

## Unions on the Waterfront: Why is Big Labor Prone to Corruption?

By Robert VerBruggen

*Summary: Corruption is usually the main topic of news stories about American labor unions. Why? One problem is structural. Labor law gives unions monopoly power. Collective bargaining gives unions a way to tap into employers' and workers' pockets. And a compliant U.S. Department of Labor looks the other way. National Review Associate editor Robert VerBruggen looks to labor law in other countries for possible ways to cut down on union corruption in the future.*

For years Local 1181 of the Amalgamated Transit Union, a school bus drivers' labor organization, has been under the influence of organized crime. The union's most recent scandal unraveled in Queens, New York, where two union officials, Nicholas and Paul Maddalone, teamed up with four corrupt school bus inspectors to coerce bribes from bus company owners.

"Fat envelopes stuffed with cash were demanded from bus operators," the New York Post explained in May 2008. In return, the bus companies got more lucrative routes and "a blind eye to safety violations" from the inspectors. The union officials also forged records to help the companies over-bill the city. The Maddalones pleaded guilty in September 2009, and in December, they received ten months in prison and two months of supervised release.

It's not hard to see how a case like this hurts everyone involved: The bus company owners feel compelled to bribe their way into getting contracts. Parents send their kids to school on poorly inspected buses. The city pays for services not rendered and faces lawsuits when things go wrong. And taxpayers foot the bill.



### Corrupt Union official Paul Maddalone

Every other week the National Legal and Policy Center has no trouble compiling a "Union Corruption Update," which catalogs the latest union misdeeds around the country. The Department of Labor's Office of the Inspector General also stays busy opening about 100 labor-racketeering cases each year. It's not unusual for the federal government to take over entire union locals, placing them under RICO trusteeship in order to expel mob influence. Even union defenders such as leftist Robert Fitch, whose book *Solidarity for Sale* (Public Affairs, 2006) was an indispensable resource in the writing of this article, concede that corruption is pervasive in the American labor movement.

What does it say about American labor unions that so many of its officers are caught up in

criminal behavior? While organized crime seems to have declined in recent decades, it still plagues labor unions. Why?

Two conditions make union corruption possible. First, U.S. labor law guarantees that unions enjoy a monopoly in collective bargaining, which means that most labor unions exercise unchallenged control over large sums of money. The money comes from union dues and goes to union pension and insurance funds as well as union salaries and the costs of collective bargaining and political action. Once a union is recognized as the exclusive bargaining agent for an employer's workforce, member dues contributions and payments pour into its coffers with little regard for the union's performance. Raids by rival unions who might want to pick-up disgruntled union members are largely forbidden by labor law, so established union locals have no competition for control over the employee workforce. Employers, once their workforce is unionized, typically defer to the union's legal right to represent its workers.

Second, lax enforcement of labor law also promotes union corruption. Corrupt union officials succeed when government oversight is relaxed, when regulations are watered-down, when union finances are not transparent and

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anti-corruption laws such as RICO are not used. Unfortunately, the Obama administration during its first year has begun to roll back union financial disclosure rules, and observers say its record on prosecuting corrupt union officials is mixed.

There is no doubt that union corruption can be greatly reduced by enacting labor law reforms that eliminate monopoly power and protect individual rights. However, Big Labor will not sit idly by while its right to exclusive bargaining is chipped away, and it will resist increased scrutiny over union finances—as Bush Labor Secretary Elaine Chao can testify.

Labor law reformers may be tempted to compromise with unions to reduce corruption. In Europe, for example, unions have many legal privileges, but nonetheless must compete with each other and cannot compel workers to join—a structure that punishes corruption. Is more power an acceptable price for better oversight Or should opponents of union corruption accept the current state of affairs, content in the knowledge that unionism is slowly dying as private sector union membership continues to fall and “card-check” legislation looks less and less likely to pass Congress.

### Where the Money Is

A reading of the publication “Union Corruption Update” shows that the most common crime in organized labor is the misuse of union finances. Consider these pleas, indictments, and sentences occurring in December 2009.

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\* Kathleen Fonti, a former president of a Health Professionals and Allied Employees local, pleaded guilty to having received \$14,500 in improper loans.

