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The Empirical Case for Streamlining the NLRB Certification Process: The Role of Date of Unfair Labor Practice Occurrence

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The Empirical Case for Streamlining the NLRB Certification Process: The Role of Date of Unfair Labor Practice Occurrence

Abstract

[Excerpt] One of the long held performance objectives of the National Labor Relations Board (NLRB) has been to reduce the time period between the filing of the petition and union certification elections. This year the NLRB's 2010 Performance Accountability Report claimed that 86.3 percent of all NLRB elections were held within 100 days of the petition being filed and 95.1 percent of all initial elections were held within 56 days of the petitions being filed. Our analysis of Bureau of National Affairs (BNA) data from 1999-2009 found that in the last two years there has been a slight increase in the number of representation elections being held between 21-30 days after the petition. But throughout the decade there have been virtually no election dates in the first 20 days after the petition is filed (see Figure 1). Thus, while the NLRB has made some progress in meeting their performance objectives, as former NLRB General Counsel Fred Feinstein explains, "the problem has been that a party in any election case has the ability to undermine the expression of employee free choice by manipulating the Board procedures to create delay".

These data on the timing of petition and election dates matter because the number of days between the petition and the election may make a great deal of difference as to whether or not a group of workers get union representation or a first contract. The time between the petition and the election also may make a difference as to whether an individual worker gets fired or gets his or her wages or benefits cut in retaliation for union activity, or ends up leaving a job, with or without a settlement, because of the coercion, threats, and/or harassment suffered throughout the employer's campaign. Over the last three decades there has been a wealth of scholarly research that has documented the gauntlet of threats, fear, retaliation, misinformation, and harassment workers have to endure in order to exercise their right to union representation and collective bargaining.

However, none of the recent NLRB certification election research has examined the relationship between employer opposition and the timing of the election. This is because for the few researchers who have done the hard work of connecting election to unfair labor practice (ULP) data, the only timing variable they had to use for employer behavior was the date ULPs were filed. But since ULP charges can be filed as much as six months after the allegation occurred, "date filed" grossly underestimates when employer opposition begins. It is for this reason we were asked to follow up on our 2009 study on employer opposition and the breakdown of the unfair labor practice process (see *No Hold Barred: The Intensification of Employer Opposition to Organizing*) to examine the relationship between the petition date, election date, and when the most serious employer opposition occurs during representation campaigns. Upon completion of this analysis we would be able to determine whether our data provide empirical support for significantly reducing the number of days between petition and election in NLRB certification elections.

Keywords

union certification, National Labor Relations Board, NLRB, unions, worker rights, unfair labor practice, labor law

Comments

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The Empirical Case for Streamlining the NLRB Certification Process

