

Free Choice, Unions & Public Policy

What Are Workers Really Thinking and Wanting?



Presented By
Glenn M. Taubman

Staff Attorney
National Right to Work Legal
Defense Foundation
gmt@nrtw.org
1.800.336.3600



Presented By
John Mortimer

President
Canadian LabourWatch Association
john@labourwatch.com
1.888.6LABOUR



A Catastrophe in the News



Agenda / Objectives...

Unionization trends in Canada & United States

What do employees REALLY want: the research says . . .

Disconnect: employee wishes, labour law & union leaders

Secret ballot votes vs card check – a key battleground

The Holy Grail: forced vs voluntary union dues

American “Right to Work” law – what does it really mean?

Q&A – ask at anytime!

Introductions

Experience with unions – who has been:

- ▶ In a unionized job - ever
- ▶ Union-free job but unionized jobs in the organization
- ▶ Through a union drive; a vote or card certification
- ▶ Through a union decertification drive; a vote
- ▶ Through a strike or lockout
- ▶ Any other insights on unions



Background – John Mortimer

15 years corporate HR, MIS & Risk Mgmt roles:

- Future Shop
- Wendy's Restaurants
- Colorization (high tech)

12 years consulting:

- Management consulting - turnarounds
- Union-free: organizing and decertification
- President of LabourWatch – 1999 to date



Background – Glenn Taubman

- Attorney 25 years at National Right to Work Legal Defense Foundation
- Litigated dozens of federal court and National Labor Relations Board worker freedom of choice cases
- Areas of specialization:
 - ▶ Advising employees on resisting “card check” organizing
 - ▶ Representing employees in decertifying unions and other NLR election campaigns
 - ▶ Representing employees in enforcing state Right to Work laws and federal anti-corruption laws
 - ▶ Defending employees against union fines, penalties and other internal union discipline

The Legal Landscape – An Introduction



Card Check Certification Available

Jurisdiction	Vote Support	Certification No Vote	Time to Vote	Vote History	Card Fee Required	Life of a Union Card	Remedial Certification
Federal	35 - 50%	50% + 1	Not specified	Never	At least \$5	6 months	Yes
Manitoba	40 - 65%	65%	Within 7 days	'96 - '00	No	12 months	Yes
New Brunswick	40 - 60%	60% + 1	N/A	Never	At least \$1	3 months	Yes
Nova Scotia (construction)	35 - 50%	50% + 1	Within 5 days	Never	At least \$2	3 months	Yes
Ontario (construction)	40 - 55%	55% + 1	Within 5-8 days	'95 - '03	No	12 months	Yes
Prince Edward Island *	50% + 1	50% + 1	Not specified	* Mgmt concerns = election	No	6 months	Yes
Quebec	35 - 50%	50% + 1	Not specified	Never	At least \$2	12 months	Never granted
USA Post EFCA	30 - 50%	50% + 1	Not Specified	'47 - present	Yes	At least 1 year	Yes



No Card Check Certification

Jurisdiction	Vote Support	Time to Vote	Vote History	Card Fee Required	Life of a Union Card	Remedial Certification
Guaranteed Certification Vote – Remedial Certification Barred by Law						
Alberta	40%	“ASAP”	`88 - present	At least \$2	90 days	No
Saskatchewan	45%	Not specified	`08 - present	No	3 months	No
No Card Cert BUT Board has Remedial Cert Power for Employer ULP’s						
British Columbia	45 - 100%	Within 10 days	`89 - `93 `01 - present	No	90 days	Yes
Nova Scotia (non-construction)	40 - 100%	Within 5 days	`77 - present	At least \$2	3 months	Yes
Ontario (non-construction)	40 - 100%	Within 5-8 days	`95 - present	No	12 months	Yes
Newfoundland & Labrador	40 – 100%	Within 5 days	`93 - present	No	90 days	Yes
USA - Current (Pre EFCA)	30%	42 days on average	`69 - present	No	At least 1 year	Yes



Canadian LabourWatch Association

Informed Employees Making Informed Choices

- Founded 2000.
- Only “balanced” site for employees wanting:
 - ▶ information without pro-union, anti-mgmt bias
 - ▶ resources if they have no lawyer
 - ▶ tool to assist a lawyer in helping employees
- FAQ’s for employees
- Download documents: cancel card, petitions, decertification, Unfair Labour Practices
- Links to unions
- Research & education – where Cdn en



LabourWatch Background

Unions very active on the net

Rules complex & technical

Stories from employees

Labour lawyer proposes employee website

Associations & law firms supported

Federal non-profit created - Oct 2000

Member driven Board of Directors



National Right to Work Legal Foundation

- Founded in 1968.
- A private, charitable organization
- Supported by voluntary contributors only & court awards against unions
- NRTW gets no government funds
- NRTW's mission: eliminate compulsory unionism through courts, legislatures and public education

NRTW Background

- NRTW: 10 full time attorneys
- NRTW attorneys have argued 14 cases before the U.S. Supreme Court, and many other precedent-setting cases before the NLRB and lower federal courts
- NRTW attorneys have over 200 currently pending cases challenging various aspects of compulsory unionism.
- Go to www.nrtw.org for more information.

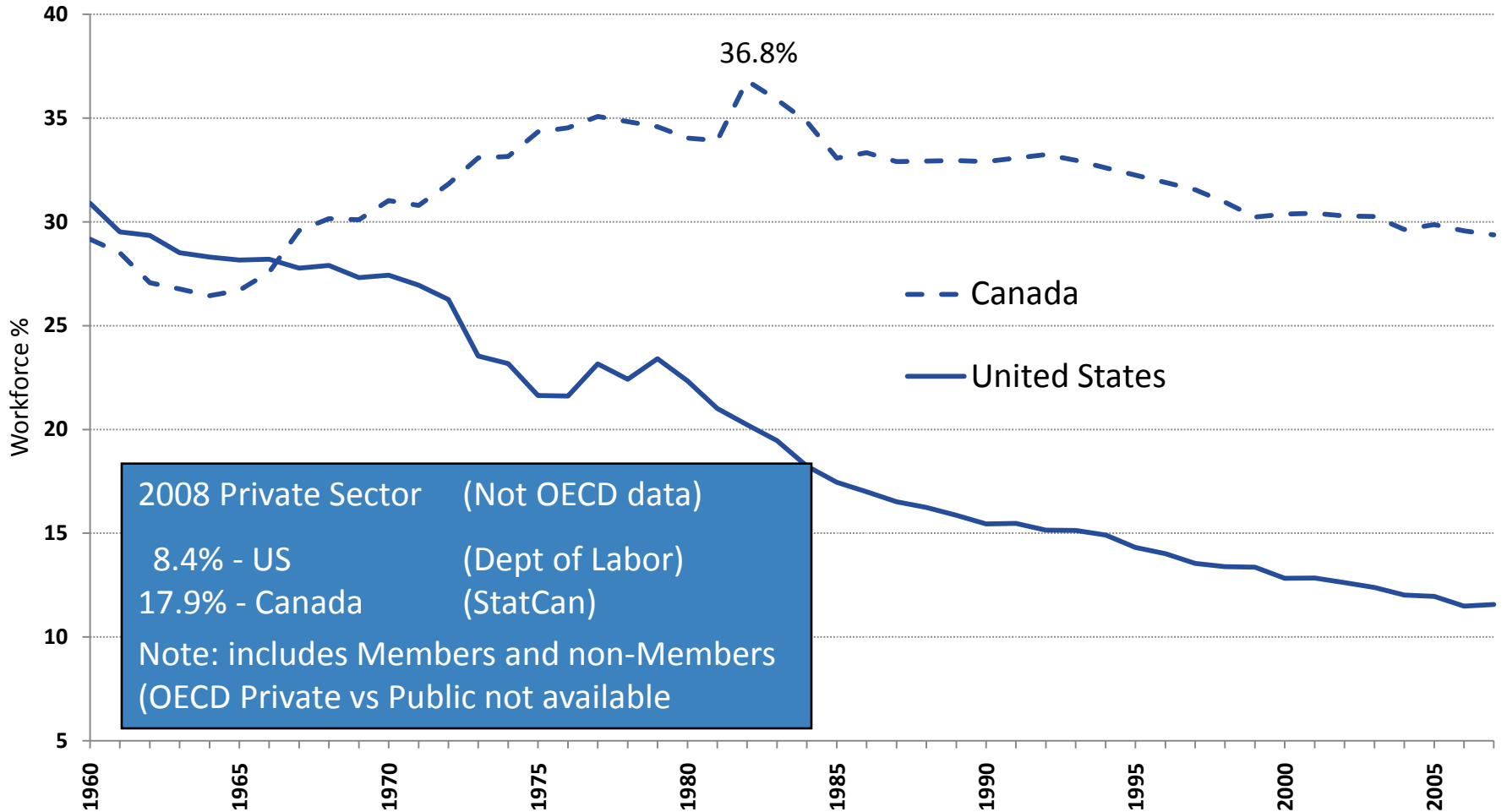


Unionization Trends

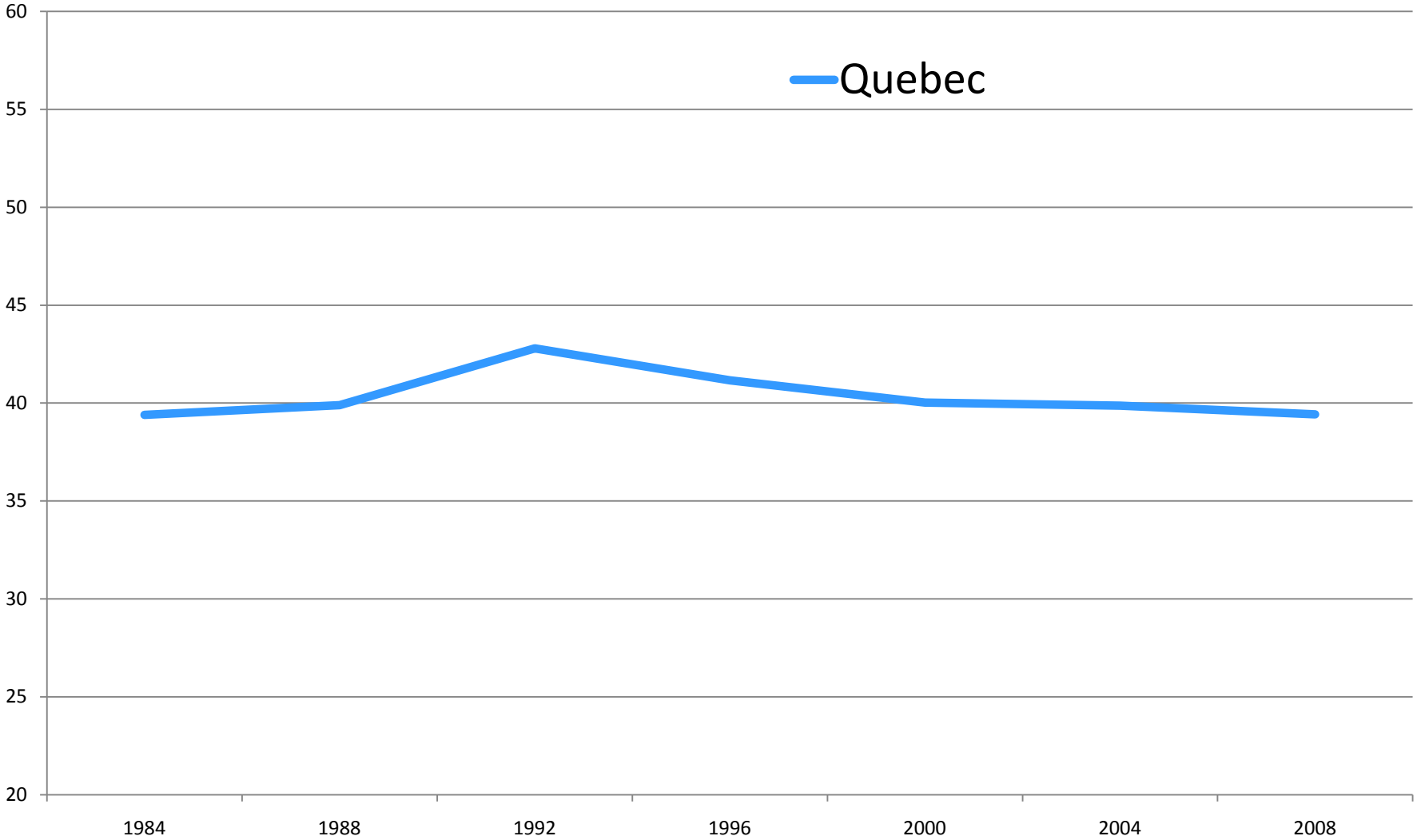


Union Density Rates – Canada vs US

Public and Private Sector Combined - 1960 to 2007 - (OECD Data)