\* Deidra Lucas, a former president of an AFSCME local in Pontiac, Mich., was indicted on allegations that she stole nearly \$40,000 in union funds.

\* Thomas Jon Witham, a former financial secretary for an Iowa Boilermakers local, was sentenced to a 21-month prison term for taking more than \$50,000.

\* Christine Throckmorton, who had been the bookkeeper and secretary for a Hotel Employees and Restaurant Employees local in Pittsburgh, pleaded guilty to embezzling almost \$10,000.

\* Karen Snelling, treasurer of a Communications Workers of America local in Indiana, pleaded guilty to stealing \$18,000.

\* Dale Holifield, a former financial secretary-treasurer of a United Food and Commercial Workers local in Mississippi, pleaded guilty to embezzling \$7,468.19.

Union fraud and embezzlement isn't always relatively minor. In July 2009, the former president and the former recording secretary of a Waterfront Guard Association local pleaded guilty to embezzling \$380,000, according to the most recent semiannual report of the Department of Labor's Office of the Inspector General.

Why are unions such a tempting target? Bank robber Willie Sutton had an answer. Asked why he robbed banks, he said, “That’s where the money is.” But why is the money there? A union’s most basic function should be to negotiate on workers’ behalf. This task may require salaried employees and backup accounts for striker benefits and pay, but it hardly requires a massive cash flow to union accounts.

Unions handle a lot of money for two reasons. First, many unions are responsible for their members’ insurance and pensions. It is common for these funds to be automatically deducted from employees’ paychecks. There is little that employees who are union members can do about this because the automatic

deduction of union dues is often a provision of the contract agreement that unions reach with employers.

Whenever money from employee paychecks is transferred to insurance companies, investment firms, and union vendors, there is the risk that some middleman will steal the money. Moreover, unions increase this risk by the unorganized way they handle financial transactions. Unions in the AFL-CIO federation are responsible for over 2,100 pension funds, which makes theft, fraud and extortion easier to commit and more difficult to root out. Bookkeeping is hard enough in a large organization such as the AFL-CIO without dividing the revenue into countless unmanageable, corruptible streams.

Unions like to portray employers as exploiters of workers and unions as their protectors. In fact, however, research has shown that pension investments are safer and more successful when they are managed by employers and not by labor unions. In their Hudson Institute paper “Comparing Union Sponsored and Private Pension Plans,” co-authors Diana Furchtgott-Roth, a former chief economist at the Labor Department and a former chief of staff for the President’s Council of Economic Advisers, and Andrew Brown reached these conclusions about union and non-union pension systems:

“Among large plans—plans with 100 or more participants—35 percent of non-union plans were fully funded, as compared to 17 percent of fully funded union plans.” The authors further refined their analysis by using two measures authorized by the Pension Protection Act of 2006: The Act calls a pension plan “endangered” if it is less than 80 percent funded, and “critical” if it is less than 65 percent funded. Furchtgott-Roth and Brown examined data collected on 4,602 large non-union pension plans and 3,481 large collectively-bargained pension funds and found that 41 percent of union plans were “endangered,” compared to only 14 percent of non-union plans, and 13 percent of union plans were in “critical” condition, compared to one percent of non-union pension plans.

Pensions can become under-funded for many reasons: from poor management and over-optimistic promises to bear markets and long term trends in the economy. But union

pension funds are particularly susceptible to outright corruption. Besides the examples of simple theft mentioned above, there are complex examples of corruption that have worsened pension under-funding. In the 1990s, the Genovese crime family used elaborate real-estate deals to steal from the Mason Tenders union. Furchtgott-Roth and Brown point to a similar scheme involving the Southern California, Arizona, Colorado and Nevada Glaziers' pension fund: There the pension fund was under-funded by \$234 million. Two men persuaded union officials to invest \$34 million from the fund to purchase a landfill that they said would become the site of a profitable shopping center. The affair ended badly, in charges of double-dealing and misrepresentation. While the union was the victim, its officials failed to exercise good judgment and the pension fund had to sell the land at a loss.

The opportunities for union financial corruption are exacerbated by the automatic deduction of union dues and pension contributions from employee paychecks. While convenient—too convenient if you are an unhappy union member or an employee who wants to exercise your right not to join a union—automatic deduction reduces union officials' incentive to zealously monitor and safeguard the intake of funds.

