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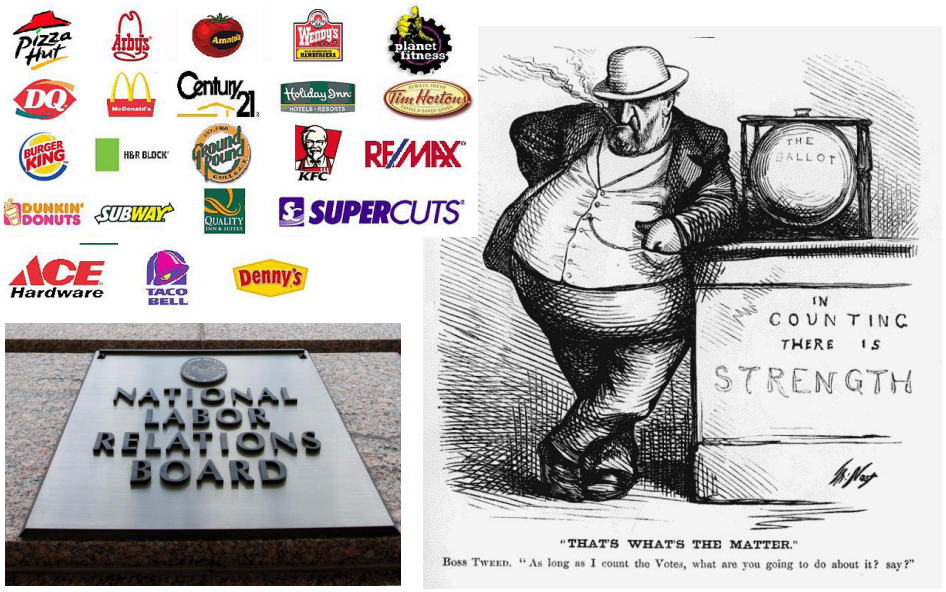
Labor Watch

The NLRB Rigs the Rules

From the joint-employer rule to quickie elections and gerrymandering, the National Labor Relations Board pushes unionization

By Diana Furchtgott-Roth

Summary: *A long-time union lawyer is enjoying his high post at the National Labor Relations Board, where he and his allies threaten to wreak havoc on the American economy. With little respect for the rule of law and a heavy thumb on the scales for the union side, the NLRB is in the midst of upending the franchise model that makes so many small businesses possible. It's also at work perverting the ballot process for unionization elections, and keeping employers from talking with workers before those elections.*



From redefining franchises to changing the procedures for elections, the National Labor Relations Board is making it harder for employers and employees to stand up to unions.

In his novel *The Trial* (1914), Franz Kafka painted a portrait of an unimaginably oppressive government with secret laws and trials in which the individual is crushed. Kafka could have found much literary inspiration in the National Labor Relations Board, which has recently worked to bring the nation quickie unionization elections, the gerrymandering of bargaining units (deciding who's eligible to vote *after* the votes have been cast), and a scheme that could destroy the franchise model in American business.

Let's look first at an effort to change the definition of who's your boss, if you work at one of the hundreds of thousands of businesses in the U.S. that are based on the franchise model. This effort can be traced to the office of NLRB General Counsel Richard Griffin.

If you follow issues related to labor law, Griffin's name may be familiar. He previously served for 30 years as an official of the International Union of Operating Engineers (IUOE), rising to become the union's top lawyer. He was a board member of the AFL-CIO Lawyers Coordinating Committee. In his position at the IUOE, he was accused by the business manager of a Los Angeles local of attempting to cover up evidence that union funds were stolen, including apprenticeship funds reportedly used for breast implants for the girlfriend of a union official. In 2012, Griffin was nominated to the NLRB as a "recess appointment"—a presidential appointment made during a Senate recess—when President Obama claimed the power to make such appointments even though the Senate was not in recess. The Supreme Court threw out the appointments, and Griffin's name was withdrawn as a nominee for the board. He was subsequently named to the position of NLRB General Counsel.