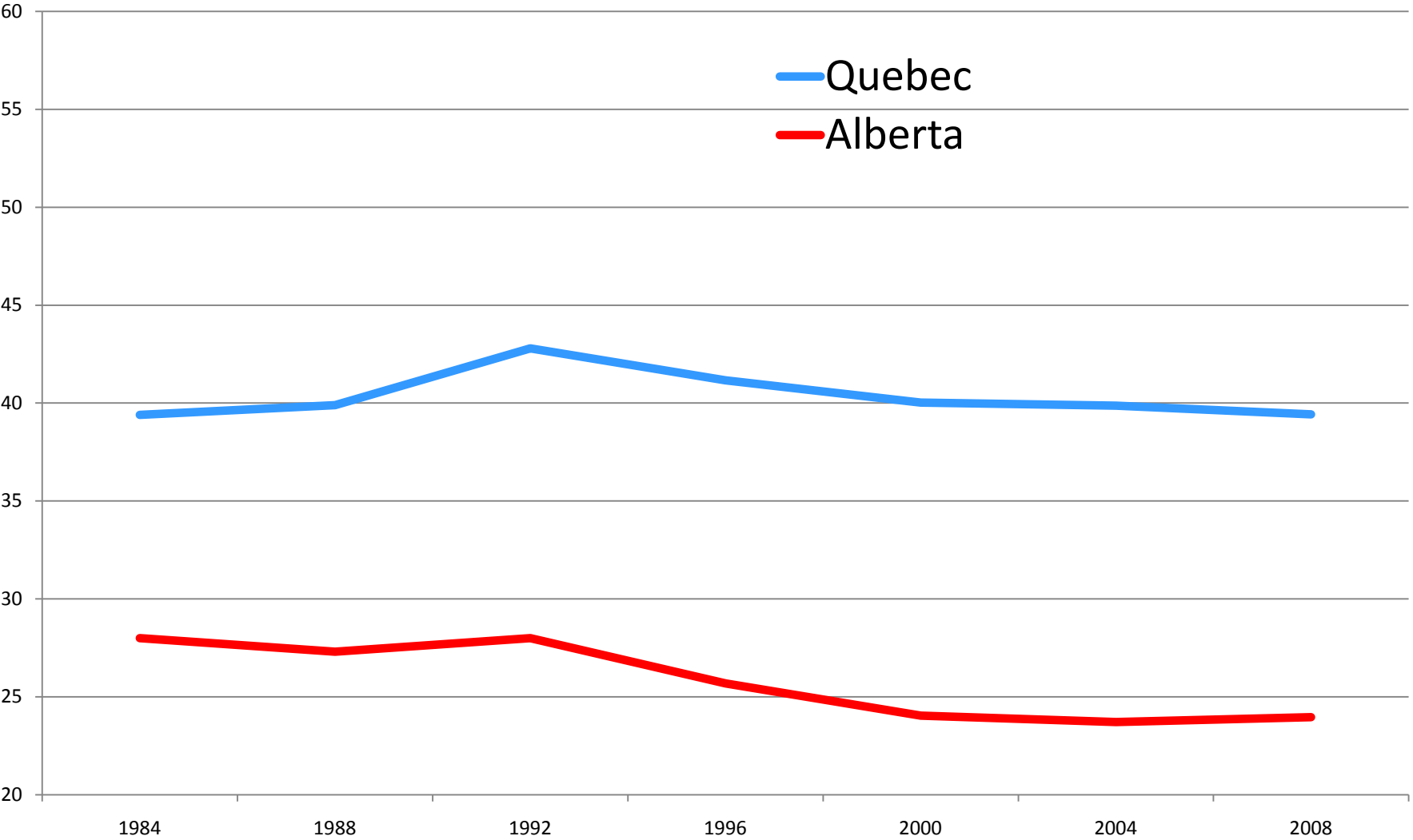


Unionization Density Trend – 1984 to 2008



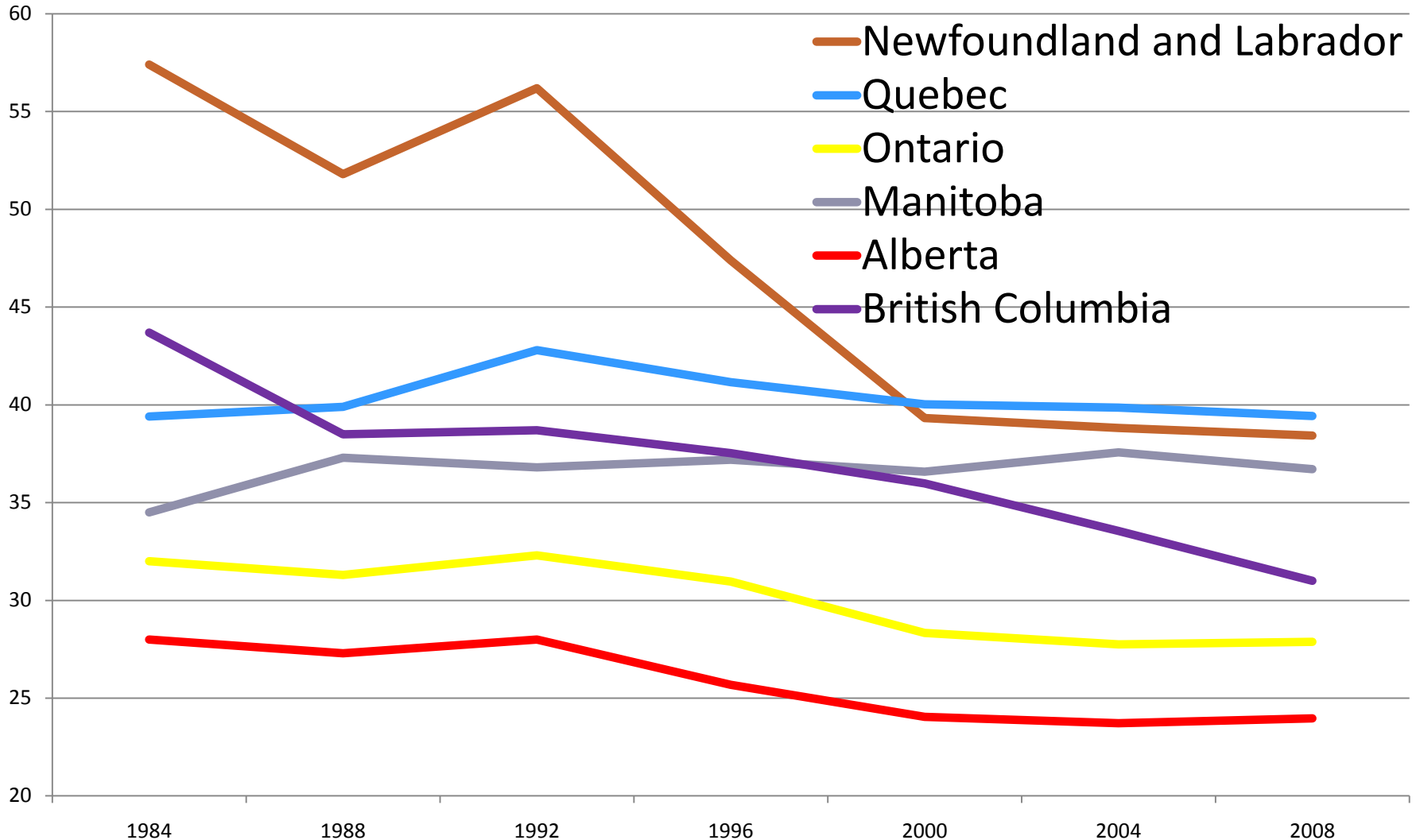
Public and Private Combined - 1984 to 2008
(StatCan 2008 Labour Force Survey)

Unionization Density Trend – 1984 to 2008



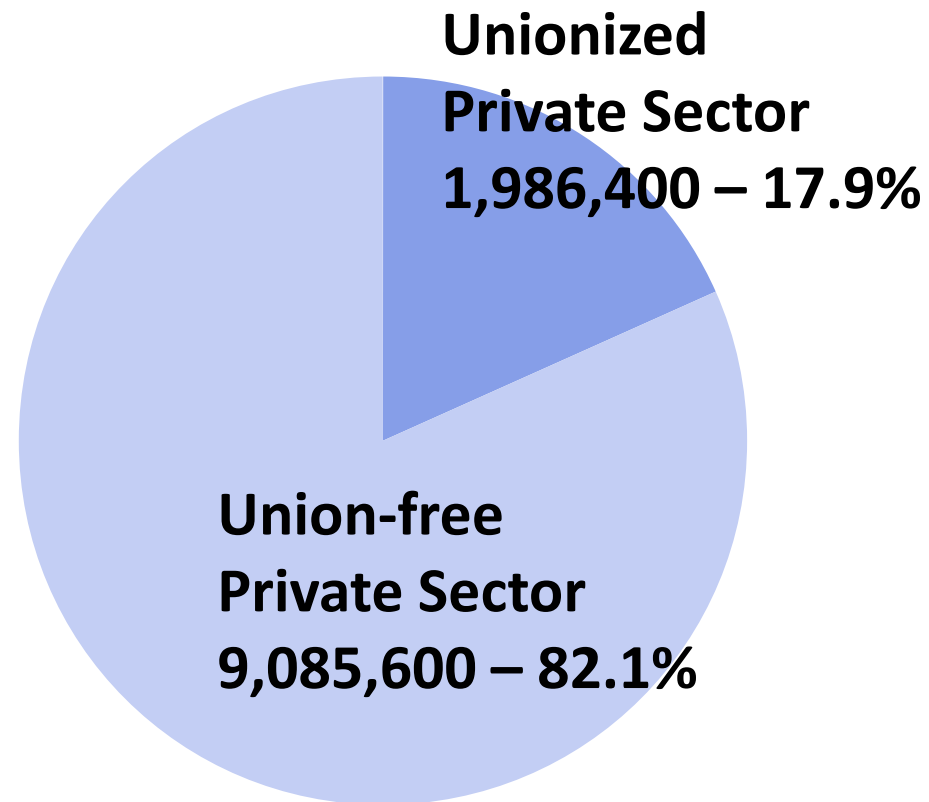
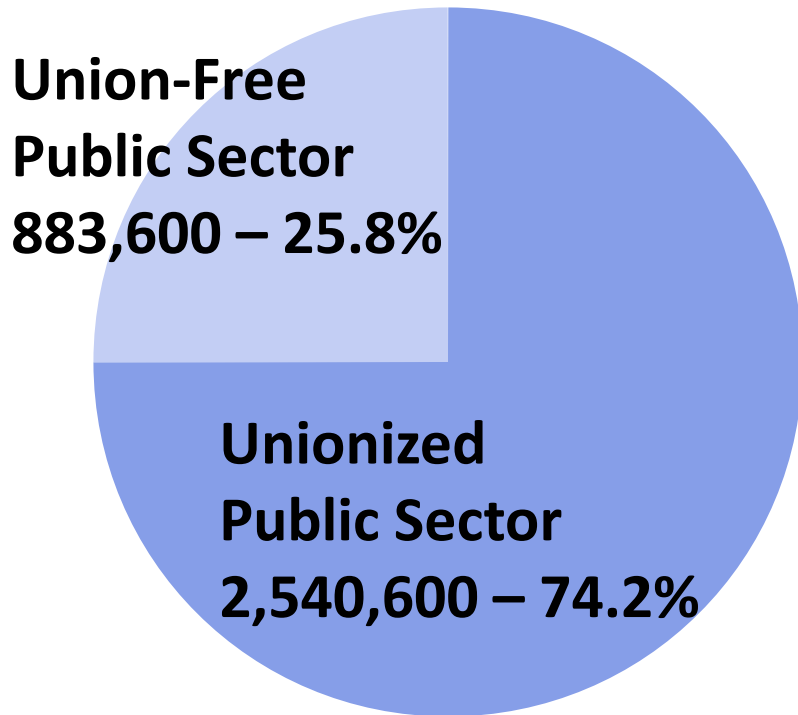
Public and Private Combined - 1984 to 2008
(StatCan 2008 Labour Force Survey)

Unionization Density Trend – 1984 to 2008



Public & Private Combined - 1984 to 2008
(StatCan 2008 Labour Force Survey)

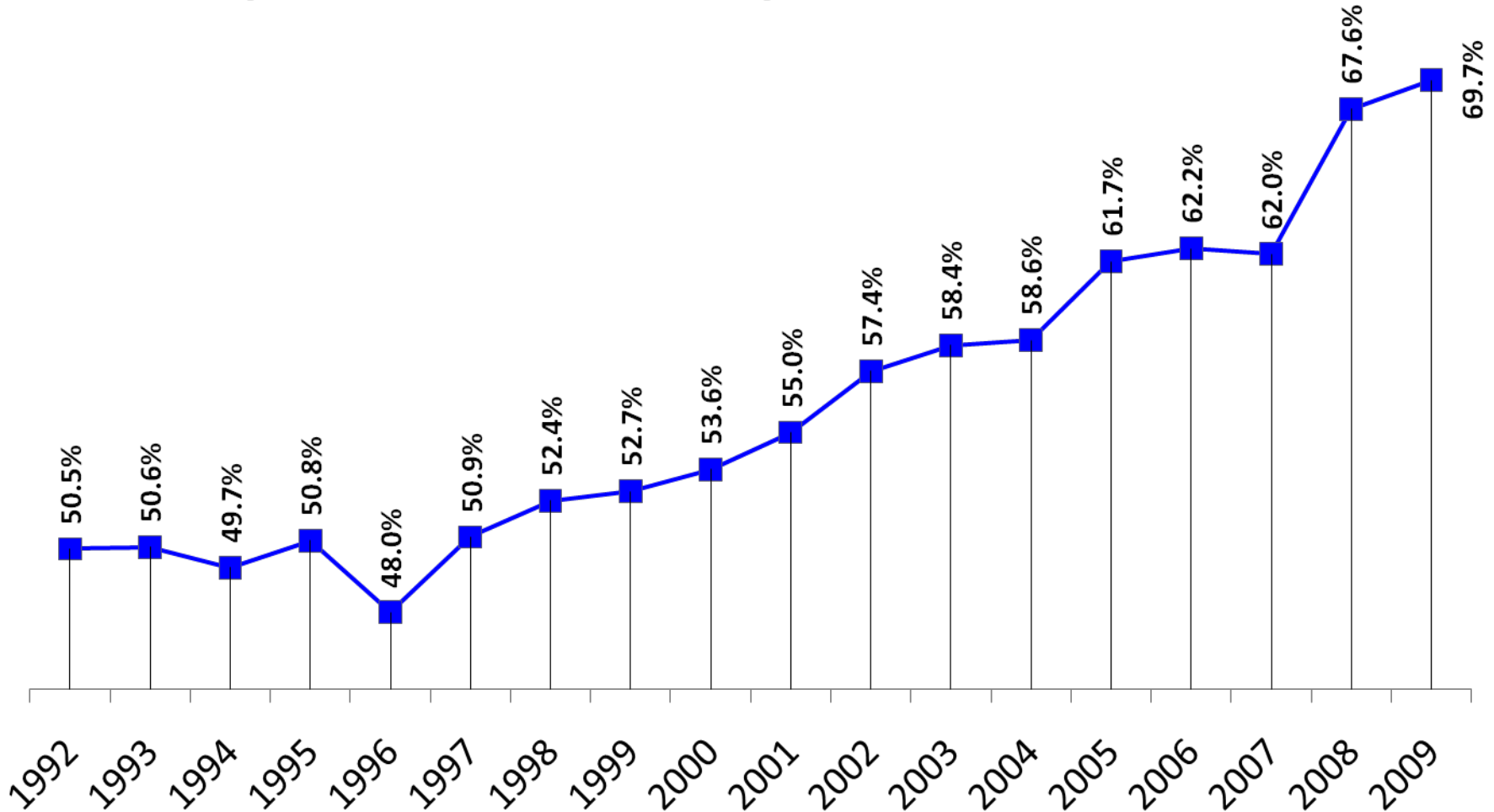
Unionization – Public and Private Breakout - 2008