But automatic deduction is a merely a symptom of a larger structural problem with labor unions: This is the unions' claim that they "represent" employees. Currently, by law, if more than 50 percent of employees vote by secret ballot to unionize, then the union can claim to "represent" 100 percent of the workers, and it can demand their dues money. (Should "card-check" be enacted, the union would only need to submit cards signed by employees, who would lose their right to a secret ballot.) The law does not apply to the 22 states that have enacted Right-to-Work laws.

As a result of the U.S. Supreme Court's *Beck* decision, non-union member employees can ask the union to return any dues money that does not go into collective bargaining—for instance, funds spent on political activities. According to the Mackinac Center for Public Policy, members who ask for their money back might receive around 20 percent of their dues; when the Supreme Court reviewed unions' finances in *Beck* and a follow-up case,

however, it found that the unions in question actually spent only 10 to 20 percent—not 80 percent—of their revenue on representation. And aside from exercising their *Beck* rights, workers can do nothing to curb union spending short of persuading their fellow members to vote to dissolve the union.

Labor law protections of union monopoly power have let the AFL-CIO divide the country into what union critic Robert Fitch calls a "fiefdom" system -- each union exercises exclusive control over particular trades within a particular territory. Under AFL-CIO rules, unions can't compete for members, so workers dissatisfied with their union can't pick a different one. And good luck should a union member try to reform a union from within. The Association for Union Democracy, a nonprofit information clearinghouse that advocates for union reform, argues that union elections are often a sham, when they're not rigged outright. Reliable union placeholders hold office continuously and votes are explicitly or implicitly exchanged for jobs and favors.

Corrupt businesses like Enron tend to crumble, because the market in which they operate is open and competitive. But corrupt unions tend to fossilize, because they monopolize the market in which they operate. They keep on raking in dues payments, paying lavish salaries, and doling out perks. Is it any surprise that some union officials take this power and run with it?

### **Hiring Hall Shenanigans**

Union control over jobs is also a prime source of corruption. Bribes-paying union members or union favorites get the more lucrative gigs whenever union officials have a say in workplace hiring and promotions. This power over which workers get which jobs results whenever employers cede hiring authority to unions in collective bargaining agreements. Often the employer agrees to use union "hiring halls" which provide qualified workers in skilled trades (carpenters, electricians, heavy equipment operators, etc.) that employers may need on short notice.

Requiring employers to use union screening practices is complicated by the 1947 Taft-Hartley Act, which outlaws the "closed shop"—the term for a workplace that is obliged to hire only union members. Taft-

Hartley also complicates compulsory union hiring by allowing states to enact "right-to-work" laws that give workers in 22 states, mainly in the South, Great Plains and Rocky Mountain states, the right to hold a job without joining a union. However, Taft-Hartley does not void the fundamental law that protects compulsory unionism. This is the 1935 National Labor Relations Act (NLRA), which authorizes the "union shop"—the term for a close cousin of the closed shop: A workplace that will hire anyone as long as they agree to join the union or pay non-member "fees" that are the equivalent of union dues. The NLRA is the law of the land, and it is most fully applicable in the states on the East and West coasts and in the industrial Midwest, the strongholds of unionism.

Because closed shops are outlawed, unions cannot in theory require hiring hall jobseekers to be union members. Instead, they offer jobseekers a choice: Join the union and pay "dues" or remain a non-member but pay "fees" that are the equivalent of dues. How does this type of hiring facilitate corruption? In my April 2009 Labor Watch article, "What Price, Solidarity," I argued that union membership does tend to secure higher wages for workers. But this creates a spread between the union rate and the market rate, and this differential can be exploited for profit by those who control access to hiring: For instance, a worker may be willing to grease some palms in order to get a job that pays more than he could make outside the hiring hall. When union officials are corrupt or when organized crime controls a union, it can use its power over hiring to reward and punish union members. In the 1954 movie "On the Waterfront," workers put toothpicks behind their ears to signal that they were willing to offer bribes in exchange for work.

