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NEWS CLIPS

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## Labor on the Line  Mark Mix at Labor Hearings

Congressional Quarterly Weekly, 2/04/2012

While private employers are free to negotiate with unions, governments should not be forced to deal with a "monopoly bargaining agent," says Mark Mix, president of the National Right to Work Foundation. "What we're doing here is we're taking a private organization and we're putting them between taxpayers and their elected officials."

## Indiana and the last crusade: Do right-to-work acts work?

Globe and Mail Online, 2/07/2012

Contrast that with the National Institute for Labor Relations Research in Springfield, Va., which is clearly on the other side of the table, describing itself as a non-profit body "analyzing and exposing the inequities of compulsory unionism."

Its study found that employment growth in right-to-work states outpaced the others from 2000 to 2010 (in fact, employment fell in the others). At the same 10-year span, manufacturing growth climbed, as did compensation in the private sector.

## Toyota To Build More Highlander SUVs in the U.S.

Wall Street Journal Online, 2/09/2012

Toyota Motor Corp. said it will increase production of the Highlander at its Princeton, Ind., factory. The ramp-up is to begin late next year and is expected to add about 400 jobs at the plant, known as Toyota Motor Manufacturing Indiana Inc., or TMMI.

## South Carolina House Approves Bill Which Would Level Playing Field For Workers, Employers, in Union Organizing Campaigns

Daily Labor Report Online, 2/09/2012

H. 4652 would require employers to display a poster informing workers of South Carolina's right-to-work protections and clarifying existing provisions in state law (S.C. Code Ann. § 41-7-10, et seq.) that employment may not be denied because of membership or nonmembership in a labor organization. The measure also would require unions to provide the state with organizational and financial information, similar to the information they are required to disclose to the federal government.

## House Committee Holds Hearing On Use of Union Dues for Politics

Daily Labor Report Online, 2/08/2012

The committee heard from three union members, all of whom said their union dues were used for political purposes they did not authorize or agree with. They also heard from a professor of labor and employment law who said that union members can opt out from having their dues used for political activities.

## Indiana Finds Union Guilty of Safety Violations

Daily Labor Report Online, 2/09/2012

The serious violations involved IATSE not meeting the requirements of the ANSI standard or the general duty clause. Specifically, IATSE is alleged to have provided a head rigger who was not a "competent person" even though he was required to make "determinations on the construction and guy wire attachment points and placement of anchors on the load bearing roof structure."

## KY Union president, in a Tired Old Rant, Boos Charter Schools, Students' and Teachers' Freedom

Courier and Journal Online, 2/08/2012

Charter schools are really an effort to undermine teacher unions. The anti-union backers of charter schools, like the Walton Family Foundation, also support other anti-union organizations like the National Right To Work Foundation.

## No surprise here:  Union Boss, Having Ripped Freedom from Teachers, Now Scorns Poor, Saying: "Life's Not Fair"

Commentary Magazine Online, 2/08/2012

Vincent Giordano, the head of the New Jersey Education Association, in a recent interview on New Jersey public television. When asked why he opposes giving poor parents the same opportunity to take their kids out of failing public schools and into successful private or religious institutions the wealthy have, the teachers union boss, who makes more than half a million in salary and other compensation, replied: "Life's not always fair."

## Clash Over NLRB Erupts Anew at House Hearing

Wall Street Journal Online, 2/07/2012

Mr. Miller said it will likely be the Supreme Court, not Congress, that decides whether the recess appointments violated the Constitution, and the committee should be focusing

its efforts on other issues such as job creation instead of having its sixth hearing "attacking" the NLRB.

## Business Groups, NLRB Present Arguments In Court Challenge to Election Rule Revisions

Daily Labor Report Online, 2/06/11

Asking the U.S. District Court for the District of Columbia to grant summary judgment in the lawsuit they filed in December 2011, the chamber and CDW argued that because only two members voted to adopt the final rule, the regulatory action was improperly conducted "without the congressionally-mandated three member quorum." The groups also contended that the rule is inconsistent with several provisions in the National Labor Relations Act.

## Court Says Teamsters Can Be Held Liable After Local Did Not Request Wage Reopener

Daily Labor Report Online, 2/06/2012

Judge Robert M. Dow Jan. 31 ruled that Teamsters Local 673 breached its duty of fair representation under the Labor-Management Relations Act in its dealings with approximately two dozen union-represented truck drivers. The truck drivers are employed by UChicago Argonne LLC, which operates the Department of Energy's Argonne National Laboratory.


CQ WEEKLY – COVER STORY
Feb. 4, 2012 – 2:13 p.m.

# Labor on the Line

By David Harrison, CQ Staff

Back in early 2009, as President Obama was settling into the Oval Office, American labor unions allowed themselves to dream. Unions had come out in force for Obama's campaign and were thrilled with the first bill the new president signed — the Lilly Ledbetter Fair Pay Act — which made it easier for workers to sue over discriminatory pay.

ON THE LINE: Indiana's new right-to-work law drew protesters to the Statehouse on Feb. 1, to no avail. (MICHAEL CONROY / AP)

Up ahead was the Employee Free Choice Act, otherwise known as "card check," a legislative proposal high on labor's all-time wish list that would make union organizing drives much easier and faster, permitting certification if a majority of the employees in a company signed cards joining a union. It represented a chance to start reversing decades of dwindling membership and declining political clout.

Labor could not have asked for friendlier legislative leaders. Rep. George Miller of California and the late Sen. Edward M. Kennedy of Massachusetts ran the labor committees in their respective chambers, and Rep. David R. Obey of Wisconsin and Sen. Tom Harkin of Iowa chaired the relevant Appropriations subcommittees. All were Democrats and committed labor allies.

But the euphoria did not last. Democrats could not get the votes to overcome a filibuster on card check after centrists balked in the spring of 2009. By then, the Obama administration had moved on to the health care overhaul and was not inclined to waste political capital on a doomed legislative effort.

It would get worse. Tea party-backed Republicans not only took the House in the 2010 midterms but also swept into power in state capitals. They had their own wish lists.

What followed were state efforts to roll back public employee collective bargaining rights — epitomized by last year's fight in Wisconsin — and a push on Capitol Hill to hamstring the National Labor Relations Board

(NLRB), the agency charged with mediating disputes between workers and employers and implementing workplace unionization rules.

Today, unions are fighting for survival on multiple fronts. Indiana last week became the first state in 10 years and the only state ever in the industrial Midwest to adopt a right-to-work measure that forbids unions from collecting dues from non-members as a part of their contract. Right-to-work momentum is gathering in other states, such as Michigan and Minnesota. And Arizona lawmakers are rushing bills banning collective bargaining for public employees through the legislature.

Few state officials have been as aggressive as South Carolina Gov. Nikki R. Haley, a first-term Republican, who casts unions as outside agitators. “We’ll make the unions understand full well that they are not needed, not wanted and not welcome in the state of South Carolina,” she said in her state of the state address Jan. 30.

The drive has spilled over into the GOP presidential campaign, where Mitt Romney, the party’s front-running candidate, has blamed unions for slowing economic growth and innovation.

On Capitol Hill, Republican lawmakers are jostling to take the hardest line against labor unions.

The Republican Party and America’s labor movement have been at odds for a century. But this round has gone well beyond the usual jousting and represents a challenge to the foundation of the labor movement: the ability of employees, particularly public employees, to organize and bargain collectively.

“We’re talking really now about a direct attack on the rights of Americans to freely associate with their peers, the rights given to them in the law to decide whether or not they want a union,” Miller said in a speech last fall.

“To some extent this goes in cycles, although this is clearly the worst I’ve seen in a long time,” says AFL-CIO legislative director Bill Samuel. “I can remember a day, back in the 1970s, 40 or 50 Republicans routinely voted to defend unions and collective bargaining. We actually lost a lot of Southern Democrats.”

“I don’t recall so much attention to collective bargaining or labor-related issues in my lifetime,” says Marick F. Masters, a business professor at Wayne State University in Detroit. “I remember presidential campaigns since 1968, and I don’t recall labor as having been a significant issue in any of them.”

## Why Now?

This battle is happening now due to “a confluence of events,” says Minnesota Republican Rep. John Kline, chairman of the Education and Workforce Committee who has been a leader of the counteroffensive.

State government revenue shortfalls around the country have focused attention on generous public union contracts and encouraged conservatives to blame the unions for deficits. Cuts in state workforces have triggered fights with public employee unions.

