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Labor Watch

Should Union Members Get to Re-Elect Their Unions?

One Way to Make Unions Accountable

By James Sherk

Summary: *Members of Congress run for re-election. They do not have lifetime tenure. Regularly scheduled elections hold politicians accountable and motivate them to serve their constituents. Not so labor unions. Once certified as the bargaining representative for a group of employees, a union never has to apply for re-election, even when workforce turnover leaves the union representing workers who never voted for it. The absence of union re-election votes lets unions get away with poorly representing workers. Unions that waste members' dues and negotiate bad contracts need not worry about being re-elected. For labor unions democracy means one-man, one-vote, one-time. A bill in Congress would require unions to periodically stand for re-election.*

Sen. Orrin Hatch (R-UT) has introduced legislation which would require unions to stand for re-election

It's the law: when employees are unionized they may not negotiate wages, benefits, or other working conditions directly with their employers. Instead, unions represent employees and negotiate on their behalf. Even if a worker does not support the union and its priorities, the union negotiates for the worker. In representing workers during contract negotiations, the union decides what provisions to press for and what concessions to make.

Surprisingly, very few union members today voted for the union that represents them. Analysis of union elections results and Bureau of Labor Statistics data shows that only seven percent of current private-sector union members voted for their union. The vast majority of active union members—over nine-in-ten—are represented by a union they never chose and had no say in electing.

This happens because the National Labor Relations Act (NLRA) does not require unions to "stand for re-election." A unionized company remains unionized either until the company goes bankrupt or until

the workers themselves initiate a process to decertify the union as their bargaining agent.

Inherited Unions

Most currently unionized workers are members of organized labor because of actions taken decades ago in the 1940s, 1950s, and 1960s. Back then labor unions were far more active in seeking to persuade workers to join a union. In 1964, for example, nearly 487,000 workers voted in union certification elections. In 2011, despite a vastly increased population and labor force, only 72,000 workers voted in a union election. In other words, the vast majority of workers today who are members of a labor union had no say in deciding to organize their workplace and join the union. They simply "inherited" their union status when they were hired by a unionized company.

Consider General Motors, once an icon of the union movement in the United States. The United Auto Workers (UAW) organized GM in 1937. But current GM employees never voted to have the UAW represent them. They inherited the union that their fathers or grandfathers chose two generations earlier. Because Michigan does not have a right-to-work law the UAW doesn't need to ask current GM workers to join the union and pay union dues. They have to pay union dues or be fired. UAW representation is a non-negotiable condition of employment at GM.

According to the National Labor Relations Act a union only has to win one election to represent workers at a company. After that the union continues to represent the workers at a company—even after its original supporters have long retired.

Compare union elections to political elections. Members of Congress don't stay in office for life but must run for re-election every two or six years. The President can run for no more than two four-year terms. Elected officials have to renew their mandates to continue representing their constituents. This is a part of our political system that helps keep our representatives accountable to those they represent.

Barriers to Decertification

A union is not entirely immune if workers are dissatisfied with the quality of its representation. Under the NLRA workers can petition for an election to decertify the union and remove it as their representative to the employer. However, both the NLRA and labor unions make requesting an election on decertification extremely difficult.

To call for a decertification election workers must collect signatures from 30 percent of the employees in the bargaining unit. These signatures may not be collected while employees are on the clock or in work areas. Under the "contract bar doctrine" the National Labor Relations Board (NLRB) will only consider petitions that are filed less than 90 days but more than 60 days before a contract expires.

In other words, if a union has negotiated a binding three-year contract with an employer, then its dissatisfied unionized employees have only a 30-day window every three years in which to collect signatures calling for a decertification election. These severe time and location constraints put an extreme burden on those who would collect signatures to trigger an election—especially if the union is a bargaining unit that represents workplaces across many cities or states.

Of course unhappy workers who try to navigate these legal hurdles face fierce opposition from the union, which puts pressure on them not to distribute or sign decertification petitions. The union knows that if enough signatures are collected to require the NLRB to authorize a decertification election it will have to spend time and money defeating the effort. And if the election is successful the union will lose members—and their dues payments. Interestingly, the NLRB helps the union by sending it a copy of the decertification petition once it is submitted. The union thus learns the name of every worker who has signed the petition.

