TTD

A bold voice for transportation workers

REJECTING LEGISLATIVE ASSAULTS ON PORT EMPLOYEES' BARGAINING RIGHTS

Corporate special interests are seeking to use the pretense of a protracted bargaining dispute in the West Coast ports to radically alter the collective bargaining process to the detriment of port employees. Frustrated by management's inability to impose its will during contract negotiations, they have sought assistance through their congressional allies and put forth a series of bills that either outright amend labor law or use thinly disguised productivity metrics to undermine bargaining rights. TTD and its member unions want to be clear: we will mobilize our collective power to oppose any effort to weaken or eviscerate the collective bargaining rights of longshore employees and other affected workers. Every sector of transportation has faced attacks on bargaining rights and these latest legislative salvos will be met with the same unified opposition.

Congress expressly created the National Labor Relations Act (NLRA) – the primary statutory framework that governs labor-management relations in the private sector and covers longshore workers – under the premise that the most effective means to achieve stable workplace conditions is through the private settlement of disputes through collective bargaining. Consensual agreements depend on a balance of power between employers and employees and a law that ensures both sides negotiate in good faith and from a position of equal strength.

Unfortunately, a broad and concerted coalition – made up of anti-labor organizations, employer groups, retailers, think tanks and anti-union politicians – has decided to undermine this delicate balance. To achieve this goal, they are seeking to have the federal government prematurely intervene in the collective bargaining process. Notably, they are trying to transform the president's emergency authority under the Taft-Hartley Act, reserved for disputes that threaten the nation's safety and health, into a routine political tool to trigger more frequent and arbitrary injunctions. The end goal is obvious: shift all the power to management and eventually rollback decades-long bargaining rights in our ports.

The first major legislative effort, Senator Cory Gardner's (R-CO) PORTS Act (S. 1519), would amend the NLRA to allow politically-minded port state governors to usurp the president's authority and invoke Taft-Hartley injunction powers. Putting aside the many issues surrounding the legality of this legislation, the bill raises some clear implementation and political problems. For starters, the Taft-Hartley emergency provisions were written, as was the NLRA, with the express intention of creating a federal framework for negotiations and settlement. In fact, since Taft-Hartley is reserved only for disputes affecting *"an entire industry or a substantial part thereof"* only the President of the United States, the sole party able to enjoin a strike in multiple states, is fit to intervene if necessary. That is why the Federal Mediation and Conciliation Services (FMCS), an independent agency of the federal government that provides mediation services, works in close contact with the White House to monitor disputes to determine if, when, and how best to intervene. This enables the president to have sufficient information to act as an effective partner to negotiations when necessary. A governor is not able to utilize the FMCS in the same fashion,

would not be as intimately informed of the details of negotiations and would ultimately be ill-prepared to effectively work with the parties to settle issues in dispute. It is easily imaginable that a governor, who could be in the middle of a reelection, would react prematurely or without access to proper information and further jeopardize contract negotiations.

To this point, the Gardner bill raises obvious concerns related to political intention. It would allow governors, driven by local political pressure or an ideologically anti-labor bias, to circumvent the federal government's jurisdiction over national bargaining disputes. It is obvious that the motive behind the Gardner bill is to provide policy rationale – poorly disguised as it may be – for bailing out employers from their duty to bargain in good faith and settle contracts consensually as the law intends.

In a similar vein, Senator James Risch (R-ID), introduced the PLUS Act (S.1630), which would amend the NLRA to make longshoremen a unique and disadvantaged class of worker subject to a more limited ability to bargain. Specifically, the Risch bill would make it a union-side unfair labor practice (ULP) if any single employee engages in an ambiguously defined "slowdown" of production. A union found in violation would lose its right to represent the employees and be subject to far reaching legal and financial damages in order to bankrupt the soon to be former union. Not only would the bill's new "slowdown" category help trigger a Taft-Hartley injunction, but the legislation would go one step further by seeking to remove the presence of the longshore unions outright. This bill is a thinly veiled attempt to eliminate bargaining rights in our ports.

Collectively, we view these revisions to labor law as setting a dangerous precedent for all unions subject to the NLRA. Creating separate categories for port workers, distinct from other employees subject to the NLRA, is not only unfair but will serve as a future model to undermine other workers' rights. Despite rhetoric from the proponents of these reforms, longshore work is not the only industry subject to contentious negotiation or with a national economic footprint. This legislation is obviously designed to be a stalking horse for the business lobby and its allies to make the case that any bargaining that potentially impacts the economy should be subject to these blatant attempts to strengthen the hands of managements who seek further insulation from their duties under the NLRA.

The final item on the anti-port worker agenda – the so-called port productivity metrics bill introduced in the U.S. Senate – uses the cloak of benign statistical rigor to help trigger more frequent Taft-Hartley injunctions, both alone and in concert with the Gardner and Risch bills. Senator John Thune (R-SD) introduced a stand-alone bill, the Port Performance Act (S.1298), which he also included in the Senate Commerce title of the surface transportation authorization. The legislation would require the Department of Transportation (DOT) to create new, standardized metrics on the productivity of ports, including the activities of workers. The bill would then have DOT apply these metrics to monthly productivity reports issued prior to and throughout the duration of any port labor-management negotiation, including the contract negotiations of all longshore, seafaring maritime and port trucking unions. The intention of this provision is clear: to use the monthly reports to set the stage for early and improper Taft-Hartley injunctions, whether alone or as a compliment to the Gardner and Risch bills, which depend on supposed evidence of workplace "slowdowns" to impose injunctions and union decertification. This bill is an overreach that injects the government's data collection operation into the collective bargaining process.

We're hardly surprised that the legislation doesn't direct the DOT to collect data on the unsavory conduct of employers during negotiations. In effect, the port metrics ignore the innumerable variables that affect port output and would instead simply blame the collective bargaining process for all problems related to port productivity absent any justification or consideration for the complicated nature of port logistics networks.

Fortunately, the most egregious language that required monthly assessments of union contract negotiations was removed from the Senate's surface transportation authorization – the DRIVE Act (H.R.22) – at the behest of Democratic Senators, including Senators Boxer, Nelson, Booker and Manchin. However, we remain deeply concerned that the remaining language on port performance, including data related to crane moves and the monthly collection of data, will still be used to justify unjust and whimsical intervention into private sector labor-management negotiations. Accordingly, we believe Congress should follow the example set by House Transportation and Infrastructure Committee, which purposefully excluded the contentious port metrics during the bipartisan markup of their surface transportation authorization, the Surface Transportation Reauthorization and Reform Act (STRRA).

The end goal of these various pieces of legislation is clear: to significantly reorient the collective bargaining process and undermine the ability of port unions to negotiate strong contracts on behalf of their members. Increasing the use of Taft-Hartley injunctions, or even increasing the implicit threat of federal intervention or decertification, will provide management less incentive to bargain since it knows the government will ultimately intervene on its behalf. This puts the unions at a substantial disadvantage during negotiations since there is no longer a coequal bargaining partner at the table. In effect, meaningful collective bargaining would cease as employers would either impose their terms and conditions on the employees or have the federal government – or even governors – do it for them.

The TTD Executive Committee condemns these legislative attacks on longshore and other port unions. In keeping with the principles of the federal labor law, we will oppose any effort to tilt the delicate balance of power in employers' favor. We call on Congress to reject anti-port labor legislation and to exclude port metrics provisions from the pending surface transportation reauthorization bill.

Policy Statement No. F15-04
Adopted October 28, 2015