The Association for Union Democracy (AUD) frequently comments on unfair hiring practices that let union officials and employers pick and choose among dues-paying members applying for work. Its 2006 article "The Eternal Quest for Fair Hiring in Construction" told the story of a plumbers' union local whose hiring halls were plagued by patronage and scandal. In the wake of two previous corruption scandals (one of which forced the local into an



international trusteeship), the local, its international, the New York attorney general, and the U.S. Labor Department signed an agreement “to uncover and deter corruption of or criminal influence over Local 1,” and hired a consulting company to guide the process. One of the company’s responsibilities was to oversee job-referral rules and their implementation, but members reported that no such rules had been adopted—and that their business manager “indicated that he had no intention of doing so.” The AUD referred the case to New York officials, who requested a report from the consulting company, but six months later, nothing had changed. Favoritism still reigned in the hiring process.

Or consider Locals 14 and 15 of the Union of Operating Engineers. In 2003, New York prosecutors indicted a whole slew of individuals, alleging they had defrauded the union. The Justice Department’s summary of the indictments could have inspired a whole season of *The Sopranos*, but among the charges were that mobsters used “their corrupt influence to obtain preferential Local 14 and 15 job assignments,” extorted the union for “featherbed” or “no-show” jobs, and gave “preferential jobs to individuals selected by the Genovese family.”

A different form of corruption is illustrated by the 2008 indictment of two New Jersey union officials of Local 825 of the Operating Engineers. In this case, prosecutors alleged that the local union president and business manager accepted \$200,000 in bribes from contractors on Jersey City construction projects—one of the projects was a Goldman Sachs office tower—to look the other way when the contractors used cheaper *non-union* labor. The union officials profited at the expense of their members, the 7,000 construction equipment operators that Local 825 is supposed to represent.

Statistics on union hiring practices are hard to come by, but “hiring halls” are far from rare. Fitch writes that the “classic AFL unions” such as construction unions, the Teamsters, musicians unions, and longshore unions usually screen and provide employers with qualified workers having specialized skills. Government policy also plays a role in increasing labor costs: Under “Project Labor Agreements,” any company that accepts a federal government contract for a construc-

tion project valued at more than \$25 million must use workers from union hiring halls. The Bush administration banned this practice. However, at the start of his administration President Obama signed an executive order overturning the Bush order.

There is a third way for corrupt union officials to take advantage of the differential between market-based wages and union-negotiated wages. Besides accepting bribes from unionized workers or kick-backs from contractors to ignore labor agreements, union officials can also look the other way when contractors hire workers at non-union rates and bill their customers at union rates.

These practices are similar in one major respect: A criminal enterprise reaps the profit from employee labor. Sometimes the victim is the employer who agrees to pay more than the market wage and sometimes the victim is the employee who agrees to work for less than the union contract.

#### **What Is to Be Done?**

Currently, the U.S. government fights union corruption by relying upon transparency regulations and the enforcement of laws against “racketeering” (a term that refers to all manner of extortion and protection schemes). Recent actions by the Obama Labor Department reducing union transparency have been well-documented in CRC’s *Labor Watch* and elsewhere. (See, for example, W. James Antle III’s “Hard Labor,” March 2009) Under Labor Secretary Elaine Chao, the Bush administration required unions to itemize and disclose union expenses over \$5,000, which was a provision of the 1959 Landrum-Griffin Act that had never been enforced. The Obama team at Labor is undoing the progress made under Chao.

In major cases of union corruption -- mob infiltration, primarily -- the federal government can invoke the RICO (Racketeer Influenced and Corrupt Organization) Act, enabling it to put a union under the control of a court-appointed trustee. The trustee is given the task of cleaning up union affairs and holding a legitimate election to select honest and vigilant union officers. Trusteeships often last for several years and sometimes indefinitely. In 1988, U.S. Attorney Rudolph Giuliani made a historic attempt to use RICO to take over a national union, the Teamsters. Candidate

Barack Obama reportedly told Teamsters president James Hoffa that he favored lifting government oversight, but a 1989 consent decree establishing a trustee over the union remains in force.

In his 2006 book *Mobsters, Unions, and Feds*, legal scholar and sociologist James B. Jacobs analyzed twenty instances of union trusteeship. He found that only two were clear successes, five were qualified successes, four left matters unclear, one was a qualified failure, and eight clearly failed. The failed trusteeships were unable to use elections to remove organized-crime’s influence over the union. Corruption persisted.

