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Testimony of Senator Eric Brakey

L.D. 1636, "An Act to Ensure the Right to Work Without Payment of Dues or Fees to a Labor Union"

Before the Maine Legislature's Joint Standing Committee on Labor and Housing

Tuesday, May 2, 2023

Senator Tipping, Representative Roeder, and members of the Joint Standing Committee on Labor and Housing, I am Eric Brakey, Senator from Androscoggin, representing the people of Auburn, New Gloucester, Poland, and Durham. I appreciate your attention today as I present L.D. 1636, "An Act to Ensure the Right to Work Without Payment of Due or Fees to a Labor Union."

The last time I stood before this committee, I presented another piece of legislation regarding the right to work for asylum seekers. On that matter, I appreciated the committee's swift and unanimous endorsement of the proposal and the underlying principle that the right to work is an unalienable one.

Today, I present another bill regarding the right to work. The focus of this legislation is the protection of this right for another group: those who are compelled to pay dues or fees to a labor union as a condition of employment, even when they do not believe the decisions of the union bosses reflect their values or their interests.

L.D. 1636 would make all union dues voluntary.

While I have less optimism for a swift and unanimous "Ought to Pass" recommendation from this committee today than previous legislation, the right to work must be defended nonetheless.

To begin, I'd like to begin with some wise words from another — hero of the American labor movement and founder of the American Federation of Labor — Samuel Gompers. Near the end of his life, advising the movement he built, Gompers delivered some important remarks relevant to our discussions today:

“Forty-four years ago in the city of Pittsburgh a group of labor men met to bring to fruition an effort extending over a period of years — to organize a national labor movement. We were a group of labor men with little experience in a national labor movement. We had to find our problems and devise ways of meeting them. There was little to guide us...

“When the Pittsburgh labor congress set itself to the task of planning an organization... the deliberations of that conference resulted in the formation of our present American Federation of Labor... It was an organization that had no power or authority except of a voluntary character. It was a voluntary coming together of unions with common needs and common aims. That feeling of mutuality has been a stronger bond of union than could be wielded by any autocratic authority. Guided by voluntary principles our Federation has grown from a weakling into the strongest, best organized labor movement of all the world...

“But the very success of our organization has brought additional and serious dangers. Office in the labor movement now offers opportunity for something in addition to service — it offers opportunity for the selfseeker who sees an instrumentality for personal advancement both in the economic and in the political field...

“Men and women of our American trade union movement, I feel I have earned the right to talk plainly with you... **I want to urge devotion to the fundamentals of human liberty — the principles of voluntarism. No lasting gain has ever come from compulsion. If we seek to force, we but tear apart that which, united, is invincible...**

“I want to say to you, men and women of the American labor movement, do not reject the cornerstone upon which labor's structure has been builded — but base your all upon voluntary principles and illumine your every problem by consecrated devotion to that highest of all purposes — human well being in the fullest, widest, deepest sense.”

Voluntarism, not compulsion. That is what Samuel Gompers advised. That is what this legislation restores.

Opponents will tell you this bill is about union busting. That is not the case. **This legislation is about accountability.**

It is true, under certain circumstances, the relationship between the employer and the employee can become exploitative. There are many ways to balance this power dynamic, collective bargaining through a labor union being one of them. And it is also true, under certain circumstances, the relationship between the union boss and the dues-paying laborer can become exploitative. When compulsion and force enters the equation, it is hard for that relationship to not become exploitative.

Under forced unionism, people may be able to vote for their union bosses, but so long as those bosses can maintain the support of a majority, why should they care about the objections of a disgruntled minority? Why should they not take their money and distribute it to the campaigns of politicians they object to? Why should they care about whatever other objections they have? But when money walks, money talks. Allow workers to vote with their feet and take their money with them – and now union bosses must care what every member (and potential member) thinks.