The Role of Date of Unfair Labor Practice Occurrence

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IN THE CITY OF NEW YORK

PIONEERING SOCIAL SCIENCE RESEARCH AND SHAPING PUBLIC POLICY

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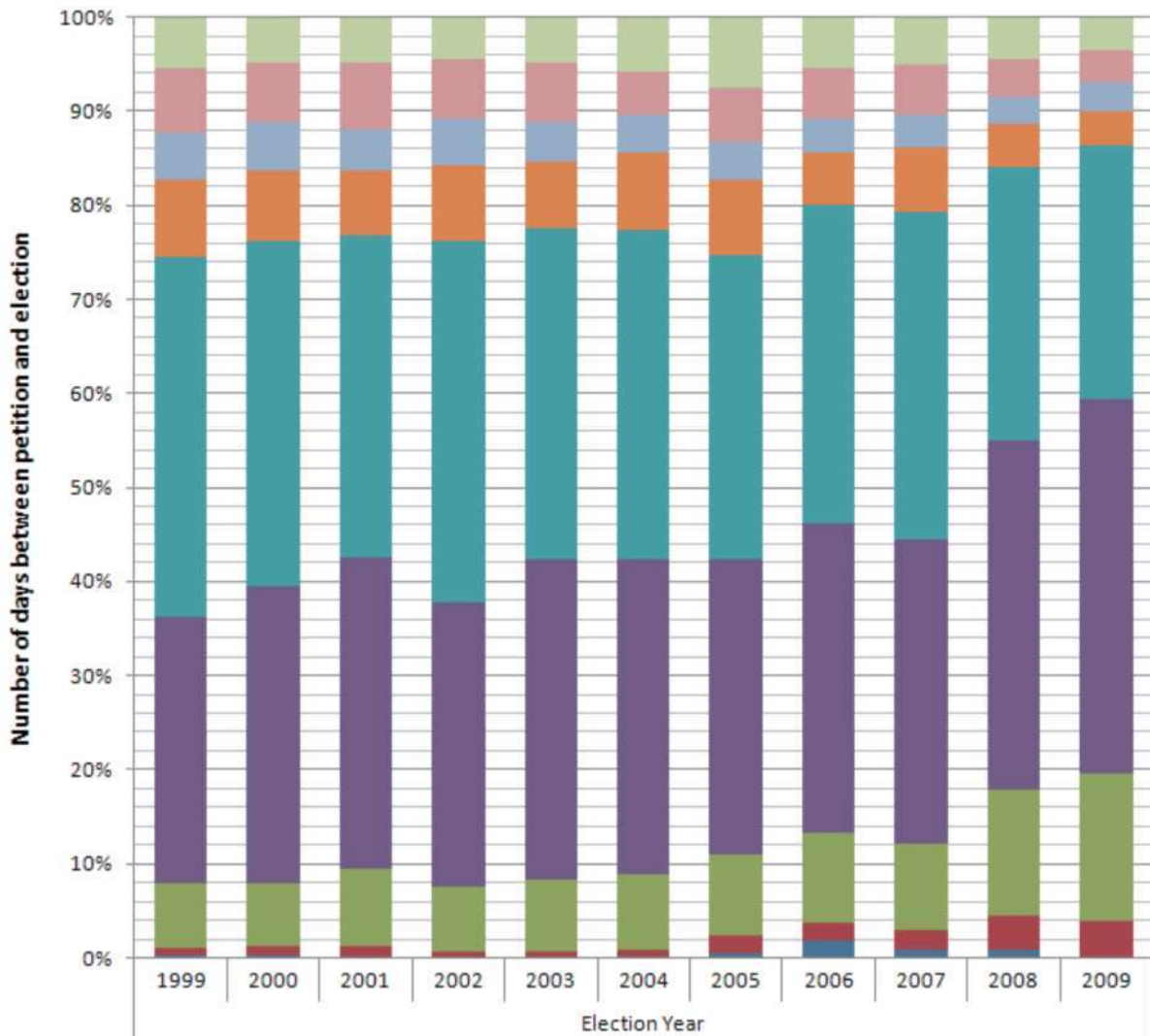
By Dr. Kate Bronfenbrenner, Senior Lecturer, Cornell School of Industrial and Labor Relations and Dr. Dorian Warren, Assistant Professor, Political Science and School of International and Public Affairs, Columbia University¹

One of the long held performance objectives of the National Labor Relations Board (NLRB) has been to reduce the time period between the filing of the petition and union certification elections. This year the NLRB's 2010 Performance Accountability Report claimed that 86.3 percent of all NLRB elections were held within 100 days of the petition being filed and 95.1 percent of all initial elections were held within 56 days of the petitions being filed.² Our analysis of Bureau of National Affairs (BNA) data from 1999-2009 found that in the last two years there has been a slight increase in the number of representation elections being held between 21-30 days after the petition. But throughout the decade there have been virtually no election dates in the first 20 days after the petition is filed (see Figure 1). Thus, while the NLRB has made some progress in meeting their performance objectives, as former NLRB General Counsel Fred Feinstein explains, "the problem has been that a party in any election case has the ability to undermine the expression of employee free choice by manipulating the Board procedures to create delay."³

These data on the timing of petition and election dates matter because the number of days between the petition and the election may make a great deal of difference as to whether or not a group of workers get union representation or a first contract. The time between the petition and the election also may make a difference as to whether an individual worker gets fired or gets his or her wages or benefits cut in retaliation for union activity, or ends up leaving a job, with or without a settlement, because of the coercion, threats, and/or harassment suffered throughout the employer's campaign. Over the last three decades there has been a wealth of scholarly research that has documented the gauntlet of threats, fear, retaliation, misinformation, and harassment workers have to endure in order to exercise their right to union representation and collective bargaining.⁴

However, none of the recent NLRB certification election research has examined the relationship between employer opposition and the timing of the election.⁵ This is because for the few researchers who have done the hard work of connecting election to unfair labor practice (ULP) data, the only timing variable they had to use for employer behavior was the date ULPs were filed. But since ULP charges can be filed as much as six months after the allegation occurred, "date filed" grossly underestimates when employer opposition begins. It is for this reason we were asked to follow up on our 2009 study on employer opposition and the breakdown of the unfair labor practice process (see *No Hold Barred: The Intensification of Employer Opposition to Organizing*)⁶ to examine the relationship between the petition date, election date, and when the most serious employer opposition occurs during representation campaigns. Upon completion of this analysis we would be able to determine whether our data provide empirical support for significantly reducing the number of days between petition and election in NLRB certification elections.

