The Heritage Foundation Backgrounder

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A Government Reform Project Study

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HOW UNIONS DENY WORKERS' RIGHTS

INTRODUCTION

Although union members split their vote roughly 60-40 between the two major political parties in 1994, this year the AFL-CIO has launched an overwhelmingly partisan $35 million "voter education project," funded mainly with mandatory union dues, to defeat conservative members of the 104th Congress. What most union members may not realize is that they have every right to demand a refund of the portion of their dues used to back political candidates or lobby for causes with which they may disagree. Depending on the individual union and the accounting rules applied, union dues devoted to non-collective bargaining activities could range from under $200 to well over $1,000 a year per union member. This alone argues for a better system both to account for and to inform union members about the use of mandatory dues payments.

The Worker Right to Know Act (H.R. 3580), recently introduced by Representative Harris Fawell (R-IL), would require labor unions to get permission from their members before using mandatory dues for politicking and other activities unrelated to collective bargaining. Senator Judd Gregg (R-NH) has introduced a similar measure (S. 1845) in the Senate. The House version of this legislation has been incorporated into the campaign finance legislation currently scheduled for House floor debate.

BACKGROUND

The National Labor Relations Act, the basic federal law governing relations between labor unions and employers, allows a union and an employer to enter into a union security agreement that requires workers, as a condition of their employment, to pay union membership dues (or an equivalent agency fee for nonmembers). Although section 14(b) of the NLRA (popularly known as the Taft-Hartley Act) allows states to enact "Right to Work" laws that prohibit such union security agreements, only 21 states have done so. In

the other 29 states and the District of Columbia, a worker can be fired for refusing to pay union dues, even if such dues are used for purposes abhorrent to his or her religious, moral, or political beliefs.[1]

In 1988, the U.S. Supreme Court ruled in *Communications Workers of America v. Beck* that workers who so choose are entitled to a refund of the portion of their dues used for purposes not related to collective bargaining activities, contract administration, and grievance processes. Writing for the majority, Justice William Brennan noted that "the National Labor Relations Act... authorizes the exaction of only those fees and dues necessary to 'performing the duties of an exclusive representative of the employees in dealing with the employer on labor-management issues.'"[2] Unfortunately, this decision remains largely unenforced.

President Bush's Executive Order

In October 1992, President George Bush issued an executive order requiring federal contractors to notify workers of their Beck rights by posting notices of these rights at worksites.[3] One of the Clinton Administration's first actions was to rescind this order.[4] Labor Secretary Robert Reich, who frequently proclaims the Clinton Administration's concern for workers' rights, told the AFL-CIO recently that "collective bargaining is not a privilege, it is a right."[5] Yet the Administration has cooperated with union officials to keep workers in the dark on their Beck rights. To Reich, the Bush executive order's requirement that workers be informed of their rights is a "burden without a benefit."[6]

National Labor Relations Board

The National Labor Relations Board (NLRB), an independent federal agency created by Congress in 1935 to enforce the NLRA, has failed to step in to break the conspiracy of silence on this issue. Earlier this year, in the first case concerning Beck rights heard by the Board since the Supreme Court's decision eight years ago, the NLRB found that a brief notice of Beck rights in a union's annual publication was sufficient to satisfy a worker's right to know. In a dissenting opinion, however, one NLRB member declared that this single notice did not "represent a good-faith effort" to inform non-member employees of their Beck rights.[7]

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1 National Labor Relations Act, Sections 8(a)(3) and 14(b).
2 487 U.S. 735 at 762 (1988).
3 Executive Order 12800, April 13, 1992.
4 Executive Order 12836, February 1, 1993.
5 *Daily Labor Report*, February 21, 1996, p. C5.
6 "Clinton Rescinds Executive Orders on Beck Disclosure, 'Open Bidding'," *Daily Labor Report*, February 3, 1993, p. AA-1.
7 *California Saw and Knife Works*, 320 NLRB 11, Footnote 41, December 20, 1995 (released January 26, 1996).

PROBLEMS WITH EXISTING LAW

Despite the *Beck* decision, rank-and-file union members remain largely unaware of just what their rights are. In an April 1996 survey of 1,000 union members, 78 percent did not know they had a right to obtain a refund for the portion of their mandatory dues spent on political activities. The survey further revealed that once union members realized what their Beck rights were, 56 percent would be likely to request a refund.[8]

Even for workers who are aware of their rights, trying to exercise them can be frustrating. Currently, a union can require workers to resign from the union in order to exercise their Beck rights.[9] Thus, workers who want to stop contributing to union "voter education" efforts can be left without a say in such important decisions as whether to go out on strike because their unions have forced them to resign.

