

TESTIMONY OF KEITH LUDLUM

Before the
HOUSE SUBCOMMITTEE ON HEALTH, EMPLOYMENT,
LABOR, AND PENSIONS

Strengthening America's Middle Class Through
the Employee Free Choice Act

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Good Morning Mr. Chairman and Members of the Subcommittee.

My name is Keith Ludlum and I work in the livestock department at Smithfield's Tar Heel, NC plant. Thank you for this opportunity to tell the Subcommittee my story and my coworkers' stories on our fight to gain a voice at Smithfield. I am here to tell you about our efforts to organize at Smithfield and Smithfield's hostile and illegal activities to stop us.

Smithfield's Tar Heel plant, which is located about 80 miles south of Raleigh, is the largest hog slaughter and pork processing facility in the world. The Tar Heel plant processes 32,000 hogs a day – that's 16,000 hogs per 8 hour shift; 2,000 per hour; 33 hogs every minute – one every 2 seconds. It employs about 5,500 employees. As a hog runner in the livestock department, I work inside the pens where hogs are unloaded off trucks. Each pen holds about 250-300 hogs. Inside the pens, I drive 15 or more hogs out into the restraining area. I am continually moving the hogs forward and stopping them, when necessary, so they can be branded, stunned and killed. During my 8 hour shift, my coworkers

and I are responsible for moving about 16,000 live hogs per day into the plant for slaughter.

I am a native North Carolinian and after a tour of duty in Desert Storm, I returned to Bladen County in 1993 to look for work. In September of that year, I got a job at Smithfield, which had just opened in 1992 in Tar Heel.

I soon saw how Smithfield mistreated its workers. Every day I saw my fellow workers forced to work in dangerous, inhumane conditions. We were often injured severely, and if we couldn't work any more, we were fired. Day after day, I saw safety and health and worker protections ignored. I saw workers abused and humiliated.

The moment that made me realize we needed a union at Smithfield was when a fellow worker in his 50's broke his leg on the job when it was pinned between an electric pallet jack and a concrete wall. The next day, when I came to work, he was there in the break room with a full leg cast and using crutches. I asked him why he was back at work so soon. He told me that the company had told him he needed to come to work or he would lose his job. It was only later that I learned that by forcing him to return to work the next day, Smithfield avoided reporting a lost work day due to injury on their Occupational Safety and Health Administration (OSHA) log. For weeks, I watched this man hobble through the parking lot and across the greasy, wet floors of the kill floor and cut departments to get back and forth to the livestock yard. Finally one day, I approached the supervisors and asked them if the worker could park his car in a space near the livestock yard to avoid further risk of injury from slipping with his crutches. They told me "only managers can park there. He is a worker." At that moment, a light clicked on for me. Here was an injured man who couldn't get a little help because he was "just a worker." Well, I am a worker too and was not going to be used by this uncaring and callous company. On that day, I asked myself, "What can I do to change Smithfield?" I knew I had to stand up and fight these wrongs.

At Smithfield, the hogs have onsite government representation by the USDA. Yet, the workers have none. The USDA is present in the livestock yard to insure that the hogs are not abused or unduly stressed. If a hog is abused or stressed, the USDA has the power to shut down the plant and any worker responsible can be fired. If a holding pen has a drain clog and the water and feces are backing up, the USDA inspectors will tag the pen and hogs cannot be placed in that pen until the drain is unclogged. Yet, if a drain is clogged in the restraining area or runway, workers must continue to go through these ponds of hog waste and endure the vile mixture splashing on them. So, while the USDA is there to protect the hogs, inspect the processing of the meat, and ensure the safe handling of the meat, there is no onsite representation to ensure the same level of safety and health protections for the workers.

The government ranks meat packing as one of the most dangerous jobs in the country. At Smithfield, workers are on production lines that move at blinding speeds, with countless injuries. Workers get no paid sick days or personal days. In fact, workers get penalized if they take time off if they are out sick. Smithfield frequently denied workers' compensation by the company when they've been injured on the job. While Smithfield paid some of the modest fines imposed for safety violations by OSHA, we were working every day in extremely unsafe conditions.

As a result of all this, in December 1993, I started working on organizing a union at the plant. We wanted workers at my plant to have the same rights that Smithfield workers enjoy in unionized plants in other parts of the U.S. and the world. We wanted a safe workplace. We wanted a union contract. We wanted to be treated with respect.

