



## The Teamster Freedom of Association Hustle

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**H**ustle: *an inducing by fraud, pressure, or deception especially of inexperienced or uninformed persons, to buy something [or] to participate in an illicit scheme....* ([www.dictionarreference.com](http://www.dictionarreference.com)).

## **I. Introduction**

Freedom of association (FOA), correctly understood, is a fundamental human right. Since the last half of the 19<sup>th</sup> Century labor union advocates have used FOA as the principal ground on which labor union legitimacy is built. Even Pope Leo XIII in *Rerum Novarum* [<http://tinyurl.com/3yyxv> (1891)], based the legitimacy of unions (as he conceptualized them) on FOA. Today, most unionists, in particular the International Brotherhood of Teamsters (IBT), and their surrogates appeal to a truncated, illegitimate version of FOA to disguise their true agenda – rounding up more and more dues payers to support the lavish life-styles and political power of union officials.

The purpose of this paper is to expose the IBT's fraudulent, propagandistic use of FOA. First, I examine two central philosophical concepts – fundamental human rights and FOA. Next, I consider how FOA is treated in various United Nations (UN) documents and conventions of the International Labor Organization [(ILO), which is a subsidiary of the UN], and in the National Labor Relations Act (NLRA). Then, I illustrate how specific IBT surrogates and international bodies misuse FOA on union-related issues. In turn, I examine the IBT itself – what its

bosses say, what they do, and why they do it. Penultimately, I explore a case study in IBT's misuse of FOA in its struggle to capture dues payers – the private school-bus market. I end by summing up the issues.

## II. Freedom of Association is a Fundamental Human Right

### A. Fundamental Human Rights

To understand this concept correctly we must first consider the nature of voluntary exchange. People exercise their fundamental human rights while interacting with other people. Voluntary exchange is the process within which fundamental human rights are put into action.

#### 1. Voluntary Exchange

An exchange is a reciprocal giving and receiving of goods and services among two or more people. An exchange is voluntary if four criteria are met.<sup>1</sup>

- a. *Entitlement.* All parties to the exchange must either own that which they are offering to exchange, or they must be acting as the authorized agent of the owner(s). There is no such thing as voluntary exchange of stolen property.
- b. *Consent.* All parties to the exchange must agree to (1) enter into the exchange relationship -- i.e., to bargain with each other -- and (2) the terms at which any actual exchange takes place. No forced bargaining can result in a voluntary exchange contract.
- c. *Escape.* All parties to the exchange must be able to turn down any offers they do not like and walk away without losing anything to which they are entitled.
- d. *No misrepresentation.* No party to the exchange may defraud any other parties. That is, no one can tell a lie. This criterion does not

require the parties to tell all they know. It merely proscribes any person saying something he knows to be false. It permits honest error. In the market, competition and entrepreneurship tend to ferret out and correct error.<sup>2</sup>

In brief, an exchange is voluntary if it is carried out by mutual consent, in the absence of force and fraud, without violating anyone's entitlements.

## 2. The Nature of Fundamental Human Rights

A fundamental human right is one held by all humans, all the time, in exactly the same way. Such a right is fundamental because it is inherent in human nature. It is a gift of nature or, if you prefer, a gift from God. It is a birthright. All you need to have a human right is to be human. Such a right does not come from any government or international body. As Thomas Jefferson put it in 1776, humans "are endowed by their Creator with ... unalienable Rights." Government's job is to protect these rights for all, not to add to or subtract from them. And that applies equally to national governments and the United Nations.

If an alleged right is an actual human right, it must be possible for any human to exercise it without in any way precluding or diminishing the ability of any other human to do the same, at the same time or any other time. Put differently, one person's exercise of the right cannot be in conflict, or in rivalry, with any other person's exercise of the right. This point is so essential that it must be elaborated.<sup>3</sup>

Jefferson's "pursuit of happiness" is a true human right because Person A can *try* to achieve (pursue) his happiness by offering, without force or fraud, some of that to which he is entitled in exchange for some of that to which Person B is entitled. If Person B consents, the exchange takes place and each has gained in happiness. (Otherwise, why would they both have agreed?) If Person B does not consent, the exchange does not take place, and no one has lost anything to which he is entitled. Person A's pursuit of happiness does not diminish or impair Person B's pursuit of happiness. Both A and B can continue to pursue happiness by voluntary exchanges with other people (or groups of people).

In contrast, there is no fundamental human right to *achieve* happiness in the sense that any person is guaranteed that his pursuit of happiness will be successful. If Person A has a fundamental human right to achieve happiness there must be some Person (or group) B who has the obligation to provide Person A with the means to increase his happiness. In that case Person B's ability to pursue his happiness is diminished and impaired. Person A's happiness is achieved at the expense of Person B. There is no mutual consent. A wins, B loses.

In voluntary exchange, no person's ends are forcibly subordinated to the ends of others. No person may, without his consent, be used as a means to satisfy any other person's ends. Such consent can only be obtained by some form of

acceptable compensation which, of course, can include the happiness that comes from being charitable.

Logically, humans who make a living by selling their labor services to other humans called employers cannot have fundamental human rights that differ from the human rights possessed by employers, or suppliers, or lenders, or customers, or investors, or college professors, or anyone else. Fundamental labor rights are the same as fundamental human rights. If there *are* special rights for workers that do not apply to other humans, those rights cannot be fundamental. They are special rights, granted by governments to some at the expense of others.

#### B. Freedom of Association

There is only one FOA, but it has two inseparable parts. First, group (or person) A has a fundamental human right to offer to associate, on whatever terms it chooses to offer, with Person B. If Person B accepts the offer then it is a done deal. Neither Group A's nor Person B's exercise of their FOA has diminished or impaired the other's exercise of their FOA. There is no conflict or rivalry in that exercise.

To understand the necessary second part of FOA, suppose that Person B declines Group A's offer to associate. If we say that Group A's FOA requires Person B to accept the unwanted association, then Person B does not have FOA. Group A's and Person B's FOA are in direct conflict. Group A is happy, but Person

B is forced to associate. Forced association is not free association, and this is true even if Group A is a labor union. Put differently, the second part of FOA is the right of all parties to decline offers of association and lose nothing to which they are entitled.

The one FOA in light of its two inseparable parts can be stated succinctly:

*All humans are free to associate with any other humans who are willing to associate with them for purposes that do not trespass against the equal rights of others.*

1. United Nations and International Labor Organization Documents on Freedom of Association

Article 20 of the United Nations Declaration of Human Rights (the Declaration, 1948) says:

- (1) Everyone has the right to freedom of peaceful assembly and association.
- (2) No one may be compelled to belong to an association.

Just so. The Declaration recognizes both parts of freedom of association.

Article 23(4) of the Declaration says:

Everyone has the right to form and to join trade unions for the protection of his interests.

Ideally, the expression "and the right to decline to do so" should follow, but it does not. Nevertheless, coming so soon after 20(2) it is obvious that the right to decline is implied.

Article 19 of the Declaration reads:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

This is the free speech article of the Declaration; and, in the American context, it applies to free speech by both employers and unionists during the period leading up to a National Labor Relations Board (NLRB) certification election. Crucially, it is consistent with Section 8(c) of the NLRA which says:

The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute, or be evidence of an unfair labor practice under the provisions of this act, if such expression contains no threat of reprisal or force or promise of benefit.

