

Hard Labor: Elaine Chao, Reformer

By W. James Antle III

***Summary:** Elaine Chao was the longest serving Cabinet-level appointee of the Bush administration. As head of the Labor Department, she worked hard to modernize antiquated labor regulations, force unions to come clean about how union dues are spent, and prosecute labor lawbreakers. The Left vilified her for her successes, but could some of her reforms survive?*

Reading the newspapers, one might get the impression that no one will miss Elaine Chao, the longest-serving member of former President George W. Bush's Cabinet, now that she is gone from her post as secretary of labor. On January 12, the Washington Post reported that some Labor Department staffers—and organized labor—were rapturously celebrating her departure.

Days before the Bush administration came to a close, Chao's detractors partied at Clyde's, a Washington restaurant. Alexander Bastani, president of Local 12 of the American Federation of Government Employees, reportedly led the crowd in the familiar tune sung in moments of victory, "Na na, na na na na, hey, hey, hey goodbye." Nor did Big Labor's anti-Chao karaoke bash end there.

"Sisters and brothers, we are 11 days away," Bastani was quoted as saying to over 100 cheering members. "Eleven days away from freedom." Even the cake—yellow with white icing and the words "Ciao to Chao" written on top—was said to "symboliz[e] the end of tyranny at the Department of Labor." The American Federation of Government Employees' general counsel, Mark Roth,



Former Bush administration Labor Secretary Elaine Chao

said that Chao's Labor Department had been a "terrible place to work for the career workforce"—though it didn't seem to impede their ability to throw \$6,000 parties in Washington, D.C.

When President Barack Obama nominated Congresswoman Hilda Solis (D-CA) as his choice to run the Department of Labor, much of the praise of his selection contained thinly veiled shots at former Secretary Chao. "We're confident that [Solis] will return to the Labor Department one of its core missions—to defend workers' basic rights in our nation's workplaces," said John Sweeney, president of the 55-union, 10 million-member AFL-CIO.

That was Sweeney holding back. He had previously declared, "In all my years of meeting with secretaries of labor, I've never had one so anti-union." The union boss liked to joke that Chao was really the "secretary of commerce."

Even President Obama rose above his spirit

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of post-partisanship long enough to get into the act. While courting union activists on the campaign trail in 2008 he frequently treated the Chao-run Labor Department as an example of what not to do. At one rally the man who would be president said, “We are watching a Washington that has thrown open its doors to the most anti-union, anti-worker forces we’ve seen in generations.”

Labor’s SEC

Don’t believe it. Many veterans of the Bush-era Labor Department look back on Chao’s tenure as a period of tremendous accomplishment and reform. They believe the department set an example over the last eight years that future administrations should follow, not disavow or ignore.

“Elaine Chao’s Department of Labor didn’t just show the way on labor policy,” says one former Labor political appointee, now searching for new work in much more hostile terrain. “I think it has a lot to say about how conservatives can govern and get things done.”

One of these accomplishments paradoxically accounts for the unrelenting union hostility toward Chao. Under her direction, the department decided to begin enforcing union financial disclosure requirements that had gone virtually ignored under administrations of both parties for over 40 years.

“The law has been on the books since 1959,” says Don Todd, former Deputy Assistant Secretary for Labor-Management Standards,

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The Frances Perkins Building. Good luck finding the OLMS.

referring to the Landrum-Griffin Act. “It had never been enforced. We came in and said: we’re gonna enforce this part of the law.”

Even under Republican presidents, Labor has tended to be an activist department that tries to serve as a contact between the administration and the AFL-CIO. Past GOP labor secretaries like Bill Brock, Elizabeth Dole, and Lynn Martin mostly kept this arrangement intact. Chao replaced it with an “open door policy” for all unions. More importantly, she recognized that the Labor Department serves all working Americans, non-union as well as union members.

