

# UNION BUSTING BY ANY OTHER NAME STILL HURTS ALL WORKERS

By Matthew A. Peluso, Esquire

*"Unions have done more for humanity than any other organization of men that ever existed. They have done more for decency, for honesty, for education, for the betterment of the race, for the developing of character in men, than any other association of men." Clarence Darrow*

Despite this justified praise from one of America's greatest lawyers, over the last couple of years several states have enacted legislation that significantly curtails the collective bargaining, and other rights of both public employee and trade unions. These new state laws have arisen as the result of several factors, including the lingering domestic and world economic recessions, the bitterly fought and divisive 2012 Presidential election, and an old-fashioned, nationwide union busting movement solely intended to eliminate every remnant of organized labor in this country.

In 2011, Wisconsin enacted a controversial anti-union law that has eliminated the collective bargaining rights of most of that state's unionized public employees. Although Wisconsin does exempt most law enforcement officers from its collective bargaining law, the Wisconsin Law Enforcement Association has filed a lawsuit, in which it alleges that the law wrongfully strips most public union members of their free speech, association and equal protection rights. However, one appellate court in Wisconsin has already upheld the anti-union law.

Even Michigan, a traditional bastion of organized labor, recently enacted "Right to Work" legislation. Among other things, this type of legislation restricts a union's ability to collect dues from employees and is supported by the National Right to Work ("NRTW") Foundation, a public foundation which operates under the same tax-exempt status of Section 501(c)(3) of the Internal Revenue Code currently at issue in several pending Congressional and federal investigations involving other similar groups.

Although Right to Work laws had previously been limited to southern states, there is clearly a concerted effort by anti-union politicians and groups to expand this type of legislation into traditional, pro-union states in the Midwest and Northeast. Indiana passed a Right to Work bill, and similar legislation was recently introduced in the Ohio state legislature. According to the NRTW Legal Defense Fund, 24 states have enacted Right to Work legislation. Also, Senator Rand Paul (KY) introduced a federal National Right to Work law earlier this year.

New Jersey has not yet passed Right to Work legislation. However, Governor Christie was able to push through a bill in 2011 that has eliminated longstanding collective bargaining and pension rights of New Jersey law enforcement officers. As in Wisconsin, a "divide and conquer" approach was used in New Jersey to get the bill enacted. As one New Jersey opponent of the bill said: "Crushing collective bargaining was the culmination of a premeditated crusade pitting neighbor against neighbor." Yet, in signing New



Jersey's bill, Governor Christie felt that: "New Jersey has become a model for America."

If that belief becomes a reality, then organized labor could face its greatest threat since the early days of the movement in the 1930s. Longstanding, sacrosanct rights of organization and collective bargaining are directly under attack by the increasingly successful lobbying efforts of well-funded state and national political groups opposed to unions. By legislatively restricting or removing collective bargaining by unions in contract negotiations, anti-union groups can create an inherent imbalance in what has always been a negotiation process between (relatively, or, at least, hypothetically) equal parties.

In addition, as many law enforcement officers are aware, taking an active role in union activities often leads to intentional harassment, intimidation and hostility, even though such conduct is prohibited by both federal and state law. For example, the New Jersey Employer-Employee Relations Act (Act), New Jersey Statute 34:13A-1, et seq., makes it unlawful to discharge, harass, intimidate or retaliate against a worker because of his or her union activity. Yet, in the on-going scandal involving the Edison Police Department, senior members of the Superior Officers Association claim to have been intentionally harassed and subjected to adverse employment actions by their chief, and officers aligned with him, specifically because of their leadership in the union.

The alleged policy behind all of this union busting is the misleading assertion that public employee unions are over-burdening taxpayers and keeping the country from moving out of the intractable economic recession. However, even setting aside the fact that the 2008 financial crisis was triggered primarily by Wall Street abuse and a lack of regulatory oversight by the federal government, it is clear that the already-diminished labor unions in this country were not the cause of the recession, and are not preventing any recovery from it.

According to the Bureau of Labor Statistics, only 11.3 percent of all American wage and salary workers in 2012 were affiliated with an organized labor union and, thus, covered by some type of collective bargaining agreement setting forth specific terms and conditions of their employment, salary and benefits. This is a record low, down from a high of 35 percent in the mid-1950s. Thus, despite all of the current hysteria regarding pensions given to public employees like law enforcement officers, the overwhelming majority of American workers in this country are now private-sector "at-will" employees.

As "at-will" employees, most American workers have no guaranteed job security and are employed solely at the discretionary "will" of their employers. Such at-will employees can be legally terminated at any time, with little or no prior notice, for no specific reason and usually with only one additional pay-check given to them at most. Given the economic reality that most Americans Association last year found that 68 percent of American workers would have

financial problems if their paycheck were withheld for one week --- "at-will" termination causes an immediate economic crisis in most American families.

Yet, many non-union workers in New Jersey and other states believe that the new anti-union craze sweeping the nation will benefit them; that the anti-union laws will "level" the playing field, so to speak, between all workers, which, in one way, it does: It "levels" it downwards for all American workers. As at-will employees, the overwhelming majority of American workers have no collective bargaining rights. Consequently, they have no real leverage in the employer-employee relationship. Thus, when public and private employers are successful in eliminating the hard-fought rights of organized labor won over decades of negotiation and legal battles, the non-union labor force can expect to suffer even greater losses in their already limited employee rights.

As an attorney who represents unions and their individual members, I know how the right to collectively bargain provides unions with the only leverage they have to ensure fair wages and working conditions for employees. For this reason, I have been advocating for an at-will employee's "Bill of Rights" to provide the majority of American workers with at least some protection against unlimited and unilateral employer control over non-unionized workers.

This Bill of Rights would include a defined notice of termination period, with a specific reason for termination provided to the employee in writing, similar to what union members get through the notice and disciplinary regimes contained in most collective bargaining agreements. This notice provision would at least allow at-will employees to begin a job search (which now takes several months, if not years) while they are still employed and earning income. In addition, at-will employees would be provided with a statutorily defined period of post-termination salary, since unemployment pay is insufficient to prevent an immediate and severe economic crisis for most families, including foreclosure and loss of health care benefits.

As the journalist Molly Ivins said: "Although it is true that only about 20 percent of American workers are in unions, that 20 percent sets the standards across the board in salaries, benefits

and working conditions. If you are making a decent salary in a non-union company, you owe that to the unions. One thing that corporations do not do is give out money out of the goodness of their hearts."

Employer response to every worker-related movement in the last 100 years, from the concept of unionization, to mandatory workplace safety standards, to unemployment benefits, has always been negative, aggressive and entrenched. However, American workers should not be forced to bear the brunt of our nation's economic recovery more than they already have. The time has come for American workers to seek, and for elected officials to provide, legal protections that will help to stabilize the employment and financial conditions of families now and for years to come.

Despite all of its rhetoric, the current brand of anti-union legislation is not intended to "level the playing field" between union and non-union workers. Nor is it a remedy for the lingering economic recession in this country. Rather, it is just old-fashioned union busting using statutory language rather than the bats and pipes of the 1930s. However, when state governments are successful in eliminating longstanding union rights, all workers in this country, both union and non-union, are ultimately harmed.

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