TESTIMONY OF MARK A. MIX, PRESIDENT,
NATIONAL RIGHT TO WORK COMMITTEE
House Committee on Oversight and Government Reform
Thursday, 14 April 2011

Chairman Issa, Members:

I'd like to thank the Chairman and the Committee for the opportunity to participate in this hearing. My name is Mark Mix, and I am President of the National Right to Work Committee, in Springfield, Virginia.

The Committee, established in 1955, is a nonprofit, nonpartisan, single-purpose organization made up of more than two and a half million members and supporters dedicated to the principle that all Americans must have the right to join a union if they choose to, but none should ever be forced to affiliate with a union in order to get or keep a job. The Committee's members and supporters are men and women in all walks of life, from every corner of America, union members as well as nonunion employees who, through their voluntary contributions, support the Committee's work. Poll after poll demonstrates that nearly 80% of all Americans sympathize with the Committee's objectives and oppose forcing workers to affiliate with a union as a job condition.

This Committee is today considering the important question of "State and Municipal Debt: Tough Choices Ahead." I am pleased to offer the National Right to Work Committee's views on this real and serious problem.

Although the National Right to Work Committee does not involve itself with the minutiae of public financing, long-term public debt, or other fiscal issues, we do understand at least one long-term cause of the crises which currently face too many state and local governments nationwide. That understanding is derived from long and intimate experiences with the constitutional and public-policy implications of public-sector monopoly bargaining or, as its apologists euphemistically prefer, "collective bargaining."[1]

---

[1] "Collective bargaining" does not require the monopolistic powers granted under most state and Federal statutes, which grant unions the power of "exclusive" representation of bargaining

(continued...)

The issue of public-sector monopoly bargaining has been in the public eye in recent months, much more so than at any time in recent memory, particularly with proposals in Wisconsin and Ohio to impose varying limits upon it. More accurately, most frequently in the public eye have been caricatures of the policies offered by Governor Walker of Wisconsin and Governor Kasich of Ohio.

One caricature which comes from union partisans is the notion that such proposals seek to "silence" government employees.[2] Nothing in any of the proposals to limit or repeal unions' monopoly bargaining power suggests that public employees should not retain their First Amendment rights to speak on public policy issues, or to join together in voluntary associations to do so. In fact, clear evidence from Wisconsin, Ohio, Indiana, Pennsylvania, and other states show these First Amendment protections are alive and well. However, the slander that proposals to limit the special powers possessed by public-employee unions would somehow "silence" public employees is based upon the premise that government unions are somehow entitled to the ***preferred*** place at the table given to them by many existing state monopoly-bargaining statutes.

Another canard is the assumption that the power granted to government unions is some how a "right." The notion that "rights" are at issue is equally false. The United States Supreme Court has plainly held that there is no Federal constitutional "right" to monopoly bargaining.[3]

---

[1] (...continued)
units of employees, extinguishing the right of individual employees who do not want union representation to bargain over their own terms and conditions of employment.

[2] One website declared various state efforts to limit public-sector monopoly bargaining to be "an ideological war to silence public employees." World Peace Journal (http://www.worldpeacejournal.com/apps/blog/show/prev?from_id=6395050).

[3] *Smith v. Arkansas State Highway Emp., Local 1315*, 441 U.S. 463, 465 & n.2 (1979) ("the First Amendment does not impose any affirmative obligation on the government to listen, to respond or, in this context, to recognize the association and bargain with it") (*per curiam*); **see also** *Winston-Salem/Forsyth County Unit, Educators' Ass'n v. Phillips*, 381 F.Supp. 644, 648 n.4 (M.D.N.C. 1974) ("sovereignty ... signifies the right of the people of a state to govern themselves under the form of government of their choosing" and that "the prospect of public employee collective bargaining impinges upon those rights") (three-judge court).

Indeed, when the Supreme Court rendered that decision, it relied upon two prior decisions of the Seventh Circuit,[4] in which Wisconsin lies.

