Subcommittee on Health, Employment, Labor and Pensions

Hearing Date: April 26th, 2018

"Worker-Management Relations: Examining the Need to Modernize Federal Labor Law"

Written Testimony

By

Terry Bowman

Ford-UAW Worker from Ypsilanti, Michigan

Summary

The issue discussed today is one of monumental importance for the 7.6 million private-sector workers in the US that are members of unions[1]. I am here today because of my desire to do what is best for union workers. I work with them side-by-side every day, and for over 21 years have cared about what happens to them and their families. I am here to testify on behalf of workers; not on behalf of corporate unionism. The two are very different and distinct from each other. Sometimes what benefits a union as a company, does not mean it benefits workers, and frequently can come at the detriment of worker freedoms and rights.

I will make the case why labor reforms are needed, and recommend how members of both parties can comfortably pass common-sense legislation that could have been written by union workers for union workers. A bill called the Employee Rights Act (HR 2723).

I was raised in a blue-collar, union household. My father grew up in LaFallotte, Tennessee, and after a stint in the US Army, migrated to Michigan in the 50's. With only an 8th grade education, he worked hard at menial jobs until finally landing a job with Ford Motor Company. His sister and brother both worked for Ford in different plants, and he retired in the early 90's.

Why his story matters is that he never had an opportunity to vote if he wanted to join a union. My father as well as his siblings were forced, as a condition of their employment, to accept the UAW as their collective bargaining agent. This was well over 50 years ago.

When I hired into Ford in 1996 and continuing to this day, I also have never been offered the opportunity to vote if I wanted union representation or not. I am forced to accept it. Even though Michigan is a Right to Work state, and I exercised those rights, freedoms, and protections in 2015, I remain forced to accept union representation from a corporation – the United Auto Workers – that I detest. If I want to continue an employee/employer relationship with Ford Motor Company, I must give up my 1st amendment right of Freedom of Association (or conversely, to NOT associate). I am a 2nd generation union auto worker forced to accept a union I never wanted. Periodic recertification elections would allow all union workers the ability to vote on their own representation.

So in 2009, I decided that millions of union workers like me needed someone to stand up and speak for them – even in the face of a hostile and threatening union atmosphere. I am pro-union; but in the context of what unions were created to do, not what they have become. Unions today are so closely tied to a political party that they have lost all sense of what they are supposed to be, and instead have become the funding and grassroots arm of their favorite political party. Protections are needed to ensure workers are not funding speech they disagree with.

My fight for worker rights started almost a decade ago when my union incorrectly used a theological argument to make a political statement against the Republican Party. The article in our union newsletter claimed that Jesus was basically a socialist, and that he would approve of

---

[1] https://www.bls.gov/news.release/union2.toc.htm

what is now known as Obamacare. The article was critical of Republicans as if the party was on the wrong side of God.

I was attending a Christian College and Seminary at the time and knew the theological argument was wrong – hurtful, insensitive, and insultingly wrong. I knew at that time that I had to start defending workers against the abuses of the very unions that claim to have their best interest at heart. In most circumstances, unions are entrenched for generations without fear, concern, or pressure to do a good job for the workers. This entrenchment also means that unions can spend dues money however they feel necessary, and support both political and social agendas with a workers dues money without getting prior approval.

Congress has granted Labor Unions extraordinary powers over individual worker rights, allowing them to become entrenched in companies without ever giving the workers a chance to vote if they want representation. That fact negatively affects union responsiveness to member concerns, and allows absolute power over workers in a collective bargaining unit (cba).

Lord Acton once said:

"Power tends to corrupt and absolute power corrupts absolutely"

In comparison, consider this: The members of this committee are representatives of your respective districts, but your citizens are granted the ability to vote every 2 years whether they want you to represent them. Perhaps as elected officials, you would enjoy not ever having to run for re-election. But I believe you would all agree that periodic elections are necessary to establish the wishes of your constituency.

Workers should be able to expect no less. Union workers, simply wanting to pursue their happiness by getting a job, do not have that ability. They are forced, as a condition of employment, to accept union representation. Common sense labor reform can grant voting rights to workers while giving unions tools necessary to move into the 21st century.