As General Counsel, Griffin has virtually unchecked power to determine which cases the board takes up and

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which ones are ignored. He is taking full advantage of his new powers.

On December 19, just before the holidays, when many people had their minds on holiday shopping, Griffin announced that he had issued complaints against McDonald's franchised restaurants and McDonald's USA, the parent corporation, as *joint employers.*

That's a critical designation. If it were to be upheld in the law, then the franchise model—the basis for much of the job creation in America and the upward mobility of working-class Americans—would be hamstrung, if not destroyed. Should it become law that a national or international corporation is the "joint" employer of workers at a franchise business, then an immigrant family who put their life savings into a local, independent franchise would be subject to rules and regulations that are supposed to exempt small businesses like theirs. To deal with this new responsibility, McDonald's and other big corporations would have no choice but to greatly restrict the business practices of their franchisees, taking away their flexibility to deal with local workers and local customers. Small businesses will be lumped together with rich, multinational corporations—folks with what lawyers call "deep pockets"—in a way that makes them bait for lawsuits.

To make peace with labor unions—unions that currently must organize on a store-by-store basis—companies like McDonald's might unionize nationally, regardless of what franchise employees want at the local level.

This change would apply to some 770,000 franchise businesses in the United States—not just McDonald's, and not just fast-food restaurants, but auto repair businesses, doughnut shops, tax-return preparers, housecleaning businesses, real estate management businesses, nail salons, and other types of franchises. The new law would likely extend to temp agencies and subcontractors as well.

Griffin goes after McD's

In the cases brought before the NLRB's Griffin, workers at a few McDonald's franchises alleged that they were unfairly disciplined for communicating with unions and that their employers threatened them with retaliations like fewer work hours and job loss. The NLRB stated this past December that "of 291 charges filed since November 2012, 86 cases have been found meritorious, and therefore, complaints would issue regarding those meritorious cases, absent settlement." This number represents about half of one percent of all U.S. McDonald's 14,000 locations.

In July 2014, Griffin had stated (without offering a legal argument) that McDonald's USA was a joint employer of those workers who are employed by local McDonald's franchises, but he waited until December 2014 to bring charges against both the franchises and the parent company.

In plain English, that means that if an employee at a mom-and-pop franchise charges his boss with an unfair labor practice, such as withholding pay or being forced to work too many hours, Griffin believes the parent company, McDonald's USA, is also responsible.

Franchise owners do not want any interference from McDonald's USA on how to treat employees or run their business. Two groups profit from Griffin's change in the law. One is unions, because they believe that they will be able to extort McDonald's USA into requiring unionization as a condition of obtaining a franchise. The other group is the class action plaintiffs' bar, because lawyers will now be able sue McDonald's USA rather than a local McDonald's for any unfair labor practices or any allegations of wrongdoing. McDonald's USA is a far more lucrative target.

This decision to charge both the McDonald's franchise and the parent company overturns decades of precedent. For half a century, the local franchise was considered the only employer. The NLRB defined employers as those who controlled workers' "essential terms of employment," namely hiring, wage rates, firing, and job description. Your employer was the franchisee you called "boss," not the owner of the entire franchise (McDonald's USA). But the NLRB wants to change that, and its new authorization is an integral part of the new employment landscape.

Acting in the shadows

One puzzling, Kafkaesque aspect of this change is the way it was implemented. Normally, when federal agencies want to change a legal rule, they announce it, then seek public comment for a period ranging from one to four months, use the public's comments to adjust the proposed rule, and only then issue a final rule. The NLRB has followed this process in some other cases, such as "quickie elections," discussed below. But in the case of franchises, the change was done with the utmost

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secrecy, in a manner more typical of the old USSR than the USA.

Consider that when I called the NLRB to ask whether I could see the Advice Memorandum (the document that lays out the legal foundation for the change), I was told by an anonymous spokesman that "the memorandum is not available publically because it's part of the litigation process." I was also informed that the arguments in the Advice Memorandum—but not the Memorandum itself—will be available when the case goes before regional administrative judges in the spring.