These misrepresentations of what is actually at issue with public-sector monopoly bargaining are no less serious than the corrosive effects of such practices on the public *fisc*. Put simply, public-sector monopoly bargaining is a major contributing factor — perhaps **the** major contributing factor — to the fiscal mess in which many local and state governments find themselves today. For example, the website Daily Beast last year considered the public debt of the fifty States. Although that website did not make the connection, a review of the data demonstrates a close correlation between high state debt and the existence of public-sector monopoly bargaining. Indeed, one has to travel far down the list — to No. 13, South Carolina — before one finds a Right-to-Work state. The first twelve states with high debt-to-gross domestic product ratios permit public-sector monopoly bargaining. Indeed, only two other Right to Work states (South Dakota and Louisiana) appear in the top twenty-five states with the highest debt-to-gross domestic product ratios.

On the other hand, a majority of the states with the **lowest** debt-to-gross domestic product ratios are Right to Work states.

There is an inevitable and irresolvable conflict between specially-privileged union political power and popular, representative government. Fundamental to our system of government is legal equality of opportunity, for all individuals, to influence the political decision-making process. However, public-sector monopoly bargaining perverts the processes of government by granting to labor unions a preferred status in the public debate over the allocation of scarce public resources.

The American system of representative, republican self-government presupposes that the

---

[4] *Hanover Township Federation of Teachers v. Hanover Community School Corp.*, 457 F.2d 456, 461 (7TH CIR. 1972), **quoting** *Indianapolis Education Assn. v. Lewallen*, 72 LRRM 2071, 2072 (7TH CIR. 1969) ("'there is no constitutional duty to bargain collectively with an exclusive bargaining agent'").

state may act only for the *common*, or *public*, good.[5] From the very beginning of our nation, it has been an article of faith that "government is, or ought to be, instituted for the common benefit, protection and security of the people ... and not for the particular emolument or advantage of any single man, ... or sett of men, who are a part only of that community ...."[6] Thence the precept emerges that *all* of the people are entitled to legal equality of opportunity to exercise a voice in the governmental process. A representative, republican government cannot exist separate from the people, but "rests on the foundation of a belief in rule by the people not some, but all the people."[7]

Our system of popular sovereignty presupposes that governmental programs and policies will represent a consensus derived in some regular manner from the sometimes complementary, sometimes conflicting, interests of the people taken as a whole. It is only the operation of this process which uniquely determines the public interest — that is, the process by which a free people, acting individually or in voluntary associations, none of which possesses monopolistic powers rivaling those of government itself, seeks to secure through governmental action the kind of services the majority desires and the minority can accept. Our system might, therefore, be described as one of pure procedural justice: a system designed not to advance particular substantive views favoring specially privileged interests, but rather, to define a general procedure for making decisions in the common interest, reserving the question of the specific content of public policy to be settled by the unimpeded operation of the process itself.[8] As Justice John Marshall Harlan said, "laws which define the structure of political institutions ... are designed with the aim of providing a just framework within which the diverse political groups in our

---

[5] Locke, John, *Second Treatise on Government* §§ 89, 110, 131, 135, 142 and *passim*.

[6] Pa. Const. declaration of rights § 5 (1776); *accord*, Del. declaration of rights §§ 1, 5 (1776); Md. Const. declaration of rights § 4 (1776); Mass. Const. preamble, pt. I, art. 7 (1780); N.H. Const. pt. I, arts. 1, 8, 10 (1784); Vt. Const. ch. 1, §§ 5-7 (1777); Va. Const. bill of rights § 3 (1776); U.S. Const. preamble (1789).

[7] *United Public Workers v. Mitchell*, 330 U.S. 75, 114 (1947) (Black, J., dissenting).

