

A Piece of the Action: Labor Expects Much from the Next Congress, New Administration

By W. James Antle III

Summary: The elections in November ushered in a new era for organized labor. The unions had poor relations with President George W. Bush's administration. So they invested a great deal of time, money, and effort to secure a more pro-labor Congress and White House, and largely succeeded. What happens now?

Now that hope and change have come to Washington, no group in America is more hopeful than organized labor. Union leaders have spent the past eight years lamenting the Bush administration's policies, which they perceive as tilting sharply against their interests and in favor of the business community's. John Sweeney, president of the 55-union and 10 million-worker AFL-CIO, has blasted the outgoing president for running "the most anti-labor administration since Hoover."

Don't expect such sharp rhetoric to be directed toward the next occupant of the White House, as President-elect Barack Obama is the kind of change Sweeney believes in. Why are happy days here again for organized labor? First the Democrats took control of both chambers of Congress in 2006, ending the Republicans' 12-year grip on the House of Representatives.

Then this past November, they built on those gains: Democrats came within a whisker of a 60-seat filibuster-proof majority in the Senate, knocked the Republicans back to pre-1994 levels in the House, and swept into the White House



President-elect Barack Obama with former Secretary of Labor Robert Reich.

with a majority of the popular vote for only the third time since 1964. The bulk of these Democrats relied on union muscle and money to get out the vote. Now labor will rely on them.

On the campaign trail, Barack Obama often sounded like a union spokesman. "We are watching a Washington that has thrown open its doors to the most anti-union, anti-worker forces we've seen in generations," he declared. In a Labor Day video message to union households, Obama said, "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 went further still: "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

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make the Employee Free Choice Act the law of the land.”

Other Democrats were just as strongly pro-union, if not as effusive. House Majority Leader Steny Hoyer (D-Maryland) said simply, “Labor is certainly doing much better than they did under Republicans, because Republicans are very hostile to labor unions generally.” And why shouldn’t Democrats treat unions well? “Unions help American workers get their fair share--union wages are almost 30 percent higher than non-union wages,” argued Sen. Edward Kennedy (D-Massachusetts). “Unions are also a cure for rising inequality because they raise wages more for low- and middle-wage workers than for higher-wage workers.”

Union officials have returned the kind words, with one activist calling Obama’s election “a really big moment” for organized labor. “Led by a candidate with an uncommon ability to inspire hope, we reclaimed our country from those who are serving corporate interests and the privileged at the expense of everyone else,” John Sweeney announced in a statement. American Federation of State, County and Municipal Employees President Gerald McEntee proclaimed that Obama won because voters “want a President who will fight for America’s working families.”

Organized labor’s enthusiasm for Democrats goes beyond mere words. In 2006, the unions filled Democratic coffers to the tune of \$57.6 million. 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 labor-affiliated.

These were impressive sums to be sure, but chump change compared to the union largesse that accrued to Democratic candidates this year. Unions gave \$58 million to congressional candidates in 2008, 91 percent of which went to Democrats. On top of that, labor leaders shelled out another \$44 million in independent expenditures on behalf of Obama. By comparison the Republican National Committee spent \$53 million supporting John McCain.

That adds up to more than \$100 million to help Democrats win federal offices just this year alone. All told, unions planned to spend more than \$400 million over the course of the 2008 campaign, up from approximately \$160 million in 2004. When a Democrat is well funded, look for the union label.

The unions proved good for elbow grease as well as money. Their activists knocked on doors, waved signs, manned phone banks, drove neighbors to the polls, and otherwise played an integral part in get-out-the-vote operations. They were particularly active in the battleground states, with the AFL-CIO officials boasting they “mounted a bigger effort than ever before” in Ohio, Pennsylvania, Michigan, Colorado, Florida, and even Virginia.

Unions sent mass mailings to hundreds of thousands of voters in heavily union swing states. By some estimates, 450,000 people associated with organized labor took part in voter mobilization drives, overwhelmingly on behalf of the Democrats.

Secret Ballot R.I.P.?