Across 27 right-to-work states, strong and voluntary unions represent over 4.4 million members. Gary Casteel, the Southern region director for the United Auto Workers, explains:

“This is something I’ve never understood, that people think right-to-work hurts unions. To me, it helps them. You don’t have to belong if you don’t want to. So if I go to an organizing drive, I can tell these workers, ‘If you don’t like this arrangement, you don’t have to belong.’ Versus, ‘If we get 50 percent of you, then all of you have to belong, whether you like to or not.’ I don’t even like the way that sounds, because it’s a voluntary system, and if you don’t think the system’s earning its keep, then you don’t have to pay.”

It sounds like Samuel Gompers and Gary Casteel have a lot in common.

Without the direct accountability imposed by voluntarism, compulsory dues foster not only the misuse of union treasury funds for political purposes, but also union embezzlement, extortion, bribery, and bid-rigging. Since the late 1990’s, eight

international union presidents have been forced out of office after being implicated in felonies.

And, according to the U.S. Labor Department's union-fraud unit, in Fiscal Year 2008 alone its investigations resulted in more than 100 convictions of corrupt union officials and their cohorts, primarily on charges related to embezzlement of workers' forced union dues and fees. However, "only a small percent of these crimes are detected," according to the late La Verne Duffy, who served as general counsel for the U.S. Senate Permanent Subcommittee on Investigations.

When an employee's Right to Work isn't protected, refusal to join or financially support a union he or she believes or knows to be corrupt can be grounds for dismissal. It shouldn't be surprising, therefore, that two scholarly studies of union corruption by journalist and labor-policy expert Carl Horowitz, issued in 1999 and 2004, found that union corruption is pervasive in non-Right to Work states, but relatively rare in Right to Work states.

Acting individually or in groups, employees should have the option of punishing union bosses as soon as they see wrongdoing by withholding their dues.

Opponents may also claim that right-to-work laws allow non-union members to "free ride" on the benefits of union representation without paying its cost.

The truth is, unions voluntarily represent non-members. The Supreme Court has repeatedly ruled that the National Labor Relations Act allows unions to negotiate contracts covering only dues-paying members.

Justice Brennan wrote in *Retail Clerks v. Dry Lion Goods* (1962), "'Members only' contracts have long been recognized." Unions represent non-members only when they act as "exclusive bargaining representatives," which requires non-members to accept the union's representation. In that case, the law requires unions to represent non-members fairly. They cannot negotiate high wages for their supporters and the minimum wage for non-members. Unions can avoid representing non-members by disclaiming exclusive representative status.

Opponents may say that representing non-members costs exclusive representative unions a lot of money.

The truth is, unions often spend little on representational activities. When unions choose to act as exclusive bargaining representatives, they often spend relatively little on processing grievances and negotiating contracts. Often union contracts have employers cover these costs by allowing union stewards to do union business while on company time. As a result, many union locals spend very little representing workers—either members or non-members.

Federal filings reveal that in 2013 United Auto Workers Local 2164 in Bowling Green, Kentucky, spent just 2 percent of its \$560,000 budget on representational activities] Boilermakers Local 107 in Brookfield, Wisconsin, spent 5 percent of its \$2.0 million budget on representational activities. Machinists Lodge 2515 in Alamogordo, New Mexico, spent 23 percent of its \$645,000 budget on representational activities—almost all of which constituted payments to its officers.

Opponents may say right-to-work laws provide no economic benefits.

The truth is, companies consider right-to-work laws a major factor when deciding where to locate. Organizing victories bring in a lot more money for a union in jurisdictions with compulsory dues. Consequently, unions organize more aggressively in places without right-to-work laws. Companies in turn want to know they can avoid being targeted by union organizers if they treat their workers well. Right-to-work laws make that more likely. Economic development consultants report that roughly half of all major businesses refuse to consider locating in jurisdictions with compulsory dues. Bureau of Labor Statistics data show that between 1990 and 2014 total employment grew more than twice as fast in right-to-work states as in states with compulsory dues.

Opponents may say right-to-work laws lower wages.

The truth is, workers have the same or higher buying power in right-to-work states. Opponents often deride voluntary dues as “right-to-work for less.” Average wages in right-to-work states are indeed slightly lower than in non-right-to-work states. This occurs because almost every Southern state has a right-to-work law and the South has a lower cost of living. Studies that control for differences in costs of living find workers in states with voluntary dues have no lower—and possibly slightly higher—real wages than workers in states with compulsory dues.

