

Toothless law: 3 years in, still no penalty for flagrant unionbuster

By Don McIntosh

When bosses at Edwards Painting found out there was a union campaign among their employees, they squashed it, and broke federal labor law 18 different ways.

Edwards, based in Oregon City, employs about 20 workers to paint multifamily residential buildings for general contractors like R&H Construction. The company wanted nothing to do with the Painters and Allied Trades union. So they fired four union supporters, one for wearing a union T-shirt. They threatened to fire others if they attended a union meeting. They interrogated workers about union activities. They told workers the company would never be a union shop. They called the police when some employees handed out union fliers at their home office. To avoid hiring union supporters, they put a question about union affiliation on their employee application form, told applicants the company doesn't hire union painters, and hired nonunion applicants while passing over better-qualified union-member applicants.

Every one of those acts was illegal. But violating the law got the job done: The union campaign was obliterated. All this was in the summer and fall of

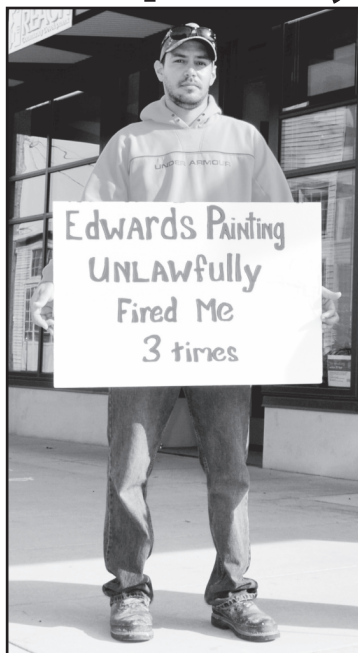
2013. Over three years later, the company has faced next to no consequences.

Sure, the union filed charges with the National Labor Relations Board (NLRB), the independent federal agency that is supposed to defend workers' right to form a union. But owner Gene Edwards told the NLRB's investigating agent flat-out that he would rather have closed his 45-year-old business than allow his workers to unionize.

When the case went before an administrative law judge in May 2014, Edwards, his wife Connie, and their son Grant, went without an attorney. They gave contradicting testimony and shredded a document they were subpoenaed to hand over. On Sept. 26, 2014, the judge ruled against them, ordering the company to hire or reinstate seven union painters and pay back wages with interest — within two weeks.

Three weeks later, Edwards hired an attorney, Paul Ostroff of the Lane Powell law firm. The company then requested extension after extension, took up time in fruitless settlement talks, and a year after the judge's order, appealed that decision to the NLRB's five member Board in Washington, D.C., objecting to 97 separate elements.

On Nov. 30, 2016, the Board



Sean Carter, fired by Edwards Painting, protests Oct. 13, 2014 outside the office of a developer. Two years after the firing, he settled for \$7,000 and waived reinstatement.

upheld the judge's decision, increased the amount of money Edwards owed, and ordered Edwards to comply within two weeks. One month later, nothing has happened. [The NLRB gave Edwards until Jan. 5 to respond — after this issue went to press.]

"The Edwards case is such a good example of the ineffectiveness of the NLRB," says Seattle labor attorney Daniel Hutzenbiller, who represents the Painters Union. "Nobody's been rein-

stated, and any organizing campaign we had is dead."

Edwards had to shell out for the legal help, and paid \$7,000 to settle with one of the fired painters. It may also have lost some business due to union pressure and bad publicity. But it's still operating, and hasn't complied with the NLRB order.

Painters union rep Scott Oldham — who got a job at Edwards to help organize the shop — is one of the workers Edwards fired. He says Painters District Council 5 has learned a lesson from the Edwards case: Think twice about organizing "bottom up" by appealing to workers, because employers can just fire union supporters and escape consequences indefinitely. Instead, the union is focusing on "top down" organizing — pitching less hostile employers on the value of signing on with the union in order to access affordable high-quality employee benefits and a ready supply of skilled workers through the union hiring hall.

Ironically, the Edwards saga comes at a time when the NLRB is the most energetic it's been in decades. Under the leadership of Obama appointees, the agency has worked hard to modernize operations, make its processes more efficient, and fulfill the law's official mandate of encour-

aging collective bargaining.

If Edwards Painting has escaped justice so far, the blame is not with the NLRB agents and attorneys, who worked hard to assemble a case and enforce the law. It's because the law they enforce was weak to begin with.

Other employee-protection statutes give wronged workers the right to sue, and if they win, to collect actual and punitive damages plus attorney fees. The Civil Rights Act of 1964 is an example. Those sanctions are a serious deterrent to employer wrongdoing. The National Labor Relations Act, on the other hands, provides no penalties, only "remedies" — meaning the wronged employee must be "made whole." The employer must pay the worker any wages they lost because they were unlawfully fired — and, incredibly, any wages the worker earned in the meantime from another employer count against the back pay award.

Though the sanctions are toothless, employer fear of attorney's fees might deter lawlessness in some cases. And unions do try to use the law as a shield to protect workers' rights. But the Edwards case shows what a flimsy shield it is, given how tough it is to force compliance on an employer who is determined to disregard the law.

What would a 'get-tough' labor law look like?

The National Labor Relations Act, passed in 1935, is supposed to encourage collective bargaining and protect workers' right to join a union. But because of toothless sanctions and adverse court rulings, the law isn't strong enough to accomplish those purposes. What would fix it? Here are some proposals, none of which are expected to pass a GOP-led Congress.

Employee Free Choice Act

A decade ago, labor put its hopes into this bill, which would require employers to recognize a union if a majority of workers sign union cards; allow fines of up to \$20,000 per violation, plus triple back pay, when workers are fired for supporting a union; and provide binding arbitration of first-time union

contracts if the two sides can't work it out on their own. It passed the House 241-185 in 2007, but died in the Senate in 2007 and 2009 because all Republicans and at least five Democratic senators opposed it.

Workplace Democracy Act

Sponsored by Sen. Bernie Sanders (I-Vermont) and Rep. Mark Pocan (D-Wisc.), it would require an employer to recognize a union if a majority of workers sign union cards.

Giving Workers a Fair Shot Act

Sponsored by Rep. Jared Polis (D-Colo.), it would increase penalties for violating federal labor laws and prohibit companies that receive taxpayer money from using those funds to bust unions.

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