Todd ran the Office of Labor Management Standards (OLMS), which in theory oversees labor unions in the same way that the Securities and Exchange Commission is supposed to oversee Wall Street—except OLMS has never been as well funded or as well positioned.

If you have ever been to the Frances Perkins Building, where the Department of Labor is housed, the OLMS section is more difficult to find than your average broom closet. Ask a career employee for directions and you can expect to receive an uncomprehending stare in return.

Given its low priority within the department before Chao, there was no reason why OLMS should take up marquee office space. After all, the number of audits of large American unions fell to zero in both 1998 and 1999.

“When I came in, I asked, ‘Where do you keep the [union financial disclosure forms]?’” Todd recalls. “There were maybe

100 of them sitting in a file cabinet.” The reports that did come in were bereft of meaningful information. A union could bundle tens of millions of dollars together in a single category and label them “grants,” without any itemization or explanation.

Under such circumstances, it was practically impossible for union members to find out how their dues were spent. “Every other federal agency I’ve ever seen has mission creep,” says Todd. “Landrum-Griffin was just the opposite. I don’t want to take anything away from the professional staff. They just were never given the resources to do much more than keep up with the overhead.”

So Chao’s team decided to make some changes. They wanted to revise the L-M2 disclosure form to require unions with annual receipts of \$250,000 or more—about a fifth of all national labor organizations—to itemize all spending over \$5,000. Smaller unions fill out a simplified L-M3 form.

The Labor Department now publishes these reports on a website that receives almost 2,000 hits a day. Dues-paying union members can easily see where their hard-earned money is going.

Unions Do Protest—Too Much?

Like any business lobby, the unions were quick to protest the new regulations, claiming they were too intrusive and expensive, and it would cost them more than \$1 billion to comply. In fact, the disclosure requirements labor unions face are lenient compared to those that the Sarbanes-Oxley law imposes on corporations.

Under the law, unions file reports annually,

not quarterly, and they can do so using free software. They don't have to get an independent certified audit or even follow standard accounting procedures. After the Chao reforms were implemented, 93 percent of unions met their disclosure requirements. The AFL-CIO's compliance costs under the newly-enforced rules totaled just \$54,000.

It appears some union officials might actually be less worried about increased red tape than about being caught red-handed by the federal government. It is now easier to figure out which unions are spending how much money on political causes. Without the reforms at OLMS it would be more difficult to track the \$65 million that flowed from the National Education Association into the coffers of groups like Jesse Jackson's Rainbow/PUSH Coalition in 2005.

Would a union member ever be able to discover that officers of the International Association of Machinists and Aerospace Workers spent \$1.8 million keeping their Learjet aircraft aloft in 2006? Such expenditures can now be found in government disclosure forms. It's difficult to see how this spending has anything to do with protecting workers' rights or improving wages and workplace conditions.

Far worse than dubious spending is the actual corruption that the Labor Department has uncovered. Over the last eight years, OLMS has conducted investigations yielding 1,004 indictments, 929 convictions and court-ordered restitution of more than \$93 million.

"Why is it anti-union to go after corrupt union bosses?" asks a former Labor staffer speaking on condition of anonymity under the terms of his current employment. "Transparency, accountability, and fair play seem like pro-worker policies to me."

Chao made the same point to me in a 2007 interview. "It's not anti-union to protect rank-and-file members, to let them know how their contributions are being used, to [help them] keep their hard-earned money," the then-secretary said, refusing to wear the anti-union label assigned by her critics.

"I can understand the unions not wanting the federal government involved in their affairs," says Todd. "But they take precisely the opposite view when it comes to everybody else. If executive pay transparency isn't anti-business, why is similar transparency for unions anti-union?"

With changes in the Labor Department, the ability of OLMS to accomplish its mission is in danger. The new, Democratic-controlled Congress is already working to cut funding for OLMS. "We never got all the funds the president requested even when the Republicans controlled Congress," Todd says.

