CAPITAL RESEARCH CENTER

Labor Watch

Special Report:
Capital Research Center's 2009 Summit on Labor Issues

By Jeremy Lott

Summary: *Capital Research Center recently hosted the 2009 Summit on Labor Issues. It was the second such gathering CRC has assembled and it was a success. Below is a report on the proceedings. Funding for this unique forum was generously provided by the Arthur N. Rupe Foundation of Santa Barbara, California.*

On March 24, 2009, the Capital Research Center brought together experts on labor issues for an all-day conference at the University Club in Washington D.C. Our purpose was to grapple with the dismal state of labor politics today. We wanted to talk about proposed new laws and policies that might hurt cooperative and voluntary employer-employee relations. Quite unexpectedly, the conference provided new reason for hope.

Grover Norquist had some unexpected news about card check.

Seventeen panelists and two star speakers—former Secretary of Labor Elaine Chao and Americans for Tax Reform president Grover Norquist—were joined by about 65 attendees throughout the day who are keenly interested in labor-management relations, public policy in employment, and labor union organizing strategies.

Participants included researchers for state and national public policy institutions, journalists (including the editor of Human Events and reporters from the Wall Street Journal and the Economist), former Department of Labor appointees who served in the Bush and Reagan administrations, and members of the business community. Surprisingly, representatives from the National Education Association and the American Federation of Teachers also participated.

CRC assembled four issue panels. They concerned 1) the power of teachers unions, 2) the economic impact of unionization, 3) lessons learned from the Bush administration's Labor Department under the leadership of Elaine Chao, and 4) the politics of union organizing and the uncertain future of labor law and public policy.

Surprise Announcement

At the start of the conference the question on everyone's mind was: Would Congress pass the Employee Free Choice Act (EFCA), also known as "card-check"? The number one priority of organized labor is this bill that would, in practice, eliminate the private ballot for unionization elections and replace voluntary collective bargaining with binding arbitration in labor-management contract disputes.

Would Senate Democrats have the 60 votes they needed for cloture, which would cut off debate on the bill and force a vote? The Heritage Foundation's James Sherk observed that if someone could tell him how Pennsylvania Senator Arlen Specter would vote on the motion, he could offer an educated guess.

Over lunch, we got the answer to that question. Luncheon speaker Grover Norquist revealed that before lunch he took a call from the office of Senator Specter, informing him that the senator would announce later that day that he would be voting against cloture, depriving Democrats of the one vote they needed to reach 60, assuming that everything else went right for the unions.

Norquist asked if he could pass that information along, and the Spectator spokesman said to go right ahead. We'll let the Washington Independent's David Weigel, who was in attendance, describe what happened next:

> "He will be announcing today," Norquist said, "this afternoon, that he will be voting against cloture and against card check."
>
> The room erupted with applause. James Sherk…pumped his fist. With a maximum of 59 Democrats in support of the bill--assuming Al Franken is seated in Minnesota and Sen. Ted Kennedy (D-Mass.) is well enough to cast a vote--EFCA needed one Republican. Specter was the only Republican senator to support a similar measure in 2007.
>
> "We may have dodged a bullet here," said Norquist. "If this was 55 [Democrats], maybe the business community would never have woken up before the next election. But cleverly, we brought the Democrats so close that they thought they had us by the neck."

When Norquist announced that Specter would oppose EFCA, reporters in the room rushed to file copy. Reports quickly appeared in the Washington Independent, Huffington Post, the Economist, American Spectator, National Review Online and Washington Examiner that Specter would come out against card check. The short item in the Examiner, a blog post by panelist Tim Carney, was the most viewed item on the site that day.

Barbara Comstock

Norquist's Specter revelation turned the conference into a news-breaking event. It changed other things as well. There was a collective sense of relief and accomplishment. Weigel wrote that "the campaign against EFCA has made passage of the current version of the bill impossible"--at least for now.

When your humble editor introduced the afternoon panel on EFCA and the future of labor policy—titled "Taft We Hartley Knew Ye"—I said the news had happily forced me to toss my prepared remarks right out the window.

