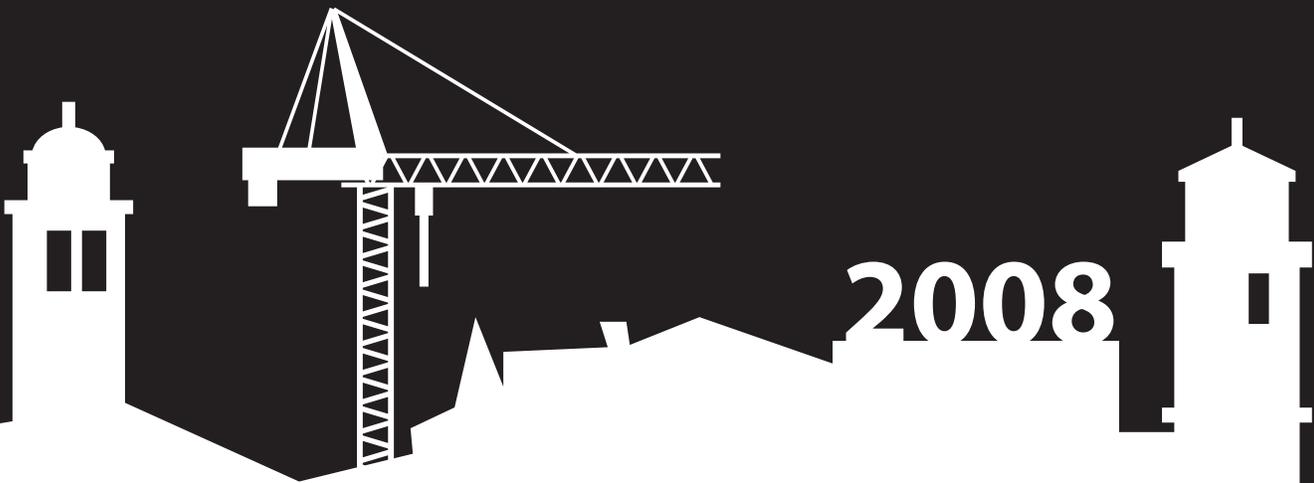


Union Math, Union Myths

An Analysis of Government Data
on Employees Fired During Union
Organizing Campaigns



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About the Author

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About the Center for Union Facts

The Center for Union Facts is a non-profit organization dedicated to showing Americans the truth about today's union leadership. More information can be found at www.UnionFacts.com.

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Summary

Since its peak in the 1950s, union membership in the private sector has steadily dropped. To explain the decline, labor leaders have scapegoated businesses for intimidating employees during organizing campaigns. To justify the claim, they cite statistics from union-affiliated researchers which suggest that a significant number of employees are fired in the organizing process. But data from the National Labor Relations Board (NLRB) **do not—in any way—substantiate the notion that tens of thousands of employees are wrongly fired for organizing annually.**

By logically linking organizing campaigns with Unfair Labor Practices, we determined that only 2.7 percent of union organizing campaigns feature an employee illegally fired (and offered reinstatement, typically with back pay). Furthermore, we demonstrate that other research on the subject relies on assumptions that are further compromised by old data that do not represent current NLRB information on the issue.

Current Estimates

In the last three decades, labor union leaders have presided over a precipitous drop in union membership. And while the decline is uncontested, the cause (or causes) is highly contentious. While employers and others point to a changing job market, poor union leadership, and other potential causes, unions singularly scapegoat businesses for intimidating employees during organizing campaigns. These allegations notwithstanding, unionization elections are at the highest win rate in 10 years.¹

Beyond that, union officials rely on statistics generated by friendly and well-funded researchers, to claim that there is widespread oppression of workers' rights.

The most frequently cited data have been produced by Cornell University professor Kate Bronfenbrenner. She published a study alleging that employers fire employees in about one-quarter of all organizing campaigns and that about half of the companies threaten employees with the partial or full shutdown of operations if the sites unionize. **This supposedly “landmark” study is based on an incredibly biased sample:** A survey of union organizers. It asked questions of union organizers in 407 National Labor Relations Board (NLRB) certification elections held between 1998 and 1999. Given the ideologically homogenized survey participants and occupations, it would only have been surprising to find less agreement.

Not just the sample should be considered biased. Bronfenbrenner herself is a former union organizer. Her university's Institute for Labor Research received over \$500,000 from unions in 2005, according to Department of Labor financial disclosure files.

