Police/Fire	9	89
Supervisory	12	92
Election Type		
Consent	119	72%
Stipulated	14	57
Ordered	31	77
Unit Size		
50-99	105	70%
100-499	67	69
500-999	1	100
1,000-10,000	8	88
<i>Total Elections</i>	181	70

Source: Bronfenbrenner and Juravich (1994).

ELECTION BACKGROUND AND EMPLOYER CHARACTERISTICS IN CERTIFICATION ELECTIONS

Perhaps the most obvious question facing those studying the differences in public and private sector organizing success is whether this variation can simply be explained by differences in the nature of the election process and the nature of public sector employment. **Table 5** provides some important background information on elections and employers in both the private and public sectors by comparing the results from Bronfenbrenner's 1993 study of private sector campaigns with the public sector study.

This comparison of the public and private sector data reveals some important and largely unanticipated differences in election and employer characteristics. Given the fact that public sector workers experience greater delay, are organizing into larger units, and tend to have better pre-campaign benefits, one would expect less, rather than more organizing success in the public sector. The data show otherwise.

In the private sector sample, the union won only 43% of the elections, receiving an average of 47% of the votes cast in all elections and 65% of the votes cast in winning elections. In contrast, in the public sector sample, unions won 70% of the elections and received 66% of the votes cast in all elections and 75% in winning elections. In addition, more than a quarter of the units where unions lost elections in the public sector went on to have a second election within two years. Forty-three percent of those second elections were won by unions, bringing the final win rate up to 75% of the total elections in the sample. Although the second election win rate in the private sector was similar at 42%, only 7% of the units where unions lost the election were involved in second elections.

Surprisingly, election delay (the number of days between the petition and the election) and unit size, two of the many factors that make it more difficult for unions to organize in the private sector, average much higher in the public sector than they do in NLRB election campaigns. In NLRB elections, delay results from both NLRB caseloads and procedures as well as employers purposely stalling elections through unit challenges and election objections. Based on our contacts in the state labor-relations agencies, it appears that the lengthy delays in the public sector are less a product of employer opposition than they are due to persistent problems in funding and staffing of public sector labor boards. In the private sector the average unit size is nearly a third lower in units where the union won the election than it is overall. In the public sector the trend is reversed.

More than a third of the elections in the NLRB sample took place in units where the same or other unions had lost a previous election. In the public sector only 18% of elections occurred in units where there had been a previous union election. Unlike in the private sector, the 72% win rate in these public sector elections was higher than it was in units where there had not been a previous failed campaign.

TABLE 5
Election and Employer Background in Private and Public Sector

	Private Sector			Public Sector		
	Sample Proportion or Mean	Proportion or Mean for Wins	% Win Rate	Sample Proportion or Mean	Proportion or Mean for Wins	% Win Rate
Election Background						
Election outcome	.43	1.00	.43 (.00)	.70	1.00	.70 (.00)
Percent union vote	.47	.65	NA	.66	.75	NA
Number of days between petition and election	80	81	NA	154	126	NA
Number of eligible voters	138	105	NA	195	214	NA
Type of Election						
Previous election lost	.35	.30	.38 (.45)	.18	.16	.61 (.72)
Consent	.48	.58	.49 (.36)	.73	.73	.73 (.71)
Stipulated	.31	.29	.40 (.25)	.09	.07	.57 (.73)
Ordered	.09	.07	.17 (.45)	.19	.20	.77 (.71)
Losses went to second election	.07	NA	.42 (.00)	.26	NA	.43 (.00)
Employer Characteristics						
Pre-campaign health insurance provided	.23	.23	.43 (.42)	.74	.70	.66 (.80)
Pre-campaign pension provided	.26	.21	.34 (.45)	.71	.69	.68 (.75)
Pre-campaign employee involvement plan	.07	.04	.22 (.44)	.19	.19	.71 (.70)
Other units already organized	.46	.52	.49 (.38)	.77	.80	.73 (.60)

Note: Number in parentheses lists the percent win rate when the characteristic or tactic did not occur.

Source: Bronfenbrenner and Juravich (1994).