Moreover, unions often serve as judge in their own case by making their own estimates of the amount of dues which should be refunded to Beck claimants. Exactly what constitutes non-collective bargaining activities is a question subject to significant disagreement. Marshall J. Breger, former Solicitor of the Department of Labor, states that as much as 80 percent of union dues is used for non-collective bargaining activities, while union attorneys claim the same 80 percent figure as the amount used for collective bargaining-related expenses.[10] In a recent case, the National Education Association (NEA) and a state and local affiliate were able to prove that only 10 percent of their general treasury funds were chargeable to bargaining activities.[11] Workers have a right to know where their hard-earned money is going. In 1993-1994, for instance, rank and file teacher union members in Modesto, California, paid $640 in combined local, state, and national union dues.[12]

THE WORKER RIGHT TO KNOW ACT

In spite of foot-dragging by labor leaders, the NLRB, and President Clinton, Congress can step in to see that hard-working Americans are made aware of their Beck rights. The Worker Right to Know Act (H.R. 3580, S. 1845) would require that a union obtain a signed agreement from an employee before using dues for purposes not related to collective bargaining activities. The agreement would offer a clear statement detailing the percentage of dues used for traditional collective bargaining and the percentage used for non-collective bargaining activities such as "voter education."[13] An independent auditor would determine the percentage breakdown between mandatory and voluntary activities.

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8 Americans for a Balanced Budget Union Members Poll, April 23-April 28, 1996.

9 "Summary of Worker Right to Know Act," *Daily Labor Report*, June 6, 1996, p. E-8.

10 "Problems with Beck Implementation," *Construction Labor Report*, May 1, 1996, p. 2.

11 *Lehnert v. Ferris Faculty Ass'n-MEA-NEA*, 643 F. Supp. 1306 (W.D. Mich. 1986), aff'd, 881 F.2d 1388 (1989), affirmed in part, reversed in part, 500 U.S. 507 (1991).

12 Charlene Haar, Myron Lieberman, and Leo Troy, *The NEA and AFT: Teacher Unions in Power and Politics* (Rockport, Mass,: Pro Active Publications, 1994), p. 34.

13 H.R. 3580, Worker Right to Know Act, Section 5(a)(h).

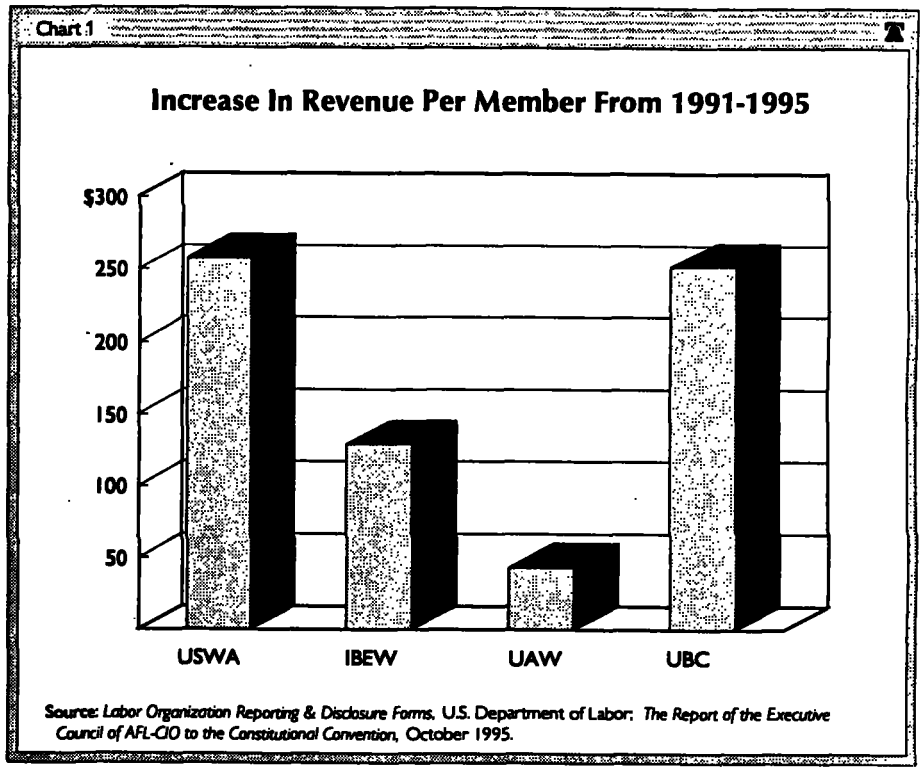
The Worker Right to Know Act also would make it clear that if individual workers chose not to give a portion of their dues to the political agendas of labor leaders, they still would retain the right to participate fully in the activities of their unions.

