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Labor Watch

Labor's Pyrrhic Victory

By W. James Antle III

Summary: Labor unions supply money and manpower during the election; Democrats in office in Congress and the White House do their bidding. This was the plan, but it hasn't quite worked out. Despite many victories, union priorities like card-check are on the back-burner. Time's running out. Will President Obama impose card-check on employers by fiat?

In his Labor Day column, veteran Washington Post scribe E.J. Dionne lamented Big Labor's loss of influence. "Even worse than the falling membership numbers is the extent to which the ethos animating organized labor is increasingly foreign to American culture," he complained. "The union movement has always been attached to a set of values—solidarity being the most important, the sense that each should look out for the interests of all."

Whatever the merits of Dionne's argument that labor unions typically "look out for the interests of all," this seems like an odd time to mourn organized labor. At the White House and in the halls of Congress, it is not hard to find the union label. The country currently has a government that organized labor did more than perhaps any other faction in American life to help elect.

Unions haven't exactly suffered under the Obama administration or Democratic majorities in Congress. After helping build these majorities, organized labor remained a reliable part of the liberal special-interest coalition, working hard for the enactment of health care reform and other progressive policy priorities. But have the Democrats delivered on anything like their soaring pro-union promises made in the aftermath of the elections?

Decrying a Bush administration that "open[ed] its doors to the most anti-union, anti-worker forces we've seen in generations," then-candidate Barack Obama argued in his 2008 Labor Day message, ""It's time we had a president who will stand up for working men and women by building an economy that rewards not just wealth, but work and the workers who create it." Obama then solemnly vowed: ""It's time you had a president who honors organized labor—who's walked on picket lines; who doesn't choke on the word 'union'; who lets our unions do what they do best and organize our workers; and who will finally make the Employee Free Choice Act the law of the land."

Well, we now have the president described in the first part of Obama's statement--one who has walked picket lines, said nice things about unions, and generally gets out of organized labor's way--but the Employee Free Choice Act, otherwise known as card check, is not the law of the land. By Big Labor's lights, House Majority Leader Steny Hoyer (D-MD) may be right when he says, "Labor is certainly doing much better than they did under Republicans, because Republicans are very hostile to labor unions generally." But the major legislation that was supposed to help boost organized labor's sagging numbers in the private sector--and bolster its lagging dues--remains on the union wish list.

Before discussing why card check is so important to the unions, let's look at their contribution to the Democrats' recent electoral success. It is no exaggeration to say that our government in Washington was largely built by union labor. Democrats control the presidency and both houses of Congress by lopsided margins. For several months until the election of Sen. Scott Brown (R-MA)--against labor leaders' wishes--Democrats controlled a 60-seat, filibuster-proof majority. If any government was ever likely to pass card check, it was this one.

In 2006, the year the Democrats took control of Congress, the unions poured no less than $57.6 million into the party's coffers. According to the Center for Responsive Politics, that accounted for 87 percent of union political contributions during the midterm elections. Sixty-nine House Democrats and only one Republican received more than $200,000 each in union money. Half of the ten biggest spending political action committees were affiliated with organized labor.

Organized labor did not rest on its laurels in the next election cycle. Instead they topped this performance with even more impressive acts of generosity toward the party of labor. Unions gave $58 million to congressional candidates in 2008, 91 percent of which went to Democrats. In addition, labor leaders doled out another $44 million in independent expenditures on behalf of Obama. That wasn't a far cry from the $53 million the Republican National Committee spent boosting the presidential candidacy of GOP nominee John McCain. The total is more than $100 million to help Democrats win federal offices in one year alone. And they weren't done yet: unions boasted of their plans to spend more than $400 million over the course of the 2008 campaign, up from approximately $160 million in 2004. Some unofficial estimates place the price tag even higher.

Unions aren't just good for money. As you might expect, they provide labor too. Members and affiliated activists knock on doors, carry signs, man phone banks, drive neighbors to the polls, and otherwise play an indispensable part in Democratic get-out-the-vote operations. In 2008, they were particularly active in the battleground states, with AFL-CIO officials boasting they "mounted a bigger effort than ever before" in Ohio, Pennsylvania, Michigan, Colorado, Florida, and even Virginia. They sent mass mailings to hundreds of thousands of voters in heavily union swing states. An estimated 450,000 people associated with organized labor took part in voter mobilization drives, overwhelmingly on behalf of the Democrats.