Elaine Chao's Labor Department

In introducing Elaine Chao, CRC president Terry Scanlon remarked on the extraordinary accomplishments of the Secretary of Labor and the team she assembled during her eight-year-long tenure at the department. Chao, the longest-serving Secretary of Labor since World War II, has amassed a record of achievement in reforming labor law and policy.

Moreover, she revamped management of what had previously been called facetiously (but accurately) the "Department of Organized Labor" so that it now served all working people. Still, after the question "Will EFCA pass?" the next question on everyone's mind was: "Will Chao's labor reforms survive?"

Here is a very good review of Chao's presentation by Robert VerBruggen, who wrote the following day on National Review's blog "The Corner":

> [T]he highlight of the day was a speech from Bush labor secretary Elaine Chao… Chao's department was among the most successful modern America has ever seen: It ramped up enforcement of many laws, including ones labor unions didn't like; modernized various regulations; and emphasized transparency in the way unions spend their members' dues money. Meanwhile, the department's budget *fell* from $11.7 billion to $11.6 billion over eight years. That's without adjusting for inflation.
>
> The big question: Can these changes stick in a Labor Department overseen by a Democratic administration? Chao

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Labor Watch is published by Capital Research Center, a non-partisan education and research organization classified by the IRS as a 501(c)(3) public charity. Reprints are available for $2.50 prepaid to Capital Research Center.

Former Rep. Ernest Istook

sounded hopeful and afraid in equal measures. During her eight years heading the department, she said, she tried to not just change policies but "institutionalize" them -- she took seriously the suggestions of career bureaucrats who'd still be around under future presidents; she tried to lock down or change important policies via executive order; she used her longevity at the department to pursue long-term goals (it can take three to five years to change OSHA regulations); she fought court battles whenever the need arose. She sounded confident that she'd left a lasting mark on the department.

However, she fully recognized that the Obama administration would leave its own mark, sometimes by undoing things she'd accomplished. "I have to pay the Obama administration a compliment: They're very organized and very formidable," she said. She pointed out that her department took until mid-February 2001 to secure its first executive order. Obama's first labor-related executive orders -- three of them -- came before the end of January.

In her speech, in the subsequent question-and-answer session, and in a four-page handout, Chao provided a laundry list of changes Obama and his Labor Department could make (and have already made) to labor law. Card check is the big one, of course. But there's also a new executive order that federal contractors can't use government money to encourage workers not to join unions -- since money is fungible, Chao argued, that could mean that federal contractors can't communicate to workers about unions at all. Both houses of Congress have held hearings on expanding the benefits employers must provide under the Family and Medical Leave Act. The Respect Act would change the definition of "supervisor" to include fewer workers (unions cannot organize supervisors). And so on.

Featured Speakers

In addition to luncheon speaker Norquist and Elaine Chao, who spoke at 2:00 pm, our panel participants included:

On the Employee Free Choice Act (EFCA) and the future of labor politics and policy: former Labor Department assistant secretary for policy **Michael Baroody;** former Oklahoma representative **Ernest Istook,** speaking for Save Our Secret Ballot; **Greg Mourad**, legislative director of the National Right to Work Committee; and **Barbara Comstock**, principal, Workplace Fairness Institute**.** The moderator was the editor of this newsletter.

On teacher unions: **Neal McCluskey**, associate director of the Cato Institute's Center for Educational Freedom, **Timothy P. Carney**, columnist on government lobbying for the *D.C. Examiner*, and **RiShawn Biddle**, education consultant and *Labor Watch* contributor. Biddle also doubled as moderator.

On the economic impact of unionization: **Robert VerBruggen**, assistant editor of National Review; **Diana Furchtgott-Roth,** director of the Hudson Institute's Center for Employment Policy; and **James Sherk**, Bradley Fellow in Labor Policy at the Heritage Foundation. The moderator was **Matthew Vadum**, editor of CRC's *Foundation Watch* and *Organization Trends.*

On lessons learned from the Bush Labor Department: **Ivan Osorio**, editorial director of the Competitive Enterprise Institute; **Don Todd**, former deputy assistant secretary, Office of Labor-Management Standards, Department of Labor; **Patrick Pizzella**, former assistant secretary Department of Labor office for administration and management, and **F. Vincent Vernuccio,** special assistant to Pizzella. The moderator was **W. James Antle III**, associate editor of the American Spectator and author of the March issue of *Labor Watch* on the legacy of Secretary Chao.