Bronfenbrenner's work was rehashed in December 2005, when University of Illinois at Chicago professors released an unpublished study commissioned by the union funded American Rights at Work organization (ARAW). Their principal findings were that in NLRB elections, 30 percent of employers allegedly fired workers when they engaged in union activities, 49 percent threatened to close or relocate all or part of the business if workers elected to form a union, and 82 percent used consultants to design and coordinate their anti-union campaigns.

Again, these statistics were based on interviews with union staff and paid for with union money. The study was based on surveys of labor organizers in 62 Chicago land elections in 2002, as well as case studies consisting of interviews with 25 lead organizers and 11 anonymous employees.

¹ National Labor Relations Board Annual Reports.

ARAW, which sponsored the study, doesn't hide its agenda. Its president is former Congressman David Bonior, whose failed 2002 run for Michigan governor received 55 percent of its PAC contributions from unions, according to the Center for Responsive Politics. ARAW's board includes AFL-CIO President John Sweeney and union activists. Unions gave ARAW \$1,866,500 in 2005. While in Congress, Bonior voted with the AFL-CIO agenda on key votes 96 percent of the time.

A 2007 study by the labor-affiliated Center for Economic and Policy Research (CEPR) claimed 23 percent of all unionization campaigns since 2000 involved an illegal firing.² But the authors openly admit that the **crux of the study relies on “a crude ‘probability’ that a pro-union worker will be fired,” originally derived from data collected in the early 1980s.** The authors also write that the “NLRB does not report the number of workers fired illegally in connection with union election campaigns.” But the NLRB does in fact track that statistic in its Case Activity Tracking System (CATS) database. Finally, the CEPR study only tabulates the number of actual elections held, rather than the number of election petitions submitted to the NLRB—a better indicator of the number of organization campaigns—to arrive at its misleading conclusion.

Background

The aforementioned estimates of the number of employees fired during union organizing campaigns suffer from serious methodological shortcomings, including antiquated data and dubious assumptions. Despite these significant shortcomings, they have been embraced by labor union officials and their allies who seek to blame employers for the steep decline in union membership.

This study seeks to clarify previous research and provide a more precise estimate of the number of employees illegally discharged during union organizing campaigns. Rather than rely on assumptions, “crude probabilities,” and biased interviews, this study utilizes data from the National Labor Relations Board's Case Activity Tracking System database (CATS).

The National Labor Relations Act established the NLRB in 1935 as an independent administrative agency charged with administering union organization elections and adjudicating Unfair Labor Practices (ULPs). It has jurisdiction over all private sector employers, except those covered by the Adamson Railway Labor Act.

² Schmitt, John and Ben Zipperer, 2007. “Dropping the Ax: Illegal Firings During Union Election Campaigns,” Center for Economic and Policy Research. Online: www.cepr.net.

It also has jurisdiction over the United States Postal Service. The NLRB has two components: the office of the General Counsel, which is charged with prosecuting ULPs, and the Board, which serves as an administrative judicial body. The NLRB's CATS is a unified database containing information on both organizing campaigns and ULPs.³

The NLRB offers reinstatement to employees fired for engaging in a variety of protected activities, including those fired during union organizing campaigns. In its annual reports, the NLRB only reports the total number of cases where an employee was offered reinstatement. Thus, it is necessary to distinguish between the two categories of reinstatement orders: those associated with a union's organizing campaign, and those associated with other activities.

Although many ULPs are filed during organizing campaigns, the NLRB does not provide guidance in linking the two. And while CATS does offer the opportunity for NLRB regional offices to mark a ULP as part of an organizing campaign, the NLRB's Associate General Counsel has written that the "field has not been utilized routinely because the data was not necessary for case processing."⁴

Given the NLRB's incomplete data set, this study utilizes a logic matching pattern to link organizing campaign cases with ULPs, by considering their shared geographical, temporal, and naming similarities. Given those linkages, it then provides a breakdown of organizing versus non-organizing campaign-related firings.

The NLRB utilizes a standard case naming scheme, whereby the case is named after the employer in an organizing campaign and the charged party in a ULP. Additionally, the NLRB tracks case locations by their NLRB region, state, county, and city.⁵ Finally, the NLRB's regional office categorizes each case according to the North American Industry Classification System.

