

Nader'08 Gonzalez

ISSUE STATEMENT Labor – Workers' Rights

To illustrate how little has changed in four years, other than conditions becoming worse, the 2008 Nader/Gonzalez campaign is posting these policy positions on various injustices, necessities, and redirections that were prepared initially for the 2004 Nader/Camejo campaign. Such a short historical context should give our supporters and viewers an even greater sense of urgency to stop the corporate interests' and the corporate governments' autocratic control -- and the resulting deterioration -- of our society and country.

Expand Worker's Rights by Developing an Employee Bill of Rights

The rights of workers have been on the decline. It is time to reverse that trend and begin to give workers, the backbone of the US economy, the rights they deserve. Workers need a living wage not a minimum wage; access to health care and no unilateral reductions in medical benefits and pensions for current employees and retirees. Employers should not be able to avoid these benefits by hiring temporary workers or independent contractors. The privacy of employees needs to be vigorously protected. The notorious Taft-Hartley Act that makes it extremely difficult for employees to organize unions needs to be repealed. It has resulted in less than 10% of the private workforce being unionized, the lowest in 60 years and the lowest percentage in the western world. Non-union workers need upgraded rights against the likes of Wal-Mart.

Labor Day: A Call for Rights for Working People

Washington, DC: The Nader Campaign joins Paul Tobias of Workplace Fairness in calling for a civil rights movement for workers. Under current law, a worker's freedom is subordinated to employer property rights.

The general rule of law for employees is employment at will: an employee can be fired for any reason, no reason, or a bad reason, without recourse. Workers gained rights in the early twentieth century when the union movement developed, with workers joining together to bargain with employers. But that movement was stalled by laws that put up barriers to workers' joining together in a union. The civil rights movement for workers should seek a Bill of Rights for Workers, including the right to organize a union and the right to earn a living wage for all full-time workers.

America's working men and women have been abandoned by the corporate-dominated two-party system. The evidence is everywhere. The percentage of union members in the private economy has dropped below ten percent, the lowest in over sixty years. At the heart of this decline are labor laws which throw insurmountable barriers before organizing efforts. A professional class of public relations consultants and lawyers has evolved to counsel employers on ways to take full advantage of the Taft-Hartley Act in fendeng off organizing efforts. The National Labor Relations Act (NLRA) gives employers plenty of ways to prevent workers from exercising their supposed right of freedom of association.

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The Taft-Hartley Act of 1947 makes it extremely difficult for employees to organize unions and should be repealed. Among the key provisions of

Taft-Hartley

- Taft-Hartley authorizes states to enact so-called 'right-to-work' laws. These laws undermine workers' ability to build effective unions by creating a free-rider problem workers can enjoy the benefits of union membership in a workplace without actually joining the union or paying union dues. Right-to-work laws increase employer leverage in resisting unions by enabling them to benefit from free riders. Vastly decreased union membership follows, dramatically diminishing the unions' bargaining power.
- Taft-Hartley outlaws the closed shop, which required that persons join the union before being eligible for employment with the unionized employer (still permitted are provisions that require any member of a bargaining unit to pay a portion of dues to that union).
- Taft-Hartley defines employee for purposes such as excluding supervisors and independent contractors. This diminishes the pool of workers eligible to be unionized. The exclusion of supervisors from union organizing activity facilitates their use by management as a buffering front line in anti-organizing efforts.
- Taft-Hartley permits employers to petition for a union certification election, thus undermining the ability of workers and unions to control the timing of these elections during the sensitive organizing stage, invariably forcing an election before the union is ready to hold one.
- Taft-Hartley requires that election hearings on matters of dispute be held before a union recognition election, thus delaying the election. Delay generally benefits management, giving the employer time to coerce workers.
- Taft-Hartley establishes the "right" of management to campaign against a union organizing drive, thereby scuttling the principle of employer neutrality.
- Taft-Hartley prohibits secondary boycotts directed to encourage neutral employers to pressure the employer with which the union has a dispute. Secondary boycotts had been one of organized labor's most potent tools for organizing, negotiating, and dispute settlement.

The president needs to appoint federal judges who are supportive of the rights of workers, not those judges who summarily dismiss employee claims, who narrowly read the Americans with Disabilities Act (ADA), or who do not allow punitive damages. Efforts to repeal the Taft-Hartley Act, to create explicit employer neutrality, and even to make modest reforms such as card check voting have been abandoned by the two-party system, with few exceptions among legislators. This systemic failure to enforce labor rights allows for retaliatory firings of organizers and even those who vote to unionize in secret elections.