While labor leaders are frequently at odds with businessmen, they do agree on one thing: both like a good return on their investment. After expending so much time and effort, they expect a substantial political payoff. Obama voted with the AFL-CIO 98 percent of the time while he was in the Senate. Senator John McCain did so only 16

percent of the time. But they aren’t going to let Obama rest on his laurels.

Feeling burned by the last Democratic president, Bill Clinton, who generally supported free trade, the unions aren’t taking anything for granted. “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,” AFL-CIO Treasurer Richard Trumka told Bloomberg News. “We are going to make sure that our interests are considered at the front of the parade.”

Trumka isn’t exaggerating. Many union leaders insist they want Congress to pass and Obama to sign the Employee Free Choice Act (EFCA) during the new president’s first 100 days in office. What the legislation, better known as “card check” would actually do is effectively end secret-ballot elections for union organizing.

In 2007, EFCA passed the Democratic-controlled House by a margin of 241 to 185 but the bill died in the face of opposition by President Bush and Senate Republicans. EFCA fell nine votes short of overcoming a Senate filibuster, though a narrow majority of senators did support it. “It’s definitely the unions’ number one priority in the new administration,” said a veteran of the Department of Labor.

Under current law, companies can insist on a secret ballot election for union organizing. Such an election must be called when 30 percent of workers sign a union card, indicating that they would like to seek union representation. EFCA would mandate the use of card check that 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 and prevent unionization. But how can that be the case when the secret ballot prevents employers from knowing who wanted to unionize? In reality, the lack of confidentiality enables unions and their allies to intimidate employers and employees alike.

The real problem with secret ballot elections from organized labor’s perspective is that workers do not vote to form unions often

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enough under those conditions. By some estimates, unions lose more than 40 percent of representation elections.

When employers “voluntarily” allow card check, frequently as a result of the unions’ scorched earth “corporate campaigns,” the AFL-CIO estimates that it prevails 75 percent of the time. According to a set of pro-EFCA talking points published on the Senate Democratic caucus’s website “more workers form unions via card check than via secret-ballot elections,” by a margin of 375,000 to 73,000 in 2004.

“This should come as no surprise,” argued Doug Bandow of the Competitive Enterprise Institute. “In which scenario is intimidation more likely: a secret ballot election overseen by the National Labor Relations Board, or a union-run card check campaign in which union organizers can pressure employees into signing cards?”

Bandow has compared this method of union organizing to canceling a presidential election if a candidate’s aides can persuade a majority of voters to sign an endorsement petition. While surveys conducted by unions show strong support for the measure, a Zogby poll found that 84 percent of rank-and-file members want secret ballot elections.

Sometimes union officials are almost comical in their descriptions of card check. Bruce Raynor of UNITE HERE has been quoted as saying, “There’s no need to subject workers to an election.” AFL-CIO organizing director Stewart Acuff helpfully informed the *New York Times*, “Elections just don’t work.” The objective is to increase unionization, since only 12 percent of workers and 7.5 percent of private sector employees actually belong to unions. Both business and labor leaders agree this method might boost those numbers.

Andy Stern of the Service Employees International Union has memorably predicted that EFCA would help union membership “grow by 1.5 million members a year, not just for five years but for 10 to 15 straight years.” Former Democratic Congressional Campaign Committee executive director James Bonham concurs, telling the *Politico*

that organized labor has “a huge amount of skin in the game” because it has “been experiencing erosion in membership for years.”

Obama was a co-sponsor of card check legislation in the Senate and has promised to make it a priority as president. Speaking to the AFL-CIO, he vowed to be a “president who strengthens our unions by letting them do what they do best: organize our workers.”

Other Democratic leaders have also pledged to move card check forward. House Speaker Nancy Pelosi has called it “one of the top items on our full agenda” and Senate Majority Leader Harry Reid has expressed a desire to push it through the upper house. House Labor Committee Chairman George Miller (D-California) has said that he will advance EFCA in order to “fight to restore workers’ rights.”