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The constitution of most unions calls for expelling any union member who supports decertification. The Teamsters constitution, for example, prohibits members from fostering "secession." The UAW constitution provides a process for expelling any union member who is "affirmatively engaged in efforts to decertify the International Union or any subordinate body thereof".

Expulsion from the union has serious consequences. Non-members do not get to vote in elections for union officers or vote on whether to strike or ratify a new contract. If workers sign a petition that ultimately fails to decertify the union, they lose all say in how the union operates even though the union continues to be their bargaining representative. Not surprisingly, the prospect of expulsion discourages workers from signing a decertification petition—even if they believe the union is doing a bad job.

What if workers manage to collect enough signatures for an election? Often the union then delays the vote by complaining that some aspect of the decertification campaign constitutes an unfair labor practice (ULP). It knows the NLRB will not conduct an election until it has investigated ULP complaints. For instance, in 2007 employees at Children's Hospital in San Diego petitioned for an election to decertify their SEIU local. SEIU responded by filing frivolous ULP charges that created a two-year delay—allowing it to collect dues in the interim. Studies show that unions file such "blocking" complaints three times as often in decertification elections as in certification elections. (After much turmoil the SEIU eventually conceded that the hospital's employees did not want its representation and walked away from the fight.) These obstacles make decertification elections extremely rare. Between 2009 and 2011

only 38,000 private sector union members voted in a decertification election. That represents one-half of one percent of the 8 million private sector workers represented by a union. But when given an opportunity to hold their union accountable, many union members voted to decertify. Unions lost 58 percent of the decertification elections.

Still, the difficulty of petitioning for decertification protects most unions. Employees of railroads and airlines have it even worse. They are covered by the Railway Labor Act, which, unlike the National Labor Relations Act, has no decertification process. Once a railroad or airline company is unionized it becomes virtually impossible for employees to remove their union.

Unaccountable Unions

Poor Representation. Because union members can seldom vote to "re-elect" their union, union officials become less responsive to their members' concerns: they need not fear accountability at the ballot box. This situation is made even worse in states without Right-to-Work laws. In those states unionized employees must pay union dues or be fired, which guarantees the union a steady income stream.

Without Right-to-Work laws unions face few institutional pressures to represent their members well. Many unions fail to negotiate pay increases for their members after organizing a company. Failure has few consequences—for the union. Whether it negotiates a good contract or a bad one, it will stay in business. Whether the union creates better working conditions or not, it is unlikely to be removed.

Misspent Dues. The lack of regular elections also reduces the pressure to spend dues wisely. Politicians often lose elections when they raise taxes or spend wastefully. But unions face no comparable constraints or incentives. Without Right-to-Work laws unionized workers have no choice but to pay union dues. Small wonder that 57 percent of union members say they do not get enough value for their dues.

Lack of accountability is one reason why union leaders can spend so much on political candidates. In 2010 the AFL-CIO spent one-sixth of its budget on political activities. Over the 2010 election cycle the union movement collectively spent over $1 billion on politics and lobbying. Unions often support political candidates that many of their members oppose, or oppose candidates their members support. Fully 60 percent of union members object to their dues being spent in this way. If unions had to stand for re-election they would be more circumspect with their members' money. They would balance their desire to campaign for liberals against the risk that their members might vote them out.

Inflated Salaries. Similarly, the fact that workers do not get to re-elect their union representatives tends to increase union salaries—which are entirely funded by union dues. In 2011 AFL-CIO president Rich Trumka was paid $294,000. Richard Barchiesi, Trumka's "special assistant," was paid $206,000. Vincent Giblen, president of the International Union of Operating Engineers, received $390,000 in 2011. Joseph Hansen makes $361,000 as president of the United Food and Commercial Workers union, which represents hourly workers at grocery stores. These cash earnings come on top of union officers' benefits and deferred compensation.