At the same time, Republicans, who consider the Obama administration beholden to labor interests, have honed their anti-union message. From the aborted card check effort to Obama's recess appointment of longtime union official Craig Becker to a spot on the NLRB, conservatives have made the administration's union connections a central part of their Obama critique.

Finally, the NLRB's complaint against Boeing Co., charging that the company opened a factory in South Carolina to retaliate against unions in Washington state, gave Republicans even more ammunition. To them, it was inconceivable that a federal agency should go after a major corporation that was hiring some 1,000 new workers in a tough economy. Boeing and the machinists union have since settled, ending the case before it really got going.

The ultimate goal, Kline says, is to "thwart some of this union favoritism that we're seeing." Republicans say they can help the economy by reducing the number of new pro-union rules promulgated by the administration. "It would get rid of some of the uncertainty that's out there," Kline says. "Employers need to have confidence about what's coming down the road and consumers need to have confidence about what's coming down the road."

To anti-union activists, this is a chance to throttle unions of government workers, which they have long opposed on philosophical grounds.

While private employers are free to negotiate with unions, governments should not be forced to deal with a "monopoly bargaining agent," says Mark Mix, president of the National Right to Work Foundation. "What we're doing here is we're taking a private organization and we're putting them between taxpayers and their elected officials."

Labor is no passive onlooker in this fight. On the 2012 campaign trail it is gearing up for its "largest ever" role in state and federal elections, according to AFL-CIO Political Director Mike Podhorzer. By organizing effective recall efforts and referendums in Wisconsin and Ohio, union activists have also made the anti-labor crusade potentially hazardous for Republicans if voters think they've overreached.

But labor is fighting back without much explicit backing from the Obama White House, infuriating union officials and their allies. Republicans, meanwhile, see in this fight a chance to advance their anti-regulatory agenda while also kneecapping an important Democratic donor base.

Union officials say their members, who have fought to keep their health benefits and pension plans, have been turned into scapegoats by conservatives intent on driving a wedge between union and non-union workers.

The governors who have challenged unions in Indiana, Wisconsin and Ohio have argued that union-negotiated salary and pension benefits are unaffordable in the age of crushing state budget deficits. In particular, they say the states can no longer afford the retiree benefits won through collective bargaining that have saddled the states with billions in unfunded

pension liabilities.

To unions, however, the bills backed by these Republicans have been aimed at disrupting a last bastion of union and Democratic political power.

The rate of union membership is roughly five times as high among public sector workers as it is in the private sector, where it has been declining steadily. Whereas labor unions' strength once derived from their millions of members employed in manufacturing, today it increasingly comes from public workers such as government employees, teachers, police officers and firefighters.

But there is evidence that the state legislation and public sector job cuts have taken a bite out of membership. Last year, almost 7.6 million government workers were union members, the lowest number since 2007, according to the Bureau of Labor Statistics. That's a membership rate of about 37 percent, compared with a membership rate of 6.9 percent for private-sector workers.

It didn't take long for Washington to mimic what was happening in the states. In March, Republican Sen. Jim DeMint of South Carolina introduced a national right-to-work bill, which has picked up 21 cosponsors. The legislation, which has little or no chance of enactment in a Democrat-led Senate, would effectively make every state a right-to-work state.

GOP presidential contenders, meanwhile, have taken up the anti-union cause, trying to link labor with the "crony capitalism" they accuse Obama of practicing and making it part of their narrative of American decline.

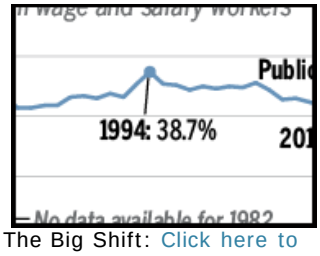
"If you want to get America going again," Romney said Jan. 19 during debate in South Carolina, "you've got to stop the spread of crony capitalism. [Obama] gives General Motors to the UAW. He takes $500 million and sticks it into Solyndra. He stacks the labor stooges on the NLRB, so they can say no to Boeing and take care of their friends in the labor movement."

Romney says he supports DeMint's national right-to-work bill. So does Rick Santorum, even though he opposed a national law while in Congress. Newt Gingrich says he wants to abolish the NLRB.

The Boeing complaint riled up Capitol Hill as well. Outraged Republicans filed numerous bills taking aim at the NLRB, an independent agency, and refused to confirm any of Obama's Democratic nominees to the board, threatening to deny it a quorum that would have paralyzed it.

## Recall Backlash

Labor is fighting back. After Republican Gov. John R. Kasich signed the Ohio bill limiting collective bargaining, union members and activists immediately began gathering petitions to hold a referendum on the measure, exploiting a feature of Ohio law that allows voters to challenge individual pieces of



The Big Shift: Click here to

legislation.

view chart

In November, Ohio voters repealed the law by a convincing 61 percent to 39 percent. Union officials called it a major victory in their attempts to hold the line against anti-union state officials. It was also a significant show of organizing strength in a heavily unionized industrial state that has emerged as a crucial battleground in presidential campaigns.

“We’re pretty confident that result in Ohio this last November foreshadows next November if Obama and presumably Romney are fighting about what to do about the economy and about jobs,” Podhorzer says.

Unions are pursuing a similar strategy in Wisconsin, where state officials are currently reviewing petitions asking for an election to recall GOP Gov. Scott Walker.

Republicans caution against reading too much into these developments, however.

“Union leadership and union members are two very different things,” says Mark Graul, a Wisconsin Republican political strategist. “As you did in 2010, you’ll have plenty of union members in 2012 who are going to vote for the governor, particularly some of those private-sector union folks who have been paying more than public sector unions for their benefits and their retirement funds.”

On the national stage, unions have been supporting the NLRB against Republican attacks. But they’re doing it without much support from national Democrats. Obama, in particular, has said very little about the unions’ ongoing struggle. That has not gone unnoticed.

“I’m very disappointed in the White House silence on the attacks on organized labor,” Harkin said in an interview, adding that in 2008 labor went all out for Obama.”

Still, Harkin conceded that Obama has made some important moves, from the signing of the Lily Ledbetter Act to Becker’s appointment to the NLRB. In January, Obama also infuriated Republicans by using his recess-appointment power to fill three vacant seats on the NLRB, even though the Senate was holding pro forma sessions.

“I just want the administration to come out fighting,” Harkin said. “I want them to do some heavy lifting for labor because labor does the heavy lifting for them.”

Harkin was particularly dismayed that the White House did not contact him before Obama visited Cedar Rapids, Iowa, last month. There’s a foreign-owned unionized plant in Cedar Rapids that is bringing jobs into the country; Harkin wanted the president to visit it. Instead, Obama went to Conveyor Engineering and Manufacturing, a non-union factory.

“These are little signals that could have been sent,” he said.

AFL-CIO President Richard Trumka has warned Democrats not to take union support for granted. The unions will help only “those people that help us,” he said last spring at a National Press Club event. “If leaders

aren't blocking the wrecking ball and advancing working families' interests, working people will not support them," he said. "This is where our focus will be — now, in 2012 and beyond."

Trumka has been especially outspoken in criticizing the administration for pushing into law a free-trade deal with Colombia, where 51 union members were killed in 2010.

There is more than a little bluff to Trumka's threats. When the campaign heats up, union political action committees will probably decide that Obama and congressional Democrats are a more palatable choice than the GOP alternatives. And Trumka has toned down his comments in recent weeks, praising Obama's State of the Union speech as having "voiced the aspirations and concerns of those who are too often ignored."

"If the direction that President Obama is going to go in is to be more forcefully for job creation and to realize that unemployment is a much bigger problem for Americans than the debt ceiling or all these other issues, then I think we're going to be much more favorably disposed toward him," Podhorzer says. "There's no question that we'll take a big role, the largest ever, in the election."

Besides federal races, "we'll be investing resources in state races because of the kinds of attacks that were unleashed by the Republicans taking control of governorships and statehouses," he says.

But the Democrats' hesitant embrace of labor unions can be seen as a reflection of organized labor's loss of political clout. As membership has sunk, so has the public's opinion of unions. Only 52 percent of respondents had a positive view of labor unions last year, according to Gallup, down from 65 percent in 2003, a drop partly attributable to the flare-ups in Wisconsin and other Midwestern states.