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With the demise of union influence, almost every aspect of workers' rights is given short shrift. The minimum wage has been allowed to languish far behind inflation as executive pay skyrockets. The gap between the wages of now two-job (or more) working families and wealth of the privileged widens, even as worker productivity rises. The average worker takes home \$517 per week, while the average CEO of the largest companies takes home \$155,769 per week. The gap between workers and large companies is now greater than 300-to-1. In 1982 the gap was 42-to-1. Over 45 million workers one in three do not make a living wage, namely under \$10 per hour gross. This is insufficient for an individual to live on and certainly not enough for a family. The Nader campaign advocates immediately increasing the minimum wage to \$8 per hour, from its current \$5.25 per hour. Two years after that increase, we advocate a \$10 per hour living wage.

The battle for a living family wage and battles to repair the workers compensation systems to secure the rights of injured workers to treatment and re-training are fought without the steadfast support of most unions or major political parties. Universal health care, available in nearly all democracies, languishes as a movement in this country for lack of power by organized labor within the American political system. Finally, the Enron scandal showed the need for employees to be allowed to diversify their stock holdings in 401(k) accounts and the need for employees to sue under ERISA for breach of fiduciary duty when employers deliberately deceive employees in matters that will affect anticipated benefits. Where employee rights are at the pleasure of management, management takes care of its own.

The marginalization of organized labor and its agenda for working people within our corporate-dominated political process is in sharp contrast to Western Europe. There unionization is industry-wide and not within a single company. The political support enjoyed by labor results in statutory rights available to union member and non union member alike. A month's paid vacation, longer sick, maternity and family leave and of course health care that is entirely portable are benefits taken for granted in other Western capitalist economic systems. Landmark legislation in 2000 prohibited companies within the European Union from discriminating against workers based on their age, disability, sexual orientation, religion in addition to racial and sex discrimination.

With every election, unions are pressed to donate and get out the vote to protect the political status quo. Yet the same candidates whom unions seek to reelect stand by passively (or actively support), trade agreements which allow vast outsourcing of skilled jobs to third world countries where labor laws are much less protective if they exist at all.

How then can working Americans transform the landscape?

One idea is to view labor rights as civil rights. Suppose workers enjoyed the same rights to form or join a union as they enjoy for other forms of discrimination? If workers seeking to unionize could sue under the Civil Rights Act of 1991 (instead of depending on existing unions to press for remedies before toothless federal agencies) they could secure:

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- Compensatory damages, not just back pay, but damages for serious humiliation or grave emotional distress.
- Punitive damages, to send a message to outlaw employers that behave contemptuously, whether it is Microsoft or a big city sweatshop.
- Injunctive relief, including temporary restraining orders and preliminary injunctions so that employers can be in court defending themselves, or at least in depositions, within days or weeks of an unlawful firing.
- Legal fees, not only to give employers an incentive to settle but to empower individuals to bring their own law suits, even start their own organizing drive, and to enlist the private bar as a new army of organizers.

For the first time every citizen would be empowered to go out and push the cause of dignity and fair pay at work.

A Worker's Bill of Rights is needed because the rights of worker's have been on the decline. It is time to reverse that trend and begin to give workers the backbone of the US economy the rights they deserve. Among the items that should be included in a Worker's Bill of Rights are:

- Workers need to be given a living wage not a minimum wage.
- Access to health care and unilateral reductions in medical benefits should not be allowed.
- A pension plan should be included for employees and pensions for current employees and retirees should not be allowed to be reduced unilaterally.
- Employers should not be able to avoid these benefits by hiring temporary workers or independent contractors.
- The privacy of employees need to be protected, e.g. the monitoring of employee email.
- When downsizing of a company is necessary, employees need to be given adequate notice and sufficient severance pay.
- The pernicious dominant employment law of employment at will that allows for an employee to be fired for any reason, no reason or a bad reason needs to be replaced with an employee's bill of rights.

