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COMMUNIQUE

CHANGING FACES OF THE U.S. SUPREME COURT

LABOR WAITS WITH BAITED BREATH FOR NEW PRESIDENT TO FILL SPOTS

By Daniel Cunningham

When conservative Supreme Court Justice Antonin Scalia died earlier this year, public sector unions got an "eleventh-hour" reprieve from the gallows. And while they slipped the knot this time, the hangman lies in wait.

Chief Justice John Roberts' Court was about to decide a case with potentially lethal outcomes for organized labor: Friedrich v. California Teachers Association. With the Court deadlocked 4-4 on the issue, Scalia's swing vote would have been the deciding one.

It began in 2013 when the ultra-conservative Center for Individual Rights (CIR) filed the lawsuit on behalf of Rebecca Friedrich and eight of her non-union collaborators. They intended to reverse a 40-year-old precedent set in 1977 by Abood v. Detroit Board of Education saying that public-sector employees are required to pay "fair share" fees to unions representing them. Friedrich petitioned the Court to consider Abood unconstitutional under the First Amendment.

The CIR argued, and still does, that any bargaining by public sector unions is political by nature. They put forth the fallacious and preposterous argument that bargaining for public sector workers, even for basics like pay, benefits and working conditions, is ideological, and thus fair-share fees violate freedom of speech. They maintain that all public sector employees should come under right-to-work (RTW) models. If the Friedrich suit had been upheld, non-members could have opted out of paying dues. Since by law unions are required to represent all workers affected by a contract (even the non-payers or "free-riders"), public sector unions would have lost millions of dollars. Had he lived, Scalia almost certainly would have used his swing vote to tip the deadlocked Court in favor of Friedrich's petition. Political pundits had already drafted labor's obituary, and many heard the bells beginning to toll for the last great bastion of organized labor — public sector unions. But fate weighed in when Scalia breathed his last.

On June 28, 2016, the Friedrich case was finally laid to rest when the Court denied a petition for rehearing of the split decision. But it is hard to kill a bad thing. Like Rasputin and Richard Nixon, they just keep coming back. The CIR issued an immediate press release following the Court's denial for rehearing that said: "…We will look for other opportunities to challenge union dues law…"

What it's Really About

The Friedrich's Case was only the latest incarnation of right-wing efforts to destroy unions, and make America a right-to-work-for-less (or a right-to-starve) country. It has nothing to do with freedom of speech. It's part of a strategy to annihilate unions.

Since the advent of the Roberts Court, only corporations have a guarantee of free speech in America. The Supreme Court has been mostly conservative since Ronald Reagan was in office. But under Chief Justice Roberts (appointed by George W. Bush), the Court has become increasingly political and ideological, and their decisions conform more and more to the thinking of the radical right. The Court's conservative bloc has consistently served corporate interests at the expense of the constitutional demand that the Supreme Court hold fairness and impartiality above all else. In recent decisions, it struck down laws for campaign financing limits, and laws limiting pharmaceutical companies from selling private prescription data kept by physicians.

Most troubling for organized labor are the decisions favoring anti-union corporate cabals. The Court voted yes to two recent petitions — Knox v. SEIU in 2012 and Harris v. Quinn in 2014, both aimed at strangling union revenue streams. Both petitions were aimed at putting a burden on unions to have members opt in to paying dues to the unions that represent them as opposed to having non-members opt-out.

Is Hope Alive?

Conservative groups currently are filing dozens of petitions against labor-friendly laws. Had Hillary Clinton prevailed in November, her replacement for Scalia would have tipped the Court in a more moderate direction. Her selection might have removed the threat against Abood altogether, at least in the short run. Depending on the longevity of the other justices, we could have had the most labor friendly court in decades. But Donald Trump is the President-elect.

His replacement for Antonin Scalia means the Supreme Court once again will be controlled by Republican and Conservative appointees. Future petitions like Friedrich are likely to find favor on the new Court. On top

of that, Justice Anthony Kennedy, who has been a voice of moderation, is 80 years old; and two of the remaining liberal Justices, Ruth Bader-Ginsberg and Stephen Breyer, are 83 and 78, respectively. If Trump also gets to replace either of these, the Court will be solidly conservative, or reactionary, for years to come.