The AFL-CIO is taking no chances. It recommends "the allocation of budgetary resources" away from OLMS to other parts of the Labor Department. It also will ask the Obama administration to "temporarily stay all financial reporting regulations that have not gone into effect," and "revise or rescind the onerous and unreasonable new requirements."

Real Reforms

Chao's legacy isn't limited to issues surrounding union transparency, however. For instance, the former secretary also led a three-year fight to reform outdated and confusing white-collar overtime regulations prescribed by a section of the Fair Labor Standards Act of 1949.

Prior to the Chao reforms both workers and employers were often unsure of who actually qualified for overtime. Job descriptions and duties were unchanged since the 1950s and 60s. The only group benefiting from this confusion was trial lawyers as overtime disputes began to overtake discrimination claims as the biggest source of federal class action lawsuits. Both unions and business groups wanted to see the rules reformed.

"Every administration since President Jimmy Carter's had tried to update and modernize these regulations," Chao remarked in a number of speeches. "And they failed." Her team succeeded, accomplishing a major Bush administration tort reform.

The Labor Department raised the income ceiling before guaranteed overtime benefits

kick in from \$8,060 to \$23,360, while allowing for overtime eligibility for people earning up to \$100,000. The department says this move strengthens overtime protections for over 6.7 million workers while it offers relief to businesses burdened by excessive litigation.

The unions and "pro-labor" politicians did not embrace every detail of Chao's reforms. AFL-CIO president John Sweeney accused Chao of telling "half-truths about whether workers are at risk of losing overtime pay." Before the regulations were finalized, national legislative director Bill Samuel told Reuters, "We still think that millions of workers would lose overtime protections, including many earning barely above \$22,000."

Senator Ted Kennedy (D-MA) argued that it was an "anti-worker rule" that would force employees to "work longer hours for lower pay." Now that the rule is in effect, there is no evidence that Kennedy's dire predictions have actually come to pass.

Other reforms aim to inject competition and free-market ideas into the office culture of the Labor Department. Grant application processes have been opened to more competition. The Senior Community Service Employment Program, which has handed out \$300 million in national grants to the same handful of union-supported organizations every year since 1967, has invited new grant applicants to compete for its money. In 2006, it had six new grantees. In fiscal years 2007 and 2008, the Labor Department learned that it ranked first out of the 18 largest federal agencies in the percentage of dollars awarded competitively.

"One of the things I learned from Secretary Chao and [Assistant Secretary of Labor] Emily DeRocco was that even projects that I might object to philosophically could still be used for beneficial purposes," a Bush Labor Department veteran said over lunch downtown. "Even if something couldn't be cut, the money could be put to good use and the taxpayers' dollars didn't have to be wasted."

This is also true of the department's job

training programs. Instead of letting Labor Department bureaucrats pick one-size-fits-all job training for displaced workers or those seeking to upgrade their skills, the Bush administration experimented with so-called career advancement accounts.

These \$3,000 vouchers—originally conceived as part of a larger American Competitiveness Initiative—enable workers to manage funds they receive to pay for training and education expenses. The AFL-CIO opposed the vouchers, which introduced flexibility and choice into the job retraining process.

Not all Chao labor department initiatives provoked ideological battles with the unions. For instance, the Labor Department set up a record number of health and safety partnerships with labor unions. In 2006, Chao joined many labor leaders in support of the bipartisan Pension Protect Act.

Competitiveness and cost-cutting realized additional savings. The Labor Department's discretionary budget was reduced from \$11.7 billion to \$11.6 billion over the course of the administration. Chao requested just \$10.5 billion in 2008, which most congressional Democrats don't think is enough.

Even if these totals are tiny in relation to a more than \$3 trillion budget—like little specks floating in a sea of red ink—it is exceedingly rare for any Cabinet-level department to spend less money from fiscal year to fiscal year. The Labor Department was the first—and the only—agency to receive a “green” rating signifying excellence in budgetary and management practices from the Bush Office of Management and Budget.