Of course, unions can still organize impressive door-knocking campaigns and get-out-the-vote drives. And the Center for Responsive Politics reports that labor-affiliated political action committees are among the strongest in the country. Labor PACs account for five of the 20 largest PACs so far this cycle, according to the nonprofit group. And their money is heavily directed toward Democrats. But even there, labor is losing some of its edge. A report last year by the center found that labor PACs accounted for roughly a quarter of all PAC money given to Democrats in 2010, down from 40 percent in 2000. Business PACs have more than made up the difference, boosting their contributions to Democrats.

## Ideology and Money

On Capitol Hill, the GOP's targeting of the NLRB fits neatly into the party's anti-regulatory agenda. One of the factors restraining job growth, according to conservative lawmakers, is the thick tome of union-related rules and

REJECTED: Kasich says he got the message in November, when voters overturned the anti-union measures he had guided through Ohio's legislature. (ERIC ALBECHT / COLUMBUS DISPATCH / AP)

regulations imposed by the NLRB that employers must follow. That forces small-business owners to hire attorneys and consultants to help them navigate union elections or the collective bargaining process and reduces their ability to invest in their businesses and hire new workers.

"I've been accused of being anti-worker and I really do take exception to that," says Kline, who sees himself as representing the interests of the 89 percent of workers who are not union members. "Their rights have to be protected."

Besides their philosophical objections, Republicans have political reasons to attack unions. Not only does impeding labor's ability to organize and raise money appeal to conservative voters, it also reduces the amount of PAC money available to Democratic candidates. Simultaneously, Republican candidates are increasingly bankrolled by anti-union funders. For instance, Sheldon Adelson, a major Gingrich supporter, has long fought organized labor in Las Vegas.

If the legislation adopted in Wisconsin or Indiana were to be replicated nationwide, "that would clearly hurt labor's ability to raise money," says Masters, the Wayne State University professor. "Labor has the capacity to bankroll campaigns. I think it's hard to read it any other way. It's the elephant in the room."

That could explain why Republicans paint labor's political efforts as simply an attempt by a major, unaccountable institution to keep money flowing out of the paychecks of working people.

"People have this notion that labor law is about labor versus business," says the National Right to Work Foundation's Mix. "It's not. This is about two large cartels that are dividing up the spoils, and the person that is missing in the debate is the employee."

With many workers struggling to keep their jobs and make their payments, it can become easy to "scapegoat" union members who have held on to their wages, health care benefits and pensions, says the AFL-CIO's Samuel.

Somehow, he says, the unions' victories on behalf of their members have been cast as a bad thing. "Talk about class warfare," he said.

Even more dramatic than the general public's loss of labor support has

been the sharp drop in Republicans' opinion of labor unions, according to Gallup's polling. Whereas about half of Republicans said they had a favorable view of unions in 1999, only about a quarter said so in 2011. By contrast, Democrats don't seem to have changed their views much over that period, with approval ratings hovering in the high 70s. That means Republicans can appeal to their base by attacking labor without risking any electoral repercussions.

Republicans have done a "terrific job" of painting labor unions as greedy and obsolete, says Lee H. Adler, a professor of labor law at Cornell University.

"The policies that organized labor is pursuing and advocating are quite inside the mainstream of America and American law, but now they're being pushed as something that is old, salty, not valuable and something that big government is pushing," he says.

It used to be relatively easy to find pro-labor Republican lawmakers, such as former Sens. Lincoln Chafee of Rhode Island, Ted Stevens of Alaska and Arlen Specter of Pennsylvania (who eventually left the party). Going further back, Ronald Reagan, a former union president, once called union organizing "one of the most elemental human rights." But he also fired more than 11,000 striking air traffic controllers in his first year in office, setting off an era of intensified conflict between labor and the GOP.

Today, Republican support for unions seems gone forever. The party has tilted so far to the right in recent years that labor officials have given up trying to forge alliances with it. Labor's fate will be increasingly tied to the fate of the Democratic Party and its success in elections, particularly the one on Nov. 6, 2012.

FOR FURTHER READING: *DeMint bill is S 504; NLRB bill is HR 2587; and Kline bill is HR 3094. NLRB, 2011 CQ Weekly, p. 2274; Boeing dispute, p. 1050; public employees, p. 565; card check, 2010 CQ Weekly, p. 382.*

TOP BUSINESS STORIES

# Indiana and the last crusade: Do right-to-work acts work?

MICHAEL BABAD | Columnist profile | E-mail

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**Indiana and 'right to work'**

This isn't directly related to the controversial shutdown of the London, Ont., locomotive plant, but the decision by Caterpillar Inc. (CAT-N 113.75 -0.06 -0.05%) and subsequent focus on Indiana got me wondering about "right to work" legislation.

VIDEO
Troubling news for earnings

VIDEO
Sarkozy, Merkel call for action in Greece talks

Whether you call it "right to work" or "anti-union" depends on which side of the bargaining table you're on, and the research is all over the map.

Caterpillar's Progress Rail Services announced Friday that it's shutting down its Electro-Motive Canada plant in London, a 62-year-old operation where 700 jobs will be lost, including those in management. The work will be moved to other plants in North and South America because, the company said, costs at the London operation must be competitive.

It locked out its union, which had said no to deep wage cuts.

Caterpillar didn't specify where the jobs would go, but Indiana is the logical candidate, given that there's

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an operation there, and the company held a packed job fair on the weekend, offering work at far less pay than in Canada.

This came at the same time that Indiana became the 23rd state in the country, and the first in about a decade, to adopt such "right to work" legislation. Though unconnected, it got me poking around, particularly in two studies cited by The Wall Street Journal.

Such legislation means that a worker can't be forced automatically to pay union dues, a long-running practice that meant you paid because you were represented. (In Canada, it has been known as the Rand formula, based on a ruling by Justice Ivan Rand in a strike by what was then the United Auto Workers against Ford in the mid-1940s.)

Unions, of course, don't like what Indiana and others have done, complaining the removal of automatic dues weakens their ability. Business and government hold another view.

"Indiana will improve still further its recently earned reputation as one of America's best places to do business, and we will see more jobs and opportunity for our young people and for all those looking for a better life," Governor Mitch Daniels declared as he signed the bill last week.

The governor also said those who objected to the new law were unnecessarily troubled: "No one's wages will go down, no one's benefits will be reduced, and the right to organize and bargain collectively is untouched and intact."

Is he right?

In a study published by the Economic Policy Institute in Washington, researchers Elise Gould and Heidi Shierholz found that wages in right-to-work states are 3.2 per cent below those of states without such legislation. The rate of health insurance that is sponsored by employers is 2.6 percentage points lower, and for employer pension plans 4.8 percentage points lower.

The EPI is described on the liberal side of the spectrum. Contrast that with the National Institute for Labor Relations Research in Springfield, Va., which is clearly on the other side of the table, describing itself as a non-profit body "analyzing and exposing the inequities of compulsory unionism."

Its study found that employment growth in right-to-work states outpaced the others from 2000 to 2010 (in fact, employment fell in the others). At the same 10-year span, manufacturing growth climbed, as did compensation in the private sector.

David Doorey, an Associate Professor of Labour and Employment law at York University's School of Human Resource Management, seems to have the best answer: There's no substantial proof either way.

"There are dozens of studies 'showing' that these laws decrease wages and benefits and have no positive effect on employment levels ... and dozens showing the exact opposite," he says on his workplace law blog.

He does note, however, that the voluntary nature of dues payment makes it harder for unions to raise the money they need.

"The entire point of this type of legislation is to cut off resources from

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unions so that they become weak and ineffective," Dr. Doorey says.

"Proponents argue that it creates jobs, on the theory that there are a bunch of anti-union employers who will flock to whatever state passes the law ... Opponents dispute that claim, and argue that all it does it allow employers in those states to pay workers less and give them fewer health and pension benefits. They claim it is part of the race to the bottom that corporations encourage and that Republican politicians are more than happy to implement in exchange for the huge political contributions to their campaigns."

- A message to Caterpillar: This is Canada, not Indiana
- Mike Moffatt's Economy Lab: The $5-million Electro-Motive subsidy that wasn't
- McGuinty presses Ottawa to review 'outdated' foreign takeover rules
- Caterpillar pulls plung on London plant
- Read the EPI study
- Read the NILRR study
- Read David Doorey's blog

**Patience wears thin**

I chuckled today when I read on the wires that patience is wearing thin where Greece is concerned. That's true, of course, but patience was wearing thin about 18 months ago.