"With these three justices in or near their 80s, any successor named by Trump could shift the philosophical makeup of the nation's highest court, which most likely will not bode well for labor," said Local 1180 First Vice President Gina Strickland. "This is a scary time for unions, and quite honestly, Americans in general." Trump's initial appointees to various positions within his Cabinet already show him as an anti-union president, thereby not giving labor tremendous hope for his Supreme Court appointees either.

Recent news reports indicate that President-elect Trump has narrowed potential nominees to three or four, and will announce quite soon.

If he makes an announcement anytime soon, this would be the quickest any transition team has moved in recent years on a nominee. During the campaign, the direction of the Supreme Court was a hot topic amongst voters, many of whom expressed concern about how decisions would be rendered on controversial issues like transgender bathroom use, religious liberties, the death penalty, and criminal justice issues.

While concerns about these issues are most definitely valid, labor has its other concerns. The voices of labor leaders past are starting to echo across the centuries, warning of a return to the dismal working conditions they fought and died to eradicate — slave wages, fatal working conditions, child labor, and the sweat-shop model.

With the Supreme Court of the United States deciding between 70 and 80 cases a year, that's quite a few decisions sitting in the hands of what most likely will be a right-tilting court.

Local 1180 President Arthur Cheliotes spoke of troubled waters ahead. "Our nation is already discredited for human rights violations, including fewest protections for workers of most western nations." He provided some historical prospective as well, saying: "The labor movement never had it easy in this nation. We can now expect a Supreme Court that will eliminate unions as we know them."

Cheliotes told of a labor law decision in 1806 when cordwainers (shoemakers) tried to organize. "The workers asserted that the master shoemakers' control over their laborers was a form of wage slavery; much like the tyranny colonists had fought against. The Court ruled that organized workers hampered industry and threatened the economy."

Cheliotes now has an understandably unfavorable forecast in the wake of the election result. "We can expect appointments by a Republican president and Congress who share the Cordwainer Court's opinion, and that doesn't bode well for organized workers."

Hope is still alive, but currently on life support.

Right To Work: Origins & Implications For American Workers

In 1947, Congress enacted the Taft-Hartley Act (THA), overriding a veto by President Harry S. Truman. Taft Hartley gutted The Wagner Act of 1935, signed into law by President Franklin D. Roosevelt. The Wagner Act provided the following freedoms and safeguards: prohibited management, or any other, to interfere, restrain or coerce employees in their rights of freedom of association; guaranteed labor organizations' right to bargain collectively for wages and working conditions, prohibited interfering with the formation or administration of any labor organization; outlawed discriminating against employees for supporting or encouraging labor organization; and prohibited discriminating against employees who file charges or testify. It also penalized anyone, on either side of the spectrum, for unfair labor practices.

Easy to see why the anti-union interests dedicated to a powerless and voiceless workforce would use any means to de-fang the Wagner Act. They used all the standard weapons in their arsenal: fear, intimidation, deceit and bribery. They used fear of integration in the racist South and fear of Communism at the height of Cold War paranoia. They succeeded in passing Taft Hartley, and giving birth to the RTW movement. Today, the prevailing winds favor RTW and 26 state legislatures have now opted for right-to-work provisions. Twenty-four are considered non-RTW states.

Wondering What Life is Like Under RTW?

While statistics differ, extensive sampling by statisticians Shierholz & Gould paints a rather bleak picture. Their three-year study (2010-2012), supported by Bureau of Labor Statistics data, found the following: workers in non-RTW states are 2.5 times as likely to be in a union or protected by a union contract. Average hourly wages are 15.8 percent higher in non-RTW states than in RTW states. The AFL-CIO website recently published the following statistics, also derived from the Bureau of Labor Statistics database: Poverty rates are higher in states with RTW laws (15.3% overall and 21.4% for children), compared with poverty rates of 12.8% overall and 18% for children in states without these laws. The infant mortality rate is 12.4% higher for RTW states than in non-RTW states. States with RTW laws spend 32.5% less per pupil on elementary and secondary education than in non-RTW states. The rate of workplace deaths is 49% higher in states with Right to Work laws, according to data from the Bureau of Labor Statistics. This begs the question as to what rights are being protected under RTW laws. Not the rights of the little guy or those of working people, and definitely not the right of poor- and middle-class workers to afford a decent lifestyle.

Unions Need to Fight

In 1961, Martin Luther King said: "In our glorious fight for civil rights, we must guard against being fooled by false slogans, such as 'right to work.' It is a law to rob us of our civil rights