Figure 1: Number of days between the filing of the petition and the election under the NLRB, 1999-2009



	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
151 plus	5.4%	4.9%	4.9%	4.4%	4.8%	5.7%	7.6%	5.5%	5.0%	4.4%	3.4%
71-150	6.9%	6.3%	7.1%	6.3%	6.4%	4.7%	5.6%	5.4%	5.5%	4.1%	3.4%
61-70	4.9%	5.2%	4.4%	5.0%	4.1%	3.9%	4.1%	3.5%	3.4%	2.9%	3.1%
51-60	8.2%	7.5%	6.9%	8.1%	7.2%	8.2%	8.0%	5.6%	6.9%	4.6%	3.6%
41-50	38.2%	36.8%	34.2%	38.5%	35.2%	34.9%	32.2%	33.8%	34.7%	29.1%	27.0%
31-40	28.3%	31.5%	33.0%	30.1%	34.1%	33.6%	31.5%	32.9%	32.4%	37.1%	39.8%
21-30	6.9%	6.8%	8.2%	6.9%	7.6%	8.0%	8.5%	9.5%	9.3%	13.3%	15.6%
11-20	0.8%	0.9%	1.2%	0.6%	0.7%	0.8%	1.9%	2.0%	2.0%	3.7%	3.9%
0-10	0.3%	0.2%	0.1%	0.0%	0.0%	0.0%	0.5%	1.7%	0.9%	0.8%	0.1%

BNA Plus.com NLRB representation election data, 1999-2009

Our 2009 report resulted from a request in 2006 by the Senate and House Health, Education, Labor, & Pensions (HELP) committees to assess the effectiveness of current law and Board practice in protecting and enforcing workers' rights in the NLRB election process. The goal was to provide rigorous academic research to inform the debate on labor law reform. The data for both that original research and this more recent analysis originate from a thorough review of primary NLRB documents from a random sample of 1,000 NLRB certification elections that took place between January 1, 1999 and December 31, 2003, and from an in-depth survey of 562 campaigns coming out of that same sample. Our first findings from this research were released in May 2009 and have become one of the primary data sources for government, media, academics, and labor on both employer opposition and current Board practice during NLRB elections.

Our method of measurement for this study is the time between the date of occurrence of serious unfair labor practice allegations and the date the petition was filed and/or the date the election was filed. Because each unfair labor practice charge sheet can include from one to as many as thirty different allegations, each with a different date of occurrence, most of which are not specified on the charge sheet, this is much more time consuming data to collect. In some cases it required reading through entire ULP document files, including employer responses, settlement agreements, complaints, dismissals, withdrawals, testimony, affidavits, and Board and Court decisions until the specific date for each serious violation in the charge was found. For this reason we only used charges filed during the last year of our sample—2003.⁷

Table 1: Range of Timing between Occurrence of Serious ULP Allegations and Filing of Petition, ULP Allegations from 2003 Elections

