U.S. Senate

Committee on Health, Education, Labor & Pensions

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Hearing on "Standing Up Against Corporate Greed: How Unions are Improving the Lives of Working Families"

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Chairman Sanders, Dr. Cassidy, ladies and gentlemen of the committee, thank you for the opportunity to speak today. My name is Sean Higgins and I am a research fellow for the Competitive Enterprise Institute.

CEI first and foremost stands for the individual worker. We support the worker's right to engage in collective bargaining and their right to refrain from engaging in it. We support the rights of the individual worker to do as they choose and oppose any encroachments upon those rights. Preserving the right to dissent, to stand apart from and oppose the crowd, no matter unpopular that stance might be to others, is important and should be protected just as much in the sphere of labor rights as it is in civil rights.

Those rights must be remembered as we consider the impact of labor unions. I would like to start by discussing a bit about the National Labor Relations Act itself, because my research suggests the principal author of the act would agree.

The introductory section of the law says: *"It is declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining."*

The section's use of the word "encouraging" is often cited by individuals as the rationale for legislation or federal rules designed to prod workers into joining unions -- That the federal government's role is to encourage unionization.

This is not what the law's author, New York Senator Robert Wagner, said at the time of its passage. His view was that the government should be a neutral arbiter. It would defend the rights of those who sought to engage in collective bargaining, provided that doing so was their own affirmative choice. In testimony before this very same committee in 1935, Senator Wagner said "*That is all that this bill does, so far as I can see. It leaves the worker a free man to organize or not to organize as he chooses, and that is all it does."*

Lest you think I am taking a single section out of context, in another an exchange with another witness in the hearings, Columbia University economist Dr. Paul Brissenden, Senator Wagner denounced*, "[The] propaganda, which has been pretty widespread, that the purpose of this act is to impose some particular union upon the manufacturers of the United States… this bill does not do anything of this kind except that it does make a worker a free man so he may decide whether he wants a union or not, and, if he wants one, what particular union he wants to represent him, or whether he wants to remain unorganized."*

Wagner said in an April, 1935 nationwide radio address*, "The malicious falsehood has been widely circulated that the measure was designed to force men into unions, although the text provides in simple English prose that workers shall be absolutely free to belong or to refrain from belonging to any organization."*

The NLRA, it should be understood, was originally fix-it legislation. The first federal law to include collective bargaining rights was the Railway Labor Act in 1926, but that was limited to the transportation industry. Collective bargaining rights for private sector workers in general was first granted in 1933's National Industrial Recovery Act. The hope at the time – this was the Great Depression – was that collective bargaining would increase worker wages. The law inadvertently sparked a year of unprecedented labor strife. With federal law now affirming the right to collective bargaining, unions made a concerted push to organize industries that had previously resisted it. The industrial leaders of the time fought this with strike breakers and 1934 became one of the bloodiest, if not the bloodiest, years ever for labor unrest. This tied up all manner of commerce -- factories went idle, goods didn't ship -- as the country was still trying to get out of the Great Depression.

A second, related problem emerged: Corporations responded to the new federal law with a "if you can't beat'em, join 'em" attitude and created unions of their own for their employees to join. If you worked for GM, congratulations, you could now join the "Chevrolet Employees Association." Quite a few GM employees did. The degree to which they were pressured to do so was unclear. The independent unions of the time call these company unions sham organizations for the obvious reason: A company-run union has a clear conflict of interest and was therefore unlikely to properly serve the interests of the workers. That said, such organizations did not appear to be illegal under the Industrial Recovery Act.

A final problem was that the Industrial Recovery Act was itself being challenged and would eventually be declared unconstitutional by the courts for reasons not directly related to its labor provisions.

Wagner's NLRA was meant to rectify this: to affirm the right to collective bargaining and protect the exercise of it while also ensuring that workers were not coerced into joining labor unions that they did not wish to join or did not reflect their interests. He attempted to thread this needle by affirming that joining in collective bargaining was an individual right and that refraining to join was just as valid of a choice. The worker's interest came first, regardless of what it was.

"That is what I am interested in. Whatever the men want to do, if they want to bargain individually, or through an organization within a plant, that is all right, only if it is the free choice of the men. Of course, we are all for that. That is all I am seeking to do, to make the worker a free man to make his choice, and I think I have been emphasizing that," Wagner told this committee.

It should be further noted that the NLRA's section "encouraging" collective bargaining follows a preamble about "certain substantial obstructions to the free flow of commerce" and the need to "mitigate and eliminate these obstructions when they have occurred." In short, encouraging collective bargaining is called for as a solution when labor unrest has created a ripple effect that threatens the broader economy. This is a reference to the violence that occurred in the year before the law's passage.

The Biden Administration's decision last year to step in and force a contract on the railroad industry and its unions is the type of scenario that was being envisioned in the NLRA -- even if that particular action involved the Railway Labor Act. The administration feared that a strike by the railway workers would

create a replay of the supply chain crisis of 2021 and so it stepped in and bound both sides to a contract to prevent that potential economic disruption.

Incidentally, CEI opposed the Biden administration's intervention in that instance. We believed there was still time remaining for railroad industry management and the unions to strike a deal on their own. It's not uncommon for such negotiations to be resolved at the 11th hour, after all. CEI believes the administration acted prematurely and out of fear.

The purpose of this hearing is tout and promote labor unions as a boon to the economy and to workers. The CEI does support a worker's right to engage in collective bargaining. It also supports a worker's right not to engage or to otherwise opt out. Attempts to expand collective bargaining by workers can easily fall into the trap of coercing workers, of making them do things on the basis of "for your own good." The Protecting the Right to Organize Act would, for example, strip workers in 27 states of the right to decide for themselves if they wish to join or support a union. Nothing about right to work laws prevent workers from joining and being active in unions if they wish. They simply preserve the right of the individual to dissent.

The best force for raising the lot of the individual worker is a strong economy and a tight labor market. We've seen over the last year and a half what happens when employers are put in the position of having to compete for workers: wages rise and benefits expand on their own. The so-called gig economy should also be allowed to flourish. The ability of workers to sell their labor to the highest bidder – or, to use the old-fashioned term, "freelance" -- should be encouraged, not restricted.

With that, I thank you and am happy to take any questions.