Moreover, the unions picked their Democrats carefully and pledged not to be taken for granted after Election Day. Obama, for instance, voted with the AFL-CIO 98 percent of the time while he was in the Senate. McCain supported the labor federation's interests just 16 percent of the time. But organized labor wasn't going to give Obama a pass for his pro-union past. Feeling scorned by the last Democratic chief executive, Bill Clinton, a free-trading, budget-balancing, welfare-reforming, capital gains-tax-cutting centrist, labor fired a shot across the new president's bow. "Unlike in the past, instead of saying 'OK, we've elected you, now do what's right by us,' we are going to keep our machinery in place,'' then AFL-CIO Treasurer Richard Trumka told Bloomberg News at the time. "We are going to make sure that our interests are considered at the front of the parade."

Trumka and his friends had every reason to believe their parade had finally come. Card check had already come close once before. In 2007, the Employee Free Choice Act passed the Democratic-controlled House by a margin of 241 to 185, but then stalled due to opposition by President Bush and Senate Republicans. Card check fell nine votes short of overcoming a Senate filibuster, though a narrow majority of senators did

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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.

support it. With a new, substantially more Democratic Congress two years later, some union leaders thought it was realistic to hope the bill would pass during the first 100 days of Obama's presidency.

Big Labor's Recent Victories

Dionne's column notwithstanding, let's not weep for organized labor. While the unions may not have card check, they've gotten plenty of things that they've wanted. Consider the Lilly Ledbetter Fair Pay Act (LLFPA), another House-passed bill once bottled up in the Senate. Congress passed and President Obama signed it into law a bill that was intended to reverse a 5 to 4 Supreme Court ruling that a woman had waited too long to file a pay discrimination lawsuit against Goodyear Tire & Rubber Co. This AFL-CIO-supported piece of legislation effectively restarts the clock for filing a suit every time a putatively discriminatory paycheck is issued.

The woman for whom the bill is named boasted at the 2008 Democratic National Convention, "Barack Obama is on our side." That much was clear long before Obama became his party's standard-bearer in the presidential election. He was an LLFPA co-sponsor in the Senate. Making his case for the legislation, Obama maintained, "We won't truly have an economy that puts the needs of the middle class first until we ensure that when it comes to pay and benefits at work, women are treated like the equal partners they are."

The trouble is that LLFPA is likely to lead to litigation in outdated cases, penalizing employers who have practiced no intentional discrimination. "The only ones who will see an increase in pay are some of the trial lawyers who bring the cases," countered Sen. Orrin Hatch (R-Utah).

Consider Ledbetter's own case, the subject of a devastating post by attorney and PowerLine blogger Paul Mirengoff. Ledbetter did not charge that any of her supervisors during the limitations period had acted with discriminatory intent with regard to her pay. Instead she claimed that her pay would have been higher at that time were it not for prior discrimination--allegedly practiced by a supervisor who was now dead. Under those terms, how was Goodyear supposed to defend itself? Mirengoff concluded, "Statute of limitation periods exist precisely to prevent the injustice inherent in situations where a plaintiff 'sleeps' on his or her rights for years." LLFPA is now the law of the land.

But that's not the only labor priority that has become a reality after the 2008 elections. Unions were paid off handsomely in the $1.2 trillion stimulus package and its equally unfunded sequels. While Congress played a role, labor leaders can thank Obama himself for this development. At issue is E.O. 13502, a pro-union executive order signed by the president during his first weeks in office. With a stroke of a presidential pen, contractors who bid on large-scale public construction projects worth $25 million or more were made to accept the unionization of their workers.

The project labor agreement (PLA) required by the executive order ostensibly establishes reasonable terms and conditions for labor. In practice, syndicated columnist Michelle Malkin reported, the PLA "requires contractors to hand over exclusive bargaining control; to pay inflated, above-market wages and benefits; and to fork over dues money and pension funding to corrupt, cash-starved labor organizations." Although 84 percent of American construction workers do not belong to unions, non-union shops are effectively locked out of the contract bidding process under these terms. Malkin concluded, "Taxpayers lose; unions win."