[8] *Cf.* B. Barry, *Political Argument* ch. vi (1965).

society may fairly compete and are not enacted with the purpose of assisting one particular group in its struggle with its political opponents."[9]

Such a system can function, however, only if the basic rules do not themselves embody or tolerate mechanisms which arbitrarily favor one group over all others in the competition to acquire and exercise political influence. Of course, the actions of government affect different individuals, classes, and interests in different and unequal ways. But there is no rational or objective means to measure these differences, or to compensate for them by weighting the political voices of some differently from the voices of others. Therefore, our system of government irrebuttably presumes — as the Supreme Court has held, time and again — that access to the political process must be available to all on an equal basis.[10]

Public-sector monopoly bargaining violates this principle of political equality for all citizens. And by granting a preferred status to government employees in the competition for scarce public resources, it undermines the very legitimacy of government itself.

Public-sector labor relations are inherently and inextricably political, and public-employee unions are among the most active and powerful political pressure-groups in the country, rivaling even the major political parties themselves. This is not a debatable point, but a consensus view. Although there is a large disparity as to the pros and cons of public-sector bargaining and on the extent to which it should be encouraged or allowed,[11] there is no doubt of

---

[9] *Hunter v. Erickson*, 393 U.S. 385, 393 (1969) (Harlan, J., concurring).

[10] *E.g., Lubin v. Panish*, 415 U.S. 709 (1974); *Kusper v. Pontikes*, 414 U.S. 51 (1973); *Dunn v. Blumstein*, 405 U.S. 330 (1972); *Bullock v. Carter*, 405 U.S. 134 (1972); *Cipriano v. City of Houma*, 395 U.S. 701 (1969); *Williams v. Rhodes*, 393 U.S. 23 (1968); *Harper v. Board of lections*, 383 U.S. 663 (1966); *Carrington v. Rash*, 380 U.S. 89 (1965); *Reynolds v. Sims*, 377 U.S. 533 (1964).

[11] D. Bok & J. Dunlop, *Labor and the American Community* 331-338, 340 (1970); M. E. Dimock & G. O. Dimock, *Public Administration* 256 *et seq.* (4th ed. 1969); K. Hanslowe, *The Emerging Law of Labor Relations in Public Employment* 115-17 (1967); R. Horton, *Municipal Labor Relations in New York City: Lessons of the Lindsay-Wagner Years* 123 (1973); F.C. Mosher, *Democracy and the Public Service* 188 (1968) (public-sector bargaining "more nearly resembles standard interest-group tactics"); M.H. Moskow, J.J. Loewenberg & E.C. Koziara, *Collective Bargaining in Public Employment* 252-77 (1970); S.D. Spero & J.M. Capozzola, *The*

(continued...)

the essentially political nature of public-sector monopoly bargaining. One early commentator observed that:

> [M]unicipal labor relations is an inherently political process. The allocation of public money and the fixing of public and managerial policies, two major functions of the labor relations process, are central political acts in any organized society.

Horton, Raymond D., *Municipal Labor Relations in New York City; Lessons of the Lindsey-Wagner Years* 123 (1973). Another spoke of the intricate interplay of political forces that public-sector bargaining was bound to produce, concluding that:

> [U]nlike the directors of a private corporation, [elected officials] ... have a ... quite separate interest: to stay in office. And they do that by maintaining a majority coalition among the electorate. The decisive factor for them is the desires, expectations, and loyalties of that coalition. In other words, and still in the positive rather than the normative sense, it may pay to play pro-union politics or it may not, depending upon the composition and attitudes of the voting constituency. If it does not, the officials can back their managers to the hilt in negotiations, and a unity of interest can prevail that parallels the usual private-sector bargaining case. But if it pays to take the pro-union route, then the mayor and his council may well find themselves in the unhappy dilemma of dual allegiance — to their subordinate executives and to their voting constituents. Furthermore, an ably led union of public employees will be fully aware of this conflict of interest and naturally will be tempted to exploit it to its own advantage: it may make extreme demands in bargaining in order to create a crisis; and it may also seek to bypass the managers in hopes of getting a back-door deal directly with city hall.