Debate Over EFCA

In her remarks Elaine Chao warned of the creeping Europeanization of the American economy. This point was seconded by panelist Michael Baroody, who recalled a trip he took to Europe when he had served as assistant secretary of labor in the Reagan administration.

Many of Baroody's continental counterparts asked him how they could get their economies to perform as well as the United States. He told them that their labor laws had built in certain "rigidities" into employment that discouraged fuller employment. Baroody, who subsequently represented the National Association of Manufacturers (NAM) in Washington, warned that this, too, can happen here.

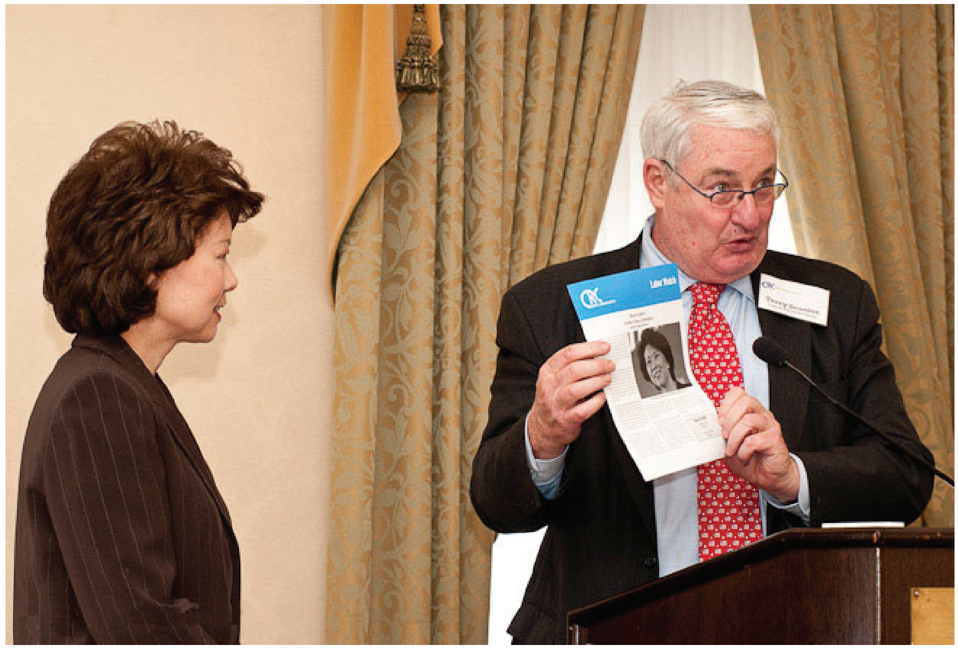
Former Oklahoma representative Ernest Istook and Barbara Comstock of the Workplace Fairness Institute urged supporters of free labor markets to resist monopoly labor legislation. “This is not a time to hibernate, to go back to sleep, and to say we’ll deal with it in 2011 after the next elections. We must be dedicated to remain active, and to keep this issue alive,” warned Istook.

Istook urged that attention be paid to legislation in the states as well as Congress. He spoke on behalf of Save Our Secret Ballot, an organization dedicated to putting anti-EFCA state constitutional amendments on the ballot. He argued that state ballot initiatives could provide legal protections to workers and employers and would send a message to wavering U.S. Senators and Representatives that their constituents were opposed to measures limiting the use of a secret ballot in unionization drives.

However, Greg Mourad, legislative director of National Right to Work, strongly disagreed, saying that the referenda would only “give Democrats cover to support this.” He suggested that state constitutional amendments wouldn’t survive court challenge and warned against suggesting “that states can actually pre-empt EFCA, if some kind of bill does come up.”

Mourad suggested that the best option is to argue and lobby against EFCA and other policy proposals by organized labor. However, he did endorse one positive alternative. This was a proposal developed by Heritage’s James Sherk and others called the RAISE Act. It would allow unionized companies to voluntarily increase the pay of unionized workers for good performance above their union-negotiated salaries.