The original stimulus allocated about $230 billion to infrastructure spending, disproportionately to the benefit of union workers under the terms of E.O. 13502. President Obama's proposed "Plan to Renew and Expand America's Roads, Railways and Runways" would add another $50 billion to that total, creating even more opportunities for union workers. Obama told the AFL-CIO, "It doesn't do anybody any good when so many hardworking Americans have been idled for months, even years, at a time when there is so much of America that needs rebuilding." Unless the hardworking Americans choose not to belong to a union, the preference of all but 16 percent of construction workers.

Not content to ply the unions with federal tax dollars, the Obama administration and Congress have been eager to cut them slack. One of the rare areas in the federal government that they have seen fit to cut spending is on Labor Department oversight of union financial practices. In the fiscal 2010 budget, the Office of Labor-Management Standards (OLMS) was targeted for a 9 percent cut, bringing its budget down from $45 million to $41 million. Obama proposed to cut its budget from $45 million in fiscal year 2009 to $41 million in fiscal year 2010. This is on top of a $2 million cut in the previous budget cycle.

OLMS is charged with monitoring union financial practices and investigating crimes where labor leaders steal from the rank-and-file. During the Bush administration, this agency won over 900 criminal convictions of union officials for embezzlement and other crimes and obtained court orders of over $91 million dollars–money that will go back to the union members. If one is pro-worker rather than pro-union leadership, then it does not make sense to undermine a government agency that protects the integrity of workers' dues.

How strange that OLMS was the only agency in the entire Labor Department that saw its budget cut. The Wage and Hour Division, by contrast, saw its funding boosted by 18 percent from $201 million in fiscal year 2009 to $238 in fiscal year 2010. "My quick back of the envelope calculations lead me to believe that OLMS is probably looking at staff reductions in the neighborhood of 40-50 personnel," said Bush-era OLMS head Don Todd, now at Americans for Limited Government. "This is significant for an agency that has slightly over 300 personnel nationwide." Todd concluded: "Obama should have cut the real fat in the Labor Department budget and left OLMS, a little agency that is less than one-tenth of one percent of the Labor Department's budget, alone."

Finally, the unions were not being altruistic when they advocated Democratic Party agenda items not directly related to labor. There was an element of self-interest to their work on behalf of the new health care law, for example: the bigger the federal role in health care, the better their ability to organize health care workers--and bolster their own membership. This is especially true for the Service Employees International Union. "If the government runs health care, then the SEIU's membership rolls will swell," Heritage Foundation labor policy fellow James Sherk wrote at the time. "If union rates among nurses in America rise to Canadian levels, then the SEIU will bring in over $1 billion a year in new mandatory dues. Newly organized technicians and other medical support staff add even more to that total." So in that context, the $40 million unions spent to pass the health care bill wasn't an act of charity--it was an investment.

Big Labor's Greatest Defeat

Overall, however, union leaders are not happy with the return on their investment in this government. Organized labor and the Democratic Party are supposed to have a symbiotic relationship: unions help Democrats get elected; Democrats pursue policies to help unions expand their membership and collect more dues. When will Congress pass the big initiatives to help boost union membership, now down to just 7.5 percent of the private sector workforce?

That's where card check comes in. Under current law, companies can require a secret ballot election to authorize a union to organize an employer's workforce and such an election must be called when 30 percent of workers sign a union card. The Employee Free Choice Act would mandate the use of card check when a union requests it. It simply bypasses the election if 50 percent of workers plus one signs a union card. Organized labor claims that the status quo allows businesses to pressure employees who want to unionize. But a secret ballot prevents both labor and management from knowing a worker's intentions. In practice, card check's lack of confidentiality enables unions and their allies to intimidate employers and employees alike.

Organized labor's problem with secret ballot elections is that workers often don't vote "correctly." By some estimates, unions lose more than 40 percent of representation elections. When employers "voluntarily" allow card check, frequently as a result of the union pressure tactics that unions call "corporate campaigns," the AFL-CIO estimates that it prevails 75 percent of the time. According to the Senate Democratic Caucus "more workers form unions via card check than via secret-ballot elections," by a margin of 375,000 to 73,000 in 2004.

