

# Labor Unions And Their Legal Privileges



Charles W. Baird, Ph.D.  
The Smith Center  
California State  
University, Hayward  
[www.thesmithcenter.org](http://www.thesmithcenter.org)

# It's Not All Bad

- Unions exist for those who wish to associate with them.
- Positive freedom of association



# However, Under the NLRA, Most of It is Terrible

- Current law doesn't recognize a negative freedom of association:
  - **Exclusive representation**
  - **Union security**
  - **Mandatory good faith bargaining**
  - **Statutory "right" to strike**

# Illicit Legal Privileges

## **EXCLUSIVE REPRESENTATION:**

- **Argument for**
- **Argument against:**
  - **Inapt analogy**
  - **Forced Association ( 1st Amendment not subject to majority vote)**
  - **Incomplete analogy**
  - **Card Check**

# New Ways to Get Exclusive Representation

- Card Check Certification
  - Unions lose over half of secret ballot representation elections.
  - Union solution: don't hold secret ballot representation elections
    - 30 percent signatures enough to request recognition from employers
    - Proposed labor law reform: 50 percent + 1 signatures enough to compel recognition.

# Second New Way

- "Neutrality" agreements
  - Deal between Heartland Industrial Partners and United Steelworkers. Now being litigated in federal district court.
  - Deal between United Autoworkers and big-three automakers to pressure suppliers -- e.g., Johnson Controls, Inc. in Athens, TN. JCI initially caved, but its employees voted out the union.

# Another Privilege

## **UNION SECURITY:**

- **What does it mean?**
- **Argument for -- The Free Rider**
- **Argument against**
  - **Free rider is artifact of the law**
  - **Free rider is cartel problem**
  - **Forced rider problem**
- **Right-to-work laws**

# Yet Another

## MANDATORY GOOD FAITH BARGAINING

- If one side wants to bargain about **x**, the other must bargain.
- Only sure defense against charge of failing to bargain in good faith is compromises.
- Contrast with ordinary contract law
- Why it matters:
  - forced association
  - Also, e.g., replacement workers

# And Another

## STATUTORY RIGHT TO STRIKE

- **Meaning of “strike”**
  - **collective withholding of labor**
  - **collective withholding plus**
  - ***Tri-City Case* (1921)**
    - **mass picketing**
    - **no strangers**
    - **right to conduct a business is a property right**

# Perhaps Worst of All



- Salts : *Town & Country Electric Case* (1995)
- Violence: *Enmons Case* (1973) -- in spite of Hobbs Act (1946)

# For Extensive Documentation of the Record of Physical Violence by Unions

See: Thieblot, Haggard, and Northrup,  
*Union Violence: The Record and the  
Response by Courts, Legislatures, and  
the NLRB*, John M. Olin Institute for  
Employment Practice and Policy  
George Mason University (1999).

# Taxonomy of Labor Relations Regimes

## BARGAINING

COMPULSORY

VOLUNTARY

EXCLUSIVE

NLRA

null

**REPRESENTATION**

MEMBERS-ONLY

NIRA: 7(a)

Free Society