If unions had to stand for re-election it's likely the question of union officer salaries would come under greater scrutiny.

Introducing the Employee Rights Act

Congress has given little thought to requiring unions to stand for re-election. The 1947 Taft-Hartley Act established decertification elections, but most labor policy debates since then have focused on other issues: right-to-work, union transparency, replacement workers, and rules governing union organizing. The idea of letting workers regularly vote on re-electing their union has received almost no attention.

Until now. In August 2011 Sen. Orrin Hatch (R-UT) introduced a bill in Congress called the Employee Rights Act. It amends the National Labor Relations Act to require a secret ballot in organizing elections and guarantees workers a secret ballot vote before their union can call a strike. The bill's most significant provision would require unions to stand for re-election every three years. If a majority of those voting decided to terminate their union representation the union would be decertified.

The Hatch proposal is attracting support in Congress. Besides Sen. Hatch, the Employee Rights Act has 20 Senate co-sponsors. A companion bill in the House, sponsored by Rep. Tim Scott (R-SC) has 25 co-sponsors.

The legislation is not comprehensive. It would not apply to government unions, or to unions in the railroad or airline industries. However, for the first time members of Congress are being asked to consider this question: should a union be allowed to represent workers in perpetuity?

What would happen if union members were able to vote to re-elect their union? In political elections it's not unusual for voters to re-elect over 90 percent of their representatives to Congress. But that doesn't make election campaigns superfluous. The fact that politicians have to run for re-election makes them better representatives.

Imagine how Members of Congress would act if they served indefinitely. Would they ever vote against a congressional pay increase? What would happen to constituent services? How much attention would they pay to their districts? Elections give voters a chance to reassess their representatives' performance, forcing even the most self-interested politicians to attend to their constituents' needs.

Requiring union re-election would similarly benefit union members. Most union members would probably re-elect their union. But by having to run for re-election it's more likely that the union would be more accountable and more responsive to its members' concerns.

For example, last year the United Auto Workers negotiated huge wage and benefit concessions —but applied them only to newly hired workers at its unionized auto plants. Many of these "second tier" workers now make less than non-union U.S. workers for Japanese and German automakers with American auto plants in Right-to-Work states. Because the UAW accepted these concessions to preserve the inflated pay structure of its existing members, its contract negotiations disadvantaged some UAW members to benefit others. If employees had the right to re-elect their unions, UAW contract negotiators might think twice about their decisions.

Union Membership: Weighing Costs and Benefits

Union membership has costs and benefits. If workers have a right to re-elect their union they will have a continuing opportunity to reassess both.

We know, for instance, that during organizing campaigns unions make grand promises about raising worker wages. But the reality is that unions have limited power to raise wages in a competitive economy. Higher wages mean higher business costs. If consumers have choices and can shop elsewhere, unionized businesses cannot raise prices. Most firms would go bankrupt were they to pay the 20 to 30 percent wage increases unions often promise workers during organizing campaigns.

Unions know this, which is why most union contracts at newly organized companies do not raise wages. Unions can only deliver higher pay at companies that can afford higher labor costs because they enjoy competitive advantages.

Unionizing also has costs that make union membership disadvantageous. The most obvious is member dues payments which cost a typical union member several hundred dollars a year or more. For example, the Operating Engineers union—which argued that Indiana's newly-enacted Right-to-Work law is slavery—charges average dues of between $2,000 and $2,500 a year. Unions actually train their organizers to deflect questions about this and other subjects that they know will alienate workers.

Collective bargaining also has less obvious drawbacks. Collective bargaining agreements (CBAs) are exactly that—collective contracts. One contract sets the pay for hundreds or thousands of workers. The contract makes no provision for individual performance or achievement. Instead, unions typically negotiate seniority schedules that base pay on length of service. Unions rarely allow companies to reward individual workers with raises or bonuses.

As I argued in a Heritage Foundation report, this is out of step with what many modern workers want:

"One-size-fits-all CBAs were workable when all workers brought essentially the same skills to the bargaining table--individual skills and effort do little to distinguish workers on the assembly line. But the nature of work in the economy is changing. Employers are automating many rote repetitive tasks. The fastest growing job sectors are positions requiring jobs requiring individual skills: professional specialty, executive and managerial, and technical and sales jobs.

