



July 9, 2009

VIA FACSIMILE

Joanne Canelli
Station Manager for KTHV-TV
720 S Izard St
Little Rock, AR 72201-4000

Re: Advertisement by Employee Freedom Action Committee

Dear Station Manager:

I represent the Service Employees International Union, whose two million members support the passage of the Employee Free Choice Act. Your news network is running an advertisement sponsored by the Employee Freedom Action Committee, which is demonstrably false and maliciously misleads viewers about unions and the Employee Free Choice Act. In particular, the ad misleadingly refers to the "Employee Forced Choice Act" and also contains the false claim that "unions want federal bureaucrats to take away your personal rights." The falsehoods and misrepresentations—described in detail below—warrant its immediate removal from air:

1. The Employee Free Choice Act Restores Workers' Rights To Form A Union. Contrary to the often-peddled falsehood, the Employee Free Choice Act does not eliminate workers' right to form a union through a secret ballot election. Rather, it gives workers the *additional* right to form unions through a majority sign-up process. As explained by *The New York Times*, "the bill... would make it easier for workers to join unions by requiring that employers recognize a union if a majority of employees at a workplace sign cards indicating they wish to organize."¹ Therefore, the description of the bill as requiring "forced choice" is simply false.

2. Private Sector Arbitrators—Not "Government Bureaucrats"—Will Help Parties Achieve a First Contract If They Are Unable To Reach Agreement Themselves. Yet another falsehood is the claim that "government bureaucrats" will take away "personal rights." Nothing in the Employee Free Choice Act empowers "government bureaucrats" to dictate the terms of any collective bargaining agreement. Rather, it is experienced and professional private-sector arbitrators who will oversee arbitration proceedings

¹ Editorial, "The Labor Agenda," *New York Times* (December 29, 2008).

ANDREW L. STERN
International President

ANNA BURGER
International Secretary-Treasurer

MARY KAY HENRY
Executive Vice President

GERRY HUDSON
Executive Vice President

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allowing the parties to reach a first contract.² In reality, experience in the public sector has shown that very few negotiations actually require arbitration; the vast majority of these contracts are settled by the parties on their own without arbitration.³

It is worth noting the reason why first contract arbitration is necessary. Even in instances where workers successfully form a union, employers often refuse to bargain fairly with their employees. A recent MIT study documents that only 38% of new unions are able to negotiate a first contract within one year of NLRB certification and only 56% are able to achieve a contract after two years. That means that under the current law, 44% of new unions still don't have contracts two years after they are certified, and many newly-unionized workers never achieve a first contract.⁴

3. Union Workers Have a Voice In the Workplace, Earn More & Have Better Benefits than Non-Union Workers. The ad falsely claims that organized workers do not have a say in negotiations over their wages and benefits, when nothing could be further from the truth. It is *un*organized workers who have no mechanism to negotiate with their employer over their wages and benefits. At the same time, union members typically vote on whether to ratify their contracts.⁵

Moreover, the ad falsely implies that employers are handing out raises to their employees with the union that is standing in the way, when, again, the exact opposite is true. The fact is that union workers have higher wages and better benefits than non-union workers, which is why more than half of all workers—nearly sixty million—would join a union if they could.⁶ Indeed, according to the Center for American Progress Action Fund, union workers earn significantly more on average than their non-union counterparts, are nearly 54% more likely to have employer-provided pensions, and are 28% more likely to be covered by employer-provided health insurance. In 2007, union workers earned 30% more on average than non-union workers.⁷

4. Union Intimidation and Violence Are Extremely Rare—Meanwhile Employers Routinely Fire, Harass, And Intimidate Workers Who Attempt to Form Unions. The advertisement portrays union representatives as violent and intimidating thugs when it is the employers who routinely flout the law during union organizing campaigns. As Rep. George Miller, Chair of the House Education and Labor Committee said, “Even a pro-business group could only find 42 cases of union deception and/or coercion in obtaining card signatures over the last 70 years. Contrast that with roughly 30,000 workers who received back pay from employers

² Employee Free Choice Act, Sec. 3 (HR 1401). *See also* Arnold Zack, “First Contract Arbitration: Issues and Design.” (March 15, 2009)

³ American Rights at Work, “Low Rates of Arbitration Use in the Public Sector,” 2009

⁴ John-Paul Ferguson, *The Eyes of the Needles: A Sequential Model of Union Organizing Drives, 1999-2004* (March 2008).