Hildebrand, George H., "The Public Sector", in Dunlop & Chamberlain, eds., *Frontiers of Collective Bargaining* 131-32 (1967) (footnote omitted).

No less an authority than former Secretary of Labor John T. Dunlop remarked regarding the far-reaching political influences of public-sector bargaining and strikes:

> Strikes among some government employees at times have been directed less against the immediate government employing agency than toward securing for the agency appropriations or grants from the politically responsible executive

---

[11] (...continued)
Urban Community and Its Unionized Bureaucracies: Pressure Politics in Local Government Labor Relations 73 *et seq.* (1973) ("municipal collective bargaining quickly becomes a political contest"); O. G. Stahl, *Public Personnel Administration* 271 *et seq.* (6th ed. 1971); D.T. Stanley, *Managing Local Government Under Union Pressure* 18, 88, 136-152 (1972); J. Steiber, *Public Employee Unionism* 193 *et seq.* and *passim* (1973); K.O. Warner & M.L. Hennessy, *Public Management at the Bargaining Table* 318 *et seq.* (1967); J. Weitzman, *The Scope of Bargaining in Public Employment* 3, 7 (1975); H. Wellington & R. Winter, *The Unions and the Cities* 24-32 (1971).

> or legislative body — that is, funds that are outside the resources of the agency. The strikes in New York City of teachers and of transport workers involved this factor, compelling the mayor and the governor to develop resources to meet the requirements of an acceptable settlement. The timing of budget making and collective negotiations in government employment is central to settlement of disputes; indeed, the failure of such coordination has been a major factor in some strikes of government employees. "It is a fundamental principle in government employment that collective negotiations and the resort to procedures to resolve an impasse be appropriately related to the legislative and budget making process."

"The Function of the Strike", in Dunlop & Chamberlain, eds., *Frontiers of Collective Bargaining* 109 (1967) (footnote omitted).

Many observers have recognized this unique character of public-sector bargaining, noting that its occurrence in a political environment inevitably results in distortions of the political process. These distortions — elected officials abandoning their posts and duties to prevent required quorums; mass electoral recall efforts; the politicization of judicial elections — have all or in tandem been writ large in Wisconsin, Ohio, and Indiana, when political leaders have challenged the special privileges granted to labor unions. For these unions — particularly in Wisconsin, where union officials offered temporary acceptance of the fiscal elements of Governor Walker's proposal in exchange for maintenance of their monopoly-bargaining and forced-dues privileges — the power to maintain their ability to engage in partisan activities such as supporting the election of sympathetic public officials, or opposing the election of unsympathetic candidates, was elevated over the immediate economic interests of those employees they purport to represent.

The union officials' goal, of course, is to render illusory the distinction between labor and management, a goal rendered inevitable when such a scheme is superimposed on a system of democratic government:

> [One of the anomalies] of collective bargaining in the public sector is that the union can often invade the management decision-making structure. Particularly in public school and junior college districts, organized teacher groups have succeeded in electing their members, relatives, or sympathizers to school and governing boards. Under these circumstances it is often impossible for the management decision-making group to hide its bargaining strategy and tactics from employees. Democratic government does allow almost anyone to run for office, but this tactic may make collective bargaining a farce.

Clark, "Politics and Public Employee Unionism: Some Recommendations for an Emerging Problem", 44 Cinn. L. Rev. 680, 686-87 (1975), **quoting** Rehmus, "Constraints on Local Governments in Public Employee Bargaining", 67 Mich. L. Rev. 919, 926 (1969).

Public-sector monopoly bargaining is, therefore, nothing less than a struggle for political power. But it is a quest for political power in which one interest group — public-sector labor unions — is granted the privilege to exercise a quasi-governmental authority over public employees. This power to control public employees carries with it the power to bring politicians, the general public, and the government, to their financial knees.