In other words, the NLRB has unilaterally changed the law without any notice or public comment, it is using the change in the law to sue a major corporation, and it is telling the target of its lawsuit and the general public that the legal reasoning behind the change cannot be revealed. This is taking place under President Obama, who stated in a memorandum on January 21, 2009, that his "Administration is committed to creating an unprecedented level of openness in Government." So much for openness!

If the NLRB is making such a change, surely the public has a right to know the legal reasoning. The new definition will affect a wide swath of franchised businesses, ranging from Dunkin Donuts to Jiffy Lube to H&R Block. Michael Lotito, co-chair of Littler's Workplace Policy Institute, told me, "This is not about winning a case. It's about the destruction of a business model that is an engine for job creation and fulfilling the American Dream."

The NLRB's decision is indeed cataclysmic for America's system of franchise business. If the parent company is considered a joint employer, then the value of a franchise business is reduced. A single-employer franchise may not be worth suing. But if the franchisor is a joint employer, such as McDonald's USA, with a value of $100 billion, then every local franchise is worth suing. Insurance rates rise, costs rise, and owning such a small business becomes vastly less attractive.

Another blow to such small businesses that will result from the NLRB change is the way the new arrangement will make it easier for unions to apply pressure to employers to organize workplaces. This is not conjecture; it was stated by the NLRB's Griffin on June 26, 2014, in a friend-of-the-court brief in another case.

Griffin wrote in *Browning-Ferris* that "the Board should abandon its existing joint-employer standard *because it undermines the fundamental policy of the Act to encourage stable and meaningful collective bargaining*" (italics added). The old rule discourages collective bargaining and unionization, so Griffin is seeking a new standard that will promote those things. In the brief, he "urges the Board to adopt a new standard that takes account of the totality of the circumstances, including how the putative joint employers structured their commercial dealings with each other. Under this test, if one of the entities wields sufficient influence over the working conditions of the other entity's employees such that meaningful bargaining could not occur in its absence, joint-employer status would be established."

But the joint-employer rule would not just *allow* unionization. It would push employees into unions, even if they don't want to join. Unions such as the Service Employees International Union (SEIU) and the United Food and Commercial Workers International Union (UFCW) want McDonald's USA to agree to practice "neutrality" with regard to unionization and also to recognize the union if a certain number of authorization cards are collected (that is, to unionize without a secret-ballot election via "card check").

David Moberg, senior editor for the left-wing, labor-oriented publication *In These Times*, wrote (July 30), "If the ruling stands, workers will have stronger legal grounds for pressuring McDonald's to remain neutral—and, in turn, keep franchisees neutral—on allowing workers to decide on a large scale whether they want a union."

Moberg was referring to "neutrality agreements," arrangements between employers and unions that make the workforce easier to organize. When employers sign neutrality agreements, they are not remaining neutral in the workers' choice of whether to be represented by a union, as mentioned above. They assist in the unionization process without presenting the disadvantages of union representation, as was the case with the campaign at the Volkswagen plant last year. [See *Labor Watch* August 2014.] The companies allow union bosses to use work hours to lecture workers about the advantages of joining a union. Such agreements give the union access to company premises to distribute information and union authorization cards, and also allow unions to be given employees' home addresses and phone numbers so union officials can visit workers at home.

Then, in what's called "card check," companies recognize the union if a certain number of authorization cards are collected, rather than holding a secret-ballot election. This is unfair to employees, because it deprives them of the right to a secret ballot. Authorization cards filled out in the presence of a union official do not always reflect the intent of the employee, who may not even have read what he's signing or been told the card just asks for an election to be held. Worse, the union official has the potential to bully the employee if he fills the card out the wrong way. After

all, the union official knows where the employee lives, who his children are, where they go to school, where the employee parks his car. The potential for extortion is enormous.