Here's what you need to know: The crisis drags on with no agreement among political leaders to meet the terms of the Troika, the international lending group that includes the International Monetary Fund, the European Union and the European Central Bank, that will pave the way for fresh bailout funds. Indeed, a key politicial meeting has now been pushed into tomorrow. Nor is there a deal with private creditors on the terms of the hit they'll take as part of Greece's overall plan.

At the same time, major unions are striking again today, which, as Greece goes, also isn't really news.

As one government official put it to Reuters, "we must find a solution today." I thought that was the issue 18 months ago, too. Or at least yesterday, when Germany's Angela Merkel and France's Nicolas Sarkozy again pushed the Greeks to come to terms lest the euro zone fall apart.

"The political climate in Greece suggests otherwise and as such continues to make any deal to implement further austerity difficult, especially with a 24-hour strike starting today, as workers protest at new austerity measures, while politicians have one eye on a general election due in April," said CMC Markets analyst Michael Hewson, pointing out why the talks are so difficult.

"No one in Greece wants to be seen to be tightening the austerity noose even tighter for fear of being punished at the polls," he added.

"Some measures have been agreed including a 20-per-cent cut in the minimum wage and 15,000 public sector job cuts," he said in a research note today.

"Disagreement remains over around €1.2-billion of around €4.2-billion worth of government spending reductions. Even if agreement is reached, given past experience it would be naïve in the extreme to believe that any of the new measures could actually be delivered in the face of such public opposition."

For now, many still see a Greek bankruptcy as inevitable, and the stakes are high as the clock ticks down.

"It's a classic case of gamesmanship as each party weigh up who has the most to lose," said Lauren Rosborough of Société Générale. "As with all

'public' items any benefit or loss is shared – the obvious loser if an agreement isn't satisfactorily reached will be the global economy."

- Greece faces crunch talks as unions strike
- Citigroup sees rising threat of Grexit (Greece euro exit)
- Greece edging closer to default

**Glencore, Xstrata agree to terms**

Glencore International and Xstrata, which owns Canada's Falconbridge, unveiled their blockbuster merger today, a marriage that would create a global mining giant valued at $90-billion (U.S.), The Globe and Mail's Eric Reguly reports.

The deal joins Glencore, the world's biggest commodities trader, with one of the biggest producers of thermal coal, copper, zinc and nickel.

The merger has been expected for some time. Glencore already owns 34 per cent of Xstrata and has wanted to buy the rest since Glencore's initial public offering in London last spring.

As Reuters reports, the deal isn't necessarily in for smooth sailing given that two major Xstrata shareholders don't like it.

- Xstrata, Glencore agree to terms on merger
- Xstrata-Glencore deal a possible game changer
- Glencore-Xstrata deal meets shareholder opposition

**Wal-Mart gets ready**

Wal-Mart Stores Inc. (WMT-N 61.66 -0.04 -0.06%) is sprucing itself up for the arrival in Canada of rival Target Corp. (TGT-N 52.43 0.02 0.04%).

The Canadian arm of the world's largest retailer announced today that it plans to spend more than $750-million on more than 70 projects this year. That includes building new stores as well as expanding and overhauling others. Most of the Zellers stores it got the rights to will be included, and will reopen as Wal-Mart outlets. There are 39 of those.

Target promises to shake up Canada's retailing scene, which Wal-Mart did almost two decades ago, when it begins opening its outlets next year.

- Wal-Mart Canada unveils plan to take on rivals

**Building permits surge**

Permits for construction starts in Canada surged more than 11 per cent in December, reaching the highest level since June 2007 and suggesting that low interest rates continue to feed the industry.

However, much of the surge was due to condo development in Ontario, where the Toronto market is a concern. In Alberta, though, commercial construction added nicely to the numbers, Statistics Canada said today.

"Construction intentions for multi-family dwellings rose 28.9 per cent to $1.9-billion," the federal agency said. :It was the second consecutive monthly increase and the highest level recorded since December 2005. The growth was due to major condominium and apartment building projects initiated in Ontario."

- Condo strength propels jump in building permits

**Australia holds firm**

Australia's central bank surprised many market players today by holding firm on interest rates.

Most had expected the Reserve Bank of Australia to trim its benchmark cash rate by one-quarter of a percentage point, but policy makers held it steady at 4.25 per cent, citing Europe's troubles and new forecasts for

slowing economic growth, but a "continuing moderate expansion" in the United States.

Governor Glenn Stevens did leave the door open.

"With growth expected to be close to trend and inflation close to target, the board judged that the setting of monetary policy was appropriate for the moment," he said. "Should demand conditions weaken materially, the inflation outlook would provide scope for easier monetary policy."

Charles St-Arnaud of Nomura in New York said he expects the central bank will now hold steady through to 2013.

**Business ticker**

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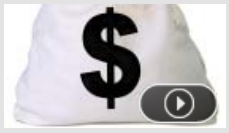
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FEBRUARY 9, 2012, 8:00 AM ET

# Toyota To Build More Highlander SUVs in the U.S.

Toyota Motor Corp.

Toyota Highlander hybrid.

Toyota Motor Corp. said it will increase production of the Highlander at its Princeton, Ind., factory. The ramp-up is to begin late next year and is expected to add about 400 jobs at the plant, known as Toyota Motor Manufacturing Indiana Inc., or TMMI.

The planned change is part of a broad program at Toyota so shift more of its production out of Japan and to build vehicles closer to the markets in which they are sold. Toyota and other Japanese car makers have been considering moving more vehicle assembly operations out of Japan in part to avoid the adverse affects of a strong yen that can make its cars relatively expensive in some markets.

The car maker said it will spend about $400 million to support demand for the Highlander around the world. Highlander production at TMMI, which will include the hybrid model and vehicles slated for export, is expected to increase by about 50,000 units per year. By the end of 2013, Toyota will no longer build the Highlander in Japan.

“This project allows for better utilization of the Indiana plant and will help Toyota capitalize on the improving North American and global auto market,” said Steve St. Angelo, executive vice president of Toyota Motor Engineering & Manufacturing North America. “In addition to new jobs at the Indiana plant, this project will increase opportunities and jobs for our North American supply base,” he said.

The TMMI plant currently employs 4,800 and builds the Highlander, Sequoia fullsize SUV and Sienna minivan.

Bloomberg BNA Daily Labor Report®

Source: Daily Labor Report: News Archive > 2012 > February > 02/09/2012 > News > State Laws: South Carolina House Approves Bill Aimed at Discouraging Union Activity

27 DLR A-6

***State Laws***

# South Carolina House Approves Bill Aimed at Discouraging Union Activity

*By Andrew Ballard*

RALEIGH, N.C.—Legislation (H. 4652) aimed at discouraging union activity in South Carolina was approved by the state's House of Representatives Feb. 9.

The bill is backed by Gov. Nikki Haley (R) and has been sent to the Senate for its consideration.

In advocating for tightening the state's "right-to-work" laws, Haley and state Speaker of the House Bobby Harrell (R) cited recent federal involvement in matters related to unionization (16 DLR A-8, 1/25/12).

## New Notice, Reporting Requirements

H. 4652 would require employers to display a poster informing workers of South Carolina's right-to-work protections and clarifying existing provisions in state law (S.C. Code Ann. § 41-7-10, et seq.) that employment may not be denied because of membership or nonmembership in a labor organization. The measure also would require unions to provide the state with organizational and financial information, similar to the information they are required to disclose to the federal government.

The pending bill also would increase the amount of penalties that can be levied on labor groups violating the right-to-work provisions and allow workers to revoke their authorization for dues deductions at any time. It also would prohibit the use of project labor agreements on public construction projects.

H. 4652 was introduced in the House Jan. 24 and received final approval Feb. 9 on a vote of 70-19. Senate approval also is expected.

South Carolina already is one of the nation's least unionized states. As of 2011, only about 3.4 percent of the workforce held membership in a union, with just 5.0 percent having union-representation.

## For More Information

Text of the bill is available at http://op.bna.com/dlrcases.nsf/r?Open=mcan-8rbvtk.



ISSN 1522-5968

## Labor on the Line  Mark Mix at Labor Hearings

Congressional Quarterly Weekly, 2/04/2012

While private employers are free to negotiate with unions, governments should not be forced to deal with a “monopoly bargaining agent,” says Mark Mix, president of the National Right to Work Foundation. “What we’re doing here is we’re taking a private organization and we’re putting them between taxpayers and their elected officials.”

