



**Howard B. Jackson**

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## REASONS FOR THE DECLINE IN UNION STRIKES

Over the last 25 years, the number of U.S. workers who are members of unions has dropped from about 16.7 million to about 14.8 million, even though the total workforce has grown significantly over that period of time. According to Bloomberg Law Labor Data, however, the number of strikes has dropped six times faster, from 793 in 1990 to 102 in 2015. Historically, strikes and the threat of strike have been considered a union's strongest economic threat. So why has the number of strikes lessened?

Strikes are expensive for unions. First, union dues are typically eliminated during a strike. Second, unions engage staff members, lawyers, and others to manage the strike. Also, many unions provide at least minimal financial assistance to the strikers during the course of the strike. All these things add up to an enormous expense. In a recent strike involving less than 2,000 electrical workers in New York, the strike cost the union over \$4 million in strike funds alone.

Another risk for unions is decertification as the collective bargaining representative of the employees. Employees crossing the picket line are often harassed by picketers. New hires have no interest in joining the union. These factors, along with erosion of support among union members that can often develop during a strike of any length, can create a "perfect storm" for an effort to decertify the union. Unions are aware of this risk.

Employers, on the other hand, often have greater ability to withstand strikes today. They have learned how to build up inventory, to shift work to other plants, to use labor services to bring in replacements, and to otherwise survive a strike. In addition, it seems unions have less

ability to pressure employers via boycotting products than in the past.

Of course, strikes are very expensive for employers as well. Further, companies know that when strikes end, restoring the morale and efficiency of the workforce can take a long time. In short, employers do not desire strikes, either.

Certain factors related to collective bargaining also have an impact. For example, unions are not organizing that many new employers today, so many collective bargaining relationships are long-standing. In that situation the employer has become accustomed to dealing with a union, and vice-a-versa. The parties are familiar with each other and with their industry and local labor market. Accordingly, both sides can more readily understand what level of wages and benefits is reasonable and expected.

The attitude of union negotiators has largely changed. In the "old days," labor negotiations were extremely adversarial, with "pounding the table" and the like. Today, negotiations are typically much calmer. Both union training and business schools are teaching cooperation in labor-management relations. Unions often present their proposals with contentions regarding how they can benefit the company, or via arguments based on fairness to employees.

By and large unions do not push for some of their formerly traditional goals. In the "old days," unions pushed to build a common "labor standard" in entire industries, or entire areas, so that the cost of labor would not be a part of industry competition. Unions have largely abandoned this philosophy and are willing to look more at local conditions in resolving negotiating issues. Further, unions at one time insisted on employer participation in "union benefit plans," but that push by unions has also declined. This greater flexibility tends to make reaching agreement without a strike easier.

Factors particular to an industry may lessen an employer's interest in ridding itself of a union, and thus

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## SHOULD EMPLOYERS KEEP EMAIL ADDRESSES OF EMPLOYEES, OR NOT?



**Mary Celeste Moffatt** .....

**“[C]urrent regulations require the employer to provide ... email addresses after the filing of [a] union election petition if the employer has the email addresses.”**

.....  
information to employees, to allow employees to exercise benefit options on-line, to do exit interviews, and to handle a host of other matters.

Let us first review some of the various considerations. In December, the Republican-majority members of the NLRB asked certain questions in consideration of a revision of the “quickie election ruling” itself. Such a change in regulations takes a long time, however, probably a couple of years and possibly longer. The current regulations require the employer to provide such email addresses after the filing of the union election petition if the employer has the email addresses.

While the current Administration can make certain changes administratively in the quickie election rule, it

Some employers are asking whether they should collect employee email addresses. The main concern is that under the National Labor Relations Board (NLRB) “quickie election” rules, after a union files an election petition with the NLRB, the union is entitled to the email addresses of voting employees retained by the employer. Thus, by collecting employee email addresses, the employer may be doing the union’s “homework” for it, allowing the union to freely communicate with employees.

On the other hand, employee email addresses are very helpful to employers. Employers can use such emails addresses to communicate benefit

cannot rewrite the rule itself and so the quickie election provision on email addresses is likely to continue until the rule itself is modified or revoked.

There are many corporate advantages to requiring employee email addresses, with the main disadvantage appearing to be the quickie election rules. Another disadvantage is that the government may use employee email addresses in an effort to enforce other laws, such as discrimination laws. But can the employer itself utilize to its advantage the email addresses to counter union organizational attempts? This writer thinks it can.

First, often the most important part of a union organizing campaign is the pre-election petition campaign of the union and the informational counter-campaign conducted by the employer. If the employer has employee email addresses, it can communicate its informational campaign to employees, and their families, by email. The union will not have access to such email addresses until two (2) business days after an election agreement is finalized by the NLRB, company and union. Thus, having access to employee email addresses can benefit the employer during the lengthy organizational process, which occurs prior to the election petition being filed.

A similar question is raised with respect to the quickie election rules as it relates to the submission of cell phone numbers, which would also be conveyed to unions if you have them available in a list. However, the potential value of such numbers to the employer (unless necessary for operational purposes) is much less than emails. Furthermore, the use of cell phones for union campaign matters is more intrusive and, in some cases, legally problematic for employers. As such, the collection of these numbers is not encouraged unless it is already done for HR or operational purposes.

## NOTICE OF NEW WEBSITE FOR E-VERIFY

The U.S. Citizenship and Immigration Services (USCIS) recently announced the launch of its new website, [E-Verify.gov](http://E-Verify.gov). This is the authoritative source for information on electronic employment eligibility verification. [E-Verify.gov](http://E-Verify.gov) is for employers, employees and the general public.

The user-friendly website provides information about E-Verify and [Form I-9](http://Form I-9), [Employment Eligibility Verification](http://Employment Eligibility Verification), including employee rights and employer responsibilities in the employment verification process. [E-Verify.gov](http://E-Verify.gov) allows employers to enroll in E-Verify directly and permits current users to access their accounts. Individuals with myE-Verify accounts can also access their accounts through [E-Verify.gov](http://E-Verify.gov).

For more information on USCIS and its programs, please visit [uscis.gov](http://uscis.gov).

lower the likelihood of employer actions that can lead to strikes. For example, in some industries companies may feel they get breaks from, or are at least viewed more favorably by, large purchasers, government enforcement agencies or public opinion by having a union.

While the decline in the number of strikes is good news

regardless of the reasons, most employers wisely resist any effort toward unionization. Unions bring added cost, decreased efficiency, and greater potential for conflict, including strikes. That unions choose to use the weapon of union strikes less often these days is no comfort for an employer who is nevertheless faced with one.

## **NOTICE OF NEW FORM FOR TENNESSEE WORKERS’ COMPENSATION CLAIMS**



The new SD-2 Form will go into effect May 6, 2018, and must be used for all settlements approved by the Tennessee court of workers’ compensation claims **involving injuries occurring on or after July 1, 2014.**

Please note, the new SD-2 form should not be used before the effective date of May 6, 2018. The older SD-1 form should continue to be used for all claims with a date of injury **prior** to July 1, 2014.

The announcement and new SD-2 form can be found on Bureau’s webpage: <https://www.tn.gov/workforce/injuries-at-work/bureau-announcements.html>



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