If transparency works only when the Labor Department is administered by appointees of reform-mind presidents, and if trusteeships are unreliable, what can be done about union corruption? The only answer is that we must restructure American unions so that they are less hospitable to criminal influence.

#### **A Leftist Agenda for Union Reform**

In *Solidarity for Sale*, liberal journalist Robert Fitch advocates what’s essentially a European approach to cleaning up and strengthening American unions. In Europe, he writes, unions have many legal advantages, but these advantages don’t offer racketeers many opportunities for bribery and extortion—primarily because unions must compete with each other for members, cannot demand payments from non-members, and handle far less money than do their U.S. counterparts. This trend holds even in Italy, home of the Mafia.

Fitch’s prescription is utterly unrealistic, but it offers a unique perspective. In a way, union corruption is the tribute American vice pays to the virtue of American freedom. In Europe, unions are not corrupt, but employer-employee relations are fundamentally un-free.

Fitch’s anti-corruption measures are not based on free market principles of competition and choice. Instead, they are a wish-list combining some plausible measures with a basic revision of labor law along statist European lines. First, he suggests that there is much that the AFL-CIO could do to reform itself. It could reduce its officials’ pay, free its newsletter to publish critical articles, base its political campaign contributions only on what union members say they want, impose

term limits on union officials, publish financial information freely on the Internet, and abolish union credit cards. He also would end automatic dues deductions, and eliminate union hiring halls, replacing them with citywide halls run by government civil servants.

More importantly, Fitch proposes policy changes that would dismantle the National Labor Relations Act. He would overturn the “right” of exclusive representation that prevents competition between unions, terminate “monopoly bargaining” clauses (which further designate a specific union as the workers’ sole representative), and outlaw the “union shop” (which, he correctly notes, is simply the closed shop in disguise).

Of course, these measures would do more than reduce union corruption. They would end the federal government’s power to compel workers to join a union or pay union fees. However, doing only this is not what a leftist like Fitch wants, and it’s not what unions and their supporters will accept.

Fitch offers other recommendations to strengthen unions, and, boy, would they be strengthened. When unions strike, he would not allow businesses to hire other workers to replace them. He further asserts that corporations “must give up their resistance to worker representation,” and he proposes the formation of “works councils” -- worker-elected and -staffed bodies that would have a say in how the corporation is run. These measures are akin to what exists now in Europe. Fitch predicts that unless the United States adopts similar measures that make labor unions into an even more formidable political force, the nation will become a “Dickensian nightmare.”

Fitch compares the U.S. to France, where union membership is voluntary. Only about 8 percent of French workers are actual union members, and union dues are collected in-person rather than through automatic deduction. But when a union negotiates a contract -- once the union has the support of a mere 10 percent of a company’s workers—the business must negotiate with it, and, as in the U.S., the contract applies to all non-member employees too. (Laws applying contracts to non-members are called “mandatory extension” laws.) Once an

agreement is struck, it must be renegotiated each year. Moreover, unions in France also negotiate with companies on a sector-wide level, and the government often extends agreements to cover non-participating companies. Union-negotiated bargains now cover 90 percent of all French workers, according to the Organization for Economic Cooperation and Development.

The gap in France between collective-bargaining coverage and union membership is unusually high, but, as in much of the rest of Europe, unions have enormous legal advantages and political power. Mandatory works councils are a reality in Germany, France, Italy, and the Netherlands. It’s not uncommon for European governments to extend union contracts to cover non-union employers and employees, or to facilitate industry-wide bargaining. Germany and Holland have mandatory-extension laws. Spain also forces businesses to negotiate with its low-membership unions. While Western European countries’ union membership rates vary, their collective bargaining coverage—the proportion of workers who are covered by union contracts, regardless of whether they’re union members—tend to exceed 60 percent. General strikes can shut down entire countries, most recently in Greece.

Needless to say, if public policies lessening union corruption were to lead America in this direction, it would be a devastating blow to economic freedom. If this were the only alternative, free-market advocates would be better off accepting the current legal status of unions, which seems to be producing their slow demise, at least in the private sector.