The Back-Biting Begins

Even with 60 Democratic votes in the Senate, card check went nowhere. Sens. Mark Warner and Jim Webb of Virginia, Jon Tester of Montana, Blanche Lincoln of Arkansas, Michael Bennet of Colorado, and many others joined all the Republican senators as either opposed or undecided on the Employee Free Choice Act. This is one of the unions' biggest political failures in all-Democratic Washington--and now its time appears to be running out.

Risking a civil war within the Democratic Party, the unions delivered on their promises to fight back--but the results have not been kind. Organized labor targeted two relatively business-friendly Democratic senators, Blanche Lincoln of Arkansas and Colorado's Michael Bennet, and spent liberally on behalf of their primary challengers. The big unions backed Arkansas Lt. Gov. Bill Halter and former Colorado house speaker Andrew Romanoff. Comically, even Halter was publicly noncommittal about card check.

Halter and Romanoff both lost. President Obama backed the Democratic incumbents the unions opposed. Party leaders were not happy with the way the unions spent their money in these races, and were particularly biting after Lincoln beat Halter. "Organized labor just flushed $10 million of their members' money down the toilet on a pointless exercise," an unnamed White House official told Politico's Ben Smith. "If even half that total had been well-targeted and applied in key House races across this country, that could have made a real difference in November."

Another senior Democrat groused to the Huffington Post, "Labor is humiliated. $10 million flushed down the toilet at a time when Democrats across the country are fighting for their lives. They look like absolute idiots." Organized labor and its allies naturally didn't take kindly to the "absolute idiots" description. "If that's their take on this, then they severely misread how the electorate feels and how we're running our political program. When we say we're only going to support elected officials who support our issues," said AFL-CIO spokesman Eddie Vale. "When they say we should have targeted our money among some key House races among Blue Dog Democrats — that ain't happening. Labor isn't an arm of the Democratic Party."

"These people have forgotten that organized labor isn't in the business of electing Democrats for the sake of electing Democrats," wrote progressive blogger Joshua Holland. "They're looking for lawmakers who will support legislation that helps working people." The Daily Kos accused the Obama administration of stupidly attacking labor "The White House apparently thinks we work for the Democratic party of its choosing. But we don't. We are creating the Democratic party of our choosing, and they are getting in the way."

All of this is happening at a time when the political climate is rapidly shifting away from unified Democratic control of the federal government. Candidates backed by unions and the Netroots have generally fared poorly in this year's competitive Democratic primaries. Union-backed candidates are not considered likely to do well in November, especially now that Big Labor is so uniformly Democratic. Recent Gallup and ABC News/Washington Post have shown voters preferring to elect Republicans to Congress by historic double-digit margins.

In fact, by trying to push the Democratic Party to the left, organized labor has helped create the very political conditions that are making its oversized influence on Washington so short-lived. "Labor is a constituency that has gotten out of control and the Democrats have to try to manage it," says one Republican consultant. The stimulus package, the automobile industry bailout, the health care bill--these are all the pieces of legislation that have jeopardized the Democrats' control of Congress and hold on the federal government. Big Labor was an indispensable backer--and direct beneficiary--of each one.

This isn't to say that organized labor is down for the count yet. Even though union leaders are likely to experience significant setbacks in the fall elections, the Obama administration will remain in the White House for another two years. It is possible a lame-duck congressional session will deliver on some union agenda items. More likely, the administration will try to impose Big Labor's will by executive fiat--perhaps even on card check.

It's not that farfetched a scenario. Consider Obama's appointment of Craig Becker to the National Labor Relations Board (NLRB), a powerful federal agency responsible for navigating the minefields of American labor law. Becker, a former union lawyer, has been described by National Right to Work head Mark Mix as a "walking conflict of interest." Becker, who devoted much of his career to devising SEIU legal strategies now refuses to recuse himself from several cases before the NRLB involving SEIU local affiliates.