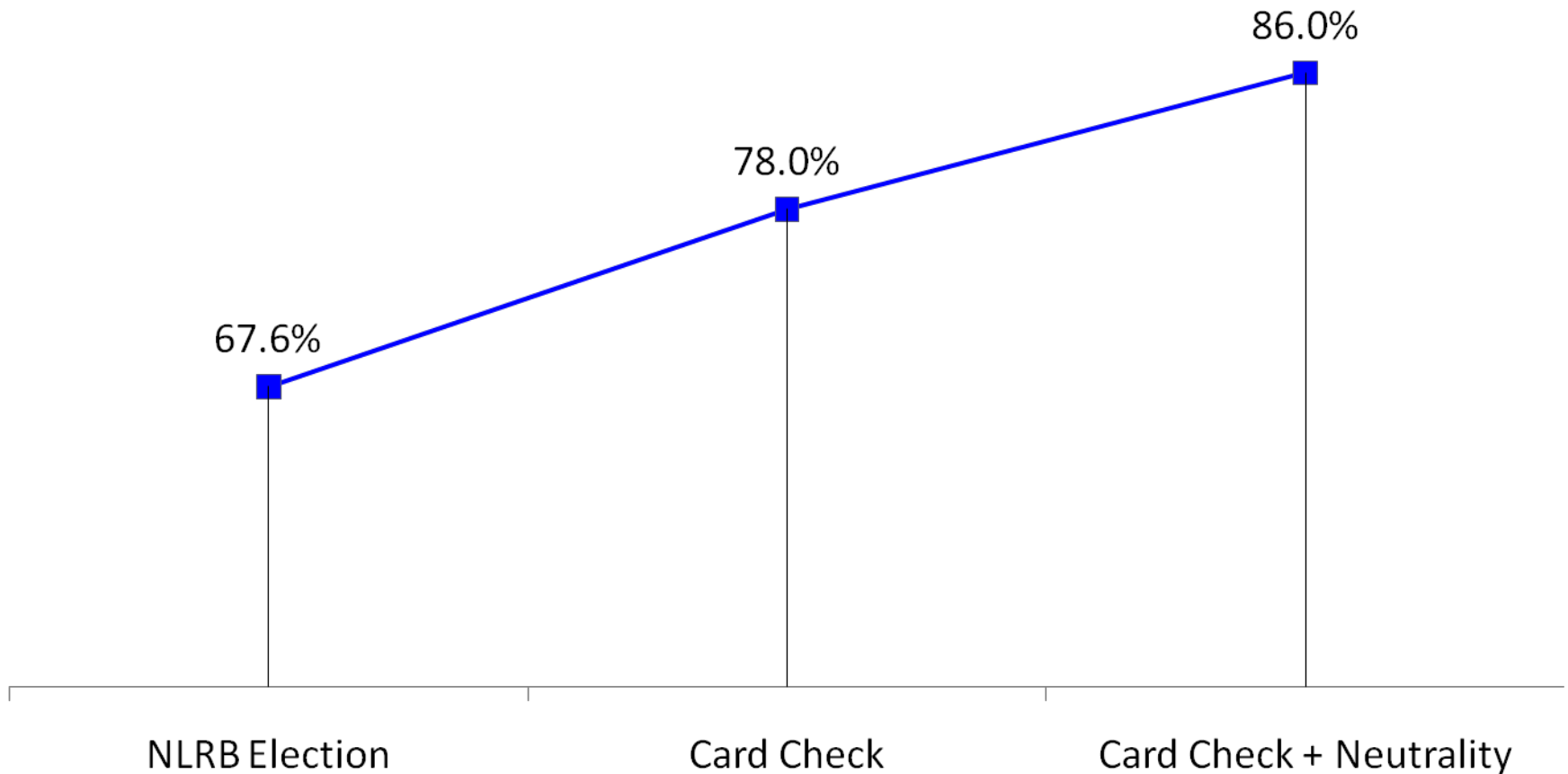
Total Employees – 14,496,200
Excludes self-employed
2008 StatCan Labour Force Survey (LFS)



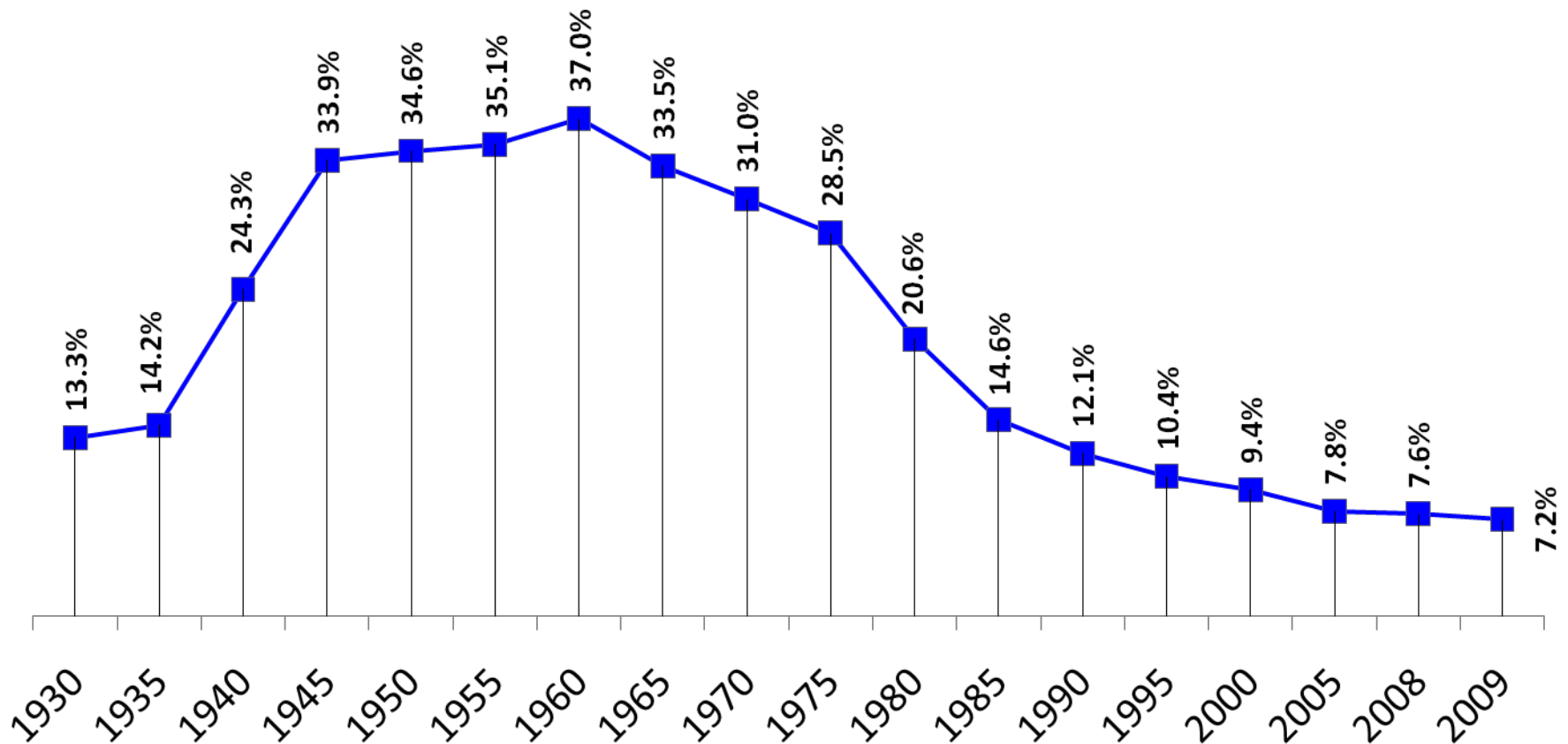
USA Union Election Wins (NLRB RC Elections) 1992-2009



USA Union Win Rate, By Type (2008)



USA Private Sector Trade Union Density 1930-2008



What Do “Labourers” Really Want?

And the Research Says . . .



STATE OF THE UNIONS: PART II



PATRICK DOYLE / REUTERS FILES

Jean-Pierre Blackburn

'If they find a new concept, I'm ready to open Part One of the Canada Labour Code to change the way it is written.'

— Jean-Pierre Blackburn, federal Minister of Labour, on a study by lawyer Peter Annis looking at ways to improve labour relations and reduce the number of work days lost to strikes.



PETER J. THOMPSON / NATIONAL POST

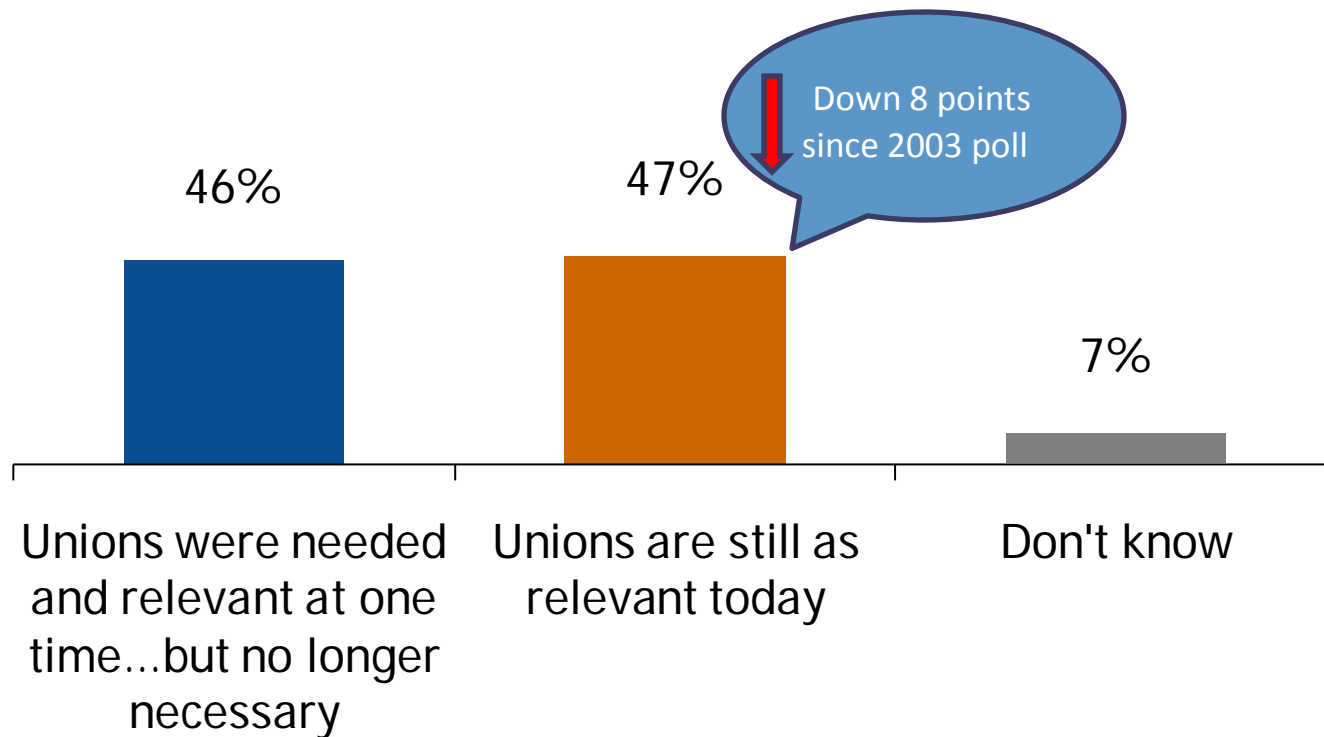
A Simmons Canada employee waves to a supporter at the company's Brampton, Ont., location on Friday. The employees have been on strike since Aug. 15 over a contract dispute.

FINANCIAL

Are Unions Still Relevant?

Which statement best reflects your personal opinion?

2008 Nanos/LabourWatch/National Post-Le Journal Poll

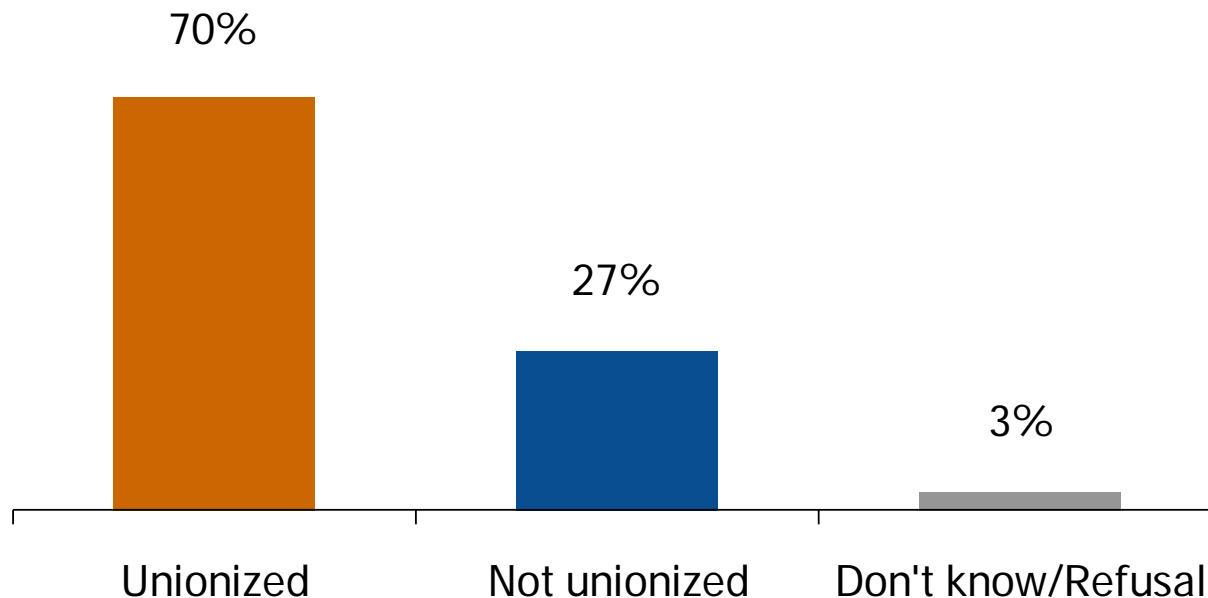


Unionized Employees re Unions

Would you like to be unionized?