Representative government is poorly prepared to meet the political challenge of unions empowered to compel unwilling civil servants to contribute financial support to campaigns of political and ideological activism. The general public is — in political terms — a diffuse, unorganized agglomeration of individuals and groups, none of which possesses any power to coerce compliance with its demands from others. Conversely, government unions constitute compact, structured organizations with institutional continuity, political sophistication, the power to bargain for public employees who may not want their "representation," and — frequently — the special privilege of compulsion provided by forced-unionism provisions.

As one observer noted:

> [i]n the public sector employees already have, as citizens, a voice in decisionmaking through customary political channels. **The purpose of collective bargaining is to give them ... a larger voice than the ordinary citizen.**

Summers, Clyde W., "Public Employee Bargaining: A Political Perspective", 83 Yale L.J. 1156, 1193 (1974) (emphasis added). In his view,

> [o]ne consequence of public employee bargaining is at least partial preclusion of public discussion of those subjects being bargained. And the effect of an agreement [between the union and the employer] is to foreclose any change in matters agreed upon during the term of the agreement.

Id. at 1192 (footnote omitted).

On the basis of observations such as these, moreover, other careful observers have asked:

> whether the attempt to institutionalize collective bargaining procedures in government would, in effect, remove the public from any decisional role in a

> policy area that has a direct bearing on the lives of citizens.... Certainly, decisions pertaining to employee job interests, through their effects upon cost and services, are crucial to the public as well as to the employees. The problem can be expressed in the form of the following hypothesis: the "professionalization" of collective bargaining will intensify the forces of bureaucracy and elitism in government, and result in a further erosion of the citizen's capacity to govern his affairs through access to the machinery of government on a basis of equality with other citizens.

Love & Sulzner, "Political Implications of Public Employee Bargaining," 11 Ind. Rel. 18, 24 (1972).

Decades of experience under public-sector monopoly bargaining statutes demonstrate beyond question that, from a fiscal perspective, public officials are ill-equipped to cope adequately with the dangers the situation presents. Popular sovereignty ultimately rests upon the responsiveness of public officials to the demands of individuals and the voluntary associations which they form in order to advance their political and social interests. But the fact of American political life that running for popular office is an expensive proposition leads politicians increasingly to seek the support of well-financed pressure groups, especially those with large voting constituencies. Obviously, the grant of a government license to public-sector labor unions has a deleterious effect on popular sovereignty.

It is hardly a coincidence that states facing the most severe budget crises are those with long histories of public-sector monopoly bargaining. One would have to suspend his or her disbelief to conclude that public officials will routinely and resolutely defend the interests of unorganized taxpayers when confronted with the demands of government union officials who command both sizable financial resources and a politically-disciplined block of reliable votes. As Justice Stewart observed, "Those in power, whatever their politics, want only to perpetuate it."[12] And successful public-sector unions have learned how to "intertwin[e] themselves with their nominal employer through patronage-political support arrangements." Burton & Krider, "The Role and Consequences of Strikes by Public Employees," 79 Yale L.J. 418, 432 (1970). Indeed, this "intertwining" has become such a commonplace that it has been given a name: the

---

[12] *Branzburg v. Hayes*, 408 U.S. 665, 724-25 (1972) (Stewart, J., dissenting).

"Hanslowe Effect." Laws coercing union financial support have the potential:

> of becoming a neat mutual back scratching mechanism, whereby public employee representatives and politicians reinforce the other's interest and domain, with the individual public employee and the individual citizen left to look on, while his employment conditions and his tax rate and public policies generally are being decided by entrenched and mutually supportive government officials and collective bargaining representatives over whom the public has diminishing control.

Hanslowe, K.L., *The Emerging Law of Labor Relations in Public Employment* 115 (1967).