The information on the election process indicates that NLRB election campaigns are much more likely to go through unit-determination hearings than are public sector elections. Close to three quarters of the elections held in the public sector are consent elections, where there is no employer opposition to the definition of the bargaining unit. Yet even in stipulated and ordered elections in the public sector, win rates drop only slightly. In contrast, in the private sector less than half of the elections are consent elections, with win rates that hover around 50%. In NLRB ordered elections the win rate drops sharply to 17%.

The employer characteristics presented in Table 5 suggest that public and private workers find themselves in very different circumstances. In the private sector only one quarter of the workers have any form of health insurance or pension plan, whereas in the public sector over three quarters of the units have these benefits prior to the organizing drive. Far fewer units in the private sector had a QWL (quality work life) or other type of labor-management cooperative program. Yet the presence of these programs has a serious negative effect in the private sector, while there is no perceptible impact evident in public sector campaigns.

Finally, in both the private and public sectors, the presence of other unionized units has a positive impact on organizing. Given the higher union density in the public sector, it is not surprising that more than three quarters of the campaigns occurred in workplaces where other units were already organized, compared to only 46% in the private sector.

In examining employer characteristics, it is apparent that public sector workers find themselves in significantly better circumstances in terms of benefits than do their private sector counterparts. Given these working conditions, one would expect public sector workers to have a much lower incentive to organize than do private sector workers, yet this is not reflected in their respective win rates.

Overall, these findings suggest that employer characteristics and board practices and procedures do not account for the differences in the win rates between the private and public sectors. While there are some significant differences between state and local elections and those supervised by the NLRB, they are neither in the anticipated direction nor in the correct pattern to account for the immense variation in win rates.

BARGAINING-UNIT DEMOGRAPHICS

Another possible explanation for the differences in win rates in the public and private sectors could be differences in the background and experience of the workers being organized. **Table 6** provides detailed information on the bargaining-unit demographics for both the private and public sector samples. Once again the data point to important differences between the two sectors. Workers involved in public sector organizing campaigns are more likely to be white, higher paid, and working in professional occupations than are workers organizing under the NLRB. Based on the private sector findings, these characteristics should make public sector workers less likely to organize. Yet, in fact, the opposite is true.

As we can see from Table 6, private sector unions appear to have their greatest success in units where 60% or more of the unit are women or people of color. Private sector union success is also highest with low-wage workers and in service and maintenance units. At the same time the majority of NLRB elections are concentrated in blue-collar units, where the average win rate is only 40%.

From these data it is clear that a very different distribution of women, minorities, and unit types are found in the public sector. Where in the private sector, for example, only 39% of the units have more than 60% women, public sector units are nearly twice as likely to have a majority of women in the unit. In the private sector, units with 60% or more women have a higher win rate than all-male units, while in the public sector the opposite is true.

Minority workers, however, are much more prevalent in private sector units. In the private sector, 20% of the units have at least 60% minority workers, compared to less than 10% of the elections in the public sector. Units where at least 5% of workers have a language other than English as their primary language are also much less common in the public sector, averaging only 4% compared to 31% of private sector election campaigns. The presence of minority workers in both sectors leads to a higher win rate, although the increase in win rates is more dramatic in the private sector.

On average, the data show that wages of workers organizing in the public sector in our sample are almost double the wages of workers in private industry. For both the private and public sector, low-wage workers are more likely to organize. However, only 3% of the public sector campaigns took place in low-wage units where the average wage was \$5.00 or less an hour. In combination with the pre-campaign health insurance and pension benefits, the wage data demonstrate that public sector workers enter into organizing campaigns in considerably better work situations than do their private sector counterparts. Organizing is also concentrated in very different units in the public sector than it is in the private sector. Fifty-nine percent of private sector units are strictly blue collar, compared to 6% in the public sector.

TABLE 6
Bargaining-Unit Demographics in Private and Public Sector Certification Elections