	Days before petition filed					Days after petition filed						% 2003 Sample
	150 plus	149-75	74-30	29-10	9-0	1-10	11-20	31-50	41-50	51-75	76 plus	
Assistance or domination	0.0%	0.0%	25.0%	0.0%	0.0%	0.0%	0.0%	50.0%	0.0%	0.0%	25.0%	1.7%
Coercive statements, including threats	10.8%	10.8%	5.4%	10.8%	16.2%	10.8%	13.5%	13.5%	2.7%	5.4%	0.0%	15.4%
Discharge for union activity	10.9%	6.5%	6.5%	13.0%	2.2%	0.0%	8.7%	15.2%	23.9%	8.7%	4.3%	19.5%
Discipline for union activity	6.1%	9.1%	9.1%	3.0%	3.0%	3.0%	15.2%	9.1%	9.1%	21.2%	12.1%	13.7%
Harassment	13.3%	13.3%	13.3%	6.7%	13.3%	0.0%	13.3%	6.7%	6.7%	6.7%	6.7%	6.2%
Interrogation	25.0%	10.0%	10.0%	5.0%	10.0%	15.0%	15.0%	5.0%	5.0%	0.0%	0.0%	8.3%
Layoff for union activity	16.7%	16.7%	0.0%	0.0%	0.0%	0.0%	0.0%	16.7%	16.7%	33.3%	0.0%	2.5%
Promise of benefits	12.5%	0.0%	12.5%	0.0%	12.5%	25.0%	12.5%	12.5%	0.0%	12.5%	0.0%	3.3%
Retaliation for Board participation	14.3%	14.3%	0.0%	0.0%	0.0%	0.0%	42.9%	0.0%	0.0%	28.6%	0.0%	2.9%
Solicitation/ distribution rules	25.0%	0.0%	0.0%	12.5%	25.0%	12.5%	12.5%	12.5%	0.0%	0.0%	0.0%	3.3%
Surveillance	12.5%	12.5%	12.5%	25.0%	0.0%	18.8%	18.8%	0.0%	0.0%	0.0%	0.0%	6.6%
Wages, benefits, or conditions altered	0.0%	9.1%	13.6%	13.6%	4.5%	18.2%	9.1%	4.5%	9.1%	4.5%	13.6%	9.1%
Total serious allegations	11.0%	9.2%	8.7%	9.6%	7.3%	8.3%	12.8%	10.6%	8.3%	9.2%	5.0%	90.5%
Serious allegations won	10.7%	10.0%	10.7%	8.6%	7.1%	9.3%	12.9%	8.6%	6.4%	10.7%	5.0%	25.7%
Total allegations	12.0%	8.7%	9.1%	9.1%	8.3%	8.7%	12.4%	9.5%	8.7%	8.7%	4.6%	100.0%

Source: Bronfenbrenner and Warren, NLRB Document Database of ULP documents from sample of 1000 certification elections from 1999-2003 with a 99 percent FOIA response rate from the NLRB.

Table 1 presents serious unfair labor practice allegations from all the 2003 elections in our sample, broken down by the time between date of occurrence of serious allegations and the petition, while Table 2 breaks the data down by the time between date of serious allegations and the election. The most significant finding in our study can be found in the bottom rows of Table 1. Thirty-one percent of serious violations occurred 30 days before the petition was filed and 47 percent of all serious allegations occurred before the petition was filed. Similarly 47 percent of all serious allegations won through Board or Court decisions or settlements occurred before the petition was filed. The serious allegations findings in both Tables 1 and 2 also reveal the pervasiveness, consistency, and intensity of employer opposition to workers exercising their rights to be represented by a union and to bargain collectively. This opposition starts long before the filing of the petition and continues on after the petition is filed while workers wait for the election, and persists still after the election.

This mission is accomplished through multiple tactics at the employer's disposal. Tables 1 and 2 list the building blocks of employer campaigns.⁸ It is no accident that they are also all serious ULP violations, those most likely to gain a settlement favorable to the union, pre or post complaint or a Board or Court order win. These include threats, interrogation, surveillance, fear, coercion, violence, retaliation and harassment for union activity, promises and bribes, and election and union interferences. Employers penalize workers in many ways; by transferring them to more onerous work assignments, cutting wages or benefits, layoffs, contracting out, and, most egregiously, discharging workers or shutting down, contracting out, or outsourcing all or part of the facility.

Table 2: Range of Timing between Occurrence of Serious ULP Allegations and the Election date (in number of days before election), ULP Allegations from 2003 Elections