My union activity at the time included attending meetings, talking about how the union could benefit the workers and getting employees to sign union representation cards. I spent many of my break times in the locker room and

break room handing out representation cards and asking my co-workers to fill them out. On a number of occasions, my supervisors would come into the locker room or break room and harass workers by telling them that they would be fired for filling out a card or that unionization of the plant would result in Smithfield closing the plant or forcing people to work seven days a week. This harassment was often enough to scare my coworkers out of signing the representation cards.

Besides these instances of harassment, I also witnessed company coercion. I witnessed workers being intimidated. I witnessed Smithfield repeatedly putting more value on the hogs and processing of the hogs than the workers' health, safety and well-being. The bottom line for them has always been profit – but in this case, it is at a very high human cost. Smithfield was doing everything it could to fight union representation but the workers continued to fight for what we believe are our rights under federal law. Workers at Smithfield knew they needed to be able to sit down with management on an equal basis and not just be dictated to or forced to work under these conditions.

In 1994, Smithfield illegally targeted and fired me for my union organizing activities. I was fired for trying to get workers to sign cards to join the United Food and Commercial Workers International Union (UFCW). When I was fired, the supervisors and the deputy sheriff marched me out of the plant in front of all the other employees as an example to intimidate them.

At the time, my wife was pregnant with our first child. It was an extremely difficult time for us – a time that should have been filled with joy and optimism as we awaited the birth of our child. Instead, my family suffered as I looked for a new job. It took me two years to find a decent job because I had been given a bad name by the only real employer in town, Smithfield Packing Company. In the end, I lost my car and could hardly pay my bills, buy groceries or purchase baby supplies.

Shortly after my firing, there was a close vote for representation and the NLRB issued a complaint against Smithfield for violating workers' rights. Clearly, the company's anti-union campaign and severe intimidation and harassment cost us the election. In 1997, Smithfield's CEO Joe Luter III promised in writing that the next election would be fair. The election that followed that same year was even worse – beatings, intimidation, threats, arrests and firings. There were many more NLRB violations. The NLRB found that workers were even asked to lie during NLRB testimony.

On both days of the 1997 election, Bladen County deputy sheriffs, dressed in battle gear with guns, lined the long driveway leading to the plant and guard house. Since I had a case pending before the NLRB, I was allowed to be on the property for the election and to vote in the election. On those days, there was no reason for the sheriff's presence because there had been no violence during the union organizing drive. The sheriffs created an unnecessarily intimidating and hostile atmosphere for workers going to vote. As workers passed the lines of police, they saw company management standing with the head of the sheriff's office. The Board later ruled that Smithfield used the police "as an intimidation tactic meant to instill fear in [its] employees."

Following the vote count on the final day of balloting, company personnel stormed the vote-counting area and in the resulting confrontation, one union supporter and one union representative were beaten and arrested by the company's security officers. Both men were later cleared of any wrongdoing.

Throughout this time, the UFCW fought for me and the other unfairly fired workers to get the justice we deserved. UFCW filed a legal claim on our behalf with the National Labor Relations Board on Smithfield's behavior between 1994 and 1998. Eventually, we won. In 2000, after a 13-week trial, the NLRB Judge issued a decision finding massive violations of labor law and ordered broad remedies including special access remedies. The Judge found that Smithfield

violated labor laws and created “an atmosphere of intimidation and coercion” in order to prevent workers at the plant from joining the union. The Judge’s decision contained some of the strongest language in recent labor history against a company’s total disregard for the law.

The court cited details that included:

- *Smithfield threatened to close the plant if workers formed a union.
- *Smithfield threatened to freeze wages if employees unionized.
- *Smithfield threatened to fire workers and threatened workers with violence.
- *Smithfield fired some workers, like me, who backed the union.
- *Smithfield harassed and physically assaulted workers who helped organize.
- *Smithfield conspired with the local Sheriff Department and falsely arrested employees.
- *Smithfield paid workers to spy on union activists – pay that was substantially more than their salaries.
- *Smithfield coerced employees to participate in Smithfield’s anti-union effort.
- *Smithfield handed out anti-union literature.
- *Smithfield ordered employees to stamp hogs with a “Vote No” stamp.
- *Smithfield confiscated union materials and videotaped employee’s union activities.

Smithfield appealed the Judge’s ruling.