	Private Sector			Public Sector		
	Sample Proportion or Mean	Proportion or Mean for Wins	% Win Rate	Sample Proportion or Mean	Proportion or Mean for Wins	% Win Rate
Percent of women in unit	.46	.54	NA	.60	.57	NA
Unit at least 60% female	.39	.49	.53 (.36)	.60	.54	.63 (.81)
No women in unit	.13	.14	.44 (.43)	.01	.01	1.00 (.70)
Percent minority in unit	.28	.34	NA	.16	.17	NA
Unit at least 60% minority	.20	.25	.53 (.40)	.09	.09	.73 (.70)
No minorities in unit	.23	.20	.37 (.44)	.28	.27	.68 (.71)
Percent part-time in unit	.06	.08	NA	.15	.17	NA
Average bargaining unit wage	6.31	5.72	NA	10.39	10.61	NA
Average wage \$5.00 or less	.41	.54	.56 (.33)	.03	.03	.80 (.70)
Average unit age	32.77	31.78	NA	39.08	38.82	NA
5% or more of unit non-English speaking	.31	.32	.43 (.43)	.04	.02	.43 (.71)
Unit strictly clerical	.03	.03	.38 (.43)	.09	.11	.82 (.69)
Unit strictly blue collar	.59	.55	.40 (.47)	.06	.08	.91 (.69)
Unit service and maintenance	.13	.18	.60 (.40)	.38	.33	.61 (.76)
Unit technical/professional	.02	.02	.40 (.43)	.17	.17	.68 (.71)
Unit Wall-to-Wall	.08	.09	.45 (.42)	.08	.09	.80 (.69)

Note: Number in parentheses lists the percent win rate when the characteristic or tactic did not occur.

Source: Bronfenbrenner and Juravich (1994).

Conversely, 38% of organizing in the public sector takes place in service and maintenance units, compared to only 13% in the private sector.⁴

Perhaps the most dramatic difference in bargaining-unit demographics is that nearly a third of public sector elections occurred in clerical, technical, or professional units while only 5% of the private sector campaigns took place in white-collar units. Whereas in the private sector these units were associated with win rates of 40% or less, in the public sector unions won 82% of the clerical elections and 68% of the technical and professional elections.

Overall, there is considerable variation in the demographics of the units that are currently being organized in the public and private sectors. Yet it is difficult to see how these differences in wages, unit type, and the distribution of women and minorities would account for the dramatic differences in win rates for the public and private sector. In fact, these demographic differences would more likely lead to the opposite conclusion. This is especially true of the large number of public sector elections covering more highly paid professional workers including teachers, professors, engineers, court officers, health care professionals, and managers and administrators. However, there are many more public sector elections for these workers, but, unlike in the private sector, where unions win only a handful of elections in high wage technical and professional units, public sector unions win more than two-thirds of the elections in these units.

Given the higher proportion of professional workers and higher average wages in the public sector compared to the private sector, it would appear that public sector workers would be significantly less motivated to join unions. Yet, as we have shown, this is not the case. Over three quarters of public sector workers participate in voting for unionization, and public sector unions receive over 80% of the vote on average. Clearly we need to identify alternative explanations for the differences in win rates between the public and private sectors.

EMPLOYER TACTICS IN CERTIFICATION ELECTIONS

Many have argued that differences in employer behavior provide the most compelling explanation for differences in union success in the public and private sector. However, to date the only documentation of public sector employer behavior was based on the anecdotes and experiences of organizers who had run public sector campaigns.

Table 7 presents the first detailed examination of tactics used by employers in both the public and private sectors. The dramatic differences in employer behavior are apparent from the data on the first line of the table. In almost a quarter of the elections in the public sector, the employer did not campaign at all against the union. This means that in these elections workers decided whether to vote for or against the union free from any interference from the employer. No captive-audience meetings were held, no letters were mailed, no workers were fired. In contrast, in the private sector there was not a single NLRB election where the employer did not run some kind of campaign against the union.

Looking first at illegal employer activity, six times as many workers were discharged for union activity during NLRB election campaigns than in public sector campaigns. Workers in the private sector were almost six times more likely to be fired and not reinstated before the election than they were in the public sector. In the public sector this occurred in only 3% of the cases, as opposed to 18% among private employers. Of special note here is that complaints were issued on illegal discharges in 13% of elections in the private sector and in only 2% of state and local elections.

Similar patterns emerge in terms of other unfair-labor-practice charges. In addition to discharges, unions filed other unfair labor practices in only 5% of the public sector elections, compared to 22% of private sector elections. Unlike the private sector, where most of these charges had to do with more egregious labor-law violations such as threats of discipline, surveillance and intimidation of union supporters, and the funding and domination of anti-union committees, in the public sector these additional charges related primarily to changes in personnel policies and procedures. Although unions were able to win complaints in only 20% of the public sector campaigns where they filed additional charges, in many of the cases they were able to reach a settlement with the employer outside of the labor-board process.