## Indiana and the last crusade: Do right-to-work acts work?

Globe and Mail Online, 2/07/2012

Contrast that with the National Institute for Labor Relations Research in Springfield, Va., which is clearly on the other side of the table, describing itself as a non-profit body "analyzing and exposing the inequities of compulsory unionism."

Its study found that employment growth in right-to-work states outpaced the others from 2000 to 2010 (in fact, employment fell in the others). At the same 10-year span, manufacturing growth climbed, as did compensation in the private sector.

## Toyota To Build More Highlander SUVs in the U.S.

Wall Street Journal Online, 2/09/2012

Toyota Motor Corp. said it will increase production of the Highlander at its Princeton, Ind., factory. The ramp-up is to begin late next year and is expected to add about 400 jobs at the plant, known as Toyota Motor Manufacturing Indiana Inc., or TMMI.

## South Carolina House Approves Bill Which Would Level Playing Field For Workers, Employers, in Union Organizing Campaigns

Daily Labor Report Online, 2/09/2012

H. 4652 would require employers to display a poster informing workers of South Carolina's right-to-work protections and clarifying existing provisions in state law (S.C. Code Ann. § 41-7-10, et seq.) that employment may not be denied because of membership or nonmembership in a labor organization. The measure also would require unions to provide the state with organizational and financial information, similar to the information they are required to disclose to the federal government.

## House Committee Holds Hearing On Use of Union Dues for Politics

Daily Labor Report Online, 2/08/2012

The committee heard from three union members, all of whom said their union dues were used for political purposes they did not authorize or agree with. They also heard from a professor of labor and employment law who said that union members can opt out from having their dues used for political activities.

## Indiana Finds Union Guilty of Safety Violations

Daily Labor Report Online, 2/09/2012

The serious violations involved IATSE not meeting the requirements of the ANSI standard or the general duty clause. Specifically, IATSE is alleged to have provided a head rigger who was not a “competent person” even though he was required to make “determinations on the construction and guy wire attachment points and placement of anchors on the load bearing roof structure.”

## KY Union president, in a Tired Old Rant, Boos Charter Schools, Students' and Teachers' Freedom

Courier and Journal Online, 2/08/2012

Charter schools are really an effort to undermine teacher unions. The anti-union backers of charter schools, like the Walton Family Foundation, also support other anti-union organizations like the National Right To Work Foundation.

## No surprise here:  Union Boss, Having Ripped Freedom from Teachers, Now Scorns Poor, Saying: “Life’s Not Fair”

Commentary Magazine Online, 2/08/2012

Vincent Giordano, the head of the New Jersey Education Association, in a recent interview on New Jersey public television. When asked why he opposes giving poor parents the same opportunity to take their kids out of failing public schools and into successful private or religious institutions the wealthy have, the teachers union boss, who makes more than half a million in salary and other compensation, replied: “Life’s not always fair.”

## Clash Over NLRB Erupts Anew at House Hearing

Wall Street Journal Online, 2/07/2012

Mr. Miller said it will likely be the Supreme Court, not Congress, that decides whether the recess appointments violated the Constitution, and the committee should be focusing its efforts on other issues such as job creation instead of having its sixth hearing “attacking” the NLRB.

## Business Groups, NLRB Present Arguments In Court Challenge to Election Rule Revisions

Daily Labor Report Online, 2/06/11

Asking the U.S. District Court for the District of Columbia to grant summary judgment in the lawsuit they filed in December 2011, the chamber and CDW argued that because only two members voted to adopt the final rule, the regulatory action was improperly conducted “without the congressionally-mandated three member quorum.” The groups also contended that the rule is inconsistent with several provisions in the National Labor Relations Act.

## Court Says Teamsters Can Be Held Liable After Local Did Not Request Wage Reopener

Daily Labor Report Online, 2/06/2012

Judge Robert M. Dow Jan. 31 ruled that Teamsters Local 673 breached its duty of fair representation under the Labor-Management Relations Act in its dealings with approximately two dozen union-represented truck drivers. The truck drivers are employed by UChicago Argonne LLC, which operates the Department of Energy's Argonne National Laboratory.

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27 DLR A-3

***Safety & Health***

# Indiana OSHA Proposes $80,800 in Fines After Probe of Fatal Stage Collapse at Fair

*By Bruce Rolfsen*

The Indiana Occupational Safety and Health Administration, as a result of its investigation into the fatal August 2011 collapse of an outdoor stage at the Indiana State Fair that resulted in the deaths of seven people, is proposing fines totalling $80,800 against the union that provided stage hands, the State Fair Commission,, and the company that provided the stage superstructure and rigging.

IOSHA announced its conclusions Feb. 8 in Indianapolis. The Aug. 13 stage collapse killed seven people, including a security guard and a spotlight operator.

Lori Torres, Indiana's commissioner of labor, who briefed reporters on the investigation's conclusions, said IOSHA's focus was on determining whether any state health and safety standards were violated. The IOSHA review was not an inquiry into why the stage fell amid high winds during a storm that struck around 8:45 p.m. That ongoing investigation is being conducted by the international engineering firm Thornton Tomasetti.

Torres also said the accident did not reveal any gaps in IOSHA standards. “We feel we've got the tools we need,” she said.

However, the Indiana legislature is considering new laws to establish inspection requirements for temporary stages, Torres added.

## Knowing Violations

Mid-America of Greenfield, Ind., which erected the stage, received the most costly citation, a proposed $63,000 fine for three “knowing” violation—the equivalent of what the Department of Labor's Occupational Safety and Health Administration terms a willful violation.

IOSHA faulted Mid-America for not following the American National Standards Institute guidance for temporary ground support structures for entertainment events [ANSI E.21-2006].

“The evidence demonstrated that the Mid-America Sound Corp. was aware of the appropriate requirements and demonstrated a plain indifference to complying with those requirements,” Torres said

Mid-America's mistakes included “not providing cross-bracing as recommended,” not preparing “proper layout drawings” and “engineering documentation,” not taking into consideration soil conditions at the state fair site, not designating a competent person, and not taking into “full consideration” the weights of equipment and personnel suspended from the stage.

Mid-America spokeswoman Myra Borshoff Cook disputed IOSHA's conclusions. Each year, for nearly a decade, Mid-America warned the fair commission in writing that the stage roof can not be used in winds 25 mph and faster, Cook said.

“On the evening of the incident, one of our employees reconfirmed with state fair leadership that if there was lightning or wind speeds of 40 mph or more, the area should be evacuated,” Cook said. “Despite these warnings, the Indiana State Fair Commission, who controlled the venue, and Sugarland, who controlled the concert, refused to postpone the concert and failed to implement an evacuation plan away from the temporary roof structure.”

## Union Accused

The International Alliance of Theatrical Stage Employees Local 30, based in Indianapolis, was cited for three serious violations and one other-than-serious violation for a total proposed fine of $11,500.

Torres said the action marked the first time Indiana OSHA has cited a union.

John Baldwin, business representative for Local 30, rejected IOSHA's assertion that the union was an employer.

“IOSHA's contention that Local 30 was acting as an ‘employer' is nothing short of absurd,” Baldwin told Bloomberg BNA Feb. 8. “Local 30's contract with the State Fair Commission provides it possesses ‘complete and unfettered rights, powers, privileges, prerogatives, and authority over all matters relating to its business, the employees, and the employment relationship.' ”

The serious violations involved IATSE not meeting the requirements of the ANSI standard or the general duty clause. Specifically, IATSE is alleged to have provided a head rigger who was not a "competent person" even though he was required to make "determinations on the construction and guy wire attachment points and placement of anchors on the load bearing roof structure."

Also, IATSE did not conduct a personal protective equipment hazard assessment of the work site, and did not provide fall protection equipment and training to employees working four feet or higher.

The nonserious violation was for failing to keep OSHA Form 300 logs for 2008 through 2011.

**Fair Organizers Faulted**

The State Fair Commission, which oversees the fairgrounds, was fined $6,300 for a single serious violation of the general duty clause for not meeting the National Fire Protection Association code for life safety measures [NFPA 101, section 13.1.7.3]. Specifically, the commission failed to conduct a "life safety evaluation," including an assessment of all conditions and safety measures at the concert venues at the fairgrounds, and it did not take measures to protect employees exposed to severe weather and hazards from temporary structures.