More with Less

All this has happened without gutting the Labor Department from within. Since 2001, the department's Wage and Hour Division has recovered record back wages for U.S. workers. The Occupational Safety and Health Administration reported that injury and illness rates were down 13 percent as of 2007.

Money recovered for victims of illegal em-



ployment discrimination was up 80 percent over the same period, and topped \$67 million (on behalf of more than 19,000 workers) in fiscal year 2008. The department's efforts to monitor compliance with health and safety plans yielded \$9.2 billion and 691 criminal indictments.

Not everyone is satisfied. “I don't buy it,” John Gage, national president of the American Federation of Government Employees, told the Washington Post. “She has deliberately walked away from regulation after regulation that was put there to look out for the safety of workers.” Chao's former teammates answer: “Believe it. We've proven you can do more with less, time and again.”

The record: Overtime regulations unchanged since 1949 are modernized. Union financial disclosure requirements are better enforced than at any time since Congress enacted them in 1959. Job training programs have been updated and made more flexible for

modern workers. And, the kicker: Chao requested the lowest budget for the Department of Labor since 1996.

A Lasting Legacy?

While liberals and union leaders excoriate Chao, conservatives offer fulsome praise. A “smart woman” says financial columnist Lawrence Kudlow. The “unsung hero of the Bush administration” and “one of my stars” says Heritage Foundation president Ed Feulner.

Reformers should be “building statues” in her honor, says David Keene of the American Conservative Union. She was the one Cabinet member who “best fulfilled the promises made in the 2000 presidential campaign,” concluded the late New Right leader Paul Weyrich.

Those closest to Chao acknowledge the credit she has received, but they argue that the conservative-liberal divide over her record misses the point. “One of the things that made her so successful is that she didn't pursue reform in the name of ideology,” says Steven Law, a former deputy secretary of labor. “She did it in the name of what is best for the American worker, which makes it far more likely that her results will endure.”

“We didn't always please everyone in the department or outside,” says another Chao subordinate who now works with both labor and business organizations. “But I think they knew where we stood.”

In 2008 Chao told The Hill newspaper that her department's goal was to “always to try to work on a bipartisan basis with everyone.” She thought this the right approach because, “Our issues are very difficult. They're highly emotion-laden.”

As for the supposed ideological divide over labor issues, Chao has argued, “I don't think we disagree on the goals. We want to help improve the competitiveness of our workforce in a globalized 21st-century economy. We want to improve the health and safety of our workers. We want to ensure the long-term financial retirement security of our

workers and retirees.”

“But,” Chao added, “there are different ways to go about doing it.”

“As far back as I can remember, I think she was the first secretary of labor who saw herself as the representative of all the workers,” Todd explains. “Not just union workers.” According to Law, her team felt the same way. Summarizing their guidelines as the “three Ps: principle, patience, and perseverance,” Law notes that senior Labor Department political appointees who believed in the policies of President Bush and Secretary Chao, were patient enough to work for them on an incremental basis, and committed enough to stay in the department long enough to see those policies implemented.

“There’s a lot of waste in government and also a bit of a revolving door,” a former Chao team member concurs. “Neither of those things were really the case under the secretary’s watch as much as you might find elsewhere. That really helped a lot.”

Will the achievements of the Bush/Chao Labor Department be rolled back in the years ahead? Those who spent the last eight years toiling in the Frances Perkins Building differ about that. Some expect the reforms to be permanent because the results will speak for themselves.

Others—particularly those concerned with OLMS’s role in overseeing union finances—think organized labor’s increased political clout will change how the Labor Department operates in ways that will make it unrecognizable to them. “There will probably be less resources available,” says Todd. “That will mean less oversight and fewer criminal prosecutions.” They expect that senior political appointments to the Department will have a very different mission. Many will want to scrub out any signs that the Chao team was ever there.