Currently unionized respondents – 257/1000

2008 Nanos/LabourWatch/National Post-Le Journal Poll

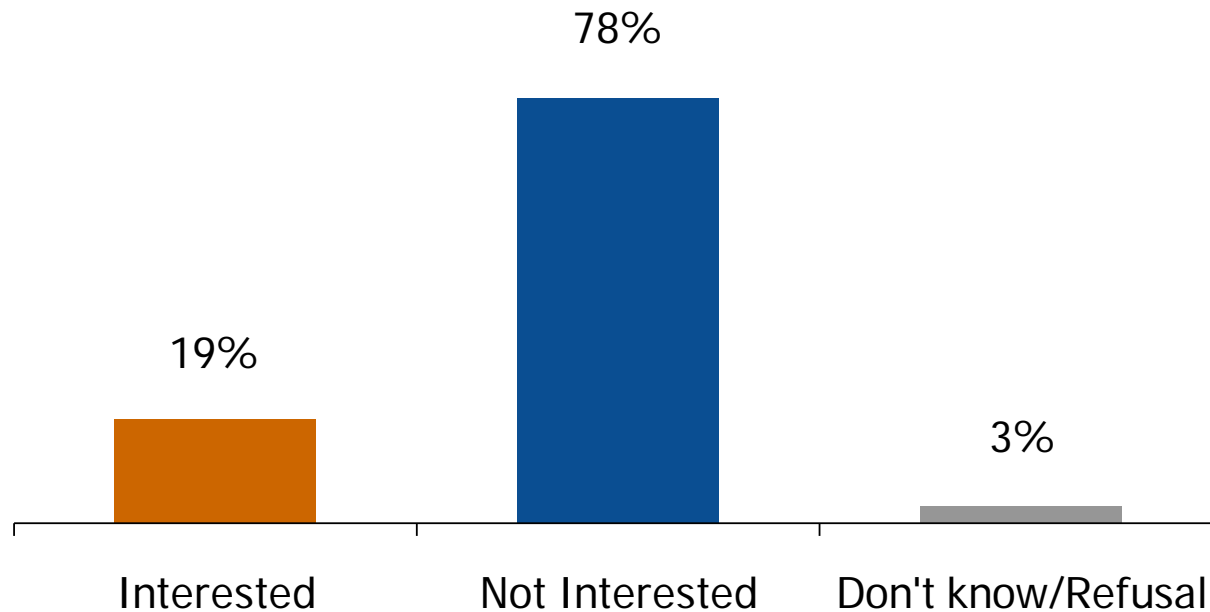


Never Unionized Employees re Unions

Would you like to be unionized?

Never unionized respondents – 610/1000

2008 Nanos/LabourWatch/National Post-Le Journal Poll

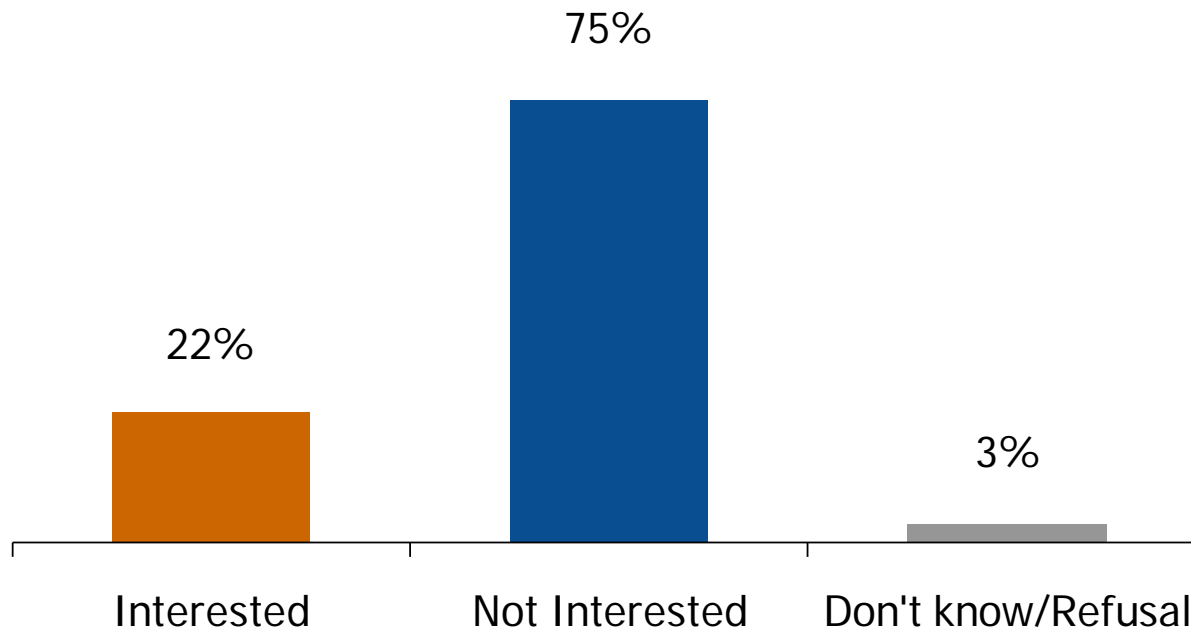


Formerly Unionized Employees re Unions

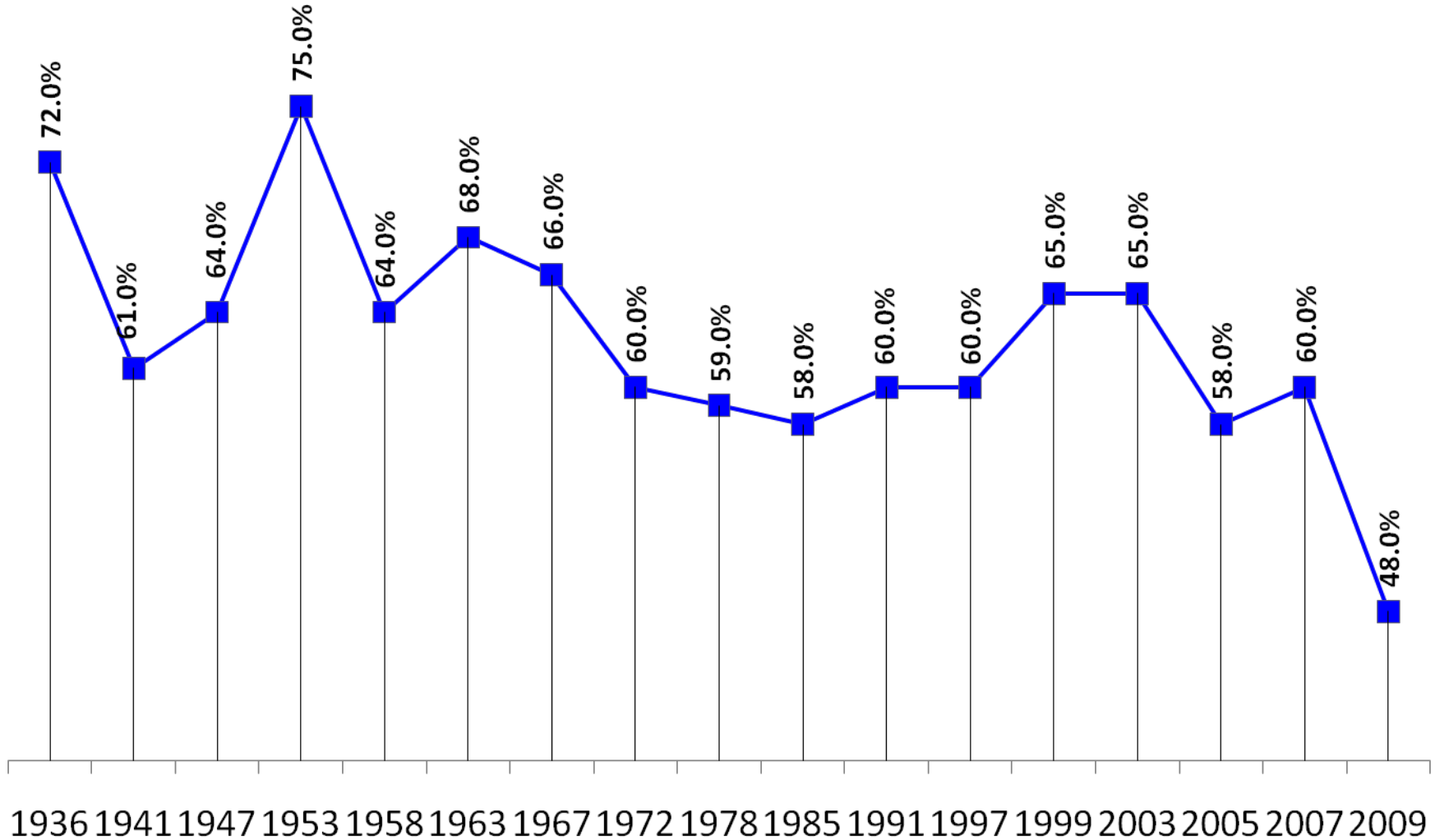
Would you like to be unionized?

Formerly unionized respondents – 133/1000

2008 Nanos/LabourWatch/National Post-Le Journal Poll



Approval of Unions - USA, 1936-2009





Canadian Labour Congress

Congrès du travail du Canada

Canadians talk about Unions

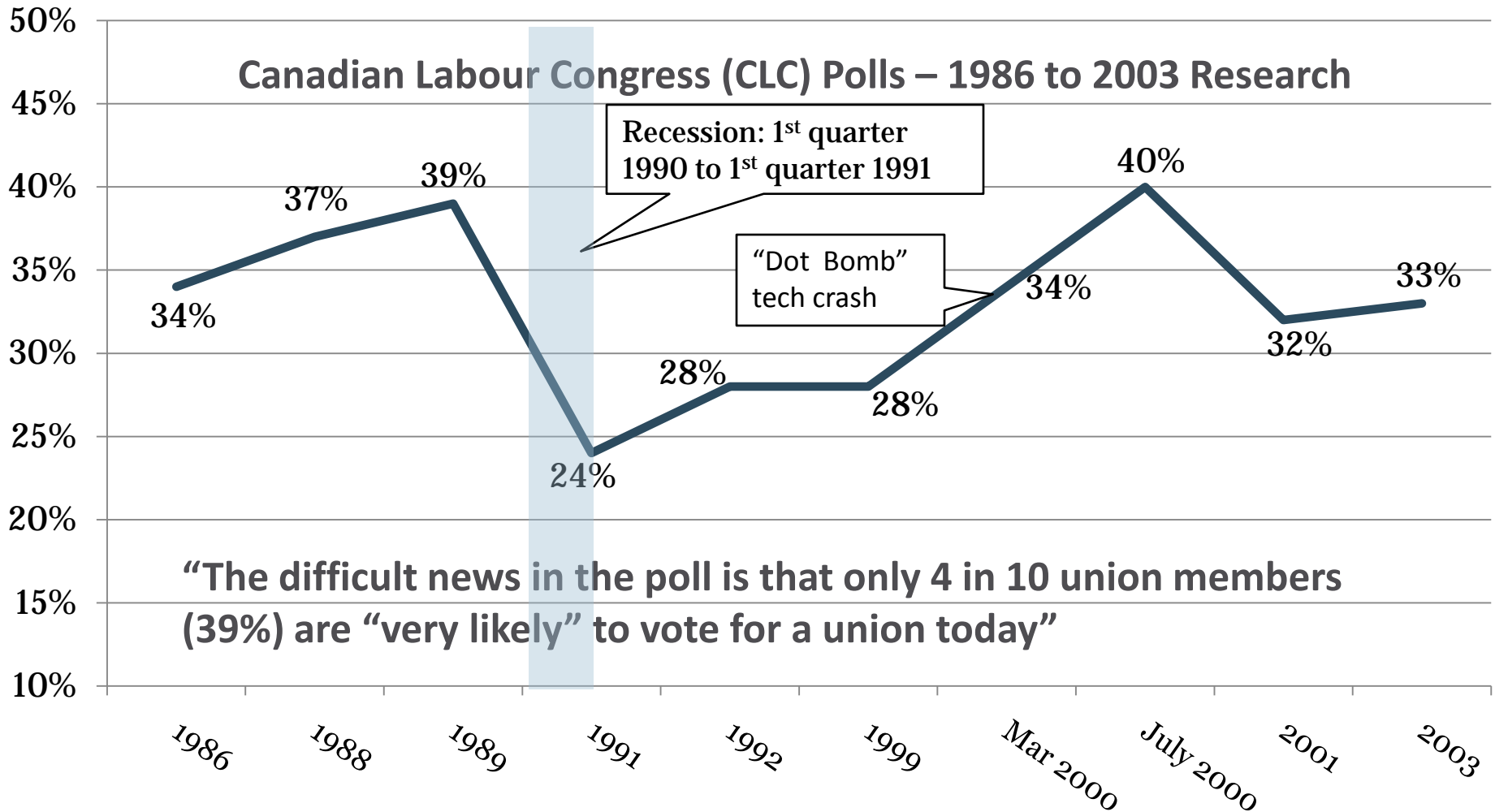
Prepared for the 2003 CLC Mid-Term Conference