We examined all organizing campaigns filed between FY 2003 and 2005 where the aforementioned information matched one or more ULP. We then limited the ULPs to only those that were filed after an organizing petition was filed with the NLRB and

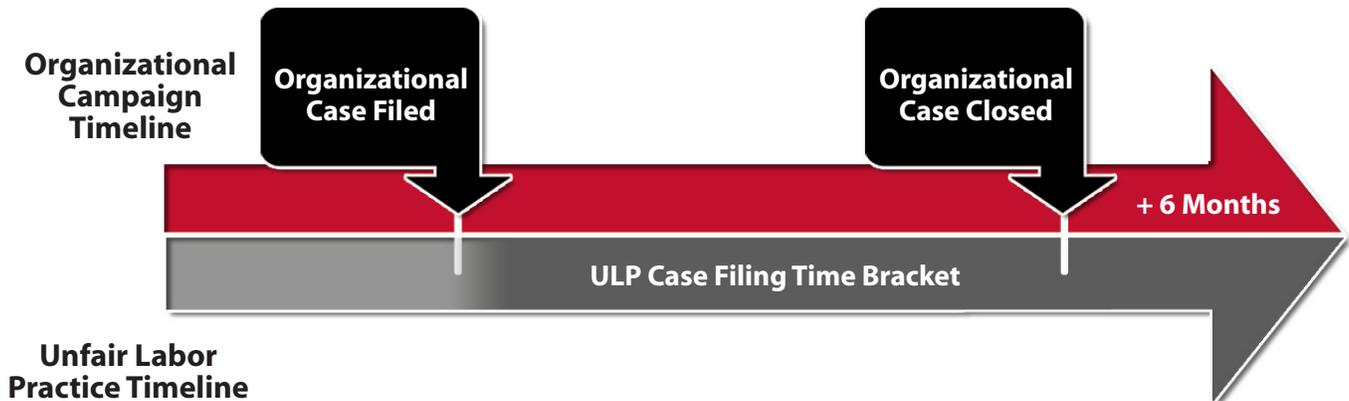
³ The Center for Union Facts (CUF) obtained a copy of the CATS database through a Freedom of Information Act (FOIA) request. Some fields of the database were withheld under FOIA regulations. CUF worked with the NLRB on a number of occasions to fine-tune analysis of CATS.

⁴ The Center for Union Facts previously estimated the number of elections involving an illegal firing based on the NLRB's "Organizational Campaign" field found in the "Regional Determination" table from the CATS database. Following that initial analysis, the NLRB informed the Center for Union Facts that the field was not reliable for analysis due to its uneven utilization between regions. The present study does not rely on the NLRB's "unreliable" data.

⁵ While ZIP codes were provided for some case information, it was redacted in some cases under FOIA guidelines making it unreliable for linking cases.

before the organizing campaign case was closed, plus an additional 6 months to allow for ULPs filed past the case's closure (Figure 1).

Figure 1.



This method is likely to be overly broad, insofar that an employer with multiple units in a single company could face a ULP charge from one union, while facing an organizing campaign from a separate union. This shortcoming might serve to inflate the estimate of the number of employees wrongly fired in a given year.

Methodology

From FY 2003 to 2005, the NLRB received 11,342 petitions for an election.⁶ These are known as “RC cases.” During that period, the NLRB processed 3,675 cases where an employee was offered reinstatement through remedial action (see Table 1).⁷

Table 1: Organizing Campaigns and Employees Reinstated FY 2003-2005		
Year	Organizing Petitions Filed	Reinstatement Cases
2003	3,720	1,334
2004	3,608	1,299
2005	4,014	1,042
TOTAL	11,342	3,675

⁶ National Labor Relations Board, *Annual Report 2003 to 2005*, Table 1A.

⁷ National Labor Relations Board, *Annual Report 2003 to 2005*, Table 4.

To ascertain the proportion of the reinstatement cases linked to an organizing campaign, we first isolated RC cases filed between FY 2003 and 2005 found in the CATS database.^{8,9}

The RC cases were then cross-referenced with the entire database of ULPs filed against employers—known as “CA cases.” Utilizing a logic lookup function, we matched the RC cases against the CA cases based on the unit’s location and industry identification code, as well as the timing of the cases and their names.