In the course of concocting SEIU legal strategy, Becker has shared some interesting opinions. One is that card check legislation could be implemented administratively by the NRLB, without congressional authorization. Becker and other union allies now constitute a majority of the NRLB. Even if the board doesn't unilaterally impose card check on an unwilling populace, it could roll back worker protections during union organizing drives. The NRLB is already reconsidering the Dana decision that imposed procedural safeguards during card check campaigns. Because employees might be intimidated into signing union cards, the NRLB had previously ruled that workers must have a 45-day "window period" to challenge the card check results with a secret ballot vote. That window period may close.

While the battles may shift from Capitol Hill to the executive branch, this much is clear: The Democrats have not given the unions their expected return on their massive 2008 investment. And by bankrolling an unpopular agenda, union bosses may be complicit in the entire Democratic coalition's defeat at the ballot box this year. Unions won big when hope and change were still in fashion. But it's starting to look like a pyrrhic victory.

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Many thanks,

Terrence Scanlon
President

LaborNotes

With a recovery like this, who needs a recession? August saw the unemployment rate rise for the first time in four months to 9.6 percent. As the Associated Press reported on September 3, "Overall, the economy lost 54,000 jobs as 114,000 temporary census positions came to an end. For the first time this year, the manufacturing sector lost jobs down a net total of 27,000 for the month. The auto industry accounted for 22,000 of those lost jobs…" If that wasn't depressing enough (economically and emotionally speaking) the "underemployment" rate – workers forced to accept menial or part-time work in lieu of full-time employment – rose as well, from 16.5 to 16.7 percent.

On Labor Day, President **Barack Obama** appeared at **Laborfest** rally with **AFL-CIO** president **Richard Trumka** in Milwaukee, Wisconsin. Obama used the occasion to extol the virtues of unions and unionism, claiming, "It was the labor movement that helped secure so much of what we take for granted today. The 40-hour work week, the minimum wage, family leave, health insurance, social security, Medicare, retirement plans. The cornerstones of the middle-class security all bear the union label." But as the **Alliance For Worker Freedom** points out, "Far from ensuring a reliable retirement, nearly half of the nation's 20 largest unions have pension funds that federal law classifies as 'endangered' or in 'critical' condition due to the unfunded liabilities the pose on taxpayers." The president also used his Laborfest appearance to call for Congress to approve $50 billion in additional funds (don't call it a stimulus!) to update America's sagging rail, road and air-traffic infrastructure. Naturally, the jobs –if any – this non-stimulus would generate would be of the kind that would largely benefit Obama's union buddies. Maybe it isn't a stimulus – maybe a better word is "bailout."

Summer 2010 continued to see shenanigans and malfeasance on the part of Big Labor officials, especially treasurers. In Pennsylvania, **Antonio Jordan**, the former treasurer of the **Erie Newspaper Guild**, pleaded guilty on August 5 in U.S. District Court to embezzling over $8,700 from his union's coffers. In California, **Curtis Iwatsubo**, formerly the financial secretary-treasurer of **Glass, Molders, Pottery, Plastics and Allied Workers International Union Local 52**, pleaded guilty on May 10 to embezzling over $48,000. And in Ohio, **Lisa Wright**, the one-time treasurer of the **Transit Employees Union**, was sentenced in U.S. District Court to three years probation for embezzling $71,000. Treasurers watch the money; to paraphrase Juvenal, who will watch the treasurers?

Ah, autumn. Brisk evenings. Leaves on the ground. Kids back in school. And football – for this year, at least. After the 2010/2011 season, a labor agreement between the player's union and the franchise owners will expire, prompting dire headlines like "Prospect of work stoppage in 2011 threatens NFL" (Washington Post, September 7). If a new deal isn't hashed out, the result could be the first NFL player's strike in 23 years. But no one wants that, least of all the owners, who are riding the recent, unprecedented wave of football popularity all the way to the bank (the NFL has ballooned to a bloated, $8 billion-a-year behemoth). The current labor agreement was ratified in 2006, and "gave the players about 60 percent of total league revenue under the salary cap system," which owners apparently now feel was a tad more than the players deserved. Naturally, the players, and their attorneys, will have something to say about that. Let's cross our fingers for 2011/2012 season.