Torres said the State Fair Commission lacked a clear chain of command for deciding if and when the stage area should be evacuated.

"The State Fair Commission did not have an adequate plan," she said. "They were slow to make an appropriate decision."

She noted that even as fair officials were getting ready to call off the concert and tell the audience to take shelter, stage hands were preparing for the show's start.

## For More Information

The citation against the State Fair Commission is available at http://op.bna.com/dlrcases.nsf/r?Open=scrm-8rbskq.

The citation against IATSE Local 30 is available at http://op.bna.com/dlrcases.nsf/r?Open=scrm-8rbsmh.

The citation against Mid-America Sound Corp. is available at http://op.bna.com/dlrcases.nsf/r?Open=scrm-8rbspf.

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# Brent McKim | The many problems of charter schools

Recently, proponents of charter schools have been spending remarkable sums of money on advertisements designed to make our public schools look worse and charter schools look better than they really are. Before jumping on the charter school bandwagon, Kentuckians should consider these points:

Charters would divert critical funding from our public schools. At a time when the state repeatedly fails to fund textbooks for children, it would be terribly damaging to redirect crucial funding and resources away from our public schools to charter schools.

We don't need charters. Advocates claim charters cut through red tape and empower school buildings, but in Kentucky, site-based decision making already cuts through red tape and empowers schools locally.

Our public schools are making greater progress statewide than neighboring states with charters. In fact, Stanford University found that the more charters there are in a state, the more likely the state is to be going down in state-by-state comparisons. Since the passage of KERA, Kentucky's ranking in the highly respected "Quality Counts" report by Education Week has gone from near the very bottom to 14th in the nation, passing most states with charter schools in the process.

In spite of better funding, charters are more likely to do worse than the regular public schools they replace, according to Stanford.

Charters lack oversight. The only thing public about charter schools is their funding. They are often not subject to open records laws, open meetings laws, or other safeguards. This lack of oversight has led to countless charter school scandals.

Charter schools kick out kids who don't perform well, and yet they still perform worse than regular public schools who accept the students being exited from these charter schools.

Charters claim to accept all students, but they intentionally screen out special-needs students. By requiring parents of special-needs students to sign waivers saying they understand that the charter school will not provide special education services for their



Brent McKim is president of the Jefferson County Teachers Association.

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child, charter schools effectively screen these students on the front end.

There are much better ways than charter schools to promote innovation. The Jefferson County Public Schools are at the center of creativity and bold initiative, launching high-quality programs for students, such as many successful new magnet schools. This has only been possible because our community has come together to support JCPS. The fragmentation and disruption created by charter schools would only undermine the community's efforts to create powerful programs in an equitable way. To further this progress, the Jefferson County Teachers Association supports Rep. Carl Rollins' "Districts of Innovation" bill, which would empower our public schools to obtain waivers from state laws and regulations, in order to try even more innovative strategies.

Wall Street financiers and land developers are making windfall profits off charter schools. This explains how charter advocates have funding for expensive TV ads and glossy pamphlets. It should be no surprise that two out of the three board members of KARE, including Hal Heiner, have either direct or indirect ties to real estate and land development interests.

The turnover rate for students in charters is very high. A nationwide Western Michigan University study found the turnover at KIPP charter schools from grade 6 to grade 8 to be 40 percent, which is much higher than at regular public schools.

The turnover rate for teachers in charters is very high. In Los Angeles charter schools, teacher turnover was found to be 3 times higher than regular public schools.

The turnover rate for administrators in charters is very high. A recent study by the University of Washington verified this and pointed out that, in general, charters have no plan for addressing this problem.

Charters do not promote stable learning experiences for children. Charter proponents boast that ineffective charters will be shut down. However, most parents d o not want their child to have to go to two or three elementary schools because one after another is being shut down. Surveys show parents would much rather help their child's school improve, rather than shut it down.

Charter advocates use misleading NAEP statistics to misrepresent successful public schools as failures. Charter proponents point to what they say is the low



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percentage of proficient students in public schools, based on the NAEP test. However NAEP proficiency levels have been repeatedly identified as ridiculously high benchmarks. For example, studies have shown that even the top-scoring countries would have more than half of their students failing the proficiency bar on NAEP. NAEP itself says its scores are only appropriate for making relative comparisons, not for looking at proficiency percentages. When NAEP scores are used for relative comparisons, charters score lower on NAEP nationally than regular public schools.

Charter advocacy organizations are funded by right-wing foundations that oppose essentially every program and service designed to support poor and minority children, but we are asked to somehow believe that on the one issue of charter schools they have a monopoly on caring about these children.

Charter schools are really an effort to undermine teacher unions. The anti-union backers of charter schools, like the Walton Family Foundation, also support other anti-union organizations like the National Right To Work Foundation. These anti-labor groups know that almost all charter schools a re nonunion. However, a number of studies have found that students are more successful in states and local school districts where teachers collectively bargain their working conditions. This is because teachers' working conditions are also students' learning conditions.

Charters are often more expensive to operate. For example, the state of New Mexico found they cost 26 percent more per student. The additional cost for charters is often made up by private donations from organizations traditionally opposed to free public schools, like the Walton Family Foundation. A Western Michigan University study found the per-pupil funding in KIPP charter schools to be about $6,500 more per student, with most of this funding coming from the private sector.

Charter schools are segregating our schools and undermining democracy. Public e ducation has been a pillar of our democracy, allowing students to understand the diversity they will experience as adults. Learners interact with o thers of different races, religions, beliefs and income levels. However, studies have found that charters are segregating our public schools. Many serve only black, or only Muslim, or only Asian, or only affluent children. This should concern anyone who cares about the ability of the members of our diverse society to be able to get along



Brent McKim is president of the Jefferson County Teachers Association.

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well with one another and value the rich diversity found in our democracy.

For these and other reasons, charter schools would do more harm than good for the children of Kentucky. We can all be proud of the remarkable accomplishments of our public schools since the passage of KERA in 1990. Let's build on this success by recommitting ourselves to support our public schools. Diverting funding and resources to charter schools would accomplish just the opposite.

Brent McKim is president of the Jefferson County Teachers Association



Brent McKim is president of the Jefferson County Teachers Association.

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# NJ teachers union head draws fire for 'life's-not-fair' comment over limited choices for poor

BETH DeFALCO Associated Press
First Posted: February 08, 2012 - 12:59 pm
Last Updated: February 08, 2012 - 4:19 pm



WESTFIELD, N.J. — Gov. Chris Christie on Wednesday called for a top leader of New Jersey's teacher's union to resign or be fired over for saying "life's not always fair" while discussing poor families' inability to afford private schools and union opposition to vouchers that could help them do so.

New Jersey Education Association executive director Vincent Giordano made the comment in an interview over the weekend on NJTV during a discussion focusing on school vouchers, which would in some cases let students use public money to attend private school.

When pressed on the dilemma faced by parents who can't afford to remove their children from failing schools, Giordano, whose annual salary in 2009 was more than $326,000 — not including more than $165,000 in deferred compensation — replied: "Life's not always fair and I'm sorry about that."

He went on to say: "We should work more closely with administrators and with this administration and we should provide the best possible education within our public schools. Our public schools are among the best in the nation. There are areas, urban areas in particular, that are challenging and that's where we should be focusing more of our energy and more of our efforts."

Christie, a Republican who has clashed repeatedly with the teachers union over his proposed education reforms, called the comment "outrageous" following a town hall meeting in Westfield and called for Giordano to step down or be fired.

"I cannot express how disgusted I am by that statement," the governor said. "But I am not the least bit surprised because I think it so succinctly captures what their position — what their real position — is.

"To that level of arrogance, that level of puffed-up, rich-man



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bologna is unacceptable and he should resign," Christie said.

The union issued a statement late Tuesday saying Giordano acknowledged his words could have been misinterpreted. Giordano meant to stress that providing vouchers to a select few students is not the way to address the challenges faced by urban schools, the union said.

But after Christie's remarks, the NJEA sharpened theirs. Communications director Steve Wollmer called Christie's comments an "expected political attack," and he challenged the governor's record on urban education, pointing to repeated education funding cuts the governor has made in recent years.

"We have fought for urban education funding and he's making a political case that we're not in support of urban education? Bring it — anytime, anywhere, governor. It's an open invitation, governor. You bring your notes and we'll bring ours," Wollmer said.