ILO Convention 87, Article 1 reads:

Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorization.

The term "organizations of their own choosing" implies the right of workers and employers to decline association with any organizations of which they disapprove. While Convention 87 does not explicitly acknowledge the negative aspect of freedom of association, it is implied. Free association requires the ability to accept or reject association.

Moreover, in 1993 the European Court of Human Rights, in *Sigurdur A. Sigurjonsson v Iceland* (<http://tinyurl.com/cc6ac9x>) incorporated the negative aspect of freedom of association into Article 11 of the European Convention on Human Rights which, like ILO Convention 87, does not explicitly acknowledge

the negative aspect of freedom of association. The same court reaffirmed this decision in 1999 in *Chassagnou et al. v. France* (<http://tinyurl.com/c2gruqc>).

There the Court said:

Freedom of association must necessarily be interpreted as the 'positive freedom' for each individual to join an association of his or her choice, but it also means the negative right not to be compelled to join an association or trade union. [To say otherwise] would mean denying the very principle of that freedom, which is based on the free, voluntary choice of any person who wishes to join a group.

Finally, ILO Convention 98, Article 4 says:

Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements.

The term "voluntary negotiation" implies the right of each side to choose *not* to associate through negotiation. When union promoters recognized this obvious problem they had to find cover. The ILO's *Collective Bargaining: ILO Standards and the Principles of the Supervisory Bodies* (2000) states that the ILO wants "effective" collective bargaining, and "effective" means mandatory bargaining that is, nevertheless, "voluntary." Who knew? Nevertheless, inasmuch as the ILO is a subsidiary of the UN, whenever there is a conflict between what the ILO decides to assert and the Declaration, the Declaration must prevail.

Some decisions of the Committee on Freedom of Association and the European Court of Human Rights to the contrary notwithstanding, there is nothing

in any of the UN Articles and ILO Conventions cited above that logically *compels* employers to surrender their employees to union rule.<sup>4</sup>

## 2. The National Labor Relations Act and Freedom of Association

Section 1 of the NLRA states:

It is hereby declared to be the policy of the United States to ... protect... the exercise by workers of full freedom of association, self-organization and designation of representatives of their own choosing....

In 1947, Congress amended Section 7 of the NLRA to make explicit the right of workers to refrain from unionization. To give effect to that right, Congress added Section 8(c) which affirmed the right of employers to engage in free speech during election campaigns.

In *Linn v. United Plant Guard Workers* [383 US 53 (1966)], the Supreme Court noted that under Section 8(c) of the amended NLRA, the NLRB does not

police or censor propaganda used in the elections it conducts, but rather leaves to the good sense of the voters the appraisal of such matters, and to opposing parties the task of correcting inaccurate and untruthful statements" (at 60).

The Court went on to assert

[D]ebate...should be uninhibited, robust, and wide-open, and ... it may well include vehement, caustic, and sometimes unpleasantly sharp attacks" (at 62).

Congress wanted workers to hear both sides of the debate over whether to unionize to enable them to make informed, uncoerced decisions of how to vote. If workers are to have any modicum of free choice in certification elections they must be able to cast an informed vote. We can count on union organizers vigorously to

present pro-unionization arguments. They start doing so long before any representation election is scheduled because they must get thirty percent of eligible workers to sign cards requesting unionization before the NLRB will order an election.<sup>5</sup>

We usually can count on employers vigorously to present opposing arguments, but they have less time than union organizers have to make their case. They often don't know about union organizing efforts until the union has collected the requisite signatures. The time between the NLRB's order to have an election and the actual election is crucial if workers are to be able to hear the employer's side of the story and thus be able to make an informed choice about how to vote.

### **III. Distortion of Freedom of Association**

A major part of the Teamster FOA hustle is to advance the absurd argument that fundamental “labor rights,” guaranteed by the United Nations Declaration and conventions of the (ILO) require that employers must surrender to any attempt by any union to unionize their employees. Surrender, according to the IBT, means that employers should be “neutral” (shut up) during certification election campaigns. Better still, employers should forego certification elections in favor of “card check” certification. With card check, employers are forced to recognize and bargain with a union that gets over 50% of his employees to sign cards. Signatures are collected in one-on-one confrontations between intimidating union organizers

and employees. It is clear to workers that the union organizers know where they and their families live. Union organizers, especially from the Teamsters, have a long record of being significantly less than gentle.<sup>6</sup>

The IBT is aided in this subterfuge by several academic surrogates who have well-established records of promoting unionization wherever and whenever they can. Two of them – Lance Compa at Cornell University and John Logan at San Francisco State University – are especially prolific in this endeavor. Both authors ignore the part of FOA that permits all parties to decline offers of association. Therefore, they misunderstand the logical underpinnings of human rights in general and FOA in particular. This misunderstanding skews their comprehension of the relevant UN and ILO documents.

For example, in 2000 and again in 2006 Compa published versions of a paper, written at the behest of Human Rights Watch, titled *Unfair Advantage: Workers' Freedom of Association in the United States under International Human Rights Standards*. (See <http://tinyurl.com/a8negmg> and <http://tinyurl.com/bjf6qt3> respectively.) In 2010 he presented the same arguments in another paper written for Human Rights Watch titled *A Strange Case: Violations of Workers' Freedom of Association in the United States by European Multinational Corporations* (<http://tinyurl.com/22jh88m>).

Compa's arguments are based on faulty decisions of the ILO's Committee on Freedom of Association and the European Court of Human Rights. Both bodies frequently fail to recognize the logically-necessary universal nature of FOA. Compa argues that to be consistent with international human rights standards the NLRA must be amended at least to compel American employers to be "neutral" in all unionization campaigns leading up to NLRB-supervised certifications. Even better, according to him, the NLRA should be amended to replace secret ballot elections with card-check certification.

Examples of John Logan's work include two papers published in 2009 -- in June and December. Like Compa, Logan seems to believe in international human rights for workers, but for no one else. The June piece was titled *Tesco's Employment Practices in the USA* (<http://tinyurl.com/bes5a63>), and the December title was *Lowering the Bar or Setting the Standard? Deutsche Telekom's US Labor Practices* (<http://tinyurl.com/b7qeh7r>). In December 2011, Logan published a third paper titled *National Express Group's Diminution of Labor Rights in the U.S.* (<http://tinyurl.com/cqdou5v>).

Tesco is a UK corporation whose American subsidiary is Fresh & Easy Neighborhood Markets, Inc. Deutsche Telekom is a German Company whose American subsidiary is T-Mobile. National Express Group is another UK

corporation. Its American subsidiary, Durham School Services, is the second largest private provider of school-bus services in the U. S.

The principal idea in all three Logan papers is that insofar as UK and other European labor relations regulations are more union-friendly than the NLRA, the parent companies should compel their American subsidiaries to follow European rules. The NLRA does, indeed, allow (but not compel) employers to surrender their employees to union rule, but to do so would be to violate workers' FOA. Logan's frequent use of the expression "fundamental labor rights," indicates that he does not understand the logically-necessary universal nature of human rights.