Reviewing the overall list of employer campaign tactics, virtually every tactic (with the exception of media campaigns) is considerably more prevalent in the private sector than in the public sector. For example, private sector employers used captive audience meetings 82% of the time, while they were used in only 32% of the state and local government elections. Private employers mailed letters in 80% of the certification elections, almost three times as many elections as in the public sector. Similar patterns emerged in the distribution of company leaflets, with the private sector employing them five times as often.

TABLE 7
Employer Tactics Utilized in Private and Public Sector Certification Elections

	Private Sector			Public Sector		
	Sample Proportion or Mean	Proportion or Mean for Wins	% Win Rate	Sample Proportion or Mean	Proportion or Mean for Wins	% Win Rate
No employer campaign*	.00	.00	0 (.43)	.24	.24	.72 (.70)
Employer discharged workers for union activity	.30	.35	.51 (.39)	.05	.03	.44 (.72)
Complaints issued	.13	.17	.58 (.40)	.02	.02	.50 (.71)
Fired workers not reinstated before the election	.18	.19	.37 (.44)	.03	.02	.50 (.71)
Other ULPs filed	.22	.24	.47 (.41)	.05	.02	.38 (.72)
Complaints issued on other ULPs	.14	.17	.51 (.41)	.01	***	.00 (.71)
Employer filed election objections	.13	.27	.51 (.41)	.04	.05	.75 (.70)
Employer used consultant	.71	.67	.40 (.50)	.48	.46	.67 (.73)
Employer used layoffs	.15	.18	.53 (.41)	.08	.08	.71 (.70)
Anti-union committee used	.42	.37	.37 (.46)	.24	.21	.60 (.73)
Employer used captive audience meetings	.82	.82	.43 (.42)	.35	.32	.64 (.74)
Number of captive audience meetings	5.5	3.97	NA	2.12	1.87	NA
Employer mailed letters	.80	.79	.42 (.45)	.35	.32	.63 (.74)
Number of employer letters	4.47	3.93	NA	1.88	1.66	NA
Employer distributed leaflets	.70	.70	.43 (.42)	.23	.21	.63 (.72)
Number of employer leaflets	5.98	5.41	NA	1.50	1.33	NA
Supervisors did one-on-one meetings	.79	.79	.43 (.42)	.40	.43	.76 (.66)
Employer used media	.10	.13	.52 (.41)	.16	.17	.72 (.70)
Employer gave wage increase	.30	.23	.32 (.47)	.12	.12	.71 (.70)
Employer promoted leaders	.17	.19	.47 (.42)	.08	.07	.64 (.71)
Employer made promises	.56	.44	.34 (.54)	.26	.25	.68 (.71)
Management change after petition	.21	.20	.41 (.54)	.09	.06	.44 (.73)
Employer campaign included more than 5 tactics**	.38	.34	.39 (.45)	.07	.06	.54 (.71)

Note: Number in parentheses lists the percent win rate when the characteristic or tactic did not occur.

* Employer did none of the following: captive-audience meetings; anti-union committees; anti-union letters; anti-union leaflets; supervisor one-on-ones; unscheduled wage increases during campaign; promises of improvements in wages, benefits, or working conditions; promotion of key union leaders; and media campaigns.

** Employer campaign included more than five of the tactics listed above.

*** The board ordered a second election, which the union won.

Source: Bronfenbrenner and Juravich (1994).

Even in those campaigns where public sector employers utilized captive-audience meetings and mailings and leaflets, it was of a very different character and intensity than in the private sector. In most cases, public sector employers used letters, leaflets, and meetings only once or twice during the campaign, while in the private sector four or five letters, leaflets, and/or captive-audience meetings were the norm. Over and over again the public sector organizers interviewed in the study reported that there was no employer opposition whatsoever, or the opposition was limited to a few nonthreatening letters and meetings.

Public sector employers were also much less likely to use other tactics commonly practiced by private sector employers, including supervisor one-on-ones; illegal wage increases; promises of improvements in wages, hours, and working conditions in return for opposition to the union; the promotion of union leaders to non-bargaining-unit positions; and changes in first-line supervisors and middle or top management during the campaign. Whereas in the private sector more than 70% of the employers used outside consultants, in the public sector outside consultants were brought in by employers in only 48% of the campaigns, and were primarily utilized in a legal advisory capacity.