Mourad explained the merits of this plan. Economically, it would allow companies to reward good work and thus, hopefully, get more of it. Politically, it would take some control out of the hands of labor unions and challenge public perceptions about just who is on the side of the worker. “After all,” Mourad said, “how often do people on our side of the debate get to come out in favor of higher wages?”



Terry Scanlon gives Elaine Chao a copy of the March issue of *Labor Watch*.

Changing Public Perceptions

What the public thinks about labor issues, and the importance of challenging those perceptions, was a theme woven throughout the conference. In our panel on teacher unions, Cato’s Neal McCluskey argued that there was a bigger obstacle to meaningful school reform than teacher unions. It was the monolithic public education system, which includes all the lobbying organizations for school boards, school administrators, even the PTA.

McCluskey said that without competition, accountability and incentives, government-provided education cannot even begin to recognize where reform needs to occur. He supports education vouchers, but he argued that it is easier for the government to impose conditions and requirements on the bearers and recipients of vouchers. By contrast, when taxpayers receive tax credits they cut their tax burden dollar-for-dollar while purchasing the education they want for their children -- or even for someone else’s child.

Timothy Carney, who writes about lobbying campaigns for the Washington, DC Examiner, compared the education lobby to the defense lobby and concluded that they are roughly comparable. In fact, he found that the NEA and AFT give more in campaign contributions that the top four oil companies or the top two defense contractors.

RiShawn Biddle lamented that although teacher unions are among the most vocal opponents of school choice, one of the biggest obstacles to school reform is suburban parents. Because they have already exercised a version of school choice by moving away from cities with bad schools, they often turn a cold shoulder to voucher programs that would allow low-income children into their suburban schools.

Economists on Unionization

In the panel on the economic impact of unionization, National Review’s Robert VerBruggen gave the audience a preview of his article in last month’s *Labor Watch*. VerBruggen points out that the latest research shows unions do increase the wages of unionized workers, but they decrease the wages for non-union workers who are kept out of jobs that would be within their reach in a free market for labor. Unionization also slows overall economic growth and makes job-creation more difficult, said VerBruggen.

The Hudson Institute’s Diana Furchtgott-Roth focused on union pension funds. Pensions for union officers and staff tend to be almost fully-funded. By contrast, pensions for union members are severely

Patrick Pizzella on lessons learned in the Bush-Chao Labor Department.

under-funded. This is one way in which union members are noticeably worse off than non-unionized workers.

The Heritage Foundation's James Sherk suggested other ways that unionized labor interferes with economic productivity. He observed that because unionized companies are forced to pay above-market rates for their workers, they hire fewer of them and tend to cherry-pick the most productive. This makes the comparison of union employees to non-union employees difficult and suggests that the most productive newly hired employees are better off at non-union firms that are able to recognize and reward their productivity.

As for the health of the companies themselves, Sherk pointed to the relations between the United Auto Workers and GM to show how unions often keep companies from making necessary reforms. Over the long term, this keeps a lot of jobs from being created and kills others.

What Is To Be Done?

The "lessons learned" panel that looked at the Department of Labor under Elaine Chao considered her past achievements but also worried about the challenges ahead. Ivan Osorio previewed a forthcoming *Labor Watch* article, which will look at Andrew Stern, the savvy president of the giant Service Employees International Union (SEIU). Osorio predicts a major struggle between Stern and SEIU against the AFL-CIO and its president John Sweeney over organizing priorities and political strategy.

Bush Labor Department appointees Don Todd and Vincent Vernuccio compared the Labor Department before and after Secretary Chao's tenure. Todd told tales about the difficulties he encountered at the Office of Labor-Management Standards (OLMS), which is charged with enforcing the 1959 Landrum-Griffin Act requiring union financial disclosure.

Previously, OLMS union financial disclosure files were tucked away in locked file cabinets in a small and obscure office. Under Chao, OLMS financial disclosure forms were strengthened and put online so that the public now has immediate access to more detailed information about union revenues and spending.