At the same time, employers are also flattening the job hierarchy. The line between management and workers is blurring. Employers increasingly expect workers to exercise independent judgment and take initiative on the job. The unique skills of individual financial planners, web developers, or medical specialists do not lend themselves to general representation. Employers want to reward—and employees want to be rewarded for—individual contributions that no collective contract can reflect. Private-sector union membership has fallen sharply because workers' demand for union representation has decreased."

A right to re-elect a union would enable workers to regularly reconsider whether the costs of union membership outweigh the benefits.

Prospects for Change

Is the right to re-elect one's union a far-fetched idea? A recent poll found that 84 percent of Americans believe that "workers should have the right to a secret ballot election every three years to determine whether or not they want to remain represented by a union." Union members are equally emphatic: the same survey shows that 83 percent of union households believe workers should have the right to vote on remaining unionized. 64 percent strongly believe this. Union officers may not like the idea, but union members understand that re-election votes benefit them.

The Employee Rights Act faces an uphill climb in Congress. Congress almost never amends the National Labor Relations Act: the last substantive change to the NLRA was in 1959, when Congress added financial disclosure requirements in the wake of investigations revealing mob influence in the labor movement. Since then neither liberals nor conservatives have been able to change the law, and even if the Employee Rights Act passed Congress, President Obama would surely veto it.

Nonetheless, the idea of union re-election can be pursued in other ways and at least some workers can win the right to vote on their union. The best opportunity exists in the states and with state government workers. The National Labor Relations Act only applies to workers in the private sector. But the majority of union members today are government employees. The states could require state and local government unions to stand for re-election.

Apply to Government Unions

This reform is more important in government than in the private sector. Private sector unions only directly affect the employers and employees the unions organize. But the contracts negotiated by government unions affect all taxpayers and citizens.

We also should keep in mind that taxpayers pay for government unions to negotiate through "official time" or "release time" contract provisions allowing government employees to conduct union business "on the clock." (See "Official Time," Nov. 2011 Labor Watch.) When the government negotiates with an unwanted union the taxpayers foot the bills. This does not come cheap. In Phoenix government employees spend 73,000 hours each year doing union business, which cost Phoenix taxpayers $3.7 million annually.

Gov. Scott Walker and the Wisconsin state legislature have taken the lead—and taken heat—for introducing government employee reforms. A requirement that all government unions, except those representing police and firefighters, stand for re-election annually was part of the legislation enacted by Wisconsin last year. Unions must demonstrate that they have the support of a majority of the government employees they represent before they are permitted to conduct limited negotiations over wages. This is a model for other states to follow.

Election Structure

Unions vehemently oppose this reform, but it is noteworthy that they are unwilling to argue publicly against the idea of periodic union re-election. Instead they've reserved

their criticism for the requirement that the union must obtain the support of a majority of all employees in the bargaining unit, not merely a majority of those voting. The unions argue that it is unfair for a non-voting public employee to be counted as a "no" vote.

This is largely an excuse to keep unions in power with support from a minority of workers. This happened recently in Michigan. The Service Employees International Union (SEIU) petitioned for an election among 43,000 home healthcare aides reimbursed by the state. Many of these "government employees" were actually parents taking care of their disabled children.

The state conducted a mail-in election, in which only 20 percent of homecare aides participated. Most parents thought the ballots were junk mail and threw them away. The SEIU, however, mobilized its supporters and won the low turnout election. Parents with disabled children soon found union dues were withheld from their Medicaid payments. They had no idea that a union election was held and that it affected their reimbursement.

States considering union election votes should keep in mind potential legal obstacles. Recently a federal district court ruled that the Wisconsin law violated the equal protection clause of the U.S. Constitution because it did not apply to police and firefighter unions. The decision is being appealed, but it suggests that good public policy should give all union members—including public safety unions —the right to vote to re-elect their union.