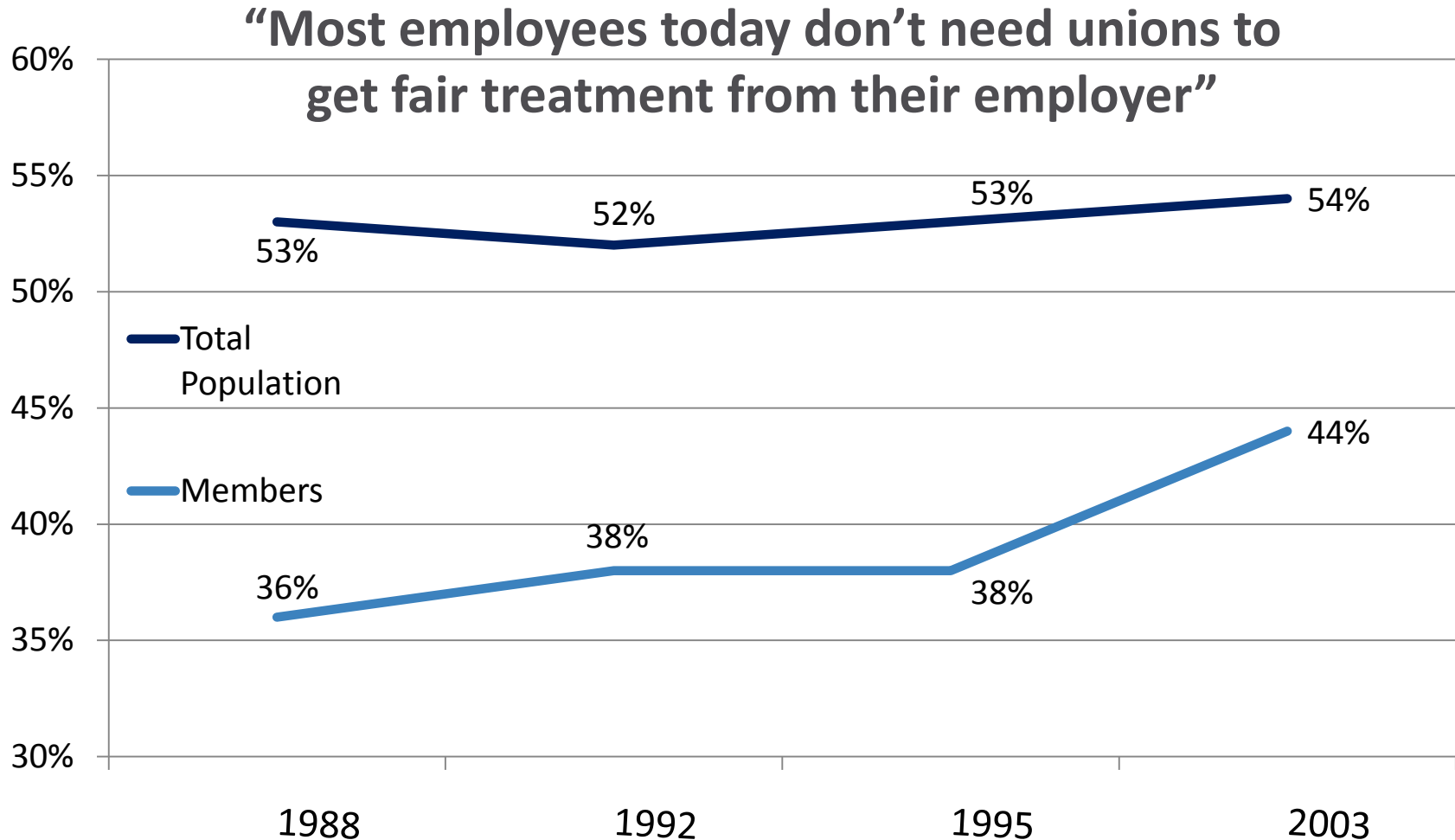
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since 1964

labourwatch

Interest in Joining a Union - Canada



Labour's Image (CLC Poll)



Why workers will not join unions

Asked those who were not very likely to vote for a union “why not?”

“Fear of unions – not employers – most powerful obstacle. .”

- Acknowledge unions make some aspects of work better
- But want to avoid perceived risks & disadvantages

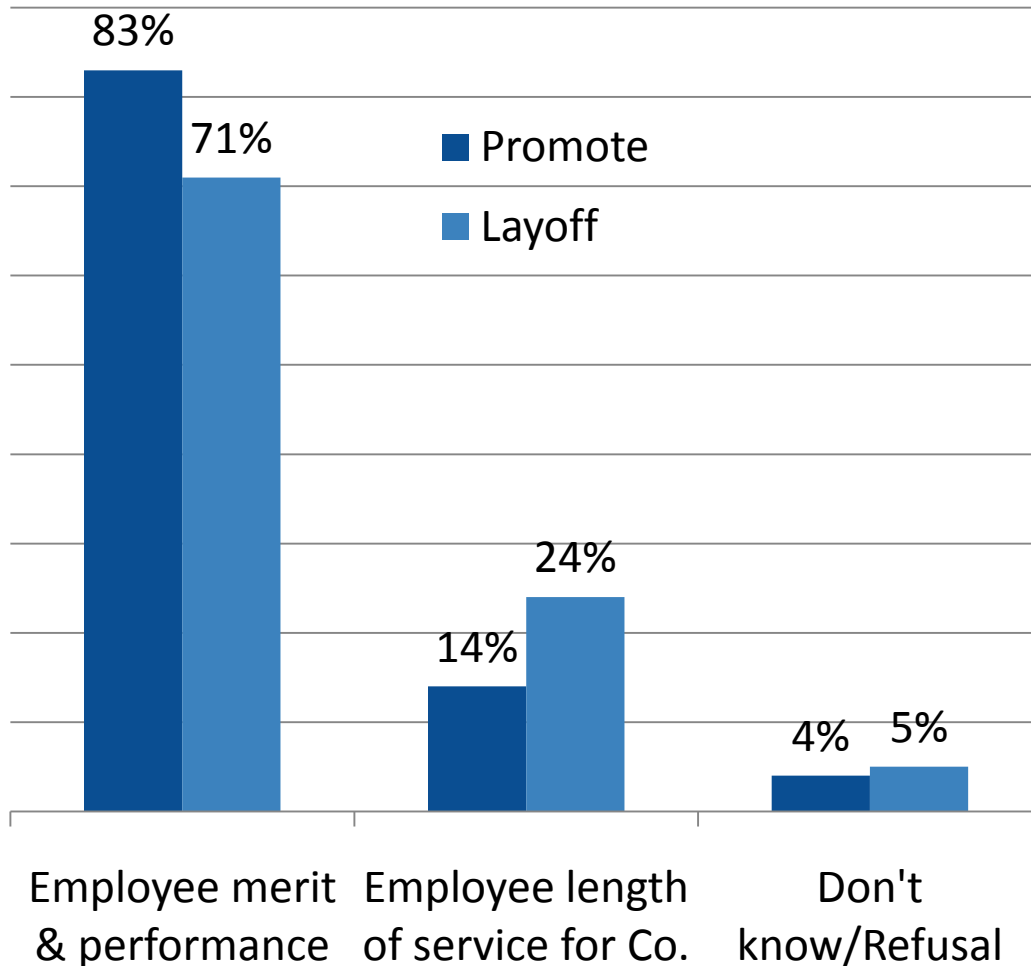
**38% of unionized & 44% of non-unionized:
seniority system “major reason”**

2003 - Canadian Labour Congress Poll



Surprise: Merit vs Seniority?

When making decision to promote/layoff employees, which criteria should be more important in guiding the decision? (2003 Leger / LabourWatch / Global News / National Post Research Survey)



	Currently unionized (n=322)	Formerly unionized (n=256)	Never unionized (n=410)
Promotions			
Employee merit & performance	77%	87%	84%
Employee length of service for Company	18%	11%	12%
Layoffs			
Employee merit & performance	58%	74%	78%
Employee length of service for Company.	36%	20%	17%

Why workers will not join unions

Non-union respondents who would not “very likely” vote for a union were asked... if SUBJECT is a: major, minor reason or not a reason that you are not very likely to vote for a union

	Major	Minor	Not a reason
With a union, promotions are based on seniority, not just initiative and merit	44%	23%	30%
Members have no say in how the union operates	43%	26%	28%
Dues are too high for what you get out of it	38%	29%	27%
You might have to go on strike	34%	24%	40%
You are [not] eligible to be in a union because you have management or other confidential job	28%	22%	47%
You worry that your employer might close down if there was a union	22%	23%	53%
Your employer would not approve of employees having a union	21%	25%	49%

2003 - Canadian Labour Congress Poll

Why workers will not join unions

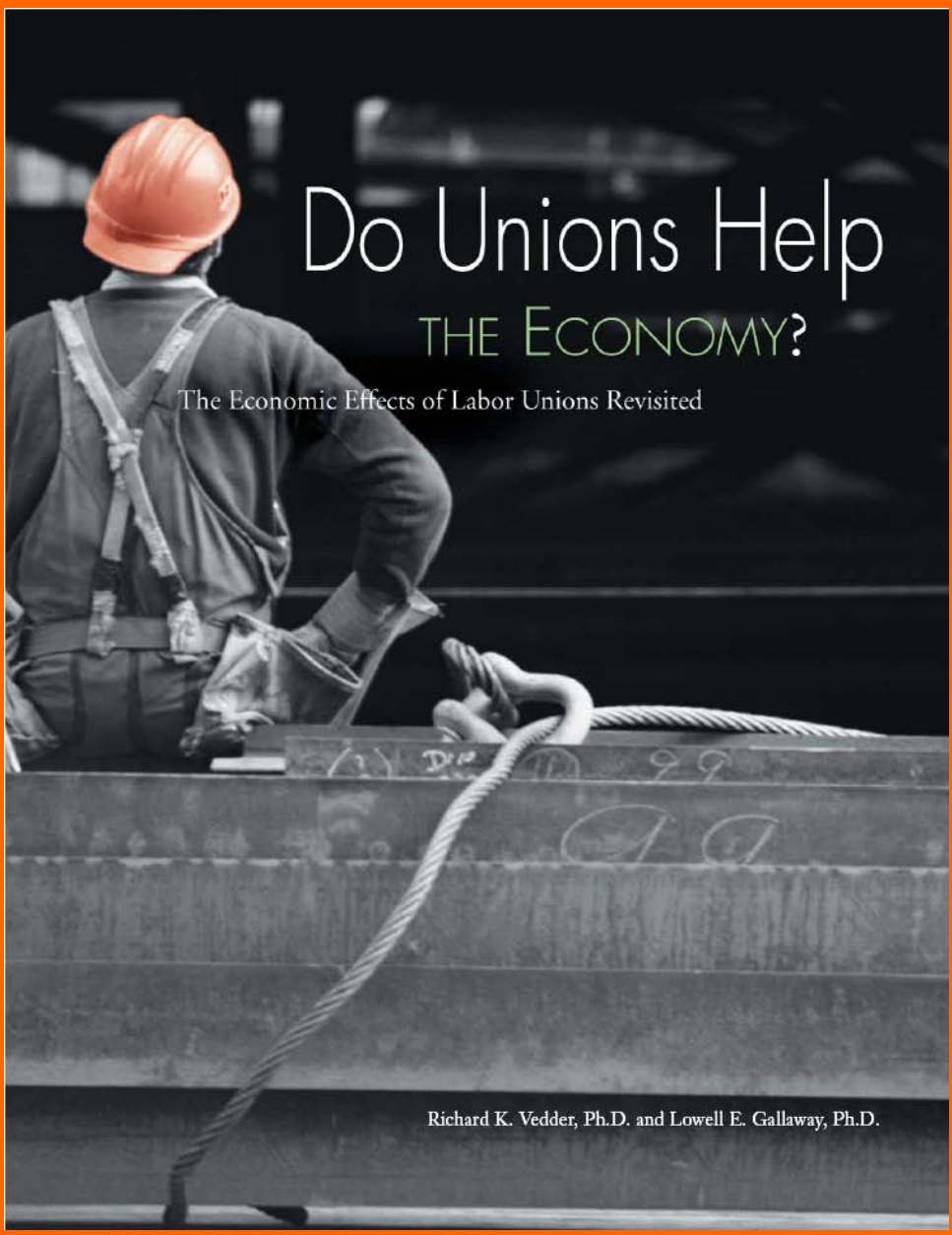
Unionized respondents who would not “very likely” vote for a union were asked... if SUBJECT is a: major, minor reason or not a reason that you are not very likely to vote for a union

	Major	Minor	Not a reason
With a union, promotions are based on seniority, not just initiative and merit	38%	36%	25%
Members have no say in how the union operates	45%	37%	17%
Dues are too high for what you get out of it	44%	33%	22%
You might have to go on strike	36%	32%	30%
You are [not] eligible to be in a union because you have management or other confidential job	22%	28%	48%
You worry that your employer might close down if there was a union	26%	30%	43%
Your employer would not approve of employees having a union	22%	28%	44%

2003 - Canadian Labour Congress Poll

Impact of Unionization on Employees





Do Unions Help THE ECONOMY?

The Economic Effects of Labor Unions Revisited

Richard K. Vedder, Ph.D. and Lowell E. Gallaway, Ph.D.



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unionism since 1964



Right to Work States Benefit – 2009 Growth Update

Sector	Right to Work States	Forced Unionism States	National Average
Growth in Construction Employment (2003-2008)	10.6%	1.8%	7.1%
Growth in Non-Farm Private-Sector Employees (2003–2008)	9.1%	3.6%	5.7%
Growth in Real Manufacturing GDP in Chained 2000 Dollars (2000– 2008)	20.9%	6.5%	10.4%
Growth in Real Personal Income (2003-2008)	15.8%	9.1%	11.5%
Welfare (TANF) Recipients per 1000 Residents (2008 Calendar Year Average)	7.0	16.0	12.5
Growth in Number of People, Aged 25+, Who Have Completed a Bachelor's Degree (2000-2008)	29.8%	21.9%	24.6%



The New Union Label.



Brought to you
by the union “leaders”
who helped bankrupt
steel, auto, and airline
companies.

UnionFacts.com
The facts they don't want you to know



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Defending America's workers from the attack of compulsion
and union since 1964

Paid for by The Center for Union Facts

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The Hewitt logo, consisting of the word 'Hewitt' in a white, serif font centered on a dark blue square background.