Because the CATS database is administered by NLRB employees in the Board’s regional offices, data entry errors are possible. The NLRB has implemented a number of data integrity initiatives, but some inconsistencies still exist. To overcome this problem, matches on the case name field allowed for a significant degree of variation to account for naming differences between RC and CA cases (see Table 2).¹⁰

Table 2: Logic Join On Case Names Examples			
Organizing Case Name	ULP Case Name	Similarity Index	Linked
Jennie-O Turkey Store	Jennie-O Turkey Store, Inc.	0.958	Yes
Martin Marietta	Martin Marietta Materials, Inc.	0.652	Yes
South Texas Project Nuclear Operating Company	STP Nuclear Operating Company	0.497	Yes
McLaren Regional Medical Center	Genesys Regional Medical Center	0.400	No
Caesars Hotel & Casino	Borgata Hotel Casino	0.403	No
St.Luke’s- Roosevelt Hospital	St. Luke’s Cornwall Hospital	0.654	No

Of the 11,342 RC cases examined, 3,546 saw a CA case filed in conjunction. The majority of those were either dismissed or withdrawn. The remainder were resolved through some form of remedial action (see Table 3).¹¹

⁸ Only RC cases were analyzed, insofar as they only occur in units previously unrepresented by a union. RM cases are inappropriate for this analysis’s linking scheme, in that they can include incumbent unions.

⁹ Data checks were conducted to maintain accuracy between the database queries and the statistics reported in the NLRB’s annual reports. All necessary information was found in the R_CASE table, which the NLRB has indicated is reliable for data analysis.

¹⁰ Logic similarity index threshold was > .3. Matches with a similarity index > .8 were presumed to match. Those < .8 were manually matched.

¹¹ The NLRB defines remedial action as any cases resolved through a Board order, court order, formal or informal settlement, or a non-board settlement, such as an adjusted withdrawal.

Table 3: Closing Methods Of Linked CA Cases	
Closing Type	CA Cases
Remedial Action Taken	1,538
Dismissed	608
Withdrawn	1,400

We cross-referenced CA cases linked to RC cases with those CA cases where an employee was offered reinstatement and determined that between FY 2003 and 2005, 2.7 percent of organizing cases had an employee offered reinstatement through remedial board action (see Table 4).

Table 4: RC Cases Linked To CA Cases With An Illegal Firing		
RC Cases With Illegal Firing(s)	Total RC Petitions	Percentage of RC Cases With An Employee Fired
303	11,342	2.7

Implications on Other Research

In 1983, Harvard Law School Professor John Weiler reported that 1 in 20 pro-union employees was fired during union organizing campaigns in a study published in the *Harvard Law Review*.¹² But researchers from the University of Chicago critiqued Weiler’s estimate in 1991 in the *University of Chicago Law Review*, writing that it “rested on three erroneous and interrelated assumptions.” The authors, Robert LaLonde and Bernard Meltzer, re-examined Weiler’s data and determined that 1 in 63 pro-union employees was illegally fired during an organizing campaign in 1980.¹³ To arrive at that conclusion, they determined that 51 percent of the NLRB’s reinstatement orders were issued as part of an organizing campaign.

Relying on LaLonde and Meltzer’s research, John Schmitt and Ben Zipperer of the Center for Economic and Policy Research suggested that 1 in 5 union organizers was fired during an organizing campaign. The study also suggests that 1.4 percent of pro-union employees were illegally fired during the organizing process, after adjusting for the rise of non-NLRB organizing methods like “card check.”¹⁴

¹² Weiler, Paul, 1983. “Promises to Keep: Securing Worker’s Rights to Self Organization under the NLRA,” *Harvard Law Review*, vol. 96., no 8 (June), pp. 1769-1827.

¹³ LaLonde, Robert J. and Bernard D Meltzer, 1991. “Hard Times for Unions: Another Look at the Significance of Employer Illegals,” *University of Chicago Law Review*, vol. 58, pp. 953-1014.

¹⁴ See Schmitt and Zipperer, p. 19

The central problem with Schmitt and Zipperer’s study, as well as LaLonde and Meltzer’s, is the reliance on Weiler’s original analysis of Board decisions from the early 1980s. Even though Schmitt and Zipperer utilize LaLonde and Meltzer’s revisions, they still pollute recent NLRB data with an index—that 51 percent of reinstatement offers are related to organizing campaigns—based on data from the 1980s.