#### **IV. The IBT's Model and Actions**

At its convention in June 2006 the Teamsters adopted Resolution 5 titled "Comprehensive Campaigns and the Teamster Model" to corral more dues payers. Of course, they didn't put it that way. Instead, in the accompanying Resolution 37, they proclaimed that "the freedom to form a union is a fundamental human right recognized in the Universal Declaration of Human Rights and the National Labor Relations Act." They went on in Resolution 37 to claim that the NLRA is "broken and doesn't protect workers' rights." So it is necessary by law to force employers to be "neutral" on the question of unionizing. Moreover, they asserted, secret-ballot certification elections should be scrapped and replaced with card-check certifications.

Resolution 5 promised to "employ important tactical elements including careful targeting, worker organizing..., taking advantage of political relationships, using bargaining and other economic power ..., working with community allies, and using global strategies."

#### A. Teamster Motivation

It is unlikely that the IBT is really interested in fundamental human rights or even special rights for workers. Its record of force, fraud, and corruption (see below) indicates that its true interest is special rights for union bosses, especially Teamster bosses. To that end they must be able to coerce more and more workers to pay union dues, fees, fines, and assessments. Perhaps most important of all, once they get representation rights over workers, who may or may not want such representation, they can leverage that power to cajole employers and workers to make "contributions" to union-run pension funds which often are slush funds with which union bosses play.

#### B. Some Teamster History

##### 1. Racketeering and Corruption

The IBT has one of the worst records of racketeering and corruption among American unions. Going back to the early 1950s under the reign of Dave Beck, and continuing from 1957 to 1971 under the notorious reign of James R. Hoffa, Teamster bosses seemed to go out of their way to gain and preserve a reputation

for La Cosa Nostra-type thuggery. The AFL-CIO expelled the Teamsters from its ranks in 1957 because it didn't want the Teamsters to taint its reputational capital. The Teamsters were readmitted to the AFL-CIO in 1987 (<http://tinyurl.com/acypcs5>). The then president of the Federation, Lane Kirkland, claimed the move was to increase "labor solidarity," but it is more likely that he simply wanted more dues payers.

James R. Hoffa spent the last four years (1967-1971) of his last term as IBT General President in federal prison after being convicted of jury tampering, bribery, and fraud. His prison term was to have lasted until 1980, but on December 23, 1971 President Nixon pardoned him on the condition that he resign his Teamster presidency. Nixon also barred Hoffa from any involvement with the Teamsters until 1980. Upon his release from prison the IBT granted him a \$1.7 million pension as a one-time, lump-sum payment (<http://tinyurl.com/ps2dz>). I guess Frank Fitzsimmons, Hoffa's successor as Teamster president, didn't think good ol' "Jimmy" had done anything wrong.

President Nixon was a typical politician – willing to do almost anything, even some things that are illegal, to get and maintain political power. For some reason, after Hoffa's pardon in December 1971, the IBT endorsed Nixon for re-election in 1972.

Apparently the IBT continued its pattern of corruption into 1989 because on March 14<sup>th</sup> of that year David N. Edelstein, a judge in the U. S. District Court for the Southern District of New York imposed a consent decree on the IBT (<http://tinyurl.com/a9nhh98>). That Decree is still in effect despite repeated efforts by the Teamsters to have the Court lift it.

Judge Edelstein noted that:

[T]he union defendants acknowledge that there have been allegations, sworn testimony and judicial findings of past problems with La Cosa Nostra corruption of various elements of the IBT; and

[T]he union defendants agree that it is imperative that the IBT, as the largest trade union in the free world, be maintained democratically, with integrity and for the sole benefit of its members and without unlawful outside influence....

In the "Permanent Injunction" section of the Decree the judge enjoined the Teamster bosses

from knowingly associating with any member or associate of the Colombo Organized Crime Family of La Cosa Nostra, the Genovese Organized Crime Family of La Cosa Nostra, the Gambino Organized Crime Family of La Cosa Nostra, the Lucchese Organized Crime Family of La Cosa Nostra, the Bonnano Organized Crime Family of La Cosa Nostra, any other Organized Crime Families of La Cosa Nostra..., and from obstructing or otherwise interfering with the work of the court-appointed officers or the Independent Review Board....

The Independent Review Board is the body set up to supervise the antics of the IBT following the 1991 election of the union's General President.

The Decree also imposes *secret-ballot election* requirements on all Teamster elections of officers and Executive Board members. Before the Decree, officers

and boards were selected by the bosses. Unsurprisingly, the Teamsters still abhor secret-ballot NLRB-supervised certification elections.

In 1991 the first General President elected by secret ballot by the rank-and-file was Ron Carey. Carey was endorsed by Teamsters for a Democratic Union, a pro-reform group within the IBT. Carey won re-election in 1996, but the election was set aside in 1997 in the face of evidence of his involvement in a donor kickback scheme involving the Democratic National Committee and the Clinton re-election campaign (<http://tinyurl.com/aopz2gu>). Carey was subsequently barred for life from running for Teamster president, and he died in 2008.

James P. Hoffa, son of James R., was elected General President of IBT in 1998, and again in 2011. In 1999 Hoffa hired Edwin Stier, a former federal prosecutor, to develop a Teamster ethics program that would convince the Court to release IBT from the Consent Decree. Stier created the RISE (Respect, Integrity, Strength, and Ethics) project and set about to clean out the Augean stable known as IBT. Hoffa was not pleased with the project, and he eventually resisted Stier's efforts. Stier resigned his position and dissolved RISE in April 2004 saying:

I have concluded that [Hoffa] has backed away from the Teamsters' anti-corruption plan in the face of pressure from a few self-interested individuals.... I can no longer permit my presence in the union to act as an endorsement of his sincerity (<http://tinyurl.com/auw3hlc>).

## 2. Violence

Teamster violence did not stop after the 1991 election of Ron Carey. In 1997 the union declared a strike against UPS. Rod Carter, a non-striking worker, was brutally beaten, stabbed five times with an ice pick, and left bleeding on the pavement. Carter is an African-American, former University of Miami football star. He was driving his UPS route when he was attacked by Teamster thugs. According to the August 10, 1997 South Florida Sun-Sentinel

(<http://tinyurl.com/a6f75ms>):

While he [Carter] was on his delivery route, he was assaulted by six men Thursday afternoon. One wielded an ice pick, and repeatedly plunged it through Carter's brown uniform into his still-muscular body

On April 13, 2001, The Sun-Sentinel reported that Carter and the Teamsters had reached a settlement (<http://tinyurl.com/aqtq9oy>).

Not to be outdone by Carey, Hoffa Jr. has shown that he, too, emulates his father's affinity for violence in labor disputes. On October 24, 1999, Hoffa launched a strike against Overnite Transportation Co. which then was a subsidiary of Union Pacific. He accused Overnite of several unfair labor practices including bargaining in bad faith. Just before the end of the strike on October 24, 2002, the NLRB ruled that those charges were without merit. After that ruling, Hoffa called off the strike admitting defeat.