Hewitt Associates Employee Engagement Data Analysis



Hewitt 50 Best Employers Survey

Best Employers Study Database (2005 through 2008):

- Over 240,000 employees surveyed
- All regions of Canada – 311 with 50 to 70,000 employees
- Over 40 economic sectors/industries
- 43% of participants had unionized employees

Study database included:

- 36,000 employee respondents indicated unionized
- 207,000 employee respondents indicated not unionized



Overall Level of Engagement

	Unionization of 67% or more		Unionization of 33% or less	
	Strongly agree or agree	Disagree or strongly disagree	Strongly agree or agree	Disagree or strongly disagree
All respondents	49%	14%	63%	7%
Unionized Respondents	44%	16%	55%	11%
Union-free Respondents	57%	7%	61%	7%
Management	65%	6%	71%	4%

- **Unionization of 67% or more:** Respondents in any employer with 67% or more unionized employees
- **Unionization of 33% or less:** Respondents in any employer with less than 33% unionized employees, including union-free

Secret Ballot Votes on Unionization

They Are Critical



Vote Overview – North America

Card Check	
Jurisdiction	History
Federal	Never
Manitoba	'96 – '00
New Brunswick	Never
Nova Scotia (construction)	Never
Ontario (construction)	'95 – '03
Prince Edward Island*	* Mgmt concerns = election
Quebec	Never
USA Post EFCA	1947 - present

No Card Check	
Jurisdiction	History
Alberta	'88 - present
Saskatchewan	'08 - present
British Columbia	'89 – '93 '01 - present
Nova Scotia (non-construction)	'77 - present
Ontario (non-construction)	'95 - present
Newfoundland & Labrador	'93 - present
USA – Current Pre EFCA	1969 – present



President Obama on Unions



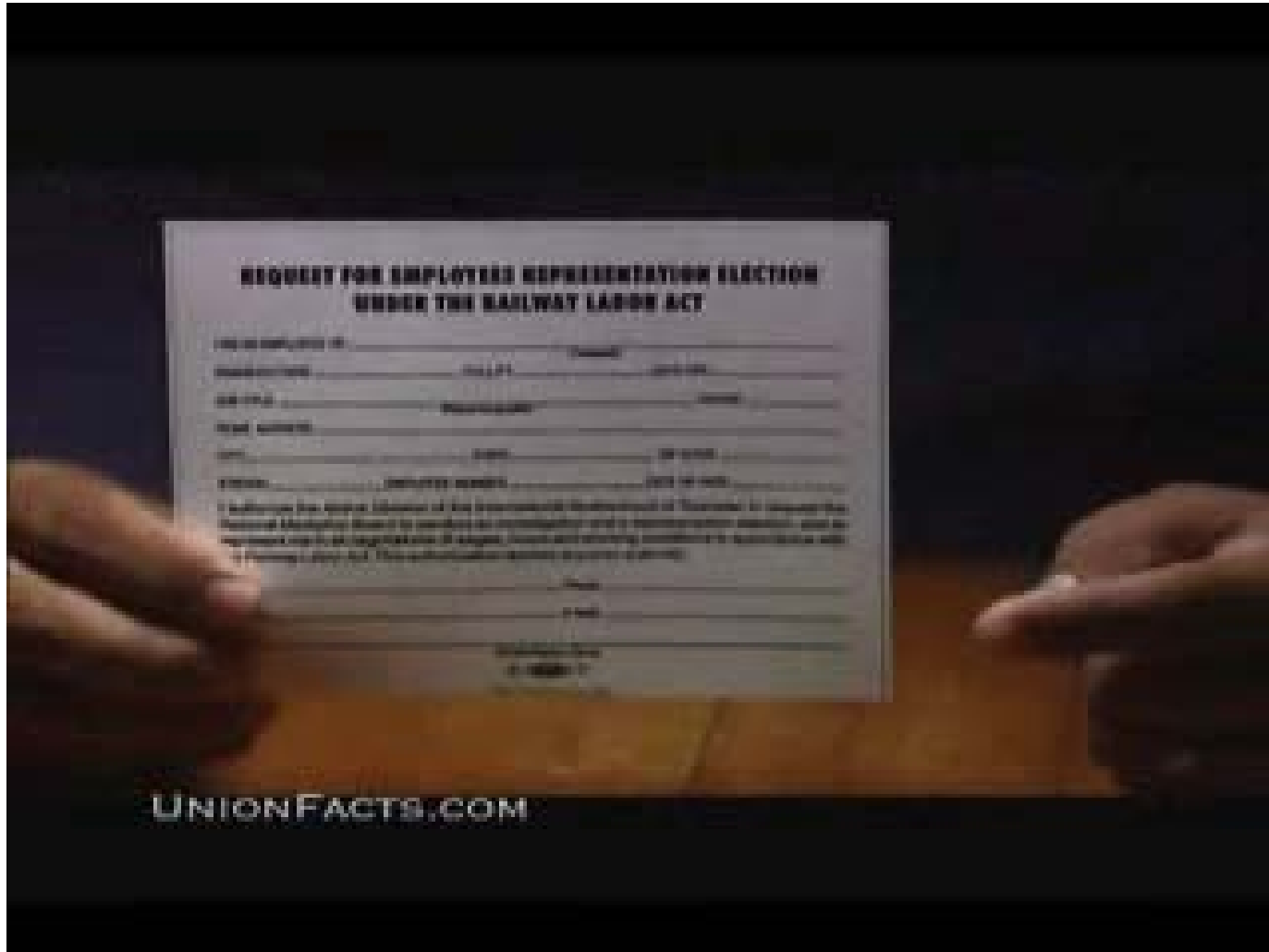
www.unionfacts.com – Class Elections



“A guy like me showing up at your doorstep”

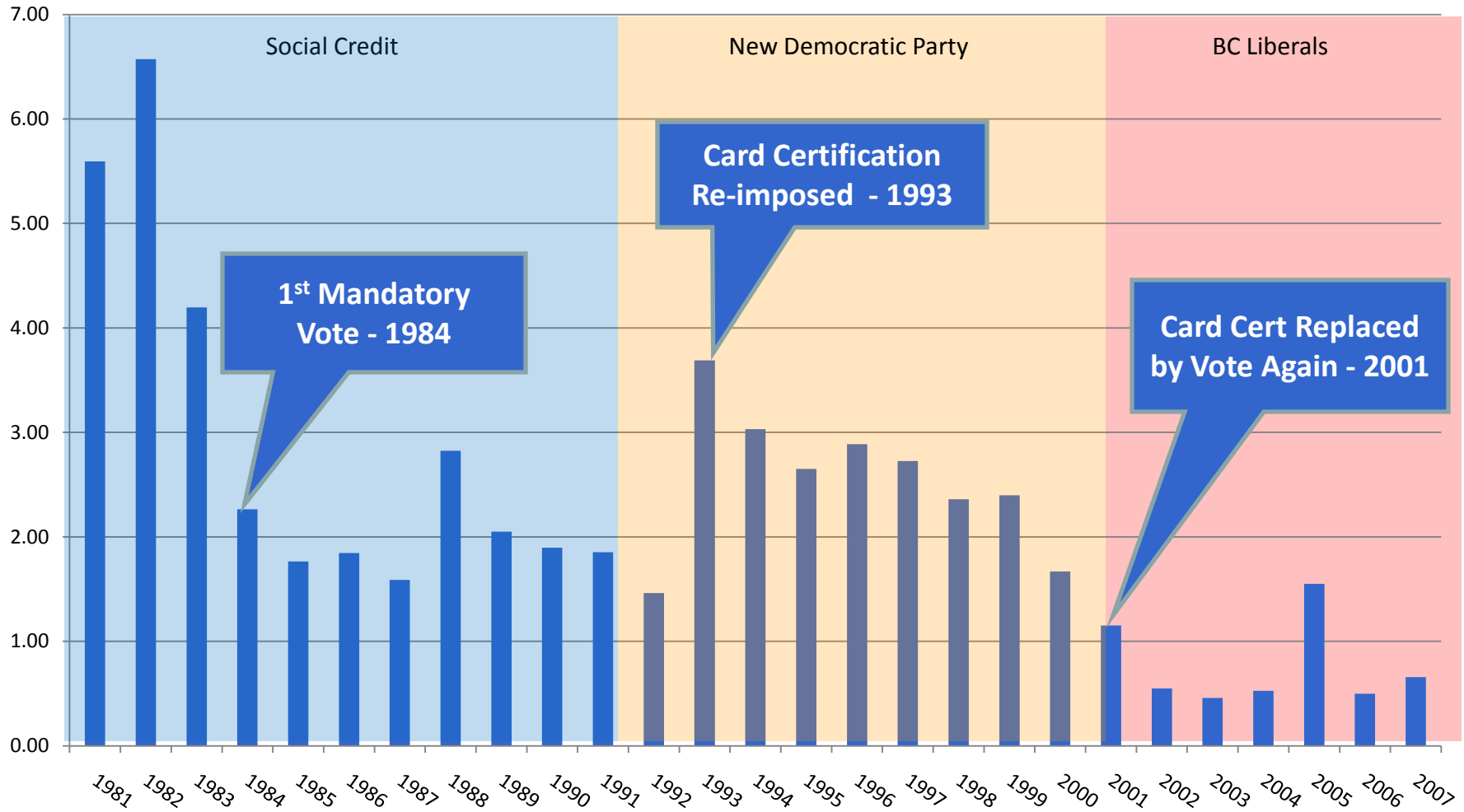


www.unionfacts.com – It Could Happen to You



British Columbia Certifications

Per 10,000 Employees (Note: Board has Remedial Certification Power & Uses It)

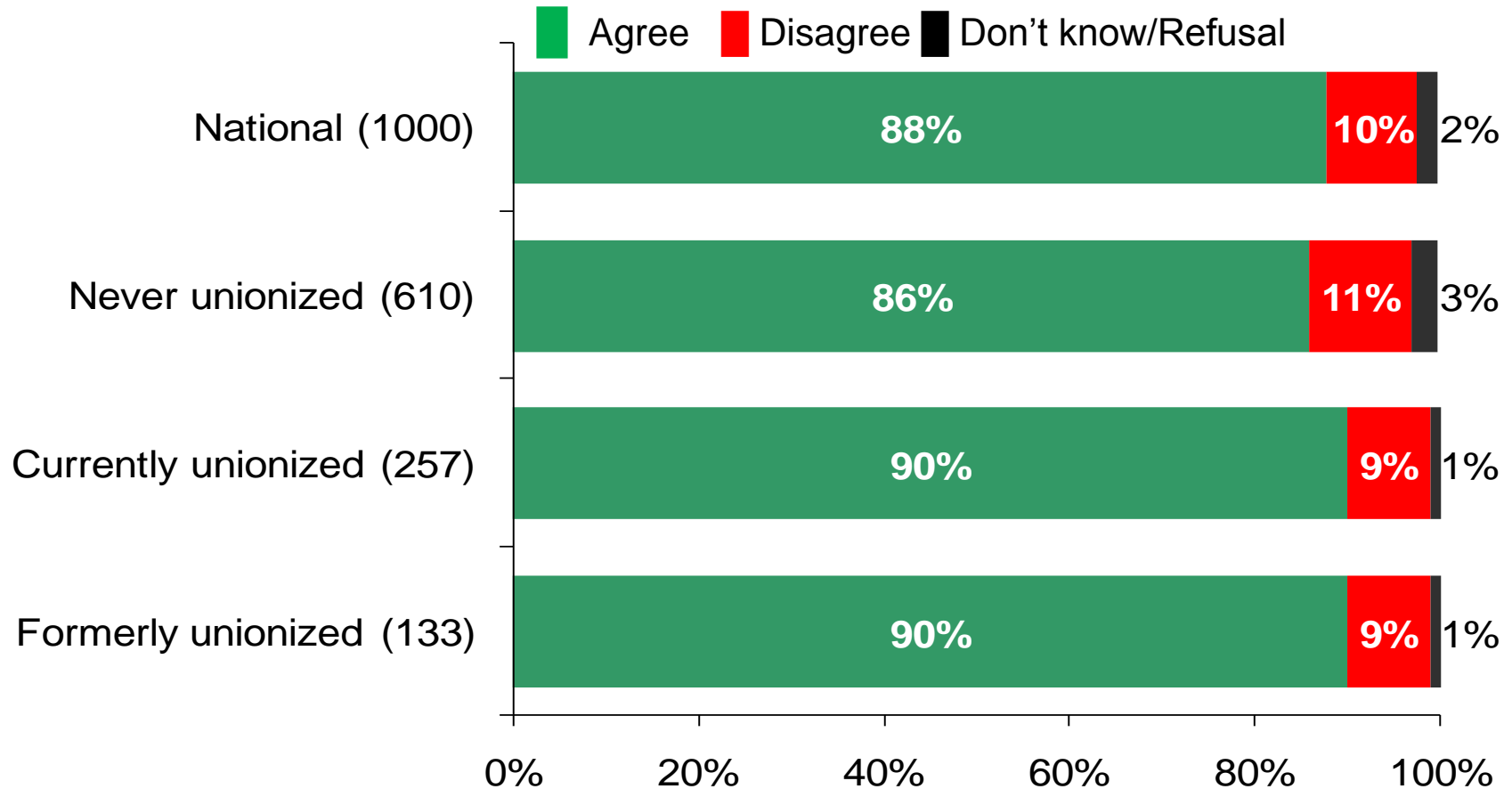


Card Certification Research

- 4/11 pure card certification – 3/11 some variations
 - ▶ 2 construction workers only are denied a vote
 - ▶ 1 management concerns raised gets a vote
- Cornell University re BC history:
 - ▶ Union success rates increased/decreased by 19%
 - ▶ Management opposition twice as effective under elections vs card certification

2008 Nanos Research Labour Day Poll

Secret ballot vote for forming or removing a union from a workplace



Secret Ballot Elections vs “Card Checks”

- ▶ Corporate campaigns and “neutrality” agreements
- ▶ US “Employee Free Choice Act” to ban secret ballots
- ▶ Dana decertification elections (USA)



The Holy Grails of Forced Unionism: Union Dues & the “Non-labour Relations Use of Dues”



Canada Now Alone . . .