Goodyear for Labor

Even if there remain enough Republicans and centrist Democrats in the Senate to mount a successful filibuster against EFCA, some warn that union allies in Congress may try to slip EFCA through via the legislation reconciliation process, which isn’t subject to filibusters. It’s possible, but items deemed extraneous to the budget process can be stripped by invoking the Byrd rule, which also requires 60 votes to waive.

More likely, if EFCA goes down to defeat by filibuster, unions will use Democratic promises to pass the bill as leverage to stack the National Labor Relations Board and push for binding arbitration that would force union contracts on unwilling businesses. William B. Gould IV, a Stanford law professor and NLRB chairman under Clinton, has argued for maintaining secret-ballot elections but stepping up government action to ensure speedy voting, permit communication about representation options, and adjudicate election disputes.

Card check isn’t the only item on organized labor’s agenda that has been road-tested by the outgoing Congress, to be continued now that the Democrats have achieved unified control of the federal government. The House last year passed a bill that would in-

crease unionization by allowing collective bargaining in all 50 states for public-safety officers like policemen and firefighters. Like EFCA, it failed to make it through the Senate. Calvin Coolidge’s dictum that there is no right to strike against the public safety by anybody, anywhere, any time would be put to the test by such a policy.

In July, the House passed the union-backed Paycheck Fairness Act (PFA). Despite its feel-good name, the legislation would treat as discrimination the act of paying people of different genders in different jobs with different qualifications different wages. The bill revives the idea of “comparable worth” that was justly pronounced dead in the 1980s. James Sherk of the Heritage Foundation warned that PFA would allow “the government and the courts to micro-manage employers, tying them up in a sea of red tape,” benefiting trial lawyers instead of women. PFA went nowhere in the Senate, but may be brought up again next year.

Another House-passed bill that was stalled in the Senate is the Lilly Ledbetter Fair Pay Act (LLFPA), intended to reverse a 5 to 4 Supreme Court ruling that a woman waited too long to file a pay discrimination lawsuit against Goodyear Tire & Rubber Co. The AFL-CIO supports the bill, which would restart the clock for filing a suit every time an allegedly discriminatory paycheck is issued. As Ledbetter herself pointed out in a speech to the Democratic National Convention, leading Democrats support LLFPA. “Barack Obama is on our side,” she said from the podium in Denver.

In fact, President-elect Obama was a cosponsor of LLFPA while in the Senate. In July, he argued, “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.”

Yet the bill in question is likely to lead to litigation about 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,” maintained Sen. Orrin Hatch (R-Utah).

In Ledbetter's specific case, she did not allege that any of her supervisors during the limitations period 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.

Under those terms, Goodyear would have had no ability to defend itself. The supervisor whose decisions were the basis of her lawsuit was dead. Attorney and blogger Paul Mirengoff observed, "Statute of limitation periods exist precisely to prevent the injustice inherent in situations where a plaintiff 'sleeps' on his or her rights for years."

New Labor Leniency

There will also be a big push to reverse many policies of current Secretary of Labor Elaine Chao, President Bush's longest-serving Cabinet officer. High atop that list will be reining in the Office of Labor-Management Standards (OLMS), the only government entity that regulates the financial integrity of unions and keeps them accountable to their rank-and-file members. OLMS is to organized labor as the Security Exchange Commission is to Wall Street.

Under Chao, OLMS worked to ensure a level of union transparency that had been required by federal law since the Landrum-Griffin Act of 1959. This included a revised L-M2 disclosure form that required unions with receipts of \$250,000 or more -- about a fifth of national labor organizations -- to itemize all spending above \$5,000. Prior to that, a union could bundle millions of dollars together in a single category and label them under a blanket term like "grants" with no further details.

The Labor Department now publishes the reports on the website www.UnionReports.gov that receives over 2,000 hits a day, leaving dues-paying union members just a few mouse clicks away from seeing where their hard-earned money is going. Compliance costs are just a fraction of what balky labor leaders projected and today 93 percent of unions meet their annual disclosure requirements.