Our analysis of NLRB data from FY 2003 to 2005 indicates that only 10.0 percent of reinstatement orders occur during organizing campaigns. This is a significant departure from Schmitt and Zipperer’s research, which uses LaLonde and Meltzer’s standard multiplier of 51 percent (see Table 5a and 5b).

Using Schmitt and Zipperer’s methods and adjusting for the rise of card check organizing methods, our new NLRB data suggests that less than 1 in 340 pro-union workers is fired during organizing campaigns. They put the ratio at 1 in 76.

Table 5a: Schmitt and Zipperer With LaLonde and Meltzer’s 51 Percent Ratio					
Year	Reinstatement Cases	LaLonde and Meltzer’s Ratio	Average Employees Per Case	Total Pro-Union Voters	Adjusted Percentage of Pro-Union Workers Fired
2003	1,334	51%	2.2	74,295	1.5%
2004	1,299	51%	2.2	72,181	1.6%
2005	1,042	51%	2.2	65,551	1.4%
AVERAGE	3,675	51%	2.2	212,027	1.5%

Table 5b: Schmitt and Zipperer With NLRB Linked Cases					
Year	Reinstatement Cases	Percent of Reinstatement Cases Linked To Organizing Campaigns	Average Employees Per Case	Total Pro-Union Voters	Adjusted Percentage of Pro-Union Workers Fired
2003	1,334	10.0%	2.2	74,295	.30%
2004	1,299	10.0%	2.2	72,181	.30%
2005	1,042	10.0%	2.2	65,551	.26%
AVERAGE	3,675	10.0%	2.2	212,027	.29%

¹⁵ Christlieb, David L. and Allan G. King, April 2007. “The Perils of Union Activism Have Been Greatly Exaggerated.” *Employment Law* 360.

¹⁶ See Schmitt and Zipperer, p. 5

Schmitt and Zipperer also report the number of union organizing campaigns featuring an illegal firing.¹⁷ To measure the number of organizing campaigns, they rely on the number of NLRB-supervised elections each year. They admit that relying on the number of elections “will have the effect of increasing the number of illegally discharged workers per union-organizing election since some portion of the workers were fired illegally during campaigns that did not result in an election.”¹⁸