Christie wasn't alone in his rebuke. Lawmakers from both parties expressed outrage.

Democratic state Sen. Raymond Lesniak and Minority Senate Leader Tom Kean, Jr., co-sponsors of a bill that would provide grants to children in low-performing districts to attend a public or private school of their choice, released a joint statement condemning the remark. Kean said it showed "a startling contempt for children and parents of limited means who are forced into failing schools by virtue of their ZIP code."

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Associated Press writer David Porter in Newark contributed to this story.



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FEBRUARY 7, 2012, 4:35 PM ET

# Clash Over NLRB Erupts Anew at House Hearing

The partisan clash over President Barack Obama's NLRB recess appointments was on full display at a House hearing Tuesday: Democrats called the meeting a waste of time and Republicans called it instructive.

Republicans said they scheduled the hearing of the House Education and the Workforce Committee to assess the implications the recess appointments will have on workers and employers.

Chairman John Kline (R., Minn.) said the hearing established the recess appointments are "going to cause difficulties throughout our economy." The reason? In the coming months, businesses will struggle over whether board decisions are legitimate and should be followed, he said, citing witness testimony on behalf of employers

Rep. George Miller (D., Calif.), the committee's top Democrat, suggested the debate was an attack on the National Labor Relations Board. "Today is just another legislative day dedicated to divisive issues," he said.

Mr. Miller said it will likely be the Supreme Court, not Congress, that decides whether the recess appointments violated the Constitution, and the committee should be focusing its efforts on other issues such as job creation instead of having its sixth hearing "attacking" the NLRB.

Bloomberg BNA Daily Labor Report®



24 DLR A-1

***Representation Elections***

## Business Groups, NLRB Present Arguments In Court Challenge to Election Rule Revisions

*By Lawrence E. Dubé*

The U.S. Chamber of Commerce and Coalition for a Democratic Workplace Feb. 3 asked a federal court in Washington, D.C., to vacate the National Labor Relations Board's recent amendments to its regulations governing union representation cases, but the NLRB urged the court to reject the groups' challenge to the rule change, scheduled to take effect April 30 (*Chamber of Commerce v. NLRB,* D.D.C., No. 11-cv-2262, *motions filed* 2/3/12).

Asking the U.S. District Court for the District of Columbia to grant summary judgment in the lawsuit they filed in December 2011, the chamber and CDW argued that because only two members voted to adopt the final rule, the regulatory action was improperly conducted "without the congressionally-mandated three member quorum." The groups also contended that the rule is inconsistent with several provisions in the National Labor Relations Act.

But the board filed its own motion asking Judge James E. Boasberg to uphold the regulation, arguing that the NLRB properly approved procedural amendments to its regulations that it could have adopted without the extensive rulemaking process it chose to follow last year. The board argued the rule changes were well within the discretion granted to the agency by Congress.

### NLRB Amended Representation Case Rules

On June 21, 2011, a board majority consisting of then-Chairman Wilma Liebman (D) and Members Mark Gaston Pearce (D) and Craig Becker (D) proposed changes to the procedures for holding representation elections, and a notice of proposed rulemaking was published the next day in the *Federal Register* (119 DLR AA-1, 6/21/11). Member Brian Hayes (R) dissented.

The board held a two-day public meeting on the proposal July 18-19 (137 DLR AA-1, 7/18/11; 138 DLR A-1, 7/19/11), and by the time the comment period ended Sept. 6, the agency had received more than 65,000 public comments.

At a public meeting Nov. 30, Pearce, who became chairman of the agency when Liebman's term ended at the end of August, and Becker voted on a resolution to immediately adopt portions of the June proposal, while deferring action on the remaining elements (230 DLR A-1, 11/30/11).

Hayes, the only Republican board member, opposed the majority's effort. Hayes said although he was concerned about the substance of the proposed rule revisions, he was particularly troubled by the majority's willingness to adopt a rule with the support of only two board members. But the board proceeded to grant final approval of the modified rule changes, which made seven changes in NLRB procedure (76 Fed. Reg. 80,138) (245 DLR AA-1, 12/21/11).

Consistent with the chairman's resolution, the final rule made seven changes in NLRB procedures in representation cases:

1. Amending board regulations to state that the purpose of pre-election hearings described in Section 9(c) of the National Labor Relations Act is to determine whether a question concerning union representation exists that should be resolved in a secret ballot election.

2. Giving NLRB hearing officers authority to limit the presentation of evidence in such a hearing to genuine issues of fact material to the existence of a question concerning representation.

3. Providing for post-hearing briefs with the permission of a hearing officer, rather than as a matter of right.

4. Amending Section 102.67 and Section 102.69 of the board's rules to eliminate parties' right to seek board review of regional directors' pre-election rulings while allowing parties to seek post-election review of such rulings.

5. Eliminating language in NLRB's current statement of procedure that recommends a regional director not schedule balloting within 25 days of directing an election.

6. Amending Section 102.65 of the board's rules to provide that requests for special permission to appeal a regional director's pre-election ruling will be granted only in extraordinary circumstances.

7. Amending board rules to make NLRB review of post-election disputes discretionary.

The rule also made technical or conforming amendments to reconcile its existing regulations and statements of procedure with the proposed amendments.

**Lawsuit Filed to Challenge New Procedures**

The chamber and CDW alleged in the complaint initiating their lawsuit that the final rule violates the NLRB, exceeds the board's statutory authority, and is contrary to the First and Fifth amendments to the U.S. Constitution, which guarantee the rights to free speech and due process.

In addition, the complaint alleged that by issuing a final rule on the signature of just two members of NLRB, the board's actions are "arbitrary, capricious, and an abuse of discretion."

Lastly, the complaint alleged that the board members violated the Regulatory Flexibility Act by failing to provide an "adequate factual basis" for concluding that the rule will not have a significant impact on a substantial number of small entities, and failing to consider the economic impact on small businesses of speeding up the election process.

**Chamber, CDW Call Two-Member Action Improper**

In support of their motion for summary judgment, the groups argued that the rulemaking process was improperly handled because the board took action based on the approval of only two board members.

Section 3(b) of the NLRA permits that the board may delegate its powers to "any group of three or more members," and provides that three members of the board constitute a quorum "except that two members shall constitute a quorum of any group designated" to exercise such powers.

Citing *New Process Steel LP v. NLRB*, 130 S. Ct. 2635, 188 LRRM 2833 (2010) (116 DLR AA-1, 6/18/10), the challengers argued that while the NLRA permits the board to take action with only two members after a board delegation to a group of three members, "[m]erely having three members on the Board is not sufficient to transact business by two members."

Contending "there was no such delegation" to the three board members serving at the time of the rule's approval, the chamber and CDW argued that "Chairman Pearce and then-Member Becker lacked authority to issue the Final Rule on December 16, 2011 without Member Hayes' participation."

Arguing that only two members voted to approve the final rule, the chamber and CDW said the rule must be set aside.

**Rule Amendments Seen as Inconsistent With NLRA**

The two groups also argued that NLRB's final rule "creates a process for handling representation elections that is irreconcilable with the plain meaning" of the federal labor law.

NLRA Section 9(c)(1) provides that when a petition for a representation election is filed, "the Board shall investigate such petition and if it has reasonable cause to believe that a question of representation affecting commerce exists shall provide for an appropriate hearing upon due notice."

The provision also requires that if the board finds upon the record of a pre-election hearing that a question concerning representation exists, "it shall direct an election by secret ballot and certify the results thereof."

But the chamber and CDW argued that by authorizing hearing officers to exclude evidence from pre-election hearings that is not needed to determine whether a question concerning representation exists, the revised regulation blocks consideration of "fundamental election issues such as whether certain employees or groups of employees are eligible to vote in the election."

Arguing that "[t]he legislative history of the NLRA established that Congress considers the pre-election hearing to be a 'sacred right,' " they said the board's curtailment of the scope of pre-election hearings is inconsistent with Section 9(c)(1)'s provision for an "appropriate" hearing before an NLRB election.

**Delegation to Directors, Limited Board Review**

The challengers also wrote that the revised board procedure results in an improper delegation of authority to the NLRB employees who conduct hearings on representation case petitions.

"[A]uthorizing hearing officers to exclude evidence on fundamental election-related issues—such as who can and cannot vote, and whether particular potential voters are supervisors excluded from the Act's coverage—places the hearing officer in the role of decision-maker, since the exclusion of such issues and evidence precludes *any* pre-election review by the Regional Director *or* the Board," they argued.

The board's rule revisions limit pre-election board review of regional directors' decisions to "extraordinary circumstances" in which the board grants special permission to raise an issue that would otherwise escape review, they argued.

The challengers argued that "[t]his type of narrow isolated review is qualitatively different from" the text of the NLRA, which they said provides a right to seek review of any regional office action in a representation case.

Rejecting the NLRB's contention that its rule amendment was merely an internal procedural change, the challengers argued that the action "boldly reverses" board precedent "by severely limiting the presentation of evidence and deferring

all requests for Board hearings and review until after the election."

**NLRB: Discretion Allowed 'Common-Sense' Revisions**

In its argument for dismissal or summary judgment in NLRB's favor, the agency advanced a number of arguments that its rule changes were properly adopted and should not be disturbed.

Quoting the U.S. Supreme Court's statement in *NLRB v. Waterman Steamship Corp.*, 309 U.S. 206, 5 LRRM 682 (1940), that "[t]he control of the election proceedings, and the determination of the steps necessary to conduct that election were matters which Congress entrusted to the Board alone," the agency argued that it acted within its statutory discretion in adopting procedures designed to eliminate unnecessary litigation and improve the timeliness of votes on union representation.

Revised procedures that limit the issues in pre-election hearings and defer the resolution of issues like voter eligibility until after an election are not inconsistent with the act's provision for an "appropriate" pre-election hearing, the board argued.

"Voter eligibility questions—including who is a supervisor—may be of great moment to the parties," the board acknowledged, "but in election cases, where time is of the essence, that understandable interest, without more, does not give the parties a right to interject these difficult questions into a pre-election hearing whose sole purpose is to determine whether an election should be held as sought in the petition."

Deferring resolution of many issues until after an election and limiting the availability of interlocutory appeals to the board before balloting is consistent with the requirement of many courts and administrative bodies that an appeal await the entry of a final judgment, NLRB argued. "The amendments merely apply a common-sense final judgment rule to election proceedings, consolidating review after the regional process has been completed," the board's memorandum argued.

**Board Defends Rulemaking Process**

Responding to chamber and CDW claims in the lawsuit that representation case-rule amendments were not properly adopted, the board asserted that "these are procedural amendments, and the Board could have promulgated them without notice, without opportunity to comment, without public hearings, without a public meeting to deliberate and vote to issue the amendments, without certification under the Regulatory Flexibility Act, and without permitting publication in the Federal Register."

Stating that the board majority voluntarily did more than was required to adopt a valid final rule, the NLRB memorandum argued that Member Hayes was not denied an opportunity to participate in the rulemaking process or to express his dissent from the rule revisions.

Hayes clearly voted against promulgating and publishing the rule amendments, NLRB argued. The members who voted in favor of the changes approved the final text, and that was all that was required, the memorandum contended.

Under a schedule established by the court in January, the chamber, CDW, and NLRB will have until Feb. 28 to respond to the motions. Boasberg has not determined whether to schedule oral argument on the motions.

The chamber and CDW were represented by Howard M. Radzely, Charles I. Cohen, Jonathan C. Fritts, Michael W. Steinberg, David M. Kerr, and David R. Broderdorf of Morgan, Lewis & Bockius in Washington, D.C., and Philip A. Miscimarra in the firm's Chicago office, along with Robin S. Conrad, Shane B. Kawka, and Rachel Brand of National Chamber Litigation Center in Washington, D.C. NLRB attorneys Eric G. Moskowitz, Abby Propis Simms, and Joel F. Dillard, in Washington, D.C., represented the board.

**For More Information**

Text of the chamber's and CDW's motion and supporting memorandum is available at http://op.bna.com/dlrcases.nsf/r?Open=ldue-8r8q59. Text of the NLRB motion and memorandum is available at http://op.bna.com/dlrcases.nsf/r?Open=ldue-8r8q5u.

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24 DLR A-14

***Fair Representation***

# Court Says Teamsters Can Be Held Liable After Local Did Not Request Wage Reopener

*By Michael Bologna*

CHICAGO—A Chicago-based local of the International Brotherhood of Teamsters can be held liable for wages lost by union members after the local failed to properly request negotiations with the employer under the wage-reopener clause of the bargaining unit's contract with the employer, the U.S. District Court for the Northern District of Illinois ruled (*Begeske v. Int'l Bhd. of Teamsters Local 673,* N.D. Ill., No. 09 CV 4009, 1/31/12).

Judge Robert M. Dow Jan. 31 ruled that Teamsters Local 673 breached its duty of fair representation under the Labor-Management Relations Act in its dealings with approximately two dozen union-represented truck drivers. The truck drivers are employed by UChicago Argonne LLC, which operates the Department of Energy's Argonne National Laboratory.

In a 17-page ruling on liability, Dow found Local 673's conduct exceeded "mere negligence'' with respect to its duty of fair representation. While the case was unique, Dow said the union had "acted arbitrarily'' when it failed to send a wage-reopener notice to Argonne.

As a result, the plaintiffs lost out on wage increases during 2009 and 2010. In line with this finding, Dow granted the plaintiffs summary judgment and ordered further proceedings on the questions of damages and attorneys' fees.

Attorney Edward M. Fox, who represented the plaintiffs, said the damages could prove substantial. Fox told Bloomberg BNA Feb. 6 that Dow would make a determination about future wages following briefings and testimony from expert witnesses. He said a jury trial likely would be convened to decide whether damages for emotional distress are appropriate.

"The future wages could be fairly large,'' commented Fox, of Edward M. Fox & Associates in Chicago. "When you lose an annual raise of something between 2.8 percent and 3.2 percent, and those numbers are compounded until retirement, those numbers add up. We're arguing that they should be entitled to the increases for the rest of their anticipated working lives and I think we win that argument.''

## BNA Snapshot

*Begeske v. Int'l Bhd. of Teamsters Local 673,* N.D. Ill., No. 09 CV 4009, 1/31/12

**Key Development:** Teamsters local's can be held liable for wages lost by union members after the local failed to timely request negotiations with the employer.

**Potential Impact:** Opinion should prompt unions to take a look at systems used to administer contracts.

### Union Reminded About Wage-Reopener Clause

According to court documents, the collective bargaining agreement between the drivers and Argonne contained a wage reopener clause for the two-year period following March 9, 2009. Both parties had the right to request negotiations through written notice prior to the deadline of Jan. 6, 2009.

On two separate occasions prior to the deadline, a union steward reminded the union's business agent to send a notice to the employer requesting negotiations on wages. Union officers, however, failed to provide such notice until Jan. 14, 2009, nine days after the deadline.

Later Argonne informed Local 673 it would have negotiated wages in good faith if the union had timely filed the request. Argonne typically negotiates increases during such reopener negotiations. Testimony showed such increases typically ranged between 2.8 percent and 3.2 percent annually.

For its part, Local 673 blamed its failure on a "clerical error.'' In this regard, the union officers had been recently elected. They were relatively inexperienced with respect to a computer-based system designed to provide notices of expiring contracts. Moreover, the union contended the deadline came during an unusual period with respect to other contracts administered by the local.

### Negligence or Arbitrary Action?

In his ruling, Dow said the question for the court was whether Local 673's conduct was mere negligence, suggesting no breach of the duty of fair representation, or "arbitrary action,'' suggesting breach of the duty. In examining this question, Dow said it does not appear the local intended to discriminate against the plaintiffs, which would have suggested conduct beyond mere negligence.

But Dow also found that Local 673's conduct was more than a clerical error, and that its failure to track the plaintiffs' contract expiration term, "reflects arbitrariness in the way that contracts are handled.''

"Specifically, because the system on which union officials relied to track important information on all union contracts

functions effectively as to ones with deadlines arising during the middle or end of the month, but not as to contracts with deadlines in the early part of the month, each contract does not get the same attention consistent with the duty of fair representation. Most contracts get due attention, but as a result of a systemic failure of the union's own tracking procedures, the Argonne contract did not. This seems to be the very definition of arbitrariness,'' the judge said.

Patrick Deady, who represented the union in the matter, said he could not comment on the decision. Deady is a partner with the Chicago firm Hogan Marren, Ltd.

**For More Information**

Text of the opinion is available at http://op.bna.com/dlrcases.nsf/r?Open=vros-8r8vpc.

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