This is not idle speculation. Remember that, in the recent unionization effort at the Volkswagen plant in Chattanooga, Tennessee, a majority of workers signed union cards—and then, in a secret-ballot election, voted against unionization. And remember that, under pressure from the unions and contrary to the wishes of the workers, the company proceeded to take steps toward unionization anyway, after the union lost the election.

Follow the money

The SEIU wants to organize McDonald's and other fast-food chains because of the high rate of turnover in the fast-food industry. Union membership is declining, and with it the dues that fund the generous salaries of the union officials and the contributions that unions make to political parties, the vast majority of which go to Democrats. In the 2012 election cycle, the Service Employees International Union gave $25 million and the United Food and Commercial Workers International gave $11 million. Both stand to profit from the new flow of dues if McDonald's is unionized. Such potential revenues are important to the SEIU because membership has declined since 2011. It now stands at 1.9 million, the same level as 2009. SEIU membership has slipped by three percent since 2011, even though the labor force has grown two percent over the same time.

McDonald's, along with other fast-food restaurants, has two characteristics that make it an ideal target. Its outlets cannot move overseas, and employees have high turnover. Turnover at McDonald's is 157 percent annually, according to an estimate in a dissertation by Michael Harris, a student at the University of Arizona. If a position at McDonald's is unionized, that adds up every year to three sets of initiation fees (generally around $50 to $100 each, or $300 a year), on top of union dues that total two percent of paychecks. I calculate that unions stand to gain about $155 million from unionizing half of McDonald's workforce, $45 million from initiation fees alone.

That's a bonanza for unions. A worker who is forced to join the union and pay the initiation fee, and soon quits his or her job, is a worker who paid into the union coffers but for whom the union provided little or no services.

Union-funded "worker centers" such as Fight for Fifteen organize demonstrations to demand that fast-food workers' wages be raised to $15 an hour from the federal minimum of $7.25. The groups hope to attract enough workers with the promise of a higher wage to be able to unionize the fast-food workers.

What the NLRB wants is for McDonald's USA to encourage unionization at its franchises. Employees would have to pay dues and initiation fees, and employers would be under pressure to pay higher wages. And few people realize how harmful this would be to precisely the people who work or hope to work in franchises. Those poor persons will find fewer jobs available, as the changes encourage automation, as has been the case in Europe.

The bottom line: If the ruling holds, either McDonald's allows its franchises to be unionized, or it will have to defend itself against a costly stream of unfair labor practice claims. This will severely damage the franchise model. Franchisors sign 10- or 20-year contracts with franchisees, and the joint employer designation has the potential to overturn millions of these contracts. With its designation, the NLRB is potentially upending agreements that have years to run. Systematic disruption of these contracts would be unparalleled.

The franchise model is popular because it is the easiest way to launch a small business. Franchisees get publicity, accounting systems, suppliers, premises, operational instruction, and a customer base attracted by the brand name. Together, they employ over eight million workers, and hire an additional 220,000 annually. Entrepreneurs are less likely to invest in a franchise if they are required to have unionized labor and lack the independence to determine working conditions. And for its part, no large company will want to license franchises to budding entrepreneurs, if the company can be sued for any decision made by the franchisor. One reason that large companies sell franchises is to *reduce* liability.

Without clarity in the law, many charges are going to be filed against franchisors, and these cases could take several years to play out in the courts, with years of uncertainty in the meantime. If at the end of that brutal legal process, franchisors are ruled joint employers, the entire franchise model will have to change, with devastating consequences to those who want to run their own businesses and to the millions of potential employees of those businesses.

[*Editor's note:* For more information on the NLRB's assault on the franchise model—one of the most significant fronts in the Obama administration's war on small business—see next month's *Labor Watch*.]

Voting irregularities made regular

The joint employer rule is not the only dramatic change the NLRB

published just before the holidays. In mid-December, the board announced new union election rules, called Representation-Case Procedures. These rules govern elections for union representation, when a petition is filed by employees and unions calling for an election, supervised by the NLRB, to see if workers want the union to represent them through collective bargaining.