For the sake of union survivability, I ask that you consider common-sense labor reform. HR 2723 includes eight key provisions that benefit workers. Three of which (Secret Ballot Elections, Political Protection, and Recertification Elections) are discussed in this testimony.

Unlike what some may say, updating labor law to reflect the 21st century is not anti-union. Granting workers additional rights, freedoms and protections is always first and foremost, pro-worker. If any reform is beneficial to workers but is disliked by union executives, you must question the sincerity of those officials. Periodic recertification elections are crucial to regaining the trust between workers and their union leadership. Political Protection for workers removes potential violations of the 1st amendment, and Secret Ballot Elections ensures workers are voting their true intentions.

Recent union corruption cases in the national media, and big losses in organizing drives show that trust between many workers and union officials are at an all-time low.

If you are pro-union, you must be willing to consider necessary steps to ensure unions grow and succeed in the 21st century. Union officials are either unable or unwilling to do it themselves. Whether it is engaging in and spending dues on partisan politics, pushing a divisive social agenda, wanting to avoid a secret ballot election, or changing their business plan to succeed, union executives remain stalwart against modern, necessary change.

Simply put, unions exist in a 1930's business model and show no signs of shifting to protect their longevity. When entrenched in a business model that has force and compulsion at its core, union officials unfortunately will fight to keep their absolute power instead of competing in a modern organizing model.

That decision will spell the doom of the US Labor movement.

The latest data from the Bureau of Labor Statistics shows that the private sector 2017 Union Membership Rate of 6.5% continues in historically low territory[2]. Obviously to any non-biased observer, change is necessary for unionism in America. Union officials do not want to see change. After all; they currently have a pretty easy deal. Workers, however, are different, and they want their unions held accountable. Strengthening unions for the 21st century will take some work - but easy decisions when you have the facts before you.

The Problem

Let's take a look at three issues that desperately need labor reform in order to protect the rights, freedoms, and protections of union workers across the country: Secret Ballot Elections, Recertification Elections, and Union political spending.

Issue #1 - Secret Ballot Elections v Card Check

Current NLRB procedure allows for union officials to organize a "Card Check" campaign, where they physically walk up to a worker and ask that worker to sign a card affirming that they want union representation. If the organizers are successful at getting 50% +1 of the bargaining unit to sign a card, they can then go to the employer and skip a secret ballot election.

Union organizers will claim that an NLRB sanctioned election may be "coercive" and only having the ability to sign a card in front of a union organizer does the worker have the ability to choose freely.[3]

This whole notion of Card Check is frightening for workers in a collective bargaining unit that is being organized. Outside of the "insiders" who are actively working with union organizers, Card Check is daunting and intimidating, leading to fearful confrontations between a worker and an organizer. Most workers simply want to do their job and go home to their families. Card check throws an unwanted physical confrontation into their work day that can cause unwanted stress.

As a worker surrounded by a union atmosphere, I can testify that the idea of a card check campaign would leave even me with worry and fright. Just imagine a union organizer approaching you at work, as you walk out the door to the parking lot, or even knocking at the door at your home. Even if the organizer does not use coercive speech or intimidation tactics, the psychological pressure on a worker is enough to force a rash and/or an ill-informed decision.

Only the sanctioned and peaceful privacy of an NLRB secret ballot election can ensure that the voter is voting his/her conscience.

---

[2] https://www.bls.gov/news.release/union2.nr0.htm
[3] https://www.heritage.org/jobs-and-labor/report/how-union-card-checks-block-workers-free-choice

NLRB rules allow many more privileges to union organizers, and many more restrictions on employers during a union election. Union organizers are not held to the same restrictions that employers must follow when speaking to workers. In fact, union organizers can literally promise the moon to workers without any fear of reprisal from the NLRB. The union has a strong, financial desire for an outcome that favors the union's bottom-line. Thus enormous pressure is applied for the union to win that election, and that pressure trickles-down to organizers who are the "boots on the ground."