Those who can’t wait to clean out the Chao team made their feelings known when

President Obama named a member of that team to be temporary acting labor secretary during the time that Hilda Solis, his nominee, was awaiting Senate confirmation.

They attacked the selection of Edward Hugler, the deputy assistant secretary for administration and management, calling him the Bush administration’s “point man” in promoting privatization. Union leaders complained that the General Accounting Office was critical of Hugler’s implementation of these privatization initiatives.

Anti-Chao reveler Alexander Bastani was one of the most vocal critics. “While the GAO is holding Department of Labor management accountable, the first signal from our new president is that he will not be holding Department of Labor management accountable for their actions,” Bastani told reporters. “Department of Labor employees, whose morale was badly damaged during Secretary Elaine Chao’s tenure at the Department, are deeply disappointed by the President’s decision to make Mr. Hugler

acting secretary.”

Those sentiments hardly represent everyone’s opinion at the Department of Labor. Surveying morale at the agencies of government during President Bush’s two terms, a former Labor Department employee smiles. “In all that time,” he says, “I can’t think of another department where I would have rather worked.”

W. James Antle III is associate editor of the American Spectator.

LW

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Terrence Scanlon, President

LaborNotes

At press time, Congresswoman **Hilda Solis** has not been confirmed as Secretary of Labor. The problem? Her answers in her confirmation hearings were widely viewed as dull or dodgy. She even refused to take positions on legislation she co-sponsored. Then, the **Weekly Standard** reported that she had flouted House ethics rules by lobbying in Congress for pro-union legislation while she also served as treasurer of **American Rights at Work** -- and tried to cover this up. Lastly, it was revealed that her husband, **Sam Sayyad**, has only recently paid off several thousand dollars worth of liens and back taxes. What next?

On January 30, Vice President **Joe Biden** told to a group of labor leaders gathered in the East Room of our national executive mansion, "Welcome back to the White House." The event was a ceremony to celebrate President **Barack Obama's** signing of executive orders that reversed labor policies of the Bush Administration. These orders prohibited federal funds from going to private contractors who fight unionization and require that workers be kept on when a contract by company A is taken over by company B. The **Washington Post** reported, "**John Gage**, president of the **American Federation of Government Employees**, said it was his first time in the White House, but he doesn't expect it to be the last."

In the Winter issue of its newsletter, the **Landmark Legal Foundation** brags about the successes of its Academic Liberty Project. Landmark says its project of litigation and official complaints has led to a "full field audit" of the **National Education Association** by the IRS, Landmark also is looking at public universities in several states that have set up labor centers in partnership with labor unions, creating what amounts to training camps for labor activists. No credits are awarded and participation is restricted to union members. Landmark argues that the cost of these programs far exceeds the sums unions are paying to fund them, which means that they are a massive public subsidy of labor activism. Complaints or lawsuits are pending in California, Massachusetts, Iowa, and Washington state.

According to a recent survey by the **U.S. Department of Labor**, membership in unions jumped 4.6 percent in the state of Hawaii during 2008. That brought the total to 136,000 union workers or 24.3 percent of all Hawaiian wage and salary employees, making Hawaii twice as unionized as the national average of 12.4 percent. So far, the state has managed to have both high unionization and fairly low unemployment, at 4.9 percent. But with the recent economic downturn, it remains to be seen whether increased unionization will mean kissing those jobs Aloha.

The recent revelation that **New York Yankees** shortstop **Alex Rodriguez** has used steroids came over the loud objections of the **Major League Baseball Players Association**. In 2003, the union agreed to go along with a large-scale drug screening of Major League Baseball players provided that the results would remain anonymous. The tests showed that 104 players had tested positive for performance-enhancing drugs, and one of those positives was Rodriguez. That would have remained a secret except the federal government subpoenaed the test results. The courts have yet to determine whether that seizure was constitutional.