The essence of these rules is that NLRB decides who is eligible to vote *after* the vote is counted, and then discards the ballots of voters who are deemed ineligible. In addition, the authorities limit freedom of speech before the election.

The NLRB wants to do everything in its administrative power to tilt the playing field towards unionization, even if it goes against decades of precedent. That is the only reason for the new rules. The Board wants 90 percent of elections to be held within 56 days, but that goal is already being met. In 2013, 94 percent of union elections were held within 56 days.

The NLRB has jurisdiction over all private-sector workers except those employed in railroads, airlines, or agriculture. It investigates allegations of unfair labor practices by unions and employers and oversees elections for union representation.

Congress has been pressed by organized labor for many years to give unions greater leverage for gaining new members, but it declined to take action, even when Democrats controlled both legislative chambers. Hence, the NLRB has taken matters into its own hands.

The NLRB issued a fact sheet comparing old rules with its new rules, set to take effect in April 2015 unless overturned by the courts. Regional NLRB directors must set a pre-election hearing eight days after an employer has received a petition, and the election must be held "at the earliest date practicable" afterwards. Only *after the election* would there be a hearing to decide what is the appropriate bargaining unit for the election for union representation. This is important, because the choice of bargaining unit—the group of workers who would be represented by the union—could determine the outcome of the election.

Counted out, forced to shut up

This procedure for unionization is similar to gerrymandering, when officials draw the lines of political districts in order to benefit the side they favor, except that gerrymandering is at least done before the election. Imagine if politicians could wait until after the votes were cast, then draw the district boundaries in order to reach the results they want!

Putting off the decision about voter eligibility makes it easier to swing the final decision towards the union. Let's say that all employees in a manufacturing plant cast a vote, but only a minority want union representation. Under normal circumstances, the union would lose. But if the bargaining unit is magically redefined after the vote to include only those sections of the workforce that voted for the union, the union wins. That is the advantage to the union of having a vote first and deciding later in a post-election hearing who was eligible.

According to Republican NLRB members Philip Miscimarra and Harry Johnson III, writing in a dissent from the new regulation, "To state the obvious, when people participate in an election, it is significant whether they actually have a right to vote, whether their vote will be counted, and whether the election's outcome will even affect them. In this respect, the Final Rule's approach would be intolerable in every other voting context, whether it involved a national political election or high school class president."

The voter eligibility question is not the only problem with this Final Rule. With only eight days between notification and the union election, the employer has almost no chance to present a set of facts to workers. Unions, by filing a petition, will already have presented workers with their viewpoint, and of course the unions can take as long as they like to file, waiting until they believe they have a majority.

In 1959, then-Senator John F. Kennedy stated that "there should be at least a 30-day interval between the request for an election and the holding of the election." This was "to safeguard against rushing employees into an election where they are unfamiliar with the issues."

The new NLRB Final Rule works the other way. Neither employees nor unions can take the opportunity to discuss the issues clearly. The rule limits free speech at a time when workers need to know the facts.

The Final Rule has numerous other problems. Employers have to respond within seven days and give the regional NLRB office a list of all matters it wants to address in the election. They have to turn over company email addresses to the union, and allow the union to use company email to communicate with workers.

It is unlikely the Final Rule will withstand court challenges—or so one hopes!—and court challenges will certainly come. But these challenges take years. A better solution would be for the 114th Congress to send President Obama a bill to reverse the new rules before they come into effect in April. If the President vetoes the reversal, this can be made an issue in the 2016 campaign.

The object of the joint employer rule and the final quickie election rule is to increase union membership. But the interests of unions, such as higher union membership, diverge from the interests of employees. Employees have come to understand this point, which is a major reason why union membership has been steadily shrinking.