The best evidence of violence by Hoffa's thugs during the strike is in the settlement agreement imposed by the NLRB on May 14, 2003

(<http://tinyurl.com/b8756wo>). In it the IBT was instructed to cease and desist from seventeen categories of violence. The first three were:

(A) Brandishing or carrying any weapon of any kind, including, but not limited to, guns, knives, slingshots, rocks, ball bearings, liquid-filled balloons or other projectiles, sledge hammers, bricks, sticks, or two by fours at or near any picket line, handbilling effort, rally or in any vehicle engaged in ambulatory picketing of any Overnite vehicle or following the private vehicle of any Overnite employee.

(B) Using or threatening to use a weapon of any kind, including but not limited to guns, knives, slingshots, rocks, ball bearings, liquid-filled balloons or other projectiles, picket signs, sticks, sledge hammers, bricks, hot coffee, bottles, two by fours, lit cigarettes, eggs, or bags or balloons filled with excrement against any non-striking Overnite employee or security guard, or in the presence of any Overnite employee.

(C) Damaging, threatening to damage or attempting to damage any vehicle or equipment owned or operated by Overnite, its employees or security guards, by any means or manner, including but not limited by slingshots, rocks, ball bearings, liquid-filled balloons or other projectiles, knives, picket signs, sticks, sledge hammers, bricks, bottles, two by fours, eggs, or paint, or by tearing off mirrors, windshield wipers or antennas, or breaking windows.

According to the New York Times, after Hoffa called off the strike he said, "Our cause is right, our struggle is just, and ultimately we will prevail"

(<http://tinyurl.com/bhhkxaz>).

### C. Teamster Hypocrisy

Hoffa seems to define "just struggle" in different ways in different circumstances. Here are three examples.

1. On May 29, 2012 the Teamster office staff voted 18-16 in a NLRB secret-ballot election to be represented by the Federation of Agents and International Representatives in collective bargaining with Hoffa. Hoffa had refused the office

staff's request that he remain neutral and agree to card check. Card check and neutrality for thee, but not for me.

2. In November 2012 Hostess Brands, the maker of Twinkies, was driven into liquidation by the intransigence of the Bakers' Union which was on strike. The Teamsters had already settled its issues with Hostess, but the Bakers held out for more. The Teamsters didn't want Hostess to liquidate because all the Teamster jobs would be lost. The Chicago Teamsters Joint Council 25 put out a news bulletin in which was copied the following from the Huffington Post

(<http://tinyurl.com/d3oo4re>):

Hostess set a deadline of 5 p.m. Thursday for the bakers' strike to end, otherwise it would seek liquidation. The Teamsters responded by publicly calling upon the bakers' union to hold a secret ballot to decide whether to continue the strike — an indication that the Teamsters felt some of the bakers' union rank-and-file may have felt differently about the strike than union leadership.

Imagine that! The Bakers' Union rank-and-file might, in secret, differ with the Bakers' Union leadership and be on the Teamsters side to keep their jobs. So the Teamsters wanted a secret-ballot election to enable the rank-and-file to express their true preferences. Convenient, but don't tell Human Rights Watch.

3. In 2005 Dolly Madison Bakery merged with Hostess Brands. Before the merger Kirk Rammage was the sole union-free sales person with Dolly Madison (DM). DM wanted to preserve Kirk's seniority in the merged firm, but the Teamsters at Hostess insisted on putting him at the bottom of the seniority list

which made him ineligible for the routes he previously served, and forced him to commute to a new work site seventy miles from home. Rammage filed unfair labor practices charges against the Teamsters with the NLRB. The NLRB decided against the Teamsters in 2008, and the decision was upheld by the Tenth Circuit Court of Appeals in 2009. Both of those rulings were vacated in 2011 on the basis of the Supreme Court's *New Process Steel* ruling in 2010 that the NLRB needs at least three members to constitute a quorum (<http://tinyurl.com/2beg63w>). In 2008, at the time of the NLRB ruling in the Rammage case, it had only two members.

In 2012, after President Obama stacked the NLRB with recess appointees (when the Senate was not in recess), the new NLRB, with an alleged quorum, reheard the case and made the same decision the old NLRB did. And in July 2012, the Appeals Court again affirmed the decision. The Tenth Circuit also imposed monetary sanctions on the IBT for the "frivolous" nature of its second appeal (<http://tinyurl.com/ajld69f>). On February 25, 2013, the Supreme Court refused to hear the IBT's appeal of the Tenth Circuit's decision.

The non-recess, recess-appointments to the NLRB by Obama in 2012 were declared unconstitutional by the D.C. Circuit Court of Appeals on January 25, 2013 (<http://tinyurl.com/aupmzcm>). If this ruling is upheld by the Supreme Court, the Rammage case, and over 600 subsequent NLRB rulings and decisions will have to be reconsidered. As of this writing the illicit NLRB is ignoring the DC

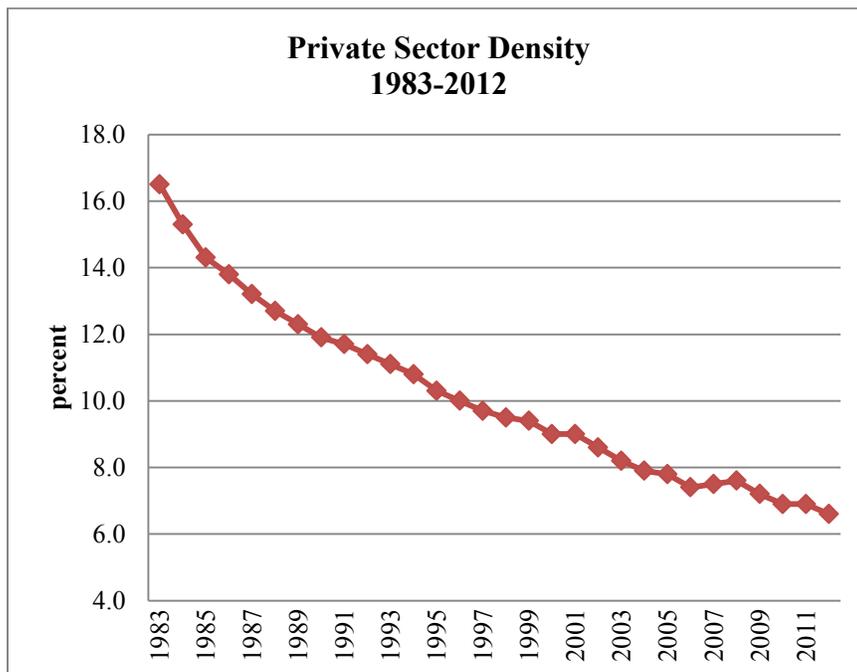
Circuit’s decision. The number of cases that may have to be reconsidered grows each day.

The IBT, it seems, believes that "labor rights" belong only to union-impaired workers. The IBT is simply incapable of understanding that union-free workers also have freedom of association.

## V. Why the IBT and Other Unions Do What They Do

### A. Private-sector Union Decline

Private-sector unions are in sharp decline in the U. S. The percent of private-sector workers who are union members (union density) reached its apogee in the



mid-1950s at approximately 35 percent. Since then it has steadily declined. The nearby chart depicts private-sector union density 1983-2012. (The Bureau of Labor

Statistics standardized its data collection methods in 1983.) In 2012 density was a mere 6.6 percent. Why is this happening?