That is not to say that there were not some public sector employers who engaged in more aggressive anti-union tactics such as discharges of union activists, threats of layoffs and privatization, unit and election challenges, and a full-scale effort to discredit the union. As in the private sector, unions found those actions very difficult to overcome. However, unlike the private sector, where these kind of actions are the norm, the few public sector cases where employers ran more intensive campaigns were clearly the exception and were highly concentrated in higher education and health care. This is not surprising, given that public sector higher education and health care employers are more insulated from public pressure than are their counterparts in local and state government. They are also more closely aligned with private sector institutions, such as hospital associations, than are other public sector employers. Similarly, the majority of the cases where state labor-relations boards issued complaints for discharges and other unfair-labor-practice violations were in health care and higher education units.

These few cases notwithstanding, the employer tactic data make clear that there is little opposition to unions by state and local government employers. Indeed, the data illustrates that in almost one quarter of the elections there is no campaign, and most of the remaining campaigns are of extremely low intensity. This difference in intensity is best captured by the employer-tactic scale presented on the final row of Table 7. These data show that nearly 40% of private sector employers, as compared to only 7% of public sector employers, utilize more than five of the following tactics: captive-audience meetings, letters, leaflets, anti-union committees, media campaigns, supervisor one-on-ones, discharges, wage increases, or promotions of union leaders.

In both the public and private sector, the intensity of the employer campaign was associated with significantly lower union win rates. Unions won only 39% of the NLRB campaigns where employers used more than five of the tactics, compared to 45% of the elections where five or fewer tactics were used. In the public sector the union win rate was 54% where more than five tactics were used, and 71% where five or fewer tactics were used. However, because these more aggressive employer campaigns only occurred in 7% of the elections in the public sector sample, they had a negligible effect on the overall union win rate.⁵

This pattern makes a great deal of sense given the fact that public officials are considerably more accountable than are their private sector counterparts. A private employer may engage in illegal tactics or push legal tactics to the absolute limit with few repercussions. Indeed this kind of “bottom-line” hardball strategy may in fact garner support from their peers, stockholders, and current and future investors.

In public sector elections in states with collective-bargaining legislation, very different dynamics are in operation. Many public officials are elected and regardless of their individual attitudes are constrained from engaging in activities that the public might perceive negatively. Thus, public opinion acts as a leveling mechanism, creating a more level playing field between labor and management. In addition, public sector workers enjoy constitutional free speech and public access rights, and in some cases civil-service protection, denied to almost every unorganized private sector worker. In contrast, as shown by the private sector data, aggressive employer opposition in NLRB campaigns, coupled with bureaucratic delays and weak enforcement of labor laws, has rendered the kind of organizing climate that exists in the public sector impossible.

Some may argue that the differing nature and intensity of employer tactics in the public and private sector is merely a reflection of differences between public and private sector union organizing efforts. That is to say that public sector employers are less likely and less able to mount aggressive anti-union campaigns because they are constrained by more aggressive and effective union-organizing strategies. It is clear from both the public and private sector data that this is not the case.

Additional analysis of union tactics in our sample suggests that public sector union campaigns are significantly less intensive, rather than more intensive, than those in the private sector. For a broad range of union tactics, such as building representative and active organizing committees, conducting housecalls for a majority of the union, using solidarity days, using rank-and-file volunteers from other units, and surveying workers one-on-one regarding what they want in their first agreement, public sector campaigns are of equal or lower intensity than private sector campaigns. For example, unions used organizing committees in 81% of public sector campaigns compared to 94% of private sector campaigns, with a

mean committee size of 10% of the unit for both sectors. In both the public and private sectors, organizers conducted home visits with the majority of the unit in 15% of the cases, while they were twice as likely to use solidarity days in the private sector (12%) than in the public sector (6%).

It is clear from our analysis that differences in union tactics alone cannot account for the higher win rate in the public sector. Once again, the data point to employer behavior as the primary reason for the dramatic difference between the 85% public sector union win rate and the 48% private sector win rate.