In the private sector, the "Hanslowe Effect" takes the form of the "sweetheart" contract. But it is hardly as insidious and dangerous there as it is in government employment. In the private sector, market forces of supply and demand, and the ever-present necessity to make a profit, all insure that most employers will resist unreasonable union demands in collective bargaining. Thus, union officials generally remain on one side of the bargaining table, and the employer on the other.

In the public sector, conversely, the political nature of monopoly bargaining, the political aspirations of public officials, and the political activism of government unions all conspire to establish a curiously inverted condition. With politicians actually or potentially beholden to unions for political support, the unions come in fact to occupy the advantageous position that private employers appeared to possess before the law prohibited the company union. That is, the union officials in effect sit on **both** sides of the bargaining table. Moreover, because there is no necessity that public services show a profit, the resistance of public officials to union political pressures is even further reduced. The lack of effective market checks, in addition to the "Hanslowe Effect," thus makes the danger from government union power a critical, and perhaps fatal, threat to control of elected and appointed public officials by the taxpaying public.

Public-sector monopoly bargaining promotes the ability of unions to exchange dollars and votes for special political influence at the expense of society in general. It causes precisely the corruption, the perversion of the political process, that this Congress has repeatedly sought to avoid through various campaign-finance "reform" schemes: "the integrity of our system of representative democracy is undermined" "[t]o the extent that large contributions are given to

secure political quid pro quos from current and potential office holders."[13] And the exercise of this power has led to the fiscal crises faced by many states and their municipal governments.

It has been a staple of labor law statisticians for decades that, while private-sector unionization rates — where market forces operate to impose some level of economic discipline — have declined, government-employee unionization rates have been on a steady increase.[14] In 2008, nearly 41% of all government employees (federal, state, and local) were unionized,[15] and government unionization was 60% or more in seven states.[16] Also in 2008, residents of those states paid an average of a 22% higher share of their income in state and local taxes than residents of states which have below-average public-sector unionization.

Moreover, in fiscal 2008, eight of the ten states with the most long-term debt as a share of personal income had government unionization rates exceeding 50%.[17] In contrast, also in that year, each of the ten states with the lowest long-term debt as a share of personal income had public-sector unionization rates below the national average. In five of these least-indebted states, public-sector unionization was less than half the national average.

States, cities, towns, and counties across the United States are facing their worst fiscal crisis since the Great Depression. It is clear that eliminating the special monopoly-bargaining privileges granted to labor unions in government wherever they are currently authorized is a critical part of the solution to the problem of putting state and muncipal fiscal houses in order.

---

[13] *Buckley v. Valeo*, 424 U.S. 1, 26-27 (1976).

[14] Most recent statistics show that, for the first time, such rates declined slightly in 2010.

[15] Hirsch, Barry T., and David A. Macpherson, "Union Membership, Coverage, Density, and Employment Among Public Sector Workers, 1973-2010," available at http://www.unionstats.com/ (last accessed on 14 April 2011).

[16] Hirsch and Macpherson, "Union Membership, Coverage, Density and Employment by State, 2008," available at http://www.unionstats.com/ (last accessed on 14 April 2011).

[17] New York Citizens Budget Commission, "In the Danger Zone: A Comparative Analysis of New York State's Long-Term Obligations" at 3, Table 1 (March 2010).

Committee on Oversight and Government Reform
Witness Disclosure Requirement – "Truth in Testimony"
Required by House Rule XI, Clause 2(g)(5)

Name: MARK A. MIX

1. Please list any federal grants or contracts (including subgrants or subcontracts) you have received since October 1, 2008. Include the source and amount of each grant or contract.

NONE

2. Please list any entity you are testifying on behalf of and briefly describe your relationship with these entities.

THE NATIONAL Right to Work Committee.
I am PRESIDENT of the Committee.

3. Please list any federal grants or contracts (including subgrants or subcontracts) received since October 1, 2008, by the entity(ies) you listed above. Include the source and amount of each grant or contract.

NONE

I certify that the above information is true and correct.
Signature: [signature]

Date: 4/13/11