⁵ Michael Mauer, *The Union Member's Complete Guide*. p. 45. Union Communication Services Inc. (2001).

⁶ Peter D. Hart poll, December 2006; Economic Policy Institute Briefing Paper #182 (February 22, 2007).

⁷ Center for American Progress Action Fund, “Unions Are Good for Workers and the Economy,” (February 18, 2009); Bureau of Labor Statistics, (January 25, 2008).

that had fired or illegally intimidated them for each year of the Bush administration. It's clear where the problem lies."⁸ In the last month, a study by Kate Bronfenbrenner, director of labor education research at Cornell University, found that in over one-third of elections, workers are illegally fired for supporting the union. In real terms, this means that a union activist in the workplace has a 1 in 7 chance of being fired, according to a report by the Center for Economic Policy and Research.⁹

Employers do more than simply fire union supporters during organizing campaigns. According to the Bronfenbrenner report, "workers were forced to attend anti-union one-on-one sessions with a supervisor at least weekly in two-thirds of elections. In 63% of elections, employers used supervisor one-on-one meetings to interrogate workers about who they or other workers supported, and in 54% used such sessions to threaten workers." Indeed, employer threats and coercion are commonplace: in 57% of elections, the employers threaten to close the plant, and threatened to cut wages in 46% of elections.¹⁰

5. Strikes Are Extremely Rare And Have Declined In Recent Years. The ad implies that unions force their members to go on strike over frivolous reasons. In fact, the vast majority of major US unions require a membership vote to authorize a strike. Most unions require two-thirds of their members to authorize a strike and few unions will even consider the option without as much as a 90 percent favorable vote.¹¹ Thus, the decision to strike is driven solely by the members. Moreover, the number of strikes in the US has declined precipitously over the last thirty years. In 2008, there only 15 strikes—the lowest number since 1947.¹²

* * *

As you undoubtedly know, unlike federal candidates, political organizations do not have a "right to command the use of broadcast facilities." See *CBS v. DNC*, 412 U.S. 94, 113 (1973). Because you have no legal obligation to air the advertisement, your station bears responsibility for its content when you do grant access. See *Felix v. Westinghouse Radio Stations*, 186 F.2d 1, 6 (3d Cir.). As a broadcast licensee, you "must assume responsibility for all material which is broadcast through [your] facilities" and therefore have a duty to "protect the public from false, misleading or deceptive advertising." *Licensee Responsibility With Respect to the Broadcast of False, Misleading or Deceptive Advertising*, 74 F.C.C.2d 623 (1961). Failure to prevent the airing of "false and misleading advertising" may be "probative of an abdication licensee responsibility." *Cosmopolitan Broad. Corp. v. FCC*, 581 F.2d 917, 927 (D.C. Cir. 1978).

⁸ House Committee on Education and Labor, "EFCA: Fact vs. Myth."

⁹ John Schmitt and Ben Zipperer, "Dropping the Axe: Illegal Firings During Union Election Campaigns." Center for Economic Policy and Research (January 2007).

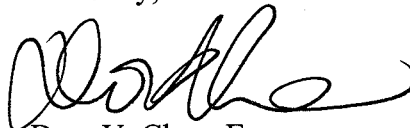
¹⁰ Kate Bronfenbrenner, "No Holds Barred: The Intensification of Employer Opposition to Organizing," EPI Briefing Paper (May 20, 2009).

¹¹ "Impasse at Boeing Leaves Many Questions," *The Seattle Times* (December 10, 2008)

¹² See Bureau of Labor Statistics, "Work stoppages involving 1,000 or more workers, 1947-2008" at <http://www.bls.gov/news.release/wkstp.t01.htm>

You should immediately cease airing this false and deceitful advertisement.

Sincerely,

A handwritten signature in black ink, appearing to read 'Dora V. Chen', with a stylized, cursive flourish extending to the right.

Dora V. Chen, Esq.
Assistant General Counsel