	150 plus days	149-75 days	74-60 days	59-50 days	49-40 days	39-30 days	29-20 days	19-10 days	9-0 days	After Election	% 2003 Sample
Assistance or domination	50.0%	0.0%	50.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	1.7%
Coercive statements, including threats	16.2%	21.6%	8.1%	8.1%	8.1%	13.5%	8.1%	8.1%	8.1%	0.0%	15.4%
Discharge for union activity	17.4%	10.9%	10.9%	13.0%	4.3%	0.0%	2.2%	13.0%	4.3%	23.9%	19.5%
Discipline for union activity	12.1%	18.2%	15.2%	9.1%	0.0%	0.0%	6.1%	0.0%	6.1%	33.3%	13.7%
Harassment	20.0%	26.7%	6.7%	13.3%	0.0%	13.3%	6.7%	0.0%	6.7%	6.7%	6.2%
Interrogation	40.0%	25.0%	0.0%	5.0%	0.0%	15.0%	10.0%	5.0%	0.0%	0.0%	8.3%
Layoff for union activity	33.3%	16.7%	0.0%	0.0%	0.0%	0.0%	0.0%	16.7%	0.0%	33.3%	2.5%
Promise of benefits	25.0%	25.0%	0.0%	0.0%	12.5%	12.5%	0.0%	12.5%	0.0%	12.5%	3.3%
Retaliation for Board participation	14.3%	14.3%	14.3%	14.3%	0.0%	14.3%	14.3%	0.0%	0.0%	14.3%	2.9%
Solicitation/ distribution rules	25.0%	0.0%	12.5%	25.0%	12.5%	12.5%	0.0%	0.0%	12.5%	0.0%	3.3%
Surveillance	12.5%	25.0%	25.0%	0.0%	6.3%	0.0%	31.3%	0.0%	0.0%	0.0%	6.6%
Wages, benefits, or conditions altered	4.5%	27.3%	13.6%	9.1%	9.1%	9.1%	4.5%	0.0%	4.5%	18.2%	9.1%
Total serious allegations	18.3%	19.3%	11.5%	8.7%	4.6%	6.9%	7.3%	5.5%	4.1%	13.8%	90.5%
Serious allegations won	17.1%	20.7%	10.0%	11.4%	4.3%	10.0%	5.0%	6.4%	4.3%	10.7%	25.7%
Total allegations	18.7%	19.1%	11.6%	7.9%	4.6%	7.5%	7.9%	5.0%	5.0%	12.9%	100.0%

Source: Bronfenbrenner and Warren, NLRB Document Database of ULP documents from sample of 1000 certification elections from 1999-2003 with a 99 percent FOIA response rate from the NLRB.

There are several distinct stages to a union organizing campaign that are important to understand in order to interpret the significance of the data presented above. First there is the initial period where the first contact is made between the workers and the union, leaders are identified and an organizing committee is established. The second phase is when the union, through the organizing committee, reaches out to the bargaining unit members and gradually builds up support until the workers are ready to petition for an election.⁹ The third phase is the period between the date the petition is filed and the election date. This is when both the union and employer campaigns are most out in the open, but as our data show this is not when the employer campaigns begin. Finally the fourth phase is the period between the date of election and the date of certification, which can include waiting for election objections, ULPs, and possible rerun elections to be resolved.¹⁰

Our findings show that serious violations occurred across each of these time periods, from discharging, threatening, and harassing leaders in the earliest stages of building the organizing committee; to using surveillance, interrogation, and threats to try to dissuade workers from attending union meetings or speaking with organizing committee members prior to submitting the petition; all the way to retaliating against the most outspoken union activists at the very end of the election campaign. Finally on the day of the election and those immediately following we found many cases of employers targeting those who were election observers or witnesses in NLRB hearings.

One representative example of employers' pattern of early, persistent, and unrelenting opposition that we recorded in our NLRB ULP Document Database comes from Hillside Acres in Willard, Ohio. The United Food and Commercial Workers (UFCW) launched an organizing campaign in late 2002. According to the Consolidated Complaint issued on December 6, 2002, 62 days before the petition was even filed, Hillside initiated its anti-union campaign by making an example of one of the union activists in the earliest phase of the campaign, starting with a written warning.¹¹ Hillside disciplined that same employee again on December 9, suspended her the next day, and fired her a week after that. The company also disparately enforced its solicitation policy. Throughout the next two weeks the employer campaign expanded to other employees and included violations such as interrogation, bribes, onerous assignments for union activity, and another discipline and discharge. This all was before the end of December, 41 days before the petition was filed. Starting mid-January, the company began surveillance and threatened workers with wage reductions and facility closure.

The UFCW filed the petition for an election on February 6. According to the Complaint, on February 26, Hillside, discharged one employee and disciplined another in retaliation for their participation in NLRB proceedings. On the following day, now 21 days after the petition, the employer made more threats and promises and in the following two months prior to the election, disciplined and harassed three more employees who were then all fired after the election. The threats, interrogations, surveillance, and disparate enforcement of solicitation rules also continued in the days and weeks after the petition was filed. By the time of the election on April 21, 2003, it had been nearly five months since the first serious allegation on December 6, 2002. The charge sheets, complaint and settlements all tell a story that is repeated over and over in numerous other campaigns—the intensity and constancy of the employer campaign and the fact that it begins long before the petition is filed.

