Twitter Thread by Dr. Dave Kamper ■



Dr. Dave Kamper ■
@dskamper

The @AlphabetWorkers have formed what is called a "minority union." Quick thread on what that means:

A cornerstone of US labor law is the principle of "exclusive representation" - if you collect authorization cards from the employees and win an election, you...

1/

> We're Alphabet workers. We\u2019ve been organizing for over a year, & we\u2019re finally ready to share why.
>
> This morning, we're announcing #AWU, the first union open to *all* workers at any Alphabet company.
>
> Every worker deserves a union\u2014including tech workers.https://t.co/m2Qmjwz32V
>
> — Alphabet Workers Union (@AlphabetWorkers) January 4, 2021

...get to represent all the employees you sought to represent. As the exclusive rep, the employer has to work with that union and that union only on any issue of wages, hours, terms and conditions of employment. In turn, the union has a legal Duty of Fair Representation (DFR)

2/

... to not discriminate against the people it represents if they choose not to join the union.

The big problem: labor law is so weak in the US, employers violate it all the time with no consequences, and therefore obtaining exclusive rep status is really hard.

3/

However, a legal theory floated by law professor Charles Morris in his 2005 book, The Blue Eagle at Work, suggests that the law also allows unions WITHOUT exclusive representation.

3a/

The National Labor Relations Act, after all, in its vitally-important Section 7, says workers have the right to collectively bargain. It doesn't say that right only exists when there is an exclusive representative.

4/

> Sec. 7. [§ 157.] Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3) [section 158(a)(3) of this title].

Under Morris' theory (which is how many unions really did operate in the early years of the NLRA), a group of employees can choose to organize together and bargain their working conditions with the employer, even if they are only a minority of the workers.

5/

This minority union wouldn't have the right to represent anyone other than its own members, but within that group, it would be an unfair labor practice for the employer to change working conditions without negotiation.

So, imagine...

6/

...a company wants to boost its profits by screwing the workers a little more, and decides to increase the deductibles on the health insurance. It can do that unilaterally with most workers, but NOT with the minority union. They have to negotiate a contract with them.

7/

Of course, since the employer wouldn't want to make the minority union look good to the workers, they'd be hesitant to cut healthcare for the rest, but even that would show workers that the minority union had power.

@CWAUnion has used the minority union concept in...

8/

...a lot of places, especially public sector employees in states where collective bargaining laws are terrible. @Ess_Dog's new book, Tell the Bosses We're Coming, talks about the possibilities of the minority unionism model, as well.

Now, of course,

9/

there are potential downsides, too. An employer could legally give everyone else a big raise but not the minority union, for example. But the gamble here is that the benefits of collective bargaining will win out, and I think they're right.

One important final note:

10/

This legal theory is, at this point, just that. No test case has made its way to the National Labor Relations Board or the Supreme Court, and there's no guarantee either would agree with Morris' legal theory (even though I find him very persuasive).

11/

It is quite likely that if Hillary Clinton had won in 2016, this would have been tested by now, with a friendlier NLRB and SCOTUS hearing the case. I don't have any inside info, but I'd bet that the timing of @AlphabetWorkers' announcement is based on a new President...

12/

...appointing a new NLRB General Counsel and hopefully therefore supporting their rights. We will see - the union may choose not to test the legal waters right away, and that's a totally legit decision.

13/

If this hold up, though, it will surely serve as a viable model for organizing Big Tech but also many other big companies that fight hard against exclusive representation.

Either way, very exciting news. Solidarity!

END