In 2000, Smithfield formed a Company Police Force, becoming the only meatpacking plant in the U.S. with its own certified police department. North Carolina law allowed these officers to carry guns at the plant and arrest workers on site. The company police force and on-site holding facility allowed them to interrogate workers for hours without any phone calls or legal counsel.

[Eventually, after public protest, the company disbanded its police force in 2005.]

In 2004, the Board affirmed the Judge's 2000 decision and ruled that Smithfield engaged in massive illegal activity during both campaigns and the 1997 election and ordered extensive remedies. There were over 50 violations. Top Smithfield officials at the plant and in the company had committed egregious actions against the union campaign. Smithfield again appealed the decision to the Federal Court of Appeals in Washington, D.C.

Then, in 2006, after more than 12 years of litigation by the company including appeals, and despite the company doing everything possible to avoid paying the back wages we were entitled to, a settlement was reached. This was only after the company was found liable by the U.S. Court of Appeals. Smithfield was not fined or indicted for breaking the law and none of its executives were punished. Smithfield was required to offer jobs to those workers like me who were illegally terminated and to pay back wages for the time we were unemployed or could not find comparable pay.

They were also ordered to hold another election. Smithfield's President said he looked forward to an election by secret ballot but we've been down that road twice already in Tar Heel. Following the 1994 election, plant officials promised there would be free and fair elections but soon after, the harassment, intimidation and coercion began again and in 1997, Smithfield's conduct was even worse than before.

Last year, when the NLRB decided the case involving Smithfield's illegal anti-union campaign at its Wilson, NC plant, the Board said that Smithfield's "Proclivity to violate the act is further established." Smithfield crushed the union's efforts to organize the Wilson employees by using the same playbook and the same top managers to commit the same type of illegal conduct at the Wilson plant as it did at my plant. This included threats to close the plant, threats of job loss, threats of loss of pay and other benefits, threats of unspecified reprisals,

discharge of union supporters and interrogations of employees about their union activities.

Knowing all this, and knowing that Smithfield was not changing its ways, when I knew I could get my job back at Smithfield, I had to decide – to stay at a secure job or take a big pay cut to return to work at the plant. It was not a hard decision since I knew I needed to finish what I had started. I had to fight to right the wrongs at Smithfield. I had to fight to protect the workers in the plant. I had to make a difference for future generations of workers at the plant. I had to return to Smithfield to make a difference and give a voice on the job to all the workers. We may have been cheated out of our right to organize a union in 1994 and 1997 but it wasn't going to happen a third time.

When I returned to the plant on July 31st of last year, my supervisors again tried to harass me and give me the worst and least safe job. The court order required that I return to the same job of running hogs that I had when I was fired. Instead, they gave me the job of hog tattooing, which is an extremely boring, filthy and tedious task. The job also isolated me from my co-workers, which kept me from talking to my co-workers about everything including the union. They wanted to keep me quiet and make my life miserable so I would quit. But the Labor Board and my union lawyer told the company that this violated the court order and said more charges would be filed if the situation wasn't corrected. I was moved to my previous work of running livestock. In my six months back at Smithfield, I have been intimidated and harassed numerous times because I continue to exercise my rights to fight for a union at Smithfield.

Smithfield is still up to their old dirty tricks of continuing to instill fear in the workers by violating the law and preventing us from banding together for better working conditions. Smithfield continues to threaten workers and distribute false information to block our union activities. Their efforts scare the activists and workers and deter union organizing.

Around the same time, they also violated my right to express my wishes for a union by replacing my hard hat and making me cover my rain jacket. I had written on my hat and jacket pro-union messages like "Union Time" or "Union Contract Protects Workers Rights." I was told by my supervisor that the hat and rain jacket must be clean. This was despite the fact that Smithfield allows many different messages and slogans on the gear all over the plant but not union messages. All over the plant, people's hats had words like "NY" written on them or stickers for various products or religious symbols. Yet, I was told to get a new hat and cover my jacket. Clearly, I was being treated differently from my coworkers. This is disparate treatment.

The harassment in the plant continues to this day despite all the litigation and promises for a fair new election. Finally last week, the company agreed to pay \$1.5M to the fired workers as part of compliance with the 1994/1997 election rulings from NLRB. This covered back pay – but the company was only liable for the time that workers were not able to find employment or comparable wages. After 12 years of consistent rulings by the Judge, NLRB and Federal Appeals Court, we finally had a decision.