This pattern of aggressive employer opposition is not isolated to units such as Hillside where the union ran a winning campaign. As in the Hillside case we found a consistent pattern of employer tactics being used repeatedly and in combination throughout our sample. This is where our survey data on employer tactics can be very instructive.¹² Table 3 uses both our survey data on employer behavior for 2003 (summarized in the last column of Table 3) and number of days between the earliest serious allegation and the date of the election from our ULP sample for 2003.

Table 3: Differences in employer opposition depending on number of days before the election that the earliest serious ULP allegation occurred. NLRB Survey Data, 2003 and NLRB Sample, 2003

	150 plus days	149-75 days	74-40 days	39-20 days	19-10 days	9-0 days	After Election	% Survey Sample
Number of captive audience meetings	15.78	3.60	13.33	7.00	20.00	4.0	15.50	10.34
Number of letters	6.86	4.20	4.00	32.67	6.00	4.0	8.67	6.53
Number of leaflets	13.00	1.00	8.50	36.00	8.00	4.0	9.00	16.21
Number discharged	1.40	1.75	2.63	1.00	1.33	.00	4.00	2.59
Number of workers laid off	.00	.00	.00	1.00	.00	.00	.00	32.58
Number of aggressive employer tactics	12.90	14.40	13.90	10.25	10.67	6.50	16.40	10.88
More than 5 captive audience meetings	.67	.20	.78	.50	1.00	.00	.75	.53
More than 5 employer letters	.57	.400	.29	.67	1.00	.00	1.00	.28
More than 5 employer leaflets	.86	.00	.80	.67	.50	.00	1.00	.61
Supervisor held one-on-ones at least weekly	.90	.60	.70	.75	1.00	.00	.60	.66
Used supervisor one-on-ones to interrogate	.60	.80	.70	.75	.33	.00	.80	.63
Used supervisor one-on-ones to threaten workers	.70	.80	.70	.50	.67	.50	.60	.54
Threatened losses of wages and benefits	.50	1.00	.60	.50	.33	.00	1.00	.47
Discharged workers for union activity	.50	.80	.80	.25	1.00	.00	.20	.34
Alteration of benefits or conditions	.20	.60	.20	.25	.33	.50	.20	.22
Promises of improvements	.40	.80	.60	.50	.33	.50	.60	.46
Unscheduled raises	.50	.20	.20	.00	.33	.00	.40	.18
Threats of plant closing	.78	.60	.70	.00	.00	.00	1.00	.58
Bribes or special favors	.30	.20	.40	.50	.00	.50	.60	.23
Surveillance	.00	.00	.30	.00	.67	.00	.40	.14
Bringing in extra security and/or putting up fencing	.30	.20	.10	.00	.00	.00	.40	.14
Threatened or harassed union activists	.60	.80	.40	.50	.00	.50	.60	.41
Brought in police	.20	.40	.20	.00	.33	.50	.60	.21
Assisted anti-union committee	.40	.60	.30	.00	.33	.00	.80	.30
Ran media campaign	.00	.00	.10	.25	.00	.00	.20	.12
10 or more employer tactics	.60	.80	.70	.50	.33	.00	.80	.49

Source: Bronfenbrenner and Warren, survey findings from the “The Changing Climate for Union Organizing at the Turn of the Millennium, Part 1: NLRB Campaigns”, February 2011.

Looking at the summary data on employer behavior, for example, in 89 percent of all campaigns surveyed employers require workers to attend captive audience meetings with top management during work time. The majority of employees attend at least five of these during the course of a campaign. In 66 percent of

campaigns workers are required to meet alone with their supervisors at least weekly, where most threats and interrogations occur. Workers are threatened with plant closings in 57 percent of campaigns and with loss of wages and benefits in 47 percent. In 64 percent of campaigns workers are interrogated about how they and other workers are going to vote, mostly by supervisors (53 percent), while employers use surveillance in 14 percent of elections.¹³

Employers also increasingly use fear and violence. Twenty-one percent do police walk-throughs with less than 1 percent relating to any arrest or investigation and 14 percent bring in security guards or put up security fencing. Most egregious, workers are discharged in 34 percent of campaigns. As shown in Table 3, a significant increase in discharges begins at day 21 and continues over time. Finally, as shown in the last column of Table 1, these survey findings are all supported by the ULP data indicating that unions are filing ULP charges on the same issues that they reported to us were the most aggressive behavior by employers.