The Teamsters, Compa, Logan and their fellow-travelers, would have us believe that all workers, or at least a vast majority of them, in their hearts, want to be represented by unions. If they had true freedom of association they would gain that representation. However, they assert, nefarious employers, aided by evil labor-relations consultants, deny workers their FOA by clouding their minds. If nefarious employers and evil labor-relations consultants would only shut up, workers could realize the truth and flock to the promised land of unionism.

The real obstacle to union organizing in the U. S. is simply that most private-sector American workers, for very good reasons, do not want to organize. They want to exercise their FOA by declining the unions' offers of association. A Rasmussen poll on September 16, 2011 (<http://tinyurl.com/5t33spu>) reported that:

Among working Americans who do not belong to a union, just 13% would like to join a labor union where they work. That's up slightly from nine percent in March 2009. Seventy-eight percent (78%) would not like to join a union.

#### B. Reasons for Workers to be Union Free

There are many good reasons for workers to choose to be union free. For example, union-free enterprises offer more job security than their union-impaired counterparts because the latter are too sclerotic to adapt quickly to frequently changing global market conditions. As a result, private-sector unions no longer

have the ability to raise worker compensation above that received by union-free workers.<sup>7</sup>

Union-impaired firms find it harder to attract investors than union-free firms do (<http://tinyurl.com/d8jfecc>). Unless severely union-impaired firms – e.g. General Motors -- receive "investments" from taxpayers through politician-imposed bailouts, they shrink or perish. They do not grow.

Workers' pay ultimately is determined by worker productivity. Since there is less investment in union-impaired firms, workers there enjoy less opportunity for productivity growth than their union-free counterparts. In severely union-impaired firms worker productivity not only fails to grow, it declines.

In union-impaired firms pay is based more on job classifications and seniority than productivity. Union-free workers are free to excel, while union-impaired workers are chained to a contract. A union contract wage is both a ceiling and a floor. In a union-free environment the only ceiling on a worker's wage is his productivity. Moreover, unions promote adversarial relationships between workers and employers, while union-free employers are free to enlist workers as partners in building durable and growing value.

Finally, when unions rule, individual workers have no voice. Only the unions are permitted to speak. Unwanted unions are third parties that come

between employees and their employers. Unions in effect become owners of the labor of any workers who, without their consent, must accept union representation.

In the face of sharply declining union density Teamsters and other union officials are desperate to protect their power, perquisites, and lavish life styles. They will stoop to whatever measures they can get away with to succeed. They are relics of the past whose irrelevance will be postponed as long as the freedom of association hustle hides the truth.

### C. Bargaining to Organize

Historically union organizers had to organize workers before they could engage in collective bargaining. The Teamsters, some other unions, and their academic surrogates have now turned that on its head. They don't first organize willing, eager workers in order to bargain for them. Rather, they first bargain hard among employers, community organizers, benighted clergy, and economically-ignorant and guilt-ridden limousine liberals, to pressure employers to surrender their employees to union rule without secret-ballot elections. Then they bargain, for their own benefit.

Employers who acquiesce in this charade subject their workers to union coercion. Under the NLRA, secret-ballot certification elections provide the best protection for workers against such coercion.

## **VI. A Case Study of the Teamster Freedom of Association Hustle: The Private School-Bus Market**

## A. The Global Campaign

In 1998 the Service Employees International Union (SEIU) began a campaign to capture dues payers at Ryder Student Transportation Co. in the Minneapolis – St. Paul area. The SEIU lost a secret-ballot NLRB-supervised election in May 1999. In July 1999, Ryder was acquired by the UK's FirstGroup plc, the world's leading transportation company. FirstGroup then formed its American subsidiary, First Student School Bus Transportation Services. SEIU continued its efforts to capture First Student bus drivers, and lost another NLRB-supervised election in December 2000. The SEIU next tried to capture First Student dues payers in 2003 by getting public school districts in the Twin Cities area to stipulate that all private companies that bid for contracts had to sign an agreement that it would accept card-check certification in place of secret-ballot certification. That also failed because First Student was awarded contracts before it signed such an agreement. SEIU suffered failure after failure after failure.

Frustrated, SEIU teamed up with the UK's Transportation and General Workers Union (T&G) in 2004 to devise a scheme to bring pressure on FirstGroup to order First Student to surrender its bus drivers to union rule through card check and neutrality agreements. As one union-friendly commentator wrote:

In the present campaign SEIU and T&G are....planning economic actions both in Great Britain and in the United States that makes it clear that there will be economic consequences for companies that do not agree to rules that guarantee a fair and honest

recognition process. Their goal is larger. It is no longer school bus drivers in the Twin Cities, but about creating the largest school bus driver union in the United States. The first two targets are First Student and Durham. Whether this campaign will be successful is a story that is still being written.<sup>8</sup>

In mid-2005 the SEIU agreed not to compete with the IBT in attempting to capture dues from school-bus drivers. In December 2005 the Teamsters announced a joint venture with SEIU to put the SEIU-T&G scheme into full force (<http://tinyurl.com/aunekgc>). The announcement explained:

The Teamsters Union is teaming up with the SEIU on a joint national campaign to organize school bus drivers at private transportation companies....

The partnership builds on one already in place between SEIU and the Transport and General Workers Union (T&G) in the United Kingdom. The Teamsters and SEIU are seeking to improve labor and service standards... and seek a more positive and productive relationship with companies such as First Student [and] Durham....

#### B. The First-Student Campaign and Eventual Capitulation

In the same month, the IBT, SEIU, and T&G cabal put out a hit piece against First Student under its new name "Driving up Standards Together." The paper was titled *Broken Trust: How Duval County's Largest Student Transportation Provider – First Student Inc – has Failed Students, Parents, and Schools in Jacksonville*.<sup>9</sup> In brief, the undisclosed author of this screed asserted that First Student bus drivers were not properly certified, that they were frequently cited for traffic violations, that they had high accident rates, and they provided poor service. The author concludes that such a poor track record suggests Duval County should take its business elsewhere. The message was clear: As long as First Student is relatively union-free, no school district should contract with the

company. All it takes for the company to be worthy is that it become union-impaired.

"Broken Trust" launched the IBT's full scale bargaining-to-organize attack against First Student. It was a corporate campaign designed to ruin First Student's reputation in the eyes of the general public, community leaders, the press, school boards, and parents. In turn, according to this scheme, those actors would push First Student to sign on to neutrality agreements and card check certifications.

At the behest of the Teamsters, in May 2006, Lance Compa joined the smear campaign by publishing his *Freedom of Association and Workers' Rights Violations at First Student, Inc.*<sup>10</sup> This consisted of his well-worn arguments based on his faulty understanding of the logically-necessary two parts of freedom of association as well as his customary misuse of UN and ILO freedom of association documents. In brief, he earnestly and honestly believes that freedom of association promulgated by the UN and ILO documents requires American employers to surrender their employees to union rule.