Only country with:

- Independent unions
- Free collective bargaining
- Still allowing forced union Membership as a condition of employment
- Dues for non-bargaining purposes: politics, social causes & union organizing

47 Council of Europe nations, USA, NZ & Australia



Member of What?

- Unionized workplace – collective agreement
- Employees are “members” of a bargaining unit
- BUT, are they also “Members” of the union?
- If yes, are they voluntary or forced “Members” by law or collective agreement?



Has its Privileges!

- To run/vote for union president or other office
- To participate in ratification/strike votes
- To be disciplined/fined (can union collect?)
- To lose “Membership”
- To lose your job for loss of “Membership” (some provinces have some protections)
- Most allow loss of job for loss of “Membership” for non-payment of dues



Union Dues

- NOT the same issue as “Membership”
- Almost all unionized Canadians pay full dues
- Why?
- Dues “check-off” in labour codes and collective agreements
- Dues of non-Members of union can be used for political & other non-bargaining unit purposes



Canadian "Rand Formula"

- 1946 arbitration award to settle a strike at Ford
- Denied union demand for forced membership
- Denied union admin of strike votes, MOL only
- Require dues from all employees as:

"a contribution towards the expense of maintaining the administration of employee interests, of administering the law of their employment"

- Led to dues check off clauses, same dues for members and non-members and dues for non-bargaining purposes

“Union Security” – A Brief History

- No laws requiring union Membership nor payment of union dues – BUT laws that allow both
- Instead: voluntary choice of individual employees to join the union or not; to pay union dues or not
- “Union security” always key union concern so they usually asked for 2 key things:
 - ▶ All unionized employees required to become & remain union members as a “condition of employment”
 - ▶ All unionized employees required to pay full union dues as a “condition of employment”



The Rise of the “Rand Formula” (cont’d)

- Other versions of “union security” clauses in collective agreements:
 - ▶ “Closed Shop” or “Hiring Hall” - must be union member to be hired
 - ▶ “Union Shop” - must join union on hiring
- Some provinces legislated “Rand Formula” clauses must be agreed to by employers as a minimum type of union security clause in all collective agreements
- Alberta, Nova Scotia, New Brunswick and PEI have not passed this kind of forced union dues legislation – at least up to now



Reform Abroad

- Europe and US - mostly not result of political will
- Europe: Litigation by employees 1976 – 2007
- Art. 20(2) UN Declaration of Human Rights:

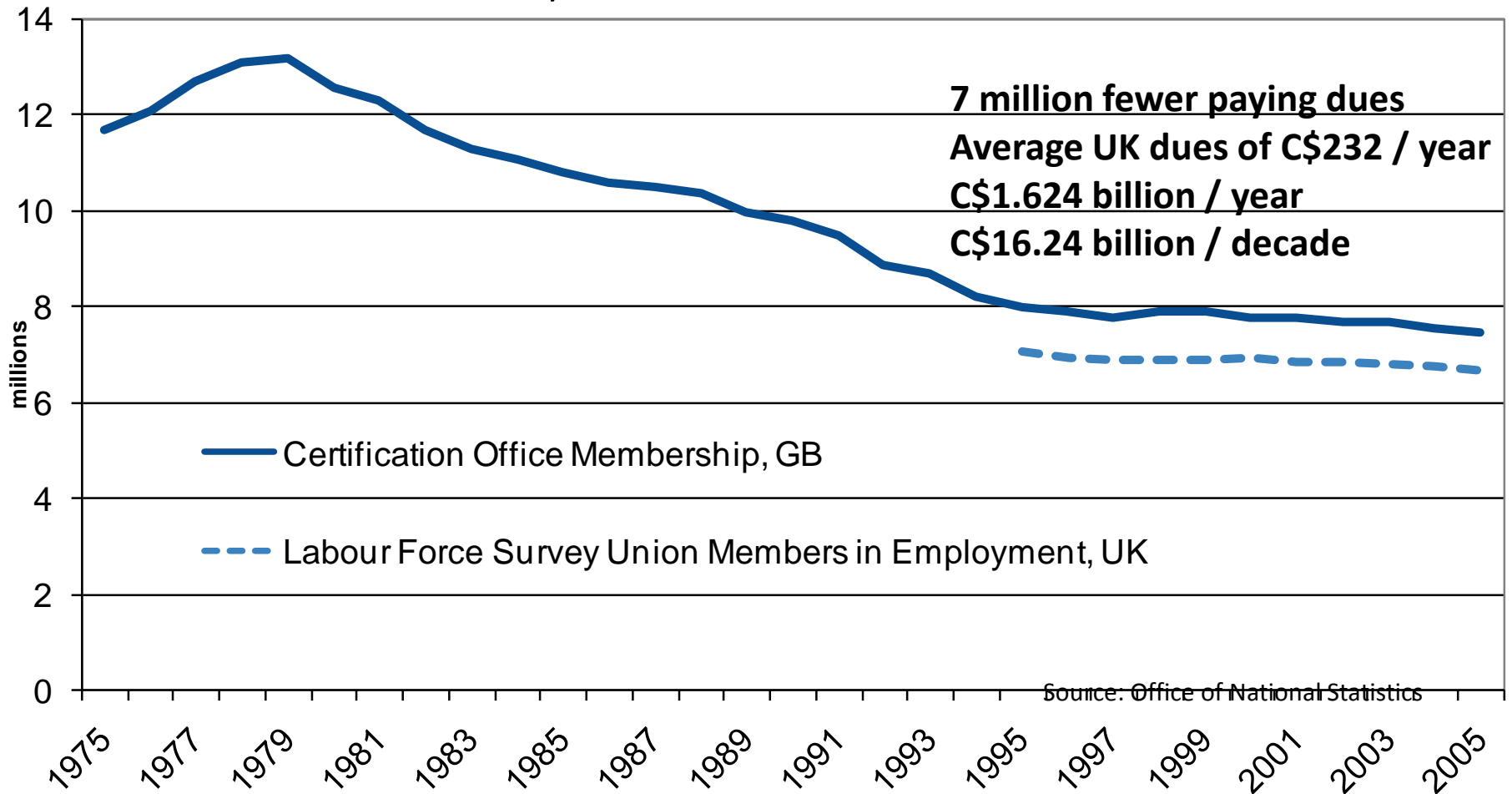
“No one may be compelled to belong to an association”

- US Supreme Court and 22 states with right to work laws

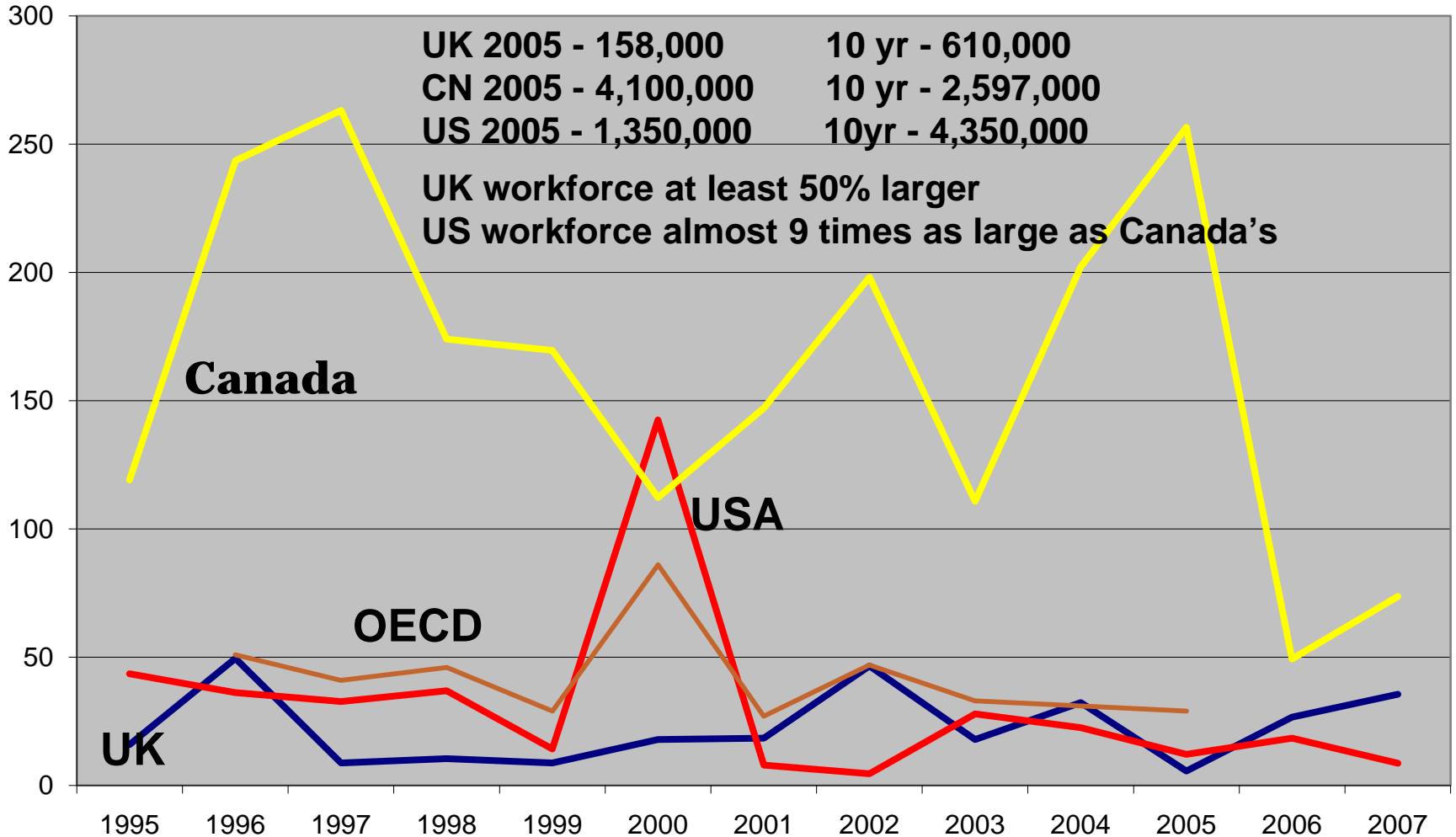


Trade Union Membership

1975 – 2005 – Great Britain/UK



Work Days Lost '95 to '07 – per 1,000



Labour Law “Policy” Paradigm

- Power imbalance between employer and employee
- Collective bargaining = “industrial stability” or “peace”
- Tip playing field in favour of unions – really union leaders
- Card certification but almost no card decertification
- “Tri-partite”: government, employers and “employees”
- Missing party of Canadian scheme: union-free employees
- Labour Standards vs Labour Relations



“WELCOME TO HELL”

Old Dutch Foods

**The New Charter “Duty”
to Pay Union Dues for Politics
or be Fired**

**Brought to you by:
the Alberta Labour Relations Board**

History - Old Dutch Foods

- 1971 – UFCW 373A unionized Old Dutch Foods (ODF) employees
- Forced union Membership & dues: issues at table because employer protected employees from these human rights abuses
- UFCW demanded ODF agree to collective agreement requiring forced union dues for all employees, sometimes included demands for forced union membership
- ODF would only agree to voluntary dues checkoff for those employees who wanted dues deducted from pay
- UFCW charges ODF with Unfair Labour Practices
- Argues new 2007 Supreme Court precedent requires Rand Formula



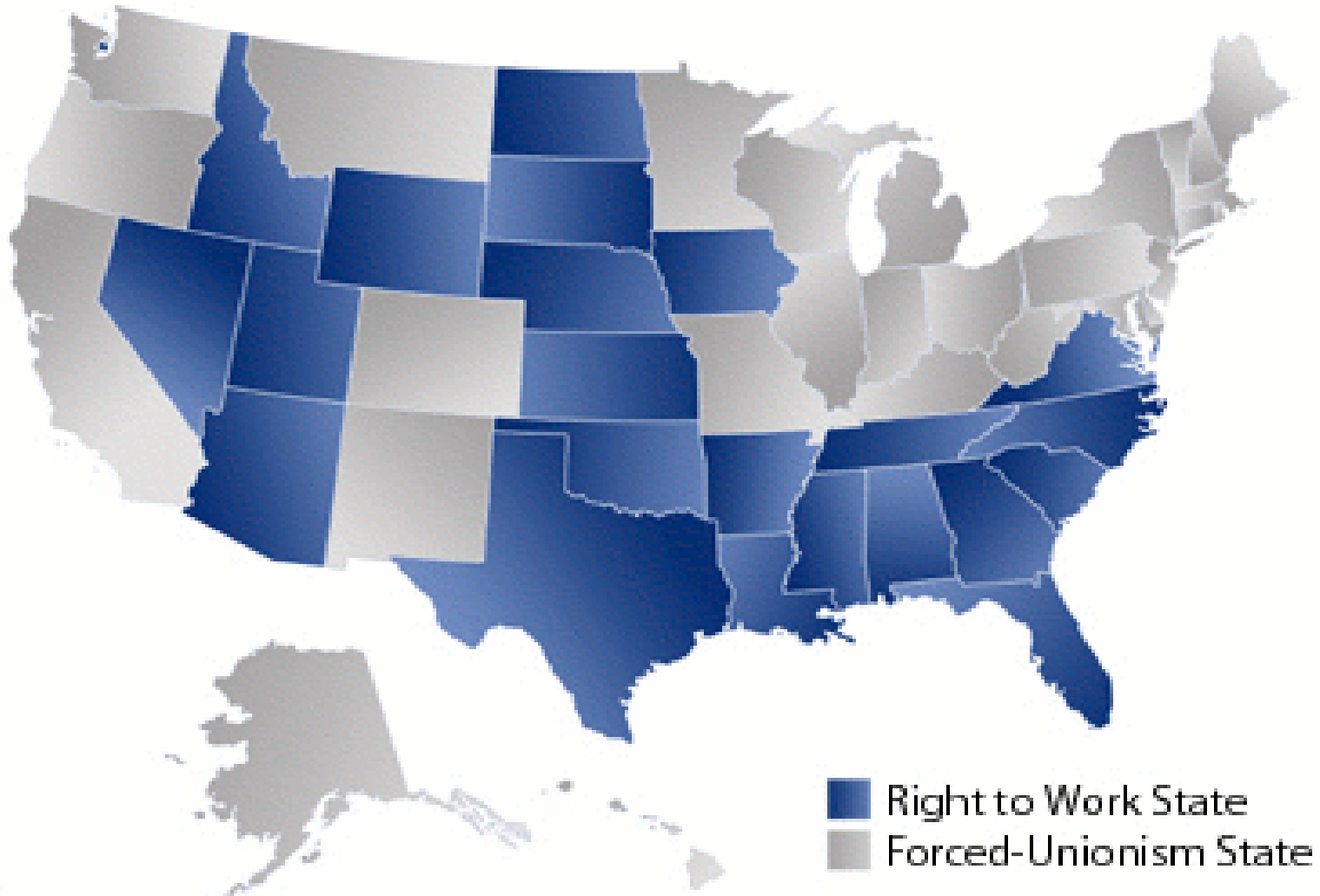
November 2009 Board Decision

Alberta Labour Relations Board Ruling:

- No good business reason to resist forced dues
- ODF only taking position to weaken the UFCW
- Declared Alberta Code unconstitutional for not including minimum of Rand Formula
- Ordered ODF to agree to Rand Formula dues check-off
- Board favourably cited 1991 Supreme Court ruling on use of dues: *to ensure unions have both the resources and the mandate necessary to enable them to play a role in shaping the political, economic and social context within which particular collective agreements and labour relations disputes will be negotiated or resolved*



Right to Work vs Forced Unionism States



■ Right to Work State
■ Forced-Unionism State

Forced Membership in the USA

- Workers covered by the *National Labor Relations Act* cannot be terminated for not becoming or remaining a union Member due to Supreme Court rulings
- But, unlike Sweden, unions and employers have never been forced to remove forced membership clauses so workers can be misled



Compulsory Payments in the USA

- Forced dues (what all unions want) versus voluntary dues
- Right to Work laws in 22 states – no compulsion to pay dues
- Reduced “Beck” dues in the other 28 states – employees may opt out of paying for union political and non-bargaining activities, but unions make this option difficult



Union Dues, Politics and Other Non-Bargaining Uses





**What can
you buy
for \$450
Million?**



Obama on Election Day 2008

At UAW Phone Bank





BC Election Union Ad

**HATES
YOU**



Albertans for Change



Alberta's UNION LEADERS have a secret plan.



They're just not telling you about it. Hiding behind the "Albertans for Change" name - a front for the Alberta Building Trades Council and the Alberta Federation of Labour - they have used union dues to fund an expensive ad campaign urging voters to oust the Progressive Conservative government in Alberta. Why? What is their agenda? In a province where

workers are treated fairly and jobs abound in every sector, they want the Stelmach government gone. In no uncertain terms. Their attacks have little to do with labour or workplaces. So what have they got to gain? What are their real motives? And why didn't they get their members' permission before spending their hard earned money? Haven't they heard of accountability?

This ad was privately funded by:



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Defending America's workers from the threat of compulsion
established 1964

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Ontario's UNION LEADERS had a secret plan, too.



During the 2003 election, Ontario union leaders attacked the Progressive Conservative government under the so-called "Working Families" coalition. When the Liberals took power, they made labour law changes that included taking away a construction worker's right to a secret ballot vote on unionization elections. In essence, Ontario union leaders picked their members'

pockets and non-union workers ended up seeing their rights taken away. Why? To make it easier for unions to grow. More mandatory dues to collect. More income for union leaders to spend. Without asking their members' permission. If union leaders are so interested in democracy, why are they using mandatory union dues to promote anti-democratic laws?

Are you going to let union leaders tell you how to vote?

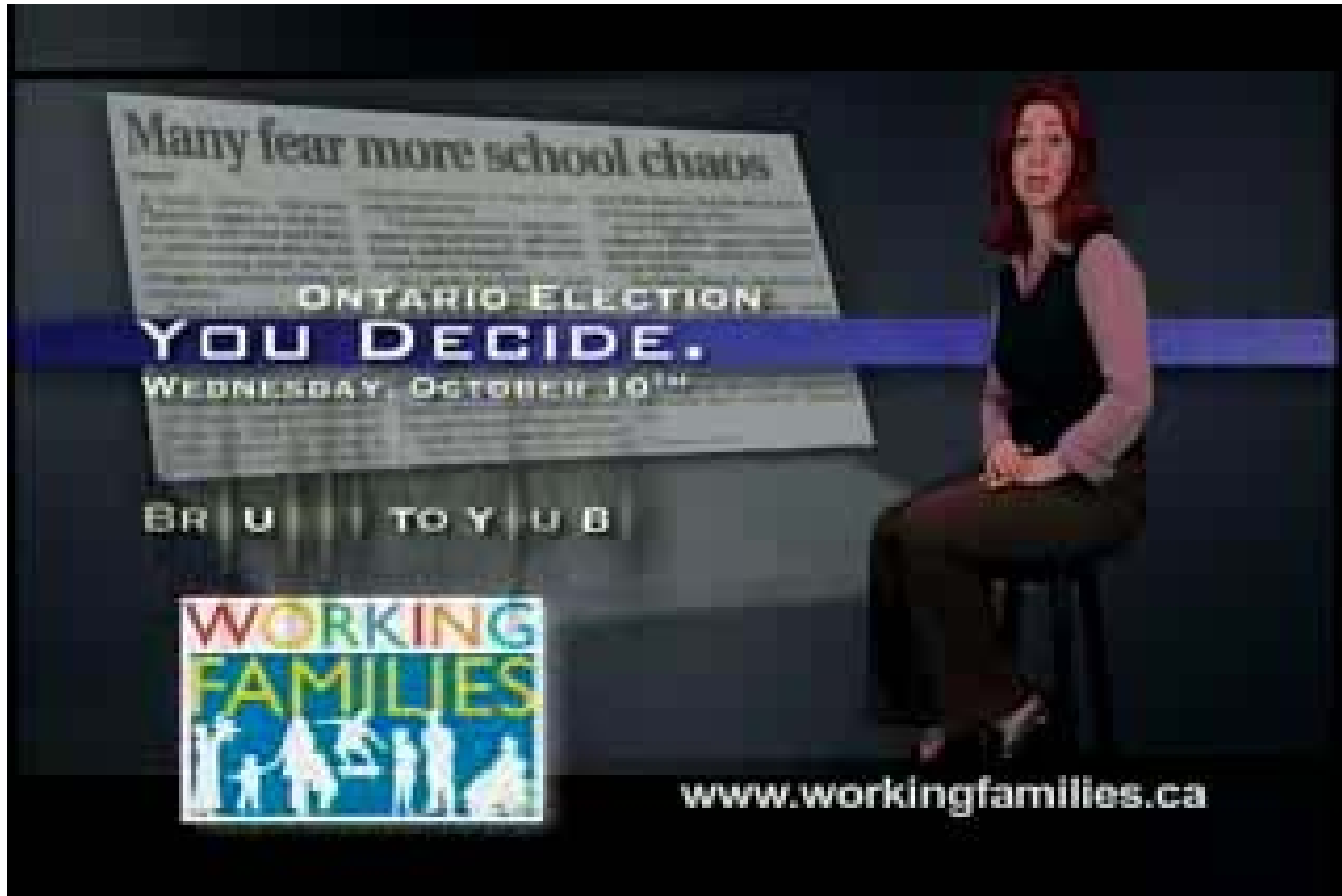
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Defending America's workers from the threat of compulsory
unionism since 1964

labourwatch

Working Families Coalition - Education



Many fear more school chaos

ONTARIO ELECTION
YOU DECIDE.
WEDNESDAY, OCTOBER 10TH

BR U TO Y U B

WORKING FAMILIES

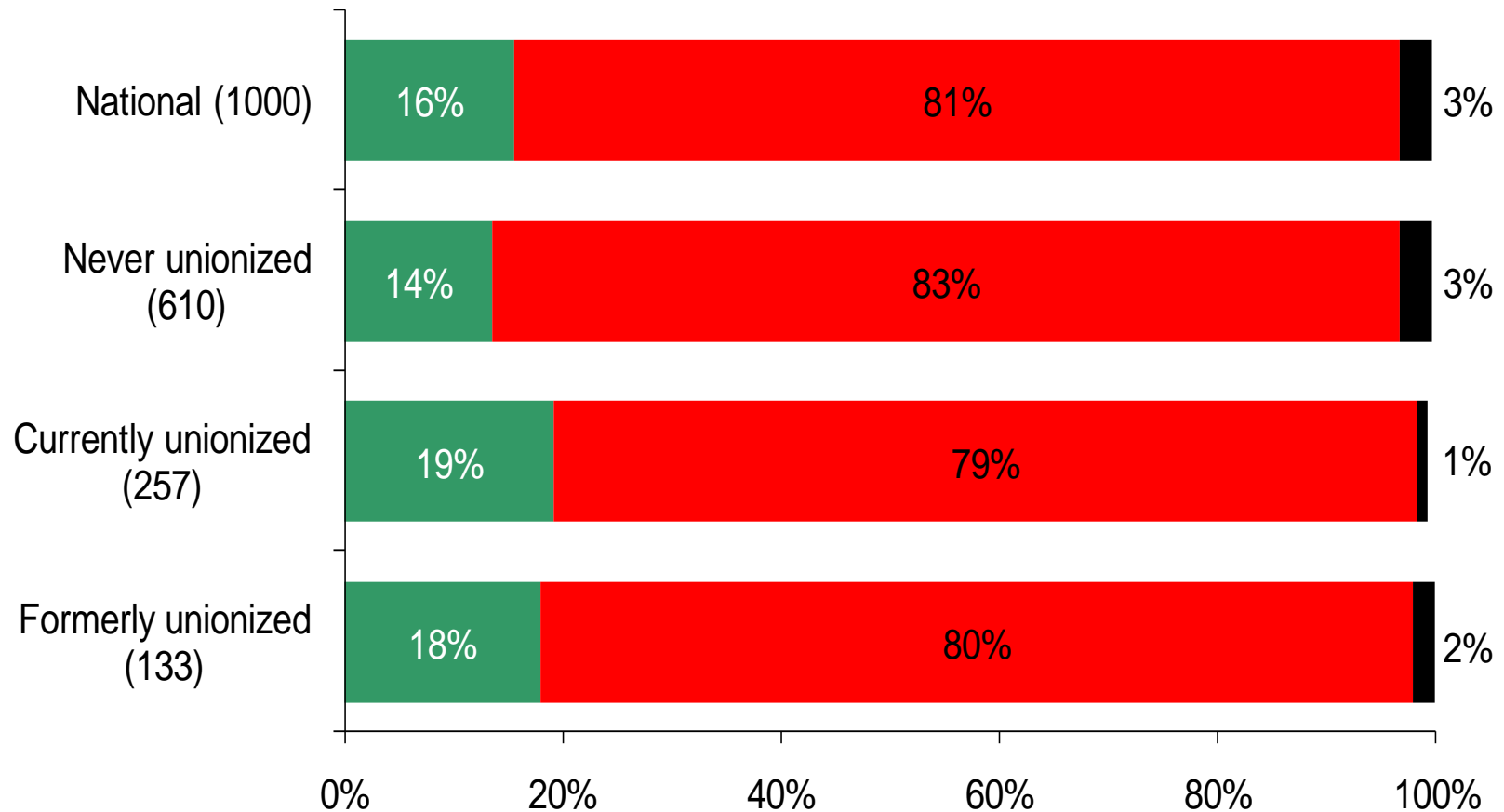
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2008 Nanos Research Labour Day Poll

Opinion about unions using dues for contributions to political parties

Agree Disagree Don't know/Refusal



POLL RESULT



Union members don't want dues going to politics

76% OPPOSE PARTY SUPPORT

BY WOJTEK DABROWSKI

New data suggest that most unionized workers don't back their leaders in spending their union dues on supporting political causes.

Instead, they want the money spent on shop issues — namely bargaining for compensation and working conditions — at their place of work.

A *National Post*/Global National poll commissioned by LabourWatch and conducted by Leger Marketing found that 76% of unionized workers don't want their contributions being shuffled into political-party coffers or advocacy groups and advertising campaigns.

"[Unions] should not align themselves with any political leanings," said a sales consultant at a Toronto-area The Brick furniture warehouse who is represented by the Canadian Auto Workers.

"We can express our concern but not use our money directly," he said. "I can understand that, but not more than that."

Instead, almost 90% of Canadians overall — including the sales consultant — agree that the bargaining and employee needs of the workplace which the union local serves are an appropriate way to spend dues.

been involved in political causes ranging from the elimination of child poverty and improving workers' rights in developing nations.

Canadian Auto Workers president Buzz Hargrove was surprised by the strong opposition of currently unionized workers reported in the poll.

"I reject the finding," Mr. Hargrove said in an interview.

"I believe as long as the union leadership goes to membership for approval of expenditures, there is absolutely nothing wrong," adding his union continues to support "progressive candidates," including NDP politicians in Ontario.

His comments yesterday came more than 10 years after a large CAW local at a General Motors plant in Oshawa, Ont., voted to cut its affiliation with the NDP.

Workers complained their contributions were being spent on helping the party. Others accused the local of paying certain members to "hustle" votes for the NDP during the federal and provincial elections.

While union leaders say the process by which spending decisions are made is democratic, critics of organized labour say the issue is one of workers' choice.

In Canada, those wishing to work where a union exists have little choice but to join and/or pay dues to the existing union, depending on the region in which the workplace is located.



DAVID CLARK / CANWEST NEWS SERVICE

Labour leader Ken Georgetti defends the donation of union dues to political parties saying it's not done based on "the whim of the individual."

NOT WITH MY MONEY

Should unions be permitted to contribute member dues to political and other causes outside their members' needs?

War chest

union member a choice, a check-off form with a list of options. Members could choose to support

Free Choice, Unions & Public Policy

What Are Workers Really Thinking and Wanting?



**Presented By
Glenn M. Taubman**

**Staff Attorney
National Right to Work Legal
Defense Foundation
gmt@nrtw.org
1.800.336.3600**



**Presented By
John Mortimer**

**President
Canadian LabourWatch Association
john@labourwatch.com
1.888.6LABOUR**