Not in workers' interest

As an example of union-backed policies that actually hurt workers, take the increase in the minimum wage. On the Friday after Thanksgiving last year, the United Food and Commercial Workers led demonstrations at 1,600 Walmarts all over the country, demanding that Walmart pay an hourly minimum wage of $15. Organized under the banner of OUR Walmart, which stands for Organization United for Respect at Walmart, the union pretended to represent workers. Similarly, in December 2014 the SEIU tried to persuade workers all over the country to go out on strike to demand $15 an hour.

The AFL-CIO, of which the UFCW is a part, backed these protests. In fact, AFL-CIO President Richard Trumka invited me personally to join the Walmart protests! (OK, I know it was part of a mass e-mail, personalized to look as if it were addressed to me.) Trumka wrote to me saying, "Diana, Wouldn't it be amazing if working families gathered together on Black Friday and sent a message to the country's largest employer that its workers deserve a living wage and full-time work? Well, that's exactly what's going to happen, and you can be a part of it. . . . Click here to find a Black Friday action near you." He signed his letter "In solidarity, Rich."

Richard Trumka knows that I do not work at Walmart. Yet he asked me, along with countless other individuals who do not work at Walmart, to protest there. Clicking on Rich's link took me to a page with a map of Walmarts in the Washington area, where I live, and instructed me that "To take action, you just need to go to your local Walmart with a sign saying that you support the workers fighting for fair pay and respect." It helpfully suggested that I protest at the new Georgia Avenue Walmart, or "host a protest" at the new H Street Walmart.

This time last year, when these two D.C. stores opened, 23,000 people applied for 800 job openings. Walmart had an acceptance rate of less than 3.5 percent for its new associates (workers), which is a more exclusive acceptance rates than those for Princeton (8.5 percent), Yale (6.8 percent), and Harvard (5.9 percent).

The Thanksgiving protests did not come primarily from the lucky 800 employees who gained jobs at Walmart, but from people who responded to instigations from the AFL-CIO and the UFCW. Walmart employees are paid about $12 to $13 an hour, or about $27,000 for a full-time position, and have the opportunity of promotion to management positions.

The UFCW and the SEIU and their affiliates, Fast Food Forward, also known as Fight for 15, called for $15 an hour wages. Although the unions were trying to organize strikes, the fast-food workers had not voted for the SEIU, the UFCW, or any other union, to represent them. The unions and worker centers are self-appointed and self-anointed.

New research shows what much earlier research has found: minimum wage hikes harm the earnings and job mobility of low-skill workers. In a December National Bureau of Economic Research paper, professors Jeffrey Clemens and Michael Wither from the University of California (San Diego) looked at the effects of the rise in the federal minimum wage from 2007 to 2009. During that period, the wage rose in three installments from $5.15 an hour to $7.25 an hour. During the same period, the percent of the population that was employed, known as the employment-population ratio, declined by 4 percentage points among adults aged 25 to 44 and by 8 percentage points among those aged 15 to 24.

That loss of employment occurred when the average worker faced a 30 percent minimum wage increase—far less than the more than 100 percent increase the SEIU seeks for fast-food workers, which would cause far greater damage.

But the professors also found that the minimum wage increase substantially reduced employment and earnings. Increasing the minimum wage has a disproportionately more harmful effect on states such as Texas, which has no minimum wage, than on states such as California and New York, which have higher minimum wages. For example, an increase in the federal minimum wage to $10.10 an hour, as President Obama is proposing, would not affect Seattle residents, who will already face a $15 hourly minimum wage in a few years. In addition to reducing employment, a minimum wage increase makes it more likely that people work without pay, such as through internships. The federal minimum wage increases reduced average monthly income for low-skill workers by $100 per month in the first year and by $150 per month in the two years afterwards.

Unlike the happy message of the SEIU and the UFCW, Clemens and Wither show that increasing the minimum wage reduces both the likelihood of employment and average income. The research should be a warning to low-wage workers: Unions who purport to represent your interests are often just representing their own.