The smear campaign worked. At the July 2006 Annual General Meeting (AGM) of FirstGroup, members and bosses of IBT, SEIU, and T&G, as well as other unions and several shareholders who were hoodwinked by the propaganda, raised a terrible ruckus. It was too much for Martin Gilbert, Chairman of FirstGroup, to bear. In exasperation he promised to "stamp out anti-union

behavior” and declared that the company “would do everything in its power to ensure the company was neutral on the issue of employee representation.”<sup>11</sup>

In October 2006 Compa published his *Follow-up Report: Freedom of Association and Workers' Rights Violations at First Student, Inc.*<sup>12</sup> Here he argued that notwithstanding Chairman Gilbert's earlier promises, First Student continued to resist unionization of its bus drivers in ways that no one could call "neutral."

In March 2007, again at the behest of the Teamsters, Compa, Logan, and Fred Feinstein, former NLRB General Counsel under President Clinton, each repeated the same allegations in three separate essays under the cover title *FirstGroup's Neutrality Policy: Failed Implementation* (<http://tinyurl.com/bx99219>). The best lesson any employer can take away from this screed is that you must never, ever say you will adopt a neutrality policy on unionization. If you do, you will soon see that anything you do that the union doesn't like will, by definition, be called non-neutral.

At the July 2007 AGM, FirstGroup officers almost completely capitulated. They promised to formulate a freedom of association policy and a means by which its compliance could be independently monitored.

In April 2008 First Student announced its "Freedom of Association Policy" and a "Compliance Monitoring Program" (<http://tinyurl.com/axzfdn>). The FOA policy stipulates that:

First Student supports human rights and the individual rights of its employees, including an employee's right to associate themselves with a labor union if they so choose....

In particular, during union organizing campaigns, management shall support the employee's individual right to choose whether to vote for or against union representation without influence or interference from management...

Our policy states that management shall not act in any way which is or could reasonably be perceived to be anti-union. ... [W]e believe that employees should be able to make an informed choice and therefore management may provide balanced factual information to assist its employees in making that choice.

This didn't fully placate the IBT. Although it promises that "management shall not act in any way which is or could reasonably be perceived to be anti-union," it is based on secret-ballot election certification, and it says that "employees should be able to make an informed choice." No card check and no neutrality.

On the other hand, Compa applauded the appointment of William B. Gould IV, Chairman of the NLRB during the Clinton years, as Independent Monitor in 2008. Gould later bragged that as a result of the Independent Monitoring Program, union density at First Student increased from 18 percent to over 80 percent.<sup>13</sup> This is a rather astonishing figure. Many union-friendly academics assert that about 60% of workers want to be in unions (e.g. <http://tinyurl.com/36hdef>). That figure is belied by the Rasmussen poll cited above; but apart from that, First Student's extraordinary density illustrates the coercive effects of "neutrality."

In July 2008 Compa published *FirstGroup's Freedom of Association Policy: A Positive Innovation*.<sup>14</sup> Here he damned First Student with faint praise. He opined

that First Student was making progress, but more had to be done. The Independent Monitor was hired by First Student, and his duties and powers were unilaterally determined by a naughty First Student which should have done all of it in collaboration with IBT. Moreover, Compa noted, even under the biased rules, the Independent Monitor had found many violations of the FOA policy. He concluded:

[The policy does] not go as far as companies that have adopted policies of full neutrality and acceptance of workers' choice of a bargaining representative rather than forcing employees into the NLRB election system.

A chastised First Student eventually fell into line. The independent monitoring program was terminated on December 21, 2010 after having been declared successful by both parties. In June 2011 IBT and First Student signed a national agreement that imposes unconditional surrender to the IBT at all its United States work sites. As General Douglas MacArthur said in Tokyo Bay on September 2, 1945 "These proceedings are now closed." In this case the wrong side won.

### C. The National Express/Durham Campaign and Response

The opening salvo in IBT's pursuit of unconditional surrender by Durham was a news release, dated May 9, 2008 and issued by the International Transport Workers' Federation [(ITF) <http://tinyurl.com/by5kfoh>]:

Trade unions today inaugurated a network for workers at National Express Group at a two day meeting at the ITF in London.

Representatives from The Netherlands, Spain, the UK and USA met for the first time to discuss the coordination of activities relating to the National Express Group (NEX). ...

NEX's US subsidiary, Durham, is considered an anti-union employer with a track record of poor labour relations and practices....

Note the similarity between this news release and the one issued by the Teamsters in December 2005 that presaged IBT's full scale attack on First Student. This is no coincidence. IBT was a major player at the ITF's two-day meeting. As we will see, the First Student precedent plays a large part in the attack on Durham.

In a letter to Richard Bowker, then CEO of NEX, dated September 3, 2008, Hoffa wrote:

We believe it would be mutually beneficial to meet and discuss ways we might work together to ensure the continued success of National Express' North American operations, thereby protecting the long-term security of our members.

Translation: It looks like we have First Student on the ropes, and now we are coming after you. Deliver your bus drivers to us. Hoffa went on to say:

FirstGroup has notably established a labor relations standard on Union neutrality during Organizing campaigns and elections....

We believe this is an opportune time to identify ways to work together – through our strong political state, county and municipal connections – on behalf of our members.

Translation: Do what we have coerced First Student into doing, or we will sic all the politicians who take orders from us (because we help them stay in power) on you.

On October 13, 2008 Bowker replied:

It is a fundamental principle of ours that we let our people decide themselves if they should or should not be a member of a Trades Union and if so, which one they would like to be members of. We think this policy has served both our employees and the company well and remains a democratic right of any employee.

Translation: You may have beaten First Student into submission, but you will find Durham to be more steadfast in its defense of its employees' freedom of association.

At the National Express AGM in May 2009, the IBT copied its strategy it used so effectively against FirstGroup at its AGM in 2006. It brought in alleged victims of Durham's union-avoidance efforts to weep, wail, and cajole the NEX board into ordering Durham to surrender. There was a faint hint that the strategy might succeed. Bowker assured the shareholders that "I will not tolerate, nor will the Board, trampling on workers' rights."<sup>15</sup>

In a letter, dated July 1, 2009, to John Devaney, Chairman of NEX, Hoffa wrote:

I am encouraged by your commitment at the National Express AGM to enforce your company's policy to "support the rights of employees to join a trade Union, or not, of their choice....

[However, a Canadian subsidiary of NEX has written a letter to its employees which] claimed that Unions "try to sell their services to you," and used dire, misleading language about Union dues and strikes in a clear effort to dissuade employees from choosing a Union, or not, "of their choice."

There are two things to note in the second quoted paragraph. First, it is undeniably true that unions try to sell their services to the employees they target. How else could a reasonable person interpret the torrent of union claims that they will benefit those employees if they sign cards and/or vote yes in certification elections? There is nothing wrong in a union (or anyone) trying to sell its services. Politicians are

always trying to sell their services. Second, there is nothing wrong in an employer trying to sell its employees the idea that unions are a bad idea. Don't Democrats try to sell voters the idea that Republicans are a bad idea? Hoffa is blinded by his conviction that among employees only the employers' "useful idiots" want to be union free.

