

A Renewed Bid For Mini-Unions

By [Cindy Skrzycki](#)

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Labor unions are asking the Bush administration for an unlikely Labor Day present -- to make it easier for them to organize workers.

The [United Steelworkers](#), [United Auto Workers](#) and five other unions petitioned the [National Labor Relations Board](#) on Aug. 14 to require employers to bargain with small groups of union members, even if the union doesn't represent a majority of those in the workplace.

Business and NLRB officials say the request is far-fetched. Union leaders disagree, though they lost a similar case last year involving [Dick's Sporting Goods](#), the largest publicly traded sporting goods retailer.

Labor leaders are eager to build membership when only 12 percent of the U.S. workforce is organized and employers and regulators are increasingly anti-union.

"The feeling here was, legally, we are on solid ground," said *Michael Yoffe*, organizing director for the steelworkers union. If the NLRB doesn't act on the petition, he said, "our hope is that there will be a more pro-worker administration in place when it comes up in the hopper. And if this ends up in litigation, sooner may be better than later, since the courts don't appear to be getting any more worker-friendly."

Currently, an elected union representing a majority of workers has exclusive bargaining rights for all the workers in a unit, even those who aren't members. The petition would force employers to recognize unions that would bargain only for their dues-paying members -- so-called members-only unions.

"The result would be pure chaos," said *Randel Johnson*, vice president of labor, immigration and employee benefits of the [U.S. Chamber of Commerce](#). "Employers would be put in an impossible position to have to bargain with possibly numerous different unions governing pockets of employees in the same or similar positions," he said.

The business community has been on the defensive with a Democratic-controlled Congress. It fought to defeat a labor-backed effort to allow workers to have union representation as soon as a majority signed cards supporting the union, instead of through an election. The bill has passed the House. It is being blocked in the Senate by threats of lengthy debate.

Unions and their supporters in Congress have viewed the Bush administration as especially anti-labor. Rep. [George Miller](#), a California Democrat, issued a report last year saying the NLRB was

rolling back labor protections. The report said that under [President Bush](#), the board has sought court injunctions against unlawful conduct less often than any administration in the past 30 years.

In their petition, the unions argue that history is on their side, saying that both the United Steelworkers and the UAW started as unions representing only a workplace minority. They also read the 1935 National Labor Relations Act as allowing that practice.

The steelworkers union gave the approach a test run two years ago when it helped about 200 employees at a Dick's Sporting Goods distribution center in Smithton, Pa., form an employee council.

The group rented office space, paid dues and tasted victory when two of its complaints to federal agencies got results. It had less success getting Dick's, based in [Pittsburgh](#), to recognize the council.

So the steelworkers filed an unfair-labor-practice charge with an NLRB regional office on Aug. 12, 2005, saying Dick's was violating the law.

Barry Kearney, associate general counsel in the labor board's division of advice, issued a 17-page memo on June 22, 2006, saying the charge should be dismissed. "The Employer in these circumstances had no obligation to recognize and bargain with the Council. This principle is well-settled and not an open issue."

Douglas Smith, a Pittsburgh lawyer who represented Dick's, called the union's latest effort to get the board to approve members-only representation a "desperation move." He said, "It's a pitch to get membership." The company declined to comment.

Kearney said in an interview that majority representation is "what gives stability to a collective-bargaining agreement, rather than sitting down at the table with five different minority unions."

The issue is broader than the Dick's case, according to the steelworkers' Yoffee. "Our union and other unions are constantly in contact with thousands of groups of workers -- representing 20, 30, 40 percent of workers in their workplaces," he said.

"These workers often desperately want union representation. We think the current labor law gives these non-majority groups of workers the right to the voice on the job they're seeking."

Twenty-five law professors wrote the NLRB to support the union petition.

Charles Morris, a professor emeritus at Southern Methodist University's law school in [Dallas](#) who has done research and writing on minority unions, said the law has been misinterpreted and misapplied for years.

Workers are entitled to bargain on a minority basis where no "exclusive bargaining agency" has been selected by a majority of the employees, he said. "I believe this is what the law is. I didn't invent it."

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