But the finding that is most relevant to the issue of the timing of elections is this: employer opposition to unions is constant and cumulative. It begins before the petition is filed and continues steadily throughout the campaign. As reported, we found that 66 percent of employers held weekly supervisor one-on-one meetings with workers throughout the campaign. It bears noting that this was in a sample where the average campaign length was as high as 15 weeks. As shown in Table 3, at least 90 percent of all campaigns in our sample that had a serious violation occur more than 150 days or more before the election had supervisor one-on-ones at least weekly. And for those that had at least one serious ULP violation after the election the rate was still 60 percent of campaigns.

Table 3 shows that this constancy is true for the full range of other aggressive tactics as well, with discharges, threats, promises, and surveillance holding steady across the many weeks and months before the date of the election in these campaigns. In addition, employers rarely use one opposition tactic in isolation; multiple tactics are used in combination and steadily to coerce workers to vote against union representation, as indicated by the last row in Table 3, which describes the percentage of employers who use ten or more aggressive tactics. For those campaigns where at least one ULP occurred 40 or more days before the election, at least 60 percent of employers used ten or more aggressive tactics.

When we tracked our ULP data more closely, reading over each case to see whether charges occur in different times in different campaigns, we find that in cases with large numbers of serious ULPs, the allegations tend to be more likely to be spread across the entire campaign, rather than clustered in one specific time period, and that filing charges does not stop the employer from continuing to commit more serious violations of the same or escalating nature. Still certain kinds of charges do tend to be clustered during different periods of the campaign. In particular, interrogation, surveillance and harassment are especially concentrated in the weeks before the petition is filed, while discrimination and retaliation for union activity, although present throughout, seem to also start out very high and then peak again just before the election. If there were any period which has a lower amount of activity it would be the twenty days after the petition was filed. But there is so little data from that period it is difficult to analyze. In addition, there simply are no data on campaigns with ten day certification periods since they occur in less than 1 percent of elections. Twenty day certification periods are such a new phenomenon, appearing just since 2008, that they have yet to be researched (See Figure 1).

Our 2003 ULP and survey findings, in combination with the larger findings for our total sample in our NLRB ULP Document Database about the timing and time span of employer behavior, tell us a great deal about the important role of timing in the NLRB election process, in particular the time between the date employer opposition begins, the date the petition is filed, and the date the election is held.¹⁴ Our ULP documents show that some of the most egregious employer opposition starts long before the union has even filed the petition.

Forty-seven percent of serious ULPs are filed before the petition, including 60 percent for interrogation and harassment, and 39 percent for discharges for union activity and 54 percent for coercion and threats. And employer opposition continues unabated from the first moment the union campaign goes above ground, day after day and week after week leading up to the election, and does not stop until the union has either lost the election or won a first contract. The cumulative effect of the steady, pervasive, and intense employer opposition undermines workers' attempts to exercise their rights to choose union representation free of coercion and intimidation.

Up until now studies examining the impact of delay in undermining workers exercising free choice in the election process have relied on the time difference between the filing of ULPs and the petition and the election dates. By using a much more reliable and accurate timing measure—the date ULP allegations occur—we have been able to show not only that most employer campaigns begin much earlier than expected but also that there is a steady pattern of serious allegations starting very early in most campaigns and continuing on through to the election. In combination our findings make a strong empirical argument for streamlining the NLRB certification process to reduce the period between the petition and the election to the shortest number of days possible.

¹ The authors would like to thank our research team Teresa Boda, Alexander Bores, John Ertl, Theodric Figurasin, Nicholas Lawrie, Alison Lupico, Jessica Quiason, Judith Rodriguez, Christian Zamarron, and Austin Zwick. This study is based on earlier data collected as part of a larger study on *The Changing Climate for Union Organizing at the Turn of the Millennium* which was funded by the Public Welfare Foundation, Panta Rhea Foundation, America Rights at Work (ARAW), Discount Foundation, Poverty and Race Action Center, Berger Marks Foundation, the AFL-CIO, CTW and 23 affiliates. This portion of the research was funded by ARAW, SEIU, and the AFL-CIO.