OLMS has also worked to crack down on union abuses. At the end of September, it

sent out a press release bragging of 900 criminal convictions on union law violations so far this decade, in addition to 130 indictments in the last year and more than \$91.5 million of court ordered restitution since 2001.

Last year, the Democratic Congress decided to reward OLMS by cutting its budget back to 2006 levels while otherwise increasing Labor's budget by \$935 million. It wasn't a cost-cutting measure in the context of a Labor, Health and Human Services budget that was \$11 billion more than the Bush administration requested.

Now the Obama administration can simply deemphasize OLMS as a Labor Department priority. OLMS was already buried in back offices, described by one insider as an afterthought under Clinton. The statistics bear this out: the number of OLMS audits of unions had fallen to zero in 1998 and 1999. The department's enforcement priorities are likely to be reoriented toward regulating business and away from overseeing unions.

Then there are the policies that have already become law that organized labor would like to make more expensive and onerous. Congress already approved an increase in the minimum wage that will occur in three steps, peaking at \$7.25 an hour. Obama has campaigned in favor of raising the minimum wage all the way to \$9.50 an hour and then permanently indexing it to inflation. The incoming president has also proposed expanding the Family Medical Leave Act to cover companies employing as few as 25 people. Further, he would increase the number of reasons for leave covered by the federal law and "encourage" states to adopt paid leave.

The unions also want a piece of any economic stimulus bill that makes its way through Congress, possibly before the new administration even takes office. That would entail extending unemployment benefits in states like Michigan, collaborating with big business and big government to bail out heavily unionized automobiles manufacturers, and also steering billions of taxpayer dollars toward the creation of new union jobs.

The United Auto Workers have already joined with the chief executives of the Big Three to lobby for \$25 billion to help the companies meet health care obligations under UAW contracts. They're not the only union involved in stimulus package negotiations. "It's damn important to us," Gary Hubbard, a spokesman for the United Steelworkers, told *Forbes* magazine.

Left around the Corner

The most costly item on organized labor's wish list might be its insistence upon revisiting the postwar bipartisan consensus in favor of trade liberalization. While the unions have been opposing multilateral free trade agreements for decades now, they have not been able to slow the march toward the global economy. The last time a Democrat was in the White House, he quickly broke with the unions by leading the fight for the North American Free Trade Agreement (NAFTA).

NAFTA was a trade pact conceived by Ronald Reagan, negotiated by George H.W. Bush, and enacted in no small part through the efforts of Bill Clinton. Despite taking a hit from labor's allies among congressional Democrats, the Clinton administration went on to champion the 1994 round of the General Agreement on Tariffs and Trade.

Now unions are increasingly finding the Democratic leadership receptive to their anti-trade, anti-competitive arguments. The Central American Free Trade Agreement (CAFTA) barely passed the House in 2005. Trade liberalization with Colombia, Peru, Panama, and South Korea has been stymied. Obama voted against CAFTA, opposes the Colombia and South Korea free trade deals, and even favors revising NAFTA to include labor and environmental standards that amount to trade restrictions traveling under another name.

While Obama economic adviser Austan Goolsbee has said "free trade is not the enemy" and the president-elect's commitment to actually renegotiating NAFTA has been questioned, there are good reasons to think the next Democratic administration will be a good deal more protectionist on trade than the last one. In addition to harming poorer countries to protect higher-wage unionized

labor in America, this puts at risk the economic benefits that come from \$930 billion in trade within NAFTA.

Protectionism, regulations prohibiting most employers from replacing striking workers, the reversal of NLRB rulings with which major unions disagree, expansions of the Davis-Bacon Act to shield union workers from free-market competition -- the Democratic majority is going to discover just how demanding organized labor can be.

However, labor is nothing if not a team player within the liberal special-interest coalition. If pleased by Obama and Congress, it will happily return the favor by promoting liberal legislation that only indirectly touches on worker issues. Specifically, liberals can count on union support when they attempt to impose price controls on pharmaceuticals via the Medicare prescription-drug benefit, prevent employers from discriminating on the basis of sexual orientation, expand government provision of health care, and even, in defiance of the sentiment of rank-and-file union members, offer some form of amnesty for illegal immigrants.