Even though unions are demonstrating for a $15 hourly minimum wage, my examination of UFCW contracts with the Kroger Company show that entry-level workers represented by the UFCW are paid close to the current minimum wage, which is to say, nowhere near $15 an hour. Even senior workers do not earn $15 an hour.

Consider meat or bakery clerks at Kroger's union shop in Dayton, Ohio. They earn a maximum rate of $14.25, even after over half a decade on the job. Those working in the salad bar, drug counter, or floral shop can earn a maximum of $10.95 after gaining years of experience. This amount is 27 percent below the $15 an hour "living wage" that the UFCW claims Walmart employees should be paid.

UFCW-negotiated hourly rates for cashiers, grocery baggers, or in-store food demonstrators start at $7.70 and are capped at $8.25, 45 percent below the $15 advocated by the UFCW. These wages are no secret. Walmart employees who might consider joining the UFCW can browse its helpful easy-to-read handout to its members in West Virginia, Kentucky, and Ohio. Three sample part-time workers, named George, Cindy, and Gregory, will reach top earnings of $11.40 an hour after 8 years on the job, according to the UFCW. The sample full-time worker, named Laney, will reach a peak of $14.51 after 6 years of work.

George, Cindy, Gregory, and Laney will have even lower take-home pay once union dues (not mentioned in the fact sheet) and federal and state taxes are subtracted. Dues are mandatory and usually take between $19 and $60 a month from members' paychecks. Some portion of dues goes towards political contributions. The UFCW contributed $7.2 million during the 2014 election cycle, nearly 100 percent of it to Democrats.

Declining membership leads to declining dues and declining political power. Unions stoop to deceit because of the terrible financial pressures they face from declining membership. UFCW's membership fell by eight percent from 2002 to 2013, even though private sector jobs increased by five percent over that period. Unions need a steady flow of dues to pay salaries of union officials, to prop up failing union pension plans, and to donate to political campaigns.

Average total compensation for those *employed* by the UFCW, rather than *represented* by the UFCW, is $90,907 a year. This income is almost six times what the union negotiated for cashiers at Kroger's. Joseph Hansen, the International President of UFCW, earns over $350,000 a year—over 20 times the earnings of many of the workers he represents. The Executive Vice President, International President, and International Secretary-Treasurer all earn over $300,000. Who funds these salaries? Entry-level union workers who pay dues out of their $7.40 an hour paychecks.

One benefit that UFCW members lack is a well-funded pension. The UFCW has one of the worst records for negotiating fiscally sound pension plans for its members. This year the Labor Department has informed the UFCW that four of its pension plans have reached "critical status," meaning they are less than 65 percent funded. In 2013, ten UFCW pension plans were in critical status. Some plans have been critically underfunded for over five years. They have low chances of sustainable financing unless they can convince more new members to join and pay dues *without* receiving similar pension benefits themselves.

Through its new rules, the National Labor Relations Board wants to push working Americans into lower-paying union contracts with failing pensions, and pay union dues to benefit distant and highly paid union bosses.

Congress can stop the NLRB's raid on American business by passing bills that state clearly what it means to be an employer, and how much time workers need to prepare for elections. Congress can then send these bills to the president for his signature. If the president vetoes the bills, the House and Senate Appropriations Committees have the power of the purse. They can withdraw funding from the NLRB if it alters the definition of joint employer from what it was on January 1, 2014, and also insists on voting first, determining eligibility later. Congress needs to stand up for working Americans and against the union bosses who want to take advantage of them.

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LaborNotes

Joseph Dougherty, longtime boss of **Ironworkers Local 401** in **Philadelphia**, was more like a **Mafia** don than a legitimate labor leader, according to federal prosecutors. In January, a federal jury convicted him of six criminal charges that included arson, extortion, and racketeering conspiracy—charges carrying a mandatory 15-year sentence. Dougherty, 73, joined the union in 1966 and rose to become business manager in 1998, remaining in that position until last February. He was paid more than $200,000 a year.