Vernuccio described Secretary Chao's efforts to stop union bosses from misusing union pension funds that are invested in corporate stock. While SEIU's Stern is eager to use union pension assets in proxy battles and political activism, Chao was determined to prevent the deployment of pension assets in this way. Former labor assistant secretary Patrick Pizzella pointed out that while typical political appointees last 18 months on the job, the average Chao appointee at the department of labor stayed 5.3 years. In addition, Secretary Chao was responsible for hiring two-thirds of the labor department's current career senior executives.

Pizzella summarized what he had learned at the Chao labor department. There are three lessons: 1) principles matter; 2) you can cut government costs and regulations if you really try; and 3) personnel is policy.

Unexpected Opportunities

The agenda of Capital Research Center's second Summit on Labor Issues shows that defenders of free markets in employment have their work cut out for them. This is a difficult political environment. But our speakers and participants were ready to act and speak out forcefully on the policy battles ahead.

Labor Watch will be reporting on these battles and the strategies of labor unions and pro-union advocacy groups in the months ahead. We will be on the lookout for unexpected opportunities. As Senator Specter's surprise announcement shows, they can come from the most unusual quarters.

Jeremy Lott is editor of Labor Watch.

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Please consider contributing early in this calendar year to the Capital Research Center.

We need your help in the current difficult economic climate to continue our important research.

Your contributions to advance our watchdog work is deeply appreciated.

Many thanks,

Terrence Scanlon
President

LaborNotes

The Employee Free Choice Act (EFCA), also known as card check, is likely dead for the remainder of the current Congress. Pennsylvania Senator **Arlen Specter,** facing the prospect of a tough primary rematch against former Representative **Pat Toomey**, announced that he would not cast the crucial sixtieth vote in the Senate to cut off debate. Toomey backer **Steve Forbes** told the **Washington Independent**, "I don't think it was a coincidence that there was a [likely] primary [challenge], and then there was an epiphany." On April 13, Toomey announced he would step down as president of Club for Growth to challenge Specter for the Republican Party's nomination in the spring of 2010.

Writing in the **American Spectator**, former *Labor Watch* editor **Ivan Osorio** explained why savvy businesses are breathing a sign of relief over EFCA's apparent defeat. Overlooked in the debate over the legislation was the effect that union pension plans can have on the bottom line. Osorio noted that "newly unionized companies would…be required to enter into union pension funds" which are poorly managed and have to be guaranteed by employers. Or else they have to pay a hefty "withdrawal fee." How pricey the plan and how hefty the fee? For UPS, "the least expensive option was to pay $6.1 billion to *get out* of the Teamsters' Central States Pension Fund." **Brett McMahon** of the construction firm Miller & Long says that for many businesses the initial negotiation period between the company and the union would be "a good time to start liquidating."

Before Senator Specter came out against EFCA, representatives of Starbucks, Whole Foods, and Costco proposed a compromise. Keep the secret ballot in unionization elections but speed up the process with so-called "snap elections." In a Heritage Foundation WebMemo, **James Sherk** and **Ryan O'Donnell** write that such elections would "preserve the secret ballot in name only, because they compromise the election process. …With regard to their ability to make an independent, informed choice on union organization, snap elections are no better than card check." Oh, snap.

"A Broome County employee confined by bosses to the Department of Social Services' building during the April 3 massacre at the nearby American Civic Association wants to be paid for his lunch hour," explained an April 14 story in the Binghamton, New York **Press & Sun-Bulletin**. Accounting clerk **James Kauchis** made a formal complaint to the personnel department because he was confined to the building for several hours and not allowed to leave for lunch due to a shooting spree – which resulted in the deaths of 13 victims and the shooter -- at the nearby ACA building. DSS denied the complaint, explaining that pizza and beverages had been ordered for the employees and that it was hardly unreasonable or illegal to tell people to stay out of harm's way, but the complaint may yet proceed. Asked for comment, Kauchis told the newspaper, "That's a matter between me, the administration, and the union."

The city of Philadelphia has so far had no takers on its $10,000-per-felon-per-year tax break for local businesses that hire ex-offenders. The **Philadelphia Inquirer** reported, "Some companies, in addition to not wanting to be publicly named, object that the program requires them to pay ex-offenders more that their current unionized workforce."