Opponents may say right-to-work laws divide Americans.

The truth is, Americans overwhelmingly support right-to-work laws. Recent Gallup polling found Americans support right-to-work laws by a 71 percent to 22 percent margin—better than 3 to 1. Independents support right-to-work laws 77 percent to 17 percent, Republicans support them 74 percent to 18 percent, and Democrats support them 65 percent to 30 percent. Polling also shows that union members themselves support voluntary dues by an 80 percent to 17 percent margin.

The arguments against right-to-work laws do not withstand scrutiny. Right-to-work laws give workers a choice over where their money goes. This freedom forces unions to earn their members' support. It also attracts businesses and jobs. The law should not force anyone in America to pay union dues as a condition of employment.

Thank you for taking the time to consider this proposal. Not too long ago, this committee voted to protect the right to work for asylum seekers. I hope you will join me in protecting the right to work for all Maine people by passing this legislation.

Finally, I would say, if I were a member of this committee, I would ask the bosses of the Maine AFL-CIO (organizing opposition to this bill): Will they publicly disown their founder, Samuel Gompers? Will they publicly repudiate his words, in which he urged the labor movement to reject compulsion and embrace voluntarism as the basis for collective organizing?

With that said, I would be happy to take any questions.

The Voluntary Basis of Trade Unionism

By SAMUEL GOMPERS

Forty-four years ago in the city of Pittsburgh a group of labor men met to bring to fruition an effort extending over a period of years—to organize a national labor movement. We were a group of labor men with little experience in a national labor movement. We had to find our problems and devise ways of meeting them. There was little to guide us. The majority of us had a standing in our local trade unions and in our national trade organizations but we had not joined hands with the representatives of other trade organizations in an effort to make the labor movement a force in the determination of national policies.

The National Labor Union like previous similar labor efforts, had organized a labor party and then passed out of existence. Industrialism growing out of constantly increasing invention of machinery, application of mechanical power which necessitated the factory system and the substitution of new materials for old, was making the need of economic protection for workers, increasingly imperative. Those of us who had opportunity to observe tendencies felt the responsibility to our fellow workers to make the effort for protection and for future progress.

There were but few paid union officials in those days, but after the day's work was done, those with the vision of spirit and service gave the evening hours and holidays to the cause of betterment of their fellow workers. More frequently than not the office of trade union official was carried in his pocket and its code of laws in his heart and mind; benefits, and even strike assistance, were irregular and undependable, if provided at all; union dues and union rules varied from city to city, if not from shop to shop. The present trade union movement was then in the making—aye, had hardly begun.

But the men who constituted that Pittsburgh labor congress in 1881 were as brainy and resourceful a group as ever gathered; they were men who know the joy and inspiration of service that entailed sacrifice. Service in the early trade union movement meant to become a marked man who employers were reluctant to hire and who was discharged first; whose family must forego the comforts and often the necessaries of life; upon whose children the

handicap attaching to the name of a "labor agitator" fell.

These very conditions of service in the labor movement assured the cause selected men of unusual qualities. They were men of self respect and character.

When the Pittsburgh labor congress set itself to the task of planning an organization, it studied the British Trade Union Congress, drafted a similar plan and organized the Federation of Trades and Labor Unions of the United States and Canada. In our optimism we thought that we had settled our economic problems and that we needed only to consider the field of labor legislation. We elected as our executive, a legislative committee, but provided no salaries, no permanent office, no full-time representatives. From year to year we met, accomplishing a little but keeping alive the thoughts of national organization and calling attention to the needs of the workers, until there came a crucial contest in which the existence of the trade unions was threatened. Then the trade unions sent out the warnings of danger and sent a small group to carry by word of mouth to rouse labor. Again in 1886 a national labor conference was called. This time it was designated a trade union conference to be composed of representatives of trade unions and to consider trade union problems. The deliberations of that conference resulted in the formation of our present American Federation of Labor with which the old Federation of Trades and Labor Unions was merged. This new Federation recognized only the trade union card as a credential and proposed to deal primarily with economic problems. It was an organization that had no power or authority except of a voluntary character. It was a voluntary coming together of unions with common needs and common aims. That feeling of mutuality has been a stronger bond of union than could be welded by any autocratic authority. Guided by voluntary principles our Federation has grown from a weakling into the strongest, best organized labor movement of all the world.