Another issue is cost. Sen. Hatch's Employee Rights bill would require private employers and unions to split the cost of conducting a union re-election. A more straightforward solution, however, would impose the cost solely on the government union. That's how internal union elections are paid for under the Labor Management Reporting and Disclosure Act (LMRDA) of 1959, also known at the Landrum-Griffen Act. LMRDA requires unions to conduct regular elections for union officers. Unions—not taxpayers—cover the cost of these elections. The same should be true of union re-election votes.

Conclusion

The facts are indisputable. Unions claim to speak for workers, yet 93 percent of private sector workers never voted for the union that "represents" them. Once a union organizes a workplace it need never stand for re-election. The vast majority of union members inherit a union that someone else voted for.

Unionized workers should have the right to vote regularly on whether to remain unionized. Forcing unions to stand for re-election would hold them accountable to workers and would force them to serve their members' interests.

Workers deserve this right. Democracy does not mean one man, one vote, one time.

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LaborNotes

May brought more disappointing news on the unemployment front, as the Labor Department announced that in April the economy added a measly 115,000 net new jobs. While the official unemployment rate fell to 8.1 percent, that drop was largely due to a continued shrinking of the American labor force: The labor participation rate in April was a mere 63.6 percent, the lowest rate since December 1981. Millions of frustrated workers have simply given up looking for work altogether, and are therefore not counted as being in the "labor force" by government accountants. To make matters worse, as the editors of the Wall Street Journal note, over the past year, "average weekly earnings are up 2.1 percent, but inflation has climbed by 3 percent."

AFL-CIO Executive Vice President Arlene Holt Baker recently told The Daily Caller that it is "conservative, right-wing policies that are to blame" for Trayvon Martin's death. Martin was killed in an altercation with neighborhood watchman on Feb. 26 in Sanford, Florida. According to Baker: "The same folks who want to kill workers' rights in the work place are the same folks who want to kill voters' votes … and now they are literally supporting legislation that is literally killing our children." Baker is referring to Florida's controversial "stand your ground" law, which allows an individual to defend himself if he feels his life is in immediate danger, and which many believe will serve as a defense for the 17-year old Martin's accused shooter. How the tragic case of Trayvon Martin has anything to do with worker's rights or collective bargaining reform is beyond Labor Notes.

In a recent email to union activists, AFL-CIO President Richard Trumka touted his organization's new Executive PayWatch website, aimed at exposing the alleged exorbitant salaries of private company CEO's. The email read in part: "Runaway CEO pay isn't just bad for our economy, it's bad for the morale of working families, too. All workers, from the executive suite down to the shop floor, contribute to making a company successful. But these corporations are buying into the myth that the success of a corporation is the result of its CEO alone." But after stirring up hatred for the wealthy, Trumka may have a hard time explaining his own "runaway pay." Trumka earned $293,750 in 2011 alone, and in fact, as the Washington Free Beacon reports, "has earned well over $200,000 every year since he was promoted to Secretary Treasurer in 2003." Meanwhile, according to Trumka's own message, the average salary for an American worker is about $34,000 per year. Tell us more about that awful 1 percent, Richard.

Officials in North Las Vegas, Nevada are in a fight to shore up the ciy's dismal finances. Standing in the way, not surprisingly, are the city's public sector unions, whose bloated pensions and pay packages have contributed to the city's upcoming $33 million budget gap. On May 8th, a bargaining session between North Las Vegas Firefighters Local 1607 and North Las Vegas city manager Timothy Hacker "ended in a stalemate" reported the Las Vegas Sun. The union refused to accept reasonable concessions sought by the city, including furloughs and a salary freeze. As a result, the city says it will be forced to lay off 57 firefighters, or about one third of the department. "We're at a point where we can no longer provide adequate service to our citizens," laments union president Jeff Hurley. Well, whose fault is that? According to city officials, the average salary and benefits for an International Association of Firefighters Local 1607 member tops $139,000. But a salary freeze is out of the question for the unions, even if it kills firefighter jobs and leaves citizens with a decimated fire department.