Stories abound in the media of both intimidation and false statements by union organizers of what authorization cards really are and what they represent.[4]

But even former union organizers testifying in front of this very committee have admitted the same. Jen Jason, a former Unite-here union organizer testified in front of this very committee on February 8, 2007[5] and said:

> *"We rarely showed workers what an actual union contract looked like because we knew that it wouldn't necessarily reflect what a worker would want to see. We were trained to avoid topics such as dues increases, strike histories, etc. and to constantly move the worker back to what the organizer identified as his or her "issues" during the first part of the house call."*

Clearly, Card Check can negatively influence, subvert, and circumvent a workers true voting wishes.

But we have an answer. A solution that is so obvious that this argument should never be necessary. Any organizing drive should be required to have a secret ballot election. Workers will feel no intimidation, no fear for voting against the union, or conversely; no fear for voting for the union. By communicating to workers beforehand that no one will ever know how they voted, workers will be free to express their will – and not the will of a towering presence in front of them holding forth a card.

Issue#2 – Union Recertification Elections

In my summary testimony, I told my family history in Southeast Michigan and our migration from the Tennessee area during the 1950's. My father, along with 2 of his siblings moved to Michigan because of the promise of a better life. While my father ultimately landed a job at Ford Motor Company at the plant in Monroe, Mi., his sister ended up at the Ford Rawsonville Plant (which happens to be where I currently work) in Ypsilanti, Mi., and his brother at the Ford plant in Sandusky, Oh. In addition I have another uncle who worked for Ford at the Dearborn Rouge facility.

My family has a long and loyal history with Ford Motor Company. We have all benefited greatly and have raised our families for four generations now in Southeast Michigan.

None of us however have ever once been afforded the opportunity to vote if we wanted to be unionized. We were all forced to accept a grandfathered union that has been entrenched in the auto industry since most of us were even born.

---

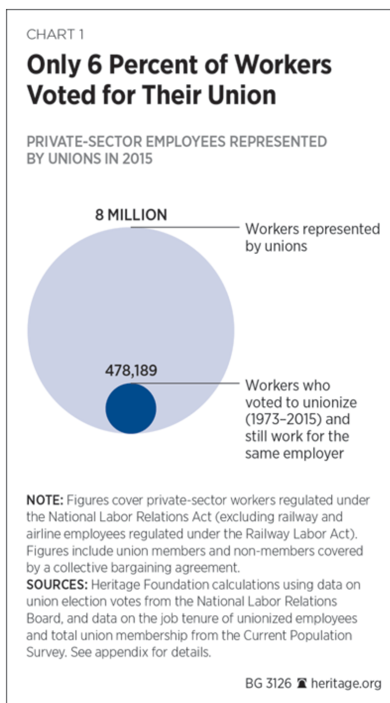
[4] https://www.redstate.com/diary/laborunionreport/2012/02/24/seiu-organizing-tactics-include-intimidation-and-lying-to-workers-company-alleges/

[5] https://www.heritage.org/jobs-and-labor/report/how-union-card-checks-block-workers-free-choice

But it's not just my family that can make that claim. Millions of union workers can claim that they also never had the opportunity to vote in a union election. Like us, they were forced to accept union representation as a condition of employment, even when many of them have moral objections against it.

Shockingly, a 2016 study shows just how widespread this is.[6] 94% of union workers in the country never had an opportunity to vote for a union. In the study, James Sherk from the Heritage Foundation points out that: "The preamble to the NLRA declares its goal as "protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing." Yet most union workers never designated a representative of their own choosing since the union already existed long before they were hired.

The chart[7] below shows the study's findings:



Unions are existing based on votes from people who lived generations ago, not based on the current workforce.

Unions will claim that workers ***should*** be forced to pay for their services, because they benefit from their hard work – but it is work that is forced upon the workers in the first place. Even in Right to Work states where workers can withdraw their union membership and stop paying dues, they are still forced to accept union representation because of the union voluntarily negotiating to be the exclusive representation agent of all workers in a bargaining unit.

[6] https://www.heritage.org/jobs-and-labor/report/unelected-representatives-94-percent-union-members-never-voted-union
[7] Ibid.

While union officials will shamefully call any worker withdrawing their membership a “free-rider” or even “free-loader,” the conveniently forget to admit that they force those workers to accept their representation, thus the worker has no other option if they want to stay employed and provide for their family. They are actually a “forced-rider.”