Oddly enough, if Americans were to adopt the labor relations policies in Europe, we would have much less corruption, but much less freedom.

#### **A Modest Proposal**

Instead of an anti-corruption drive worthy of Robespierre, U.S. policymakers might adopt a few basic and undramatic anti-corruption steps. Transparency is essential. Full disclosure of union revenue and expenditures, for example, is a commonsense measure no reasonable person should oppose. It’s clear the Obama administration has no interest in it, but any future Congress should make it an issue.

Similarly, the RICO trusteeship process should be improved. Jacobs suggests measures as simple as evaluating the trusteeships regularly—right now, there are no scheduled evaluations as to how the trusteeship is going. There’s no real literature to guide anyone through the process, either. “All U.S. attorneys considering civil RICO union suits have had to begin from scratch or with only vague ideas as to what kind of relief to ask for,” Jacobs writes. And there must be no let-up in efforts to enact Right-to-Work laws in the states. They are a great tool for giving workers a way to say no to corrupt unions (and to improve the climate for business and the prospects for economic recovery).

Ending union corruption is an achievable goal. But that will require the reform of U.S. labor law, changes in unions’ internal management and culture, and stronger enforcement of RICO and other laws. Until these changes are made American unions will continue to be an ideal target for criminal enterprise.

*Robert VerBruggen is an associate editor of National Review and a frequent contributor to Labor Watch.*

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**Many thanks,**

**Terrence Scanlon  
President**

# LaborNotes

The **Service Employees International Union** has a new president: **Mary Kay Henry**. CRC President **Terrence Scanlon** wrote in the **Washington Times** on May 10 that Henry's selection to fill out the remainder of former president **Andy Stern's** term gives us "a few clues about the future of SEIU." He predicted the union will be "slightly less political, at least in the near future." Scanlon argued that Henry will likely be preoccupied with mending the union's finances for SEIU to spend in the midterm elections the way it has in previous years. He also predicted that SEIU's future organization drives will "be concentrated in the sector of the economy Ms. Henry knows best: health care."

*Labor Watch* had long predicted that a better economy would lead to higher unemployment statistics. The April report from the **Bureau of Labor Statistics** has borne this out. The private sector created 231,000 new jobs, which one might expect to drive down the unemployment numbers. Instead, it **boosted the percentage of unemployed workers** from 9.7 to 9.9 percent. Why? Because more people are now looking for work, which expands the size of the job market. Things are getting better, but looking worse.

**Mickey Kaus**, the popular blogger who is challenging **Barbara Boxer** in the California Democratic primary, asked in the May 2 **Los Angeles Times**, "Do you have to love labor unions to be a good Democrat?" His answer was that it is "time for Democrats, even liberal Democrats, to start looking at unions and unionism with deep skepticism."

To wit, on May 11, an education reform bill narrowly beat a midnight legislative deadline in the Colorado state House. The bill, which the website **State Bill Colorado** reported would "create new teacher and principal evaluation systems and...change the way that teachers gain non-probationary status – and lose it" survived several challenges from legislators acting at the behest of the **Colorado Education Association**. Denver Democrat State Senator **Mike Johnson**, who spearheaded the bill in the state Senate, said, "All of the core components of the bill are intact. I think Colorado took a courageous step in the right direction."

Frequent CRC contributor **Sean Higgins** reported in **Investor's Business Daily** on May 2 that "Liberal groups are experiencing buyer's remorse over Democrats' proposed campaign finance bill" as they learn that "restrictions they thought would hit only corporations are broad enough to include them too." One union source told IBD that the rules that should apply to corporations should not apply to unions. "We're all for disclosure," said the source, "but we don't think corporations should be treated as individuals or in the same regard as labor unions as membership organizations. We speak for our members. CEOs don't speak for anybody but themselves."

On May 11, the **National Mediation Board** put into effect a new rule that would allow airline workers to organize by a simple majority vote of those who vote. Previously the organization rules for airlines had required a majority of all employees to vote yes, because the **Railway Labor Act**, the improbable name of the legislation that regulates air travel labor laws, does not really allow for decertification votes. What that means is, once airline workers vote for union representation, they're stuck with it.