The next attack against NEG/Durham came in the form of a written submission, by IBT and T&G, to the UK Parliament's Joint Committee on Human Rights: Session 2008-09 (<http://tinyurl.com/a4ahlo7>). The unions purported to speak about "Business and Human Rights." In section 1.5 they wrote:

Our experience of [NEX], especially in North America, provides a picture of a business that continually practices union avoidance and consistently violates the human rights of its employees by every means possible.

What is wrong with anyone trying to "avoid" possible changes in circumstances that may harm him? Should employers simply line up to be shorn? Pursuing good things and trying to avoid bad things is a prudent way to live. It is a part of the pursuit of happiness. Of course, different people have different ideas about what are good and bad things; but that is no excuse for only one side to be heard. Union avoidance, while avoiding force and fraud, is the prudent thing to do.

In section 1.7 the unions refer to Lance Compa's 2006 piece alleging rights violations at First Student. There is nothing new in that. In section 2.1 the unions refer approvingly to a report written by the Special Representative of the UN

Secretary General, John Ruggie, and submitted to the UN's Human Rights Council. (This is the Human Rights Council that accepted the late Hugo Chavez' regime in Venezuela as a right honorable member.) Ruggie simply shows that he has bought into the Compa-Logan misunderstandings of the UN Declaration's Articles 19, 20 and 23 and the ILO's Conventions 87 and 98 In section 3.5 the unions cite approvingly John Logan's 2007 contribution to the "Trio of Experts" attack on FirstGroup. These people simply have nothing new to say.

On December 8, 2009 the three members of the union-initiated National Express Monitoring Commission issued a public report (<http://tinyurl.com/awp7bt>) to IBT which did little else than rehash the submission of IBT and T&G to Parliament's Joint Committee on Human Rights. The report added some cheerless testimony from a few employees. Its recommendations included the usual:

**To the Company:** National Express should bring the management of its US subsidiary, Durham School Services, into conformity with both US labor law, international human rights standards and its own often stated policy of respecting workers' rights and allowing its employees to choose union representation freely if they so desire.

Comment: How are employees to know if they desire to associate with a union if they hear only the union side of the story?

**To National Express Shareholders:** Insist on a corporate policy that protects workers' rights wherever the company operates, including the right to freedom of association and to bargain collectively. Further, shareholders should demand implementation of a system to monitor and enforce that policy.

Translation: Make your company more like FirstGroup.

**To Legislators:** Consider public procurement laws that would require that the labor relations records of contracting firms be taken into account when using taxpayer dollars to enter into contracts for services like school bus transportation.

Translation: Do what the unions tell you to do. Then they will give you campaign donations.

Dean Finch, who used to work for FirstGroup, became CEO of NEX in February 2010. At the May 2010 AGM, he and the Board were again importuned by Teamsters and their henchmen to adopt a Freedom of Association Policy just as FirstGroup had done. He replied:

I see no need to introduce a Freedom of Association Policy. The system in North America is very different from the UK. Managers have the right to talk about the negative effects of joining the union, as they do in every other company in the US. We don't stand in the way if a worker wishes to join a union.<sup>16</sup>

Chairman Devaney added:

Workers have the right to join a union if they want to. Management also has the right to present facts to workers about what might happen if they do join a union .... We are a fair employer, and if workers want to join a union they can; but the rules allow us to present information."<sup>17</sup>

In a letter dated July 6, 2010 (<http://tinyurl.com/borr7m7>), thirty-six members of Congress, including Rush Holt who is a member of the National Express Monitoring Commission, and all of them with solid records of doing the unions' bidding, scolded Finch:

Opposing unionization efforts creates a dangerous double standard where American workers are treated differently than their British counterparts. Other American transportation companies, such as FirstGroup, have developed non-interference policies and have been able to operate successfully, thanks in part to their stable employer-employee relationship. This example should be followed.

Comments: FirstGroup's "stable employer-employee relationship" is a stability that comes from giving up the fight. As to whether First Student is able "to operate successfully," consider this. An investment advisory publication put out by Bank of America in May 2011 stated:

We believe that the current school bidding season will be challenging, with FGP [FirstGroup] (as it did last year) protecting its margins at the cost of volume, and thus potentially losing a number of contracts to competition. ... [W]e still believe that the backdrop for FY'12 remains cautious. As a result, our top line growth rate in FY'12 is -2% YoY [year over year]. Moreover, organic cost savings will be hard to realise in our view, primarily driven by the fact that the work force (which makes up the majority of the cost base at c. 55%) is highly unionised (c. 85%).<sup>18</sup>

In May 2011, NEX adopted its Workplace Rights Policy for Durham (<http://tinyurl.com/cgryua3>), which actually does protect its employees' freedom of association and comports with the relevant UN documents. The listed workplace rights are:

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions. NEG believes that Freedom of Association also means that no one should be compelled to provide financial support to associations or causes which are inconsistent with their personal beliefs.

Comment: This is in exact conformity with Article 20 of the UN Declaration.

2. The right to vote in secret is absolute and should not be restricted in any manner. When consistent with local law, everyone shall have the right to vote for representatives in genuine elections which shall be held by secret ballot, guaranteeing the free expression of the will of the electors.

Comment: Durham will not agree to surrender its employees to the Teamsters through craven card-check agreements in which secret-ballot elections are replaced by employee signatures collected by union organizers in threatening face-to-face

encounters with employees. Only secret-ballot elections protect workers' right to express their true preferences without fear of retaliation.

3. Everyone shall have the right to freedom of expression. This right shall include freedom to seek, receive and impart information and ideas of all kinds, either orally or in writing, or through any other media of their choice, and the freedom to hold opinions without interference.

Comment: This conforms exactly to Article 19 of The UN Declaration. Durham will tolerate no gags on employer or employee free speech.

4. Everyone shall have the right to obtain or impart information necessary to make an informed choice, a necessary corollary to the rights of freedom of association and secret ballot elections for representatives. Where necessary, NEG will ensure that (1) employees have the information necessary to make a fully informed choice on the important issue of representation and (2) that no party will unlawfully prevent the dissemination or expression of any views on representation.

Comment: Freedom of association requires that both sides be heard as well as safety in the expression of workers' decisions.

5. Everyone shall have the right to protection against interference with their privacy, family, home or correspondence, or attacks on their reputation, and no one shall be subjected to such interference or attack.

Comment: Let's have a clean campaign without force, fraud, or intimidation. This may be outside the experience of Teamster organizers, but it is a good rule.

6. Everyone shall have the right to their property. No one shall be deprived of their property, or the right to exercise control of their property, whether real, tangible, or intangible.

Comment: Let's not trespass against the entitlements of anyone.

In the same month, the Teamsters put out a paper, with no designated author, under the title *National Express Group: A Culture of Contradictions*

(<http://tinyurl.com/czrj2hu>). This includes a Foreword by Congressman Rush

Holt, and a “Message” from Hoffa. Holt wrote:

The right to form and join a trade union is a key article of the Universal Declaration of Human Rights, to which the USA and Britain are both committed. The principle is enshrined in national legislation in the USA and in Britain, in line with the conventions of the International Labour Organisation. National Express Group's own human rights policy expressly states that it seeks "to promote with relevant local legislation and the principles of the Universal Declaration of Human Rights." In my view, in America, National Express is operating in breach of its own policy and these principles.

No comment necessary. See above.