² NLRB. 2010. Fiscal Year 2010 Performance Accountability Report <http://www.nlr.gov/performance-and-accountability>

³ Fred Feinstein. 1994. *Testimony of Frederick L. Feinstein before the Commission on the Future of Worker-Management Relations*. Retrieved February 7, 2011 http://digitalcommons.ilr.cornell.edu/key_workplace/341

⁴ See Paul Weiler 1983. "Promises to Keep: Securing Workers' Rights to Self-Organization Under the NLRA," *Harvard Law Review*, vol. 96, no. 8 (June), pp. 1769-1827; Kate Bronfenbrenner. 1994. "Employer Behavior in Certification Elections and First-Contract Campaigns: Implications for Labor Law Reform," in Friedman, Sheldon et al. (eds.), *Restoring the Promise of American Labor Law*. Ithaca, NY. ILR Press, 75-89.
John Schmitt and Ben Zipperer. 2009. "Dropping the Axe: Illegal Firings During Union Organizing Campaigns, 1951-2007". Center for Economic and Policy Research. Washington, DC., March 2009; Lance Compa. 2004. *Unfair Advantage: Workers' Freedom of Association in the United States under International Human Rights Standards*. Ithaca, New York: Cornell University Press; Kate Bronfenbrenner. 2000. "Uneasy Terrain: The Impact of Capital Mobility on Workers, Wages, and Union Organizing." Commissioned Research Paper and Supplement to *The US Trade Deficit: Causes, Consequences and Recommendations for Action* by the US Trade Deficit Review Commission. Washington, DC: US Trade Deficit Review Commission; Ferguson, John-Paul. 2008. "The Eyes of the Needles: A Sequential Model of Union Organizing Drives, 1999-2004." *Industrial and Labor Relations Review* 62(1): 3-21.

⁵ There have been studies on employer behavior and certification election timing in Canada which found any increase in the number of days beyond card check decreases the likelihood of a union win. (See, for example, Chris Riddell. 2010. "The Causal Effect of Election Delay on Union Win Rates: Instrumental Variable Estimates from Two Natural Experiments" *Industrial Relations*, Vol. 49, No. 3 (July), 371-386 and Michele Campolieti, Chris Riddell, and Sara Slinn. 2007. "Labor Law Reform and the Role of Delay in Union Organizing: Empirical Evidence from Canada." *Industrial and Labor Relations Review* 61(1): 32-58.

⁶ Kate Bronfenbrenner *No Holds Barred: The Intensification of Employer Opposition to Organizing* Economic Policy Institute Briefing Paper #235. May 20, 2009 http://works.bepress.com/kate_bronfenbrenner/40/

⁷ Our 2003 sample had 154 elections with 236 ULP allegations. It is also important to note that our past research has found that unions file charges in fewer than half the cases where ULP cases occur both because of their frustrations with the Board process and because it is not in their interest to file charges if it is likely the union is going to win the election since the charge could block the election moving forward.

⁸ See Weiler 1983; Bronfenbrenner 1994; 2000; 2009; Schmitt and Zipperer 2009; and Compa 2009.

⁹ Although under the law unions only need to file with a minimum of 30 percent of the bargaining unit on cards to qualify for an election today 60 percent of all unions filing for NLRB elections file with at least 60 percent of the unit on cards.

¹⁰ Kate Bronfenbrenner and Robert Hickey. 2004. "Changing to Organize: A National Assessment of Union Organizing Strategies," in Ruth Milkman and Kim Voss, eds., *Rebuilding Labor; Organizing and Organizers in the New Union Movement*. . Ithaca, NY. ILR Press for more on the nature of union organizing campaigns.

¹¹ Hillside Acres Inc. d/b/a Liberty Hillside of Willard Inc. and United Food and Commercial Workers Union, local 911, AFL-CIO, CLC. *NLRB Order Consolidating Cases Consolidated Complaint and Notice of Hearing*. Charge Sheets: Case Nos. 8-CA-34011, 8-CA-34217, 8-CA-34331, 8-CA-34332; Confidential settlement agreements for discharged and disciplined employees.

¹² The last column of Table 3 is based on our full sample of 558 cases. The rest of the table only includes the cases for the 102 2003 elections in the survey file with the data sorted by time between date of first serious allegation and election date. These data include all employer violations reported by organizers including those where no ULP charge was filed because either the election was going to be won, or the witnesses were too afraid to come forward, or the remedies were not seen as worth the time and risk.

¹³ This percentage probably under estimates surveillance since most of it is electronic and invisible to the workers.

¹⁴ NLRB Document Database of ULP documents includes all of the FOIA ULP documents from our sample of 1000 NLRB certification elections from 1999 to 2003 with a 99 percent FOIA response rate from the NLRB.

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