

WHO'S GOT THE POWER?

Restoring Worker Power in the Age of Algorithmic Unionbusting

A report from the Electronic Privacy Information Center and the National Institute for Workers' Rights

Workplace surveillance is on the rise. As employers increasingly adopt technologies to monitor workers' location, activities, and performance, these tools are also deployed to counter unionization campaigns and other worker-organized collective action. **When employers use workplace technology and worker data to identify, track, and interfere with workplace organizing, they are practicing algorithmic unionbusting.**

What Algorithmic Unionbusting Looks Like:

- **Whole Foods** tracked potential unionization efforts using metrics such as employee loyalty, racial identity, and reported OSHA violations.
- **HelloFresh** used AI-powered social media monitoring tools to surveil workers' social media posts.
- **Union avoidance consultants** compiled invasive dossiers on hospital employees to score their union risk—labeling them “lazy” or “money-oriented” and collecting information about their family and finances.

Algorithmic unionbusting harms workers. By constructing workplaces built on behavioral predictions and mass data collection, employers are able to use algorithmic unionbusting to chill worker organizing, erode trust, and undermine organizing campaigns and workers' bargaining positions.^{iv} The growth of AI is likely to make these tactics cheaper for employers and even more powerful and effective.

Existing laws don't defend against algorithmic unionbusting. Federal labor laws offer some protection for organizing workers, but were designed for a world where workplace surveillance meant bosses spying on union votes with binoculars, not algorithmic unionbusting. No federal privacy law adequately protects workers from this practice. While some states have made progress, worker privacy remains limited. This threatens to chill workers' willingness to engage in the concerted activity that leads to unionizing at a time when it's already far too easy for employers to violate workers' rights.

We must shut down algorithmic unionbusting.

- States must protect workers by adopting worker-inclusive privacy laws that impose strict data minimization standards, ban or limit employer use of automated decisionmaking systems, and create a private right of action for workers harmed by surveillance.
- Congress must pass new workplace surveillance protections such as the No Robot Bosses Act and the Stop Spying Bosses Act and amend existing federal labor laws by passing the Protecting the Right to Organize Act.
- The NLRB must pursue key reforms, including by declaring more intrusive forms of electronic surveillance presumptively illegal, finding that algorithmic management is a per se unfair labor practice, and requiring employers to disclose all workplace surveillance.
- Labor organizers should use the Fair Credit Reporting Act to enforce their privacy rights against the union avoidance industry and employers that enlist their services.