The Hoffa message is the by-now familiar theme of FirstGroup as the good guy and NEX as the bad guy.

There is a disparity between [First Group and NEX]. ...First Student, has adopted a policy respectful of its employees' human rights, especially those concerning freedom of association; National Express Group's US subsidiary, Durham School Services, despite claiming to honour and adhere to international conventions on human rights, displays a record littered with concerns regarding unfair labour practices and legal complaints from its employees who dare to stand together to form a union.

The Overview of the report includes the following confession:

Since early 2002, representations have been made to engage National Express in a friendly and constructive dialogue regarding unionisation in Durham School Services. That dialogue has involved entreaties to the company from leaders and officers of the International Brotherhood of Teamsters, the Transport and General Workers Union ... and the ITF.

During the course of this correspondence, and despite starting from a position of claiming to support employees' "rights attendant to union organisation," there are strong concerns that National Express has undertaken a campaign of anti-union activities in its American subsidiary.

This is a confession that unions are third parties that come between employers and employees. Before they approach employees, they importune employers to turn their employees over to the tender mercies of union bosses. When employers

refuse, unions first engage in corporate campaigns and only then go employees to sell their services.

The report ends with four recommendations:

- (1) National Express should commit to a policy of strict neutrality in unionization campaigns. A transparent, effective and permanent compliance system should be put in place to enforce this policy....
- (2) We recommend that National Express publicly state its support for freedom of association in its US operations....
- (3) We recommend that National Express' shareholders request a corporate policy that protects workers' rights wherever the company operates, including the right to freedom of association and to bargain collectively
- (4) We recommend that legislators in the UK and US engage with National Express to influence the company to act responsibly and in line with international employment conventions and protocols....

This is the usual broken record. Come on IBT, think of something new.

In October 2011, Michael Wasser, at American Rights at Work, an AFL-CIO organization, put his half-cent's worth into the campaign with the publication of *Analysis of National Express Group PLC's Workplace Rights Policy*

(<http://tinyurl.com/cng8cza>). It is full of the usual arguments and conclusions, but

Wasser added one suggestive observation:

Durham's management has actively resisted worker efforts to organize, while still claiming to be a model corporate citizen supporting basic workplace rights, including the freedom to associate. In fact, 94 percent of NEG's employees in its home country of the U.K. are union members, while only 32 percent of its North American workforce can make the same claim – many of which held union representation before working for the company.

He suggests that if you want to see whether workers in any country enjoy freedom of association in the workplace, just check the country's union density – high

density goes with more freedom of association. This is preposterous. I think it is more likely that the correlation is negative – higher density goes with low freedom of association because high density implies more coerced unionism.

Wasser's piece was followed in December 2011, by another John Logan contribution, *National Express Group's Diminution of Labor Rights in the U.S.* (<http://tinyurl.com/cqdou5v>). Same arguments, same conclusions, and frequent use of the nonsense term "labor rights."

In May 2012 at National Express's AGM the Teamsters again flew in selected American employees of Durham to walk in a lachrymose parade. Fortunately, all the lamentations fell on skeptical ears. Shareholders, the Board, Devaney, and Finch seem determined not to surrender Durham's employees to union rule. Nevertheless, the Teamster freedom of association hustle will continue. I hope that NEX officials continue to refuse to play the game.

### **In Conclusion**

Freedom of association is, indeed, a fundamental human right. That is why labor unions have no right to force any individuals to associate with them. That is also why employers have the duty to make sure their workers can cast fully-informed and uncoerced votes in NLRB-supervised secret ballot certification elections.

The NLRA, the UN's Declaration of Human Rights, and the ILO's Conventions 87 and 98 all support every worker's right to decline offers of

association from labor unions (and any other groups). They all say workers are free to associate or not associate with unions. Notwithstanding the misguided representations of the Teamsters and their surrogates, workers must be, in the words of Milton Friedman, free to choose.<sup>19</sup> The private school-bus campaigns are a case study in the misuse of a truncated understanding of freedom of association in the pursuit of personal enrichment for a privileged few who seek to free ride on the backs of honest workers.

## Endnotes

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- <sup>1</sup> Charles W. Baird, "The Varieties of 'Right to Work': An Essay in Honor of W. H. Hutt," *Managerial and Decision Economics*, Special Issue, Winter 2008: 33 -43.
- <sup>2</sup> Israel Kirzner, *Competition and Entrepreneurship*, Chicago: University of Chicago Press, 1973.
- <sup>3</sup> See Douglas B. Rasmussen and Douglas J. Den Uyl, "Making Room for Business Ethics: Rights as Metanorms for Market and Moral Values," *The Journal of Private Enterprise* 24.2 (Spring 2009): 1-19; and by the same authors, *Norms of Liberty: A Perfectionist Basis for Non-Perfectionist Politics* (Pennsylvania State University Press, 2005), especially chapters 4 and 11, for an extensive elaboration of this approach to fundamental human rights.
- <sup>4</sup> UN bureaucrats frequently make proclamations that betray their ignorance on the logically-necessary universal nature of human rights. For example, in late November 2012 one UN agency declared access to contraceptives, at other people's expense, to be a universal human right (<http://tinyurl.com/c2xok3x>). Just like President Obama.
- <sup>5</sup> Section 9 of the NLRA sets out the rules for secret-ballot certification elections to determine whether workers want to designate a particular union, or any union, as their representative.
- <sup>6</sup> See Thieblot, Armand J. et al. *Union Violence: The Record and the Response by Courts, Legislatures, and the NLRB*, George Mason University, John M. Olin Institute for Employment Practice and Policy, Fairfax, VA, 1999.
- <sup>7</sup> Barry T. Hirsch, "Sluggish Institutions in a Dynamic World: Can Unions and Industrial Competition Coexist?" *Journal of Economic Perspectives*, Vol. 22, No. 1 (Winter 2008), pp. 153–176.
- <sup>8</sup> Erik Peterson, "A Hard Job: Lessons from SEIU Local 284's five campaigns to organize Twin City school bus drivers," Labor Education Service, University of Minnesota, March 30, 2005: 29
- <sup>9</sup> This publication has been withdrawn from the internet. I have a file copy.
- <sup>10</sup> This publication has also been withdrawn from the internet, but it is referenced by William B. Gould IV in fn 58 of "Beyond Labor Law: Private Initiatives to Promote Employee Freedom of Association in the Obama Era," *Indiana Law Journal* 87:1 (2012)
- <sup>11</sup> See fn 63 in the Gould article cited *supra* end note 10
- <sup>12</sup> *Ibid*, fn 58.
- <sup>13</sup> *Ibid*, p.98.
- <sup>14</sup> This article has also been withdrawn from the internet. I have a file copy.
- <sup>15</sup> See *National Express Investor Newsletter*, Issue 3, published by IBT in June 2010. This document has been withdrawn from the internet. I have a file copy.
- <sup>16</sup> *Ibid*.
- <sup>17</sup> *Ibid*.
- <sup>18</sup> Bank of America Merrill Lynch, "Student Recovery In Focus," May 13, 2011.
- <sup>19</sup> Friedman, Milton and Rose. *Free to Choose*, New York: Avon Books, 1981.