Even though both ends of Pennsylvania Avenue promise to be friendlier to organized labor than at any time since before the Reagan era, some parts of its agenda may yet be frustrated. There are now more business-friendly "Blue Dog" Democrats in the South than pro-union Northeastern Republicans, one of labor's few downsides during the last two elections cycles.

Conservatives may retain just enough power to block the most controversial elements of the labor agenda. And the Obama administration may prove moderate, amenable to business, and more open to compromise than their election-year rhetoric suggested. Sources close to the current Labor team are also confident that Secretary Chao's reforms aimed at union transparency will be preserved. "At the end of the day," said one, "more things will remain in place than you might guess."

But the Democrats and the labor unions have a symbiotic relationship that could be awful for the rest of the country. The unions help the Democrats gain power, through their vol-



President-elect Obama with Teamsters president James Hoffa Jr.

unteers and their financial contributions. The Democrats return the favor by enhancing the unions' clout and trying to reverse their membership's decline. This in turn means more dues with which to help elect Democrats. The cycle continues, assuming that the private sector can handle the economic strain imposed by the resulting growth of government. Leading Democrats will seek a more unionized American workforce. Emboldened union leaders will continue to work toward a more Democratic federal government.

Historians will decide whether the departing Bush administration was really the most anti-union since Hoover's. But as labor leaders contemplate their future position under the next administration and the enlarged Democratic majorities on Capitol Hill, a signature Herbert Hoover phrase undoubtedly comes to mind: Prosperity is right around the corner.

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LW

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LaborNotes

The head of the **United Auto Workers** (UAW) and CEOs of Detroit's Big Three automakers are asking Congress for a \$25 billion bailout in the form of emergency loans. **Alan Reuther**, legislative director of the UAW, said that this should not include wage concessions. "We already stepped up to the plate and made huge wage and benefit concessions," Reuther told the **Detroit News**. The UAW plans to request more financial assistance from the Obama Administration during the next Congress. Detroit automakers owe \$60 billion for a UAW trust fund that pays retiree healthcare. The union and the automakers would like government to assume that debt.

Washington D.C. public schools chancellor **Michelle Rhee** is offering raises of up to \$40,000 a year to teachers willing to give up tenure. The 4,000 member **Washington Teacher's Union** (WTU) was divided on whether to accept the offer, which would dramatically increase member pay but also expose them to discipline or jobs loss for poor performance. "You can't fire your way into a successful school system," WTU president **George Parker** told the **New York Times**. Rhee countered that tenure "has no educational value for kids; it only benefits adults. If we can put veteran teachers who have tenure in a position where they don't have it [i.e., tenure], that would help us to radically increase our teacher quality."

On October 2, a final rule was published in the Federal Register that would add significant disclosure requirements for union trusts. The **Department of Labor** explained the need for the new rule: "Labor unions increasingly conduct large-scale financial transactions through these trusts, many of which may operate outside the reach of current disclosure or accountability safeguards." Unions must now file annual Form T-1 reports that provide the "amounts purposes, and sources of disbursements and receipts."

Members of the **Virginia Education Association** (VEA) received e-mails encouraging teachers to wear the color blue on September 30, saying, "Let's make Obama Blue Day a day of Action! Barack the vote!" Virginia Republicans protested, calling it "an undisguised attempt to influence students' political views." VEA president **Kitty Boitnott** lamely explained to **FOXNews.com** that the e-mail only asked teachers to wear blue shirts, not to endorse a particular candidate.

In November, a federal jury found that the **National Football League Players Association** (NFLPA) must pay \$28.1 million to retired football players for failing to properly market their image. Retired NFL players testified that the union had cut them out of licensing deals so active NFL players could be paid more. The union countered by arguing that video game and trading card companies were interested in paying licensing fees for active players only. According to the **Associated Press**, juror **Susan Smith** said after the trial, "We felt we had to send a message that the union needs to represent and protect all its members."