So long as we have held fast to voluntary principles and have been actuated and inspired by the spirit of service, we have sustained our forward progress and we have made our labor

movement something to be respected and accorded a place in the councils of our Republic. Where we have blundered into trying to force a policy or a decision, even though wise and right, we have impeded, if not interrupted, the realization of our aims.

But the very success of our organization has brought additional and serious dangers. Office in the labor movement now offers opportunity for something in addition to service—it offers opportunity for the selfseeker who sees an instrumentality for personal advancement both in the economic and in the political field. There are serious problems confronting us. Wisdom and conviction are necessary to wise decisions.

Men and women of our American trade union movement, I feel that I have earned the right to talk plainly with you. As the only delegate to that first Pittsburgh convention who has stayed with the problems of our movement through to the present hour, as one who with clean hands and with singleness of purpose has tried to serve the labor movement honorably and in a spirit of consecration to the cause of humanity, I want to urge devotion to the fundamentals of human liberty—the principles of voluntarism. No lasting gain has ever come from compulsion. If we seek to force, we but tear apart that which, united, is invincible. There is no way whereby our labor movement may be assured sustained progress in determining its policies and its plans other than sincere democratic deliberation until a unanimous decision is reached. This may seem a cumbrous, slow method to the impatient, but the impatient are more concerned for immediate triumph than for the education of constructive development.

Our movement has found these voluntary principles the secure foundation upon which the workers of all America make united effort, for our voluntary cooperation has ignored lines of political division separating the United States and Canada, because economically we are a unit. Because we refused to be bound by arbitrary restrictions or expedients we have fostered cohesive forces which give play to the finer and more constructive faculties of the peoples of both countries. We are eager to join in an international labor movement based upon the same principles of voluntarism. We are willing to cooperate if we can be assured a basis that will enable us to maintain our integrity—a condition necessary for our own virility and continued progress.

Understanding, patience, high-minded serv-

ice, the compelling power of voluntarism have in America made what was but a rope of sand, a united, purposeful, integrated organization, potent for human welfare, material and spiritual. I have been with this movement since the beginning, for I have been given the privilege of service that has been accorded but few. Nor would that privilege have continued open to me had not service to the cause been my guiding purpose.

Events of recent months made me keenly aware that the time is not far distant when I must lay down my trust for others to carry forward. When one comes to close grips with the eternal things, there comes a new sense of relative values and the less worthy things lose significance. As I review the events of my sixty years of contact with the labor movement and as I survey the problems of today and study the opportunities of the future, I want to say to you, men and women of the American labor movement, do not reject the cornerstone upon which labor's structure has been builded—but base your all upon voluntary principles and illumine your every problem by consecrated devotion to that highest of all purposes—human well being in the fullest, widest, deepest sense.

We have tried and proved these principles in economic, political, social and international relations. They have been tried and not found wanting. Where we have tried other ways, we have failed.

A very striking illustration is emphasized by circumstances connected with the present location of our convention. For years force and selfish interests dominated relations across this international border, but the labor movement brought to an acute and difficult situation the spirit of patience and the desire of service and a transformation has been brought which gives us courage and conviction for wider application of the same principles. As we move upward to higher levels, a wider vision of service and responsibility will unfold itself. Let us keep the faith. There is no other way.

The season of baseball, which is now opening, has supplied the statisticians with a fruitful subject concerning the cost involved in conducting the sport. A million dollars represents a big sum, but this amount would scarcely get the clubs in the numerous leagues to first base. Even ten million dollars would be too insignificant to carry the clubs through a year of activity.