When it struck down Alabama's debt peonage law in *Bailey v. Alabama*, 219 U.S. 219 (1911), the United States Supreme Court wrote that the purpose of the Thirteenth Amendment was not simply to eliminate slavery, but to make labor free by prohibiting that control by which the personal service of one man is disposed of or coerced for another's benefit without the rights to

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organize, strike, boycott, and picket. (at 241) Early labor law, notably, the Norris-LaGuardia Act, was grounded in this Constitutional imperative and the guarantees of speech and association flowing from the First Amendment. During the New Deal worker freedoms under the Thirteenth Amendment diminished when the U.S. Supreme Court made the Commerce Clause dominant. This interpretation even turned the pro-worker Wagner Act into a law that gave the government power to eliminate strikes. The Commerce Clause put the needs of business first asking whether labor organizing encumbers the free flow of business and led to the federal government having the power to intrude into union organizing, as well as in disputes between labor and business on the side of business to keep commerce moving. An entirely new initiative must be undertaken to ground freedoms of speech, association and an effective freedom of labor on firm constitutional grounds.

The restoration and expansion of the rights of workers are timeless principles about basic human rights, fairness and justice.

Restore Retirement Security

AN AGENDA TO RESTORE RETIREMENT SECURITY FOR MILLIONS OF OLDER AMERICANS

In recent years, hundreds of large companies have broken long-standing pension and health insurance promises to their loyal, longtime employees and retirees. These unfair practices are accelerating, rather than diminishing, and are undercutting the retirement security of millions of people. The Ad Hoc Coalition to Restore Retirement Security is asking candidates for elective office to pledge to work to:

STOP COMPANIES FROM BREAKING PENSION PROMISES TO OLDER EMPLOYEES BY UNFAIRLY CHANGING PLAN RULES:

AT&T's switch to a cash balance "pension plan" increased its operating earnings by millions of dollars, at the expense of long-service salaried employees who lost as much as half of their expected pensions. The AT&T employees are asking candidates to support legislation that would require companies to make good on their pension promises by giving employees the choice at retirement between receiving their promised pensions and those offered under any new rules.

STOP COMPANIES FROM BREAKING PENSION PROMISES TO OLDER EMPLOYEES BY THEIR SELLING DIVISIONS:

Halliburton's sale of its Dresser-Rand division seemed like a routine business deal, until employees learned that it would cost them the full early retirement pensions they had spent their careers working for. Although the employees continue to work in the same jobs for the new owner,

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a loophole in the law allowed Halliburton to shift the money put into their plan to pay their expected benefits into a plan for its own employees. The Dresser-Rand employees are asking candidates to support measures that would prevent companies from using the sale of a division as a pretext to short-change employees of their promised pensions.

STOP COMPANIES FROM BREAKING PENSION PROMISES TO OLDER EMPLOYEES BY RECLASSIFYING THEM:

Just as thousands of Allstate insurance agents were reaching eligibility for their promised early retirement pensions, Allstate changed their status to independent contractors, and told them they would get a small fraction of their anticipated benefits. The action increased Allstate's reported earnings and infuriated the agents, who filed a lawsuit claiming that the reclassification unlawfully deprived them of their pensions. The Allstate employees are asking candidates to support measures to restore their full benefits.

STOP COMPANIES FROM BREAKING PROMISES TO RETIREES THAT THEY WOULD PAY THEIR HEALTH INSURANCE COSTS:

Thousands of GM retirees accepted early retirement packages because they were promised generous pensions supplemented by lifetime health insurance coverage. Years into retirement their companies told them that fine print allowed the companies to cutback (and even cancel) health insurance payments. The GM retirees are asking candidates to support measures that would make it unlawful for companies to change the rules after people have retired.

STOP COMPANIES FROM BREAKING PROMISES TO EMPLOYEES ABOUT THE VALUE OF THEIR COMPANY'S STOCK:

MCI/WorldCom employees believed their company officials when the officials told them that WorldCom was a sound investment for the employees 401(k) money. In fact, the officials knew that the company was in financial trouble and were selling their WorldCom stock. After the company collapsed, the employees learned that gaps in the law could prevent them from being made whole. The WorldCom employees are asking candidates to support proposals that would ensure full remedies for misrepresentations by company officials.

These are but a few of the many ways that companies have failed to keep pension and health insurance promises to employees and retirees. While we recognize that there are other retirement policies that beg for urgent attention, we believe fulfilling these commitments would be a critically important first step toward restoring retirement security for older Americans.