Witnesses said he hated nonunion contractors, calling them "pigs," declaring "war" on them, and endorsing violence against them. In one conversation caught on tape, he said, "I don't give a f*** about anybody but the union." (His defense lawyer called that "testosterone talk" and the "rants of an aging man.") Alleged "nightwork"—crimes committed on behalf of the union by a team called the "**Shadow Gang**"—included sabotage at nonunion sites such as "anchor bolt smashing" and arson committed with a portable acetylene torch. Eleven other union members were charged in the case last year; all pled guilty, and seven testified against Dougherty. One union member described him as the union's "**Jimmy Hoffa**," a reference to an infamous **Teamsters** union leader who vanished in 1975.

Speaking of the Teamsters: "International Brotherhood of Teamsters **Local 82** over several years perfected the art of the shakedown," reports ***Union Corruption Update***. Now, "**John Perry** and **Joseph 'Jo Jo' Burhoe**, respectively, ex-president and representative of the now-defunct **Boston** local, [have been] convicted on various counts of racketeering and conspiracy related to extortion at Boston trade shows." Their targets included hotels, hospitals, event planners, caterers, music entertainment companies, **Massachusetts General Hospital**, and celebrity chef **Wolfgang Puck**. Meanwhile, union members who criticized Perry and Company were beaten up.

As some states raise the minimum wage, putting jobs out of reach of many unskilled workers, one set of victims is largely overlooked: teenagers. **Preston Cooper** of the **Manhattan Institute**'s "**e21**" noted: "Low-paying jobs can provide invaluable workplace experience to teenagers just starting their careers. Higher minimum wages limit the availability of these entry-level jobs," which is why federal law allows for a lower minimum wage ($4.25 for workers under 20, for up to 90 days). Some minimum-raising states have neglected to include a youth exemption, and that will have long-term consequences: Studies have shown that people who are denied a "starter job" as teenagers make less money for decades thereafter.

Almost 40 percent of people covered by union contracts vote **Republican**, but **Democrats** get more than 90 percent of union contributions and are the beneficiaries of almost all grassroots organizing by unions. Former **House Speaker Newt Gingrich** noted recently that the **United Mine Workers** donated $50,000 to the PAC of **House Minority Leader Nancy Pelosi**, despite her support for destroying the coal industry, while construction workers' money went to foes of the **Keystone XL** pipeline.

Sean Higgins of the ***Washington Examiner*** predicted in October that, if Republicans gained control of **Congress** in the November election, lawmakers would reintroduce the **Employee Rights Act**, legislation to rewrite the **National Labor Relations Act** "to prohibit unions from using an individual member's dues for political activity unless that member explicitly grants permission to the union." Employees could opt out of having personal information shared with unions, and would be guaranteed a secret ballot in unionization elections.

There's a significant obstacle to reform, of course: **President Obama** would almost certainly veto an employee rights measure. But that would give the GOP an issue for the 2016 election. According to **Rick Berman** of the pro-reform **Center for Union Facts**, polling finds that 80 percent of Americans support the legislation.

One thing about unions: They rarely quit. The **International Association of Machinists**, for example, is still chasing workers at **Delta Airlines** (the #3 U.S. airline by traffic). IAM now claims some 60 percent of the carrier's 20,000 flight attendants have signed cards requesting a unionization election. Delta's attendants have rejected unions three times since 2002. After Delta's merger with the unionized **Northwest Airlines** in 2008, IAM was rejected by all five work groups it tried to organize. According to the ***Wall Street Journal***, an IAM victory would be "the largest transportation sector organizing win ever."

IAM's efforts to use political muscle to push for unionization at Delta via regulation and bureaucratic fiat were detailed in the February 2011 *Labor Watch* in an article written by **Barbara Comstock**, former counsel for the **House Oversight and Government Reform Committee**. We at the **Capital Research Center** and *Labor Watch* congratulate Rep. Comstock, who was elected in November as the new Member of Congress from **Virginia's 10th district**.