CONCLUSIONS

This first detailed examination of public sector organizing provides some important insights into our understanding of why workers win and lose certification elections. While much of the literature has continued to focus on unfair-labor-practice data or anecdotal case studies, the analysis of this new data provides a fresh perspective to the current debate on union organizing.

Most importantly, our examination of certification elections in the public sector demonstrates that these workers, unlike their private sector counterparts, are enthusiastically participating in union elections and voting for unions in large numbers. This calls into question the portrait of American workers as being no longer interested in unions. The comparison of detailed information on public and private certification elections has provided us an excellent opportunity to reformulate the debate.

We have examined a number of alternative explanations for the dramatic differences in the win rates in public and private sector elections. While there are differences in employer characteristics, labor-board practices and procedures, bargaining-unit demographics, and union tactics, none of these differences account for the variation in win rates.

Our data indicate, however, that the low private sector win rate is largely a consequence of significantly higher employer opposition. In the public sector nearly one quarter of the employers do not mount any campaign at all against the union. Even in those cases where public sector employers do oppose the union effort, most of the employer campaigns are limited to a few legal actions of extremely low intensity. This contrasts sharply with the private sector, where the overwhelming majority of employers launch aggressive anti-union campaigns both in the workplace and in the broader community.

As we have suggested, in the 35 states with collective-bargaining legislation, the public accountability of government officials acts to discourage the aggressive kind of anti-union behavior that has become so commonplace in the private sector.⁶ We concur with others that the playing field has become unduly tilted toward management in the past decade, violating the spirit and intention of the National Labor Relations Act. In many ways, the kind of labor-management climate that we found so prevalent in public sector organizing, where workers choose unions in an environment free from coercion, intimidation, and manipulation, is much closer to what the framers of the NLRA intended.

Given the absence of any effective constraints on employer behavior in the private sector, the only way to reproduce the more level playing field that predominates in the public sector is through significant expansion of both worker and union rights and employer penalties in the organizing process. This will require not only more vigorous and rapid enforcement of current laws but also serious financial penalties and injunctive relief to restrain the

most egregious employer violations. It will also require the expansion of union access rights to the workplace in order to counteract the captive and coercive nature of employer communication with workers during the organizing campaign.⁷

Without comprehensive labor-law reform, private sector workers will continue to be denied the opportunity to organize promised them by Section 7 of the NLRA. The brutal and contentious organizing climate found by the Commission on the Future of Worker-Management Relations will continue unabated. Our study of public sector organizing shows that an alternative organizing environment, where workers can choose whether or not to belong to a union without being subjected to coercion, intimidation, lies, and false promises, is possible for the private sector if aggressive employer opposition can be constrained.

ENDNOTES

1. Studies that utilize more detailed unit breakdowns than NLRB classifications have found greater variation between units, ranging from lows of 30% for professional and technical units to 60% for service and maintenance (Bronfenbrenner 1993, 46-48; Deshpande and Fiorito 1989).
2. This may in part be a function of a technical problem with the way that ULP data is reported by the NLRB. Based on its coding scheme, there is no easy way to separate the ULPs relating to certification elections from those related to contract administration and the collective-bargaining process.
3. The final sample was reduced to 235 cases after we received information from organizers in 15 campaigns that the state labor-relations agencies had incorrectly recorded their election as a single union certification election when it was, in fact, a decertification, accretion, severance, or multi-union election.
4. This is not a perfect comparison because service and maintenance units in the public sector are often incorporated into larger nonprofessional or support staff units that include some clerical and blue-collar workers along with the service and maintenance workers.
5. Our logit and regression analysis of the private sector data found that the majority of employer tactics had a statistically significant negative impact on both percent union vote and election outcome when the influence of election environment, company and union characteristic, and union tactic and characteristic variables were controlled for (Bronfenbrenner 1994). Due to the extremely small number of campaigns in which public sector employers used these tactics, we found a similar regression analysis to be neither feasible nor appropriate in the public sector.
6. Our analysis and conclusions do not apply to the 15 states that do not have any collective-bargaining legislation covering state and/or local employees.
7. Given the dramatic political changes that are currently taking place in state and local governments, many public sector employers may feel free to take on a more aggressive anti-union stance similar to that of the city administrations of New York and Philadelphia. Therefore, in order to protect against any erosion of worker and union rights in the public sector, many of the policy changes we recommend for the private sector may need to be incorporated into state and local labor laws.

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