The House version differs from the Senate version in that it would amend the NLRA and the Labor Management Reporting and Disclosure Act of 1959 (LMRDA), while the Senate version would amend the Federal Election Campaign Act of 1971.[14]

Unions argue that this legislation is unnecessary because only a small percentage of workers have chosen to exercise their Beck rights, but that is no excuse for obstructing those who do seek to exercise their rights. Moreover, union leaders fail to mention that few union dues payers have been informed of their rights. Clearly, if knowledge of Beck rights was more widespread, more workers would seek to obtain refunds.

HOW MUCH IS AT STAKE?

Determining the overall size and composition of union budgets is difficult. Information on union membership and finances provided in annual LM-2 union disclosure forms filed with the U.S. Department of Labor is often vague and incomplete. Economist James T. Bennett of George Mason University, who has done extensive work in this area, notes that the Department of Labor neither sets guidelines for the information it requests nor performs comprehensive audits in order to verify the accuracy of the information submitted.[15] Therefore, unions are fully aware that incomplete or inaccurate information will not be scrutinized. For example, the United Auto Workers (UAW) lists



14 "Union Dues: Senate Bill Would Force Unions To Get Workers' Permission for Political Spending," *Daily Labor Report*, June 11, 1996, p. A7.

15 James T. Bennett, "Public Sector Unions: The Myth of Decline," *Journal of Labor Research*, Vol. XII, No. 1 (Winter 1991), p. 10, footnote 5.

Table 1

Union Revenue Increases As Membership Decreases 1991-1995

	Change in Membership	Change in Membership, Percent	Change in Revenues	Change in Revenues, Percent
Auto Workers (UAW)	-89,000	-10.59%	+$32,492,046	+8.32%
Carpenters & Joiners (UBC)	-116,000	-23.48%	+$95,277,759	+122.0%
Steel Workers (USWA)	-56,000	-12.20%	+$104,008,439	+17.38%
Electrical Workers (IBEW)	-51,000	-6.90%	+$87,633,378	+35.31%

Source: *Labor Organization Reporting & Disclosure Forms*, U.S. Department of Labor; *The Report of the Executive Council of AFL-CIO to the Constitutional Convention*, October 1995.

"not available" under rates for union dues and initiation fees on all forms currently on file at the Department of Labor (forms for 1990-1995).[16]

What can be discerned, however, is that rank-and-file union members in many cases are shouldering increasingly heavy burdens as membership declines. From 1991-1995, for example, among several of the major international unions that make up the AFL-CIO, total receipts taken in actually increased while membership continued to drop.

Trends in local union revenue likewise indicate the burden rank-and-file members are being forced to bear. A random sample of locals, when combined with the internationals, shows that receipts per member range from a low of $709.36 to a high of $2,019.35 per year.[17] Given the vagaries of union practices and accounting procedures, union dues devoted to non-collective bargaining activities could range from under $200 to well over $1,000 annually per union member.

CONCLUSION

Labor unions will claim that the Worker Right to Know Act is merely election year harassment, but those who experience the real harassment and frustration are the workers who try to exercise their right to refuse to fund political causes with which they disagree.

16 United Auto Workers (UAW) Labor Organization Reporting and Disclosure Forms 1990-1995, U.S. Department of Labor.

17 International and Local Labor Organization Reporting and Disclosure Forms for 1995, U.S. Department of Labor.

It is time to make workers aware of their rights under applicable Supreme Court decisions and to make it possible for them to exercise these rights freely. Labor unions, the National Labor Relations Board, and the Clinton Administration have kept workers uninformed of their rights. The Worker Right to Know Act would remedy this problem by giving union members the power to choose for themselves whether to give their money to political causes and by making it indisputably clear that workers can continue to participate fully in the activities of their unions even if they choose not to support the AFL-CIO's partisan political agenda.

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