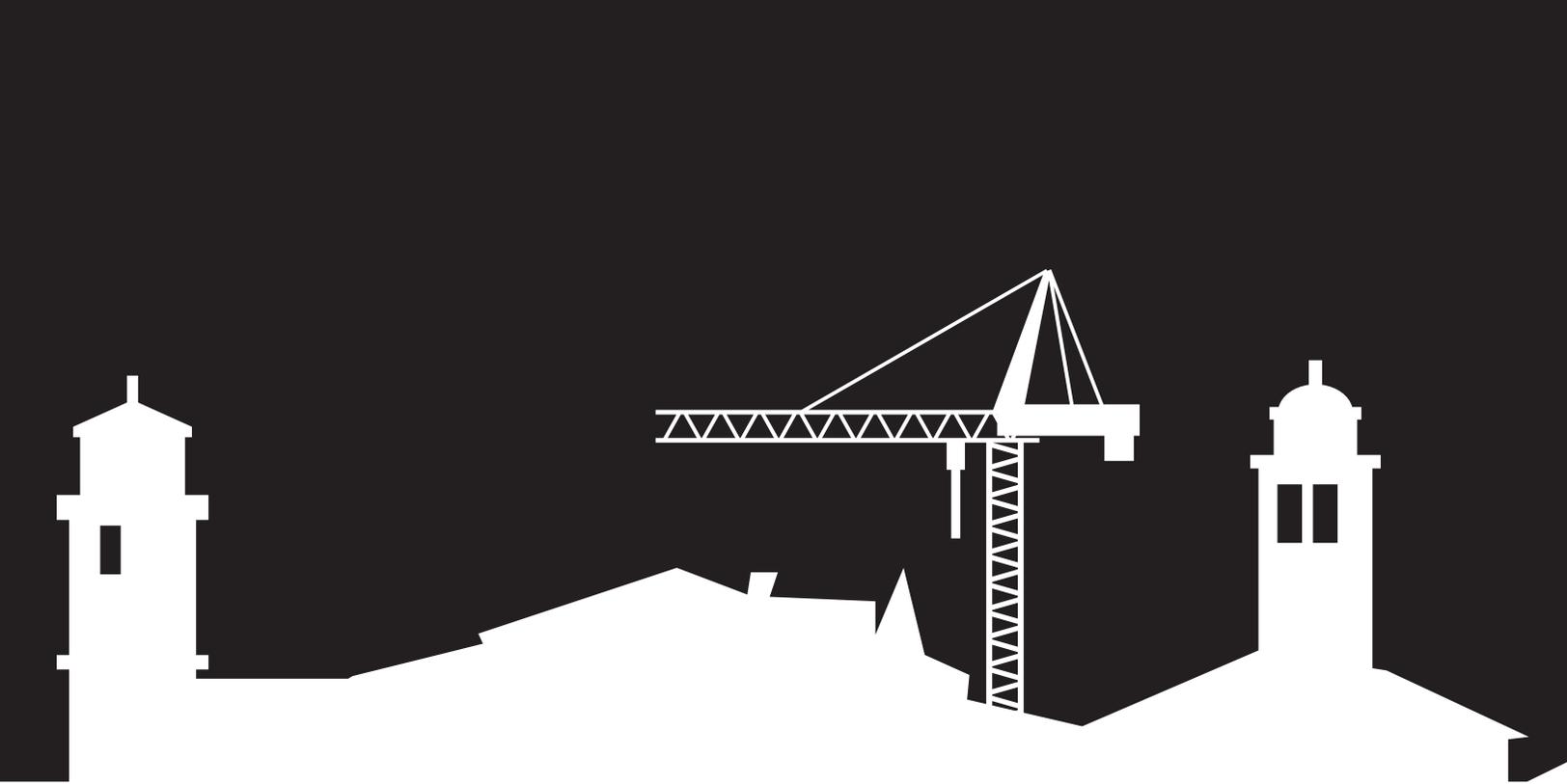
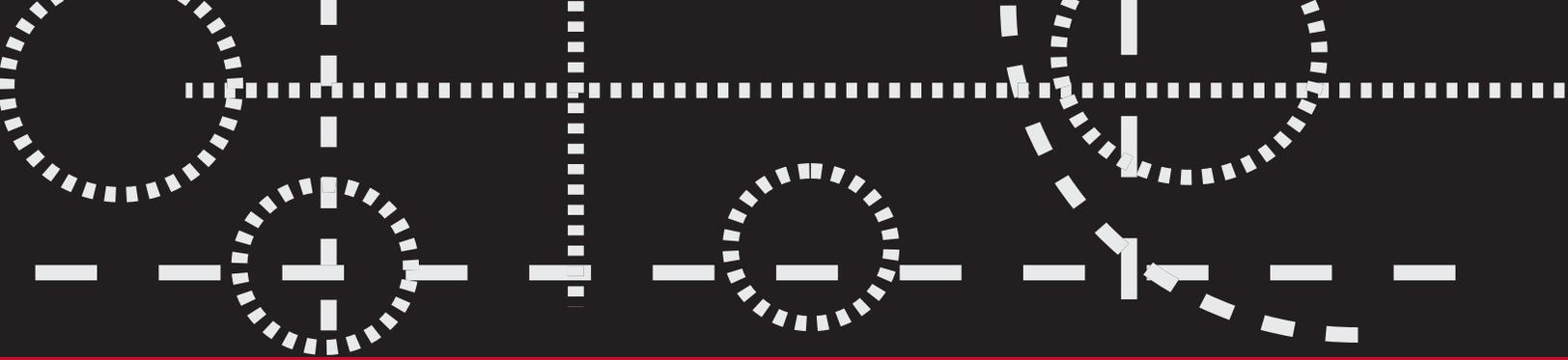
Schmitt and Zipperer could have resolved this by counting total organizing petitions—as opposed to elections—which are a better estimate of the number of total union organizing campaigns. That data, which would serve to decrease their estimates, was available in the NLRB annual reports they examined for their analysis.

Conclusion

Until now, the debate on employers illegally firing workers during organizing campaigns has been driven by biased or crude estimates. In spite of significant statistical shortcomings, union leaders have used these studies to lay the blame for their declining membership on employers. But by examining recent data from the National Labor Relations Board, this study calls into question much of the rhetoric used to justify overhauling the current system of allowing employees to secretly vote to join a union.

¹⁷ See Schmitt and Zipperer, p. 19

¹⁸ See Schmitt and Zipperer, p. 6



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