So, has anything changed since I returned to work at Smithfield? No, not really. The intimidation and coercion clearly continues. Far too many people who work at Smithfield are still injured and abused daily. In fact, the injury rate in 2006 rose by 60 percent over the year before and has DOUBLED since 2003. Many have lost their livelihood because of Smithfield's misconduct. And, Smithfield continues to challenge laws and get away with a mere slap on the wrist. One may think that the \$1.5 million settlement is more than a slap on the wrist. It was just our back pay. This is just what the fired workers earned and deserve for being fired. For a company that sells \$11 billion worth of products a year, this is pennies in a bucket. There is nothing to deter companies from its unlawful conduct. There are no fines or damages. There is simply nothing to deter them.

This is even true for companies that have government contracts, like Smithfield. The government should have closer scrutiny of companies with government contracts. It does not. This is not an equal playing field. And, the price paid in pain and suffering by Smithfield workers is nothing less than immoral.

The laws are far too easy on companies like Smithfield to force them to change. The company has been fined by OSHA. It has been fined by the Environmental Protection Agency. It has been found liable for massive violations of labor law. But breaking the law is just the cost of doing business for Smithfield. Chairman Joe Luter earned over \$4 million in cash plus millions in stock options and deferred compensation, while workers and their families regularly go through hell. That's why we need the protection of a union contract now — not just another farce of an election that Smithfield can steal through brute force and intimidation. We want our voices to be finally heard and we want an end to the abuse.

All of Smithfield's anti-union activities and fight against the union have so poisoned the environment at the plant that I believe it will impossible to have a free and fair election in Tar Heel. What the company has proposed would be more like giving an aspirin to someone with cancer. The poison is just too thick. What is to stop Smithfield from repeating what they did in 1997 and appealing any charges against them for another nine years? The only way workers can freely express their wishes is with a fair process.

That's why we need the Employee Free Choice Act. We need help to stop the injuries. We need help in getting Smithfield to change and do the right thing for its workers.

What has happened at Smithfield shows why we need new laws in this country. It shows that current laws give too much leeway to companies without any penalties. EFCA would make a difference in our struggles at Smithfield. EFCA would finally protect American workers who want to form a union and bargain

collectively. Majority verification would help us avoid the intimidation that has happened at Smithfield during the organizing drive and the election process and will happen again if there is another NLRB election. A fair vote is difficult if not impossible at the workplace. Workplaces are not neutral and unprejudiced places like the polling sites we go to when we vote in political elections – libraries, schools and community centers. Workplaces are owned by the very companies that are fighting against union representation. The air is thick with the company’s discontent. The halls are filled with anti-union rhetoric. The voting site is not a balanced and unprejudiced environment. Workers must pass through this biased environment to vote. I come from the south and I know that it sounds good to say that everyone will be able to vote secretly for the union – freely without influence. But big companies like Smithfield turn this whole process upside-down for workers, just like poll taxes and literacy tests turned voting upside down for African Americans at one time. A secret ballot is no longer secret or safe. That is why it is imperative that we are allowed card check.

It is also important to point out that elections can easily be compromised. A blackout occurred during the voting at the plant during the 1997 election. When the lights came on, a Smithfield agent, who had no right to be in the voting room, was hovering over the ballot box. On these facts, the Board found that the NLRB agent left the ballot box unguarded during the blackout and concluded that such a situation damaged the integrity of the balloting process and warranted setting aside the election.

In addition, it is critical that we pass strong penalties and remedies against employer coercion. This would force Smithfield and other companies to change their anti-union and anti-worker ways. And on that great day, when we do finally achieve representation, EFCA will help negotiate our first contract. Just as it was necessary to fight for civil rights in the south, it is now time to fight for union representation rights.

Real laws with real teeth will deter companies, like Smithfield, from abusing their workers and doing everything they can to deter our right to organize. We need a union at Smithfield. We need protections that a union will bring the Smithfield workers. My time in the Army and fighting for this country in Iraq taught me to stand up for this country and the rights of all our citizens. I believe in this country. And, I believe that it is time that we get a union at Smithfield. But like any good soldier, I can only do this with an army of support. I need your help in giving a much needed voice to the hard working men and women at Smithfield. We need respect, dignity, a safe workplace and job security – which only a union contract can provide. I need your help in establishing the safeguards we need at Smithfield and at all companies across this great country. I urge you to pass the Employee Free Choice Act and give us a voice on the job.

Thank you and I will be happy to take any questions you may have.