Outside of the UAW, other unions have also been rooted in their individual industries as long or even longer. Generations of American families are born, live, and die as the entrenched union continues collecting dues. Millions of workers are forced into union representation based on the votes of people they have never known.

In addition to their dependent nature, there are additional problems with unions never having to fear being removed. One of which is the fact that without competition, or the worry of being removed, unions have no incentive to work hard and do a good job for their workers.

Politicians rely on the votes from their constituents, which encourages them to do a good job. Regular elections help keep politicians honest and answerable to the ones they represent. Unions on the other hand have no worries, no concern that there are any consequences to doing a poor job.

Critics will argue that there are steps in place for workers to remove an unsatisfactory union. While legally true, the reality is that it is extraordinarily difficult to remove a union from a workplace. Worker’s interested in starting a decertification drive will face threats, intimidation by union officials as well as other workers, and have his/her own dues money used to fight against it.

Considering unions collect billions of dollars every year in union dues, spending millions of workers dues money to squash any uprising is a small investment for a union.

Because of a union’s absolute power and entrenchment in a workplace, union workers are simply at an extreme disadvantage to ever getting rid of a non-performing union. It is almost as if the National Labor Relations Act was written in 1935 to strip all rights from individual workers in favor of privileges granted to the union itself.

Once again, the answer to this issue should be self-explanatory. Since unions never have to justify their existence to the workforce, a regular recertification is critical to protecting worker rights. This action would serve to:

1. Hold union executives answerable and accountable to the membership
2. Guarantee a responsible and engaged union
3. Empower workers to choose other options
4. Inject free-market principles into a 1930’s compulsory business model
5. Increase trust between workers and union officials
6. Allow the possibility of an outside, more worker-centric union to make their “pitch.”
7. Secret ballot recertification elections will help ease anxiety, stress, and ensure that a worker’s true feelings on any union representation is protected

In the end, union recertification is one of the most worker-friendly labor reforms that I or any other union represented worker could ask for. An argument against recertification is an argument against worker rights in favor of union privilege.

Issue #3 – Using dues for Political Spending/Opt-out

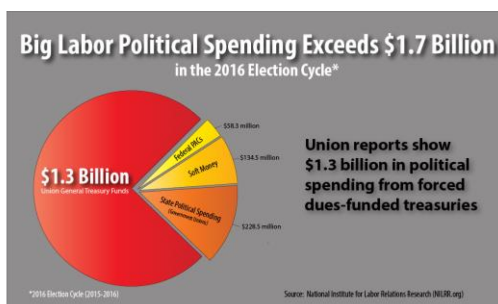
Unions spend money on politics. All the time. Most of that spending that is collected from workers is spent on an agenda that many of those workers either find disagreeable, insulting, and in many cases, abhorrent.

Unions will claim it is against the law for them to use union dues on politics, but that is a misinterpretation at best. While true that unions cannot take union dues and give directly to a candidate's campaign funds, union still engage in political and social activity daily.

Currently, labor law allows unions to deduct money for supporting political campaigns from an employee's paycheck without obtaining prior approval. Only by following the often onerous procedure to demand a refund of partial dues or by resigning from a union can employees guarantee that their money will not support candidates or a political party. The process is often overly complicated and rife with intimidation. By requiring that union members opt-in rather than having to pursue a refund of dues, employee rights will be better protected.[8]

Let's first look at the staggering amounts that unions claim they spend on politics, and then look at the real story.

The National Institute for Labor Relations Research (NILRR) reports that for the 2016 Election Cycle, unions stated on their federal LM-2 reports that they spent over $1.7 billion in politics.[9]



The figures above (as noted by the NILRR), do not reflect spending by unions that exclusively "represent" state and local government employees which are not covered by United States Department of Labor (USDOL) disclosures reports. Therefore these numbers exclude most of the state and municipal employee unions.[10]

But it doesn't just stop at a union's self-policing and reporting on political spending. Much of a union's political activity is not reported because union executives will call that activity something ambiguous or classify it something else entirely. "Education" or "organizing activity" have been used in the past, as well as "gifts, grants, or donations," which will include donations to flagrantly progressive, left-wing organizations that many workers would find extremely offensive (Planned Parenthood, for example).

---

[8] http://employeerightsact.com/
[9] http://www.nilrr.org/2017/04/17/2016-election-cycle-big-labor-exceeds-1-7-billion-political-spending/
[10] Ibid.

Most union workers would have no problem paying for quality representation and for collective bargaining services. However unions spend, donate, and gift such large payments to advocacy groups that many workers would be shocked to discover what their money is used for. With the rise of common internet access many workers are now able to find the truth.

But it doesn't end there.

All across America, union halls become political billboards with campaign signs, and yet none of the expenses of those union halls (taxes, utilities, salaries of workers) are ever considered of a "political" nature. Anytime a union hall places a campaign sign in their yard, the property and building become a political tool. None of those expenses are ever recorded as political.

Many newsletters to workers include stories that demonize the Republican Party and praise the Democrat Party. However if the newsletter in not printed for the sole-purpose of a political mailing, the expenses are rarely – if ever – recorded as political. They may be deemed "educational."

Many unions may encourage voter registration, but not publicly disclose any preference for candidates so the entire activity will be considered "community involvement." However most – if not all – of that activity only takes place in heavily Democrat areas.

Many unions are involved in "Worker Centers" and supporting non-unionized workers to fight politicians for political issues. Much of that activity is not recorded as political, but as ambiguous "organizing expenses."

In 2018, the question no longer is if unions spend a lot of money on politics – both reported and unreported. Yes; of course they do, we all know it. The real question is if workers who disagree with a unions political and social activity are being protected from forced speech? Are their 1st amendment rights to not associate with a group being protected?

That, is where we must focus on, and that is what we must attain in any civilized society.

A critical way to protect workers from forced political contributions is to simply ask them first if they would like their money involved, before they are forced to fund it.

The default position for any worker in a union shop should be that they do not have to fund any ideological, political, or social activity the union engages in. Unions should be required to receive an "Opt-in" for the political spending, as opposed to the current, and burdensome "Opt-out" that unions require.

Knox v. SEIU

In 2012, the US Supreme Court heard a case entitled *Knox v. SEIU.* The case stemmed from a California case where the public-sector SEIU was charging non-members an additional fee than their agency fees already proposed by a previous Hudson Notice (the required document informing non-members how much the union anticipated on non-essential spending (politics)). Knox claimed that the SEIU could not force any agency-fee payer to pay additional fees based on an anticipated increase in political spending. Ultimately, the Supreme Court found in favor of Knox.

While the case is based on public-sector unions, the Majority Opinion written by Supreme Court Justice Alito bears significant study for our hearing.

On page 9 of the majority opinion, Justice Alito builds his opinion by stating:[11]

The First Amendment protects "the decision of both what to say and what not to say" (emphasis deleted)). And the ability of like-minded individuals to associate for the purpose of expressing commonly held views may not be curtailed. See Roberts v. United States Jaycees, 468 U. S. 609, 623 (1984) ("Freedom of association . . . plainly presupposes a freedom not to associate")

Justice Alito makes the clear claim that just because someone is forced as a condition of employment to join a union, they are not forced to associate with the speech of the group.

On page 11 of the opinion, Alito continues to make his argument that forcing an employee to "Opt-out" of political spending creates a "boon" for the union, and one that places a "burden" on the union represented worker:

Similarly, requiring objecting nonmembers to opt out of paying the nonchargeable portion of union dues—as opposed to exempting them from making such payments unless they opt in—represents a remarkable boon for unions. Courts "do not presume acquiescence in the loss of fundamental rights." College Savings Bank v. Florida Prepaid Postsecondary Ed. Expense Bd., 527 U. S. 666, 682 (1999) (internal quotation marks omitted). Once it is recognized, as our cases have, that a nonmember cannot be forced to fund a union's political or ideological activities, what is the justification for putting the burden on the nonmember to opt out of making such a payment?

Once again, Alito clearly differentiates the Opt-in versus the Opt-out scenario, and seems to be leaning in favor of an Opt-in program for unions.

On page 13, Alito refers to a previous case, making the claim that constitutional rights in these matters lie not with unions, and instead their power to collect fees is authorized by "legislative grace."

As we noted in Davenport, "unions have no constitutional entitlement to the fees of nonmember-employees." 551 U. S., at 185. A union's "collection of fees from nonmembers is authorized by an act of legislative grace,"

On page 20, Alito acknowledges that what the union calls "chargeable expenses" is so "expansive" that you can't rely on it:

First, the SEIU's understanding of the breadth of chargeable expenses is so expansive that it is hard to place much reliance on its statistics. In its brief, the SEIU argues broadly that all funds spent on "lobbying . . . the electorate" are chargeable. See id., at 51. But "lobbying . . . the electorate" is nothing but another term for supporting political causes and candidates, and we have never held that the First Amendment permits a union to compel nonmembers to support such political activities.

In the above scenario, the union did not believe that lobbying was considered political, and hence not a reportable expense. This is why workers can never be assured that the dues they are paying are not political.

On page 21, Alito explains that unions have no constitutional rights:

Thus, if unconsenting nonmembers pay too much, their First Amendment rights are infringed. On the other hand, if unconsenting nonmembers pay less than their proportionate share, no constitutional right of the union is violated because the union has no constitutional right to receive any payment from these employees.

Again, I must make it clear that we are talking about the public-sector and about agency-fee members, but Alito's words give us a clear direction of how to proceed.

[11] https://www.supremecourt.gov/opinions/11pdf/10-1121c4d6.pdf

On page 21 & 22, Alito gets to the heart of the matter:

As we have noted, by allowing unions to collect any fees from nonmembers and by permitting unions to use opt-out rather than opt-in schemes when annual dues are billed, our cases have substantially impinged upon the First Amendment rights of nonmembers.

When taking the entire majority opinion of Knox v. SEIU and applying the same principles discussed here, it is clear that:

1. Workers have the Freedom of Association – and the Freedom to Not Associate
2. A unions ability to collect dues is not a right, but granted through "legislative grace," while a worker's 1st amendment rights can be impinged in an "Opt out" situation
3. Unions employing an "Opt-out" procedure for their reported political spending (which does not cover all political spending) is a boon for the union and a burden for the worker
4. Even the Supreme Court realized that union officials were not reporting all political activity as such
5. Opt-out programs rather than Opt-in for political spending creates a substantial impingement upon the 1st amendment rights of workers.

The Solution

As someone who has traveled around the country speaking and fighting for 21st century labor reforms, I became aware in 2013 of a proposed piece of legislation that has grabbed hold of both my heart and my mind. It is called the Employee Rights Act (HR 2723).

The ERA fixes the issues above and helps bring unions closer to the 21st century. It empowers workers with additional rights, freedoms, and protections that can never be logically claimed as "anti-union." The passage of this piece of legislation will return some of a union worker's power that a labor union has fed from since the day they hired in. The passage of this piece of legislation will give both workers and unions the tools necessary for a mutually trustworthy and lengthy relationship into the future.

Common sense labor reform guaranteeing Secret Ballot elections, periodic recertification elections, and political protection from forced speech will always be a positive, necessary step to achieving labor peace between the rank-and-file, and union officials.

Conclusion

Since the passage of the National Labor Relations Act in 1935, unions were given broad powers that stripped individual workers of their rights in favor of union privilege (or as Justice Alito called it, "Legislative Grace"). Some corrections have been made in decades past, but additional labor reforms are needed to protect workers and ensure union longevity and success in the 21st century.

Unions have changed in the wrong direction – not updated correctly with the times. I consider myself to be pro-union, but in the context of what unions were created to do, not what they have become. Many unions today seem to be more interested in furthering their political and social causes than in their created purpose of representing workers.

For a long time, union workers like me have looked for protections from the abuses of the very unions pledged to protect us. We know and understand that the unions unwilling to change into a 21st century business model will fade away over the next few decades. They cannot continue their archaic operations based in compulsion and force. Workers are wise and more media savvy than ever before, and able to find out the truth of union intolerance.

Passage of common sense labor reform goes a long way to protecting workers while also providing the tools necessary for unions to continue far into the future.

As a union worker who will be affected by this legislation, I ask you to consider labor reform legislation like the Employee Rights Act whether you are a Republican or Democrat.

Thank you for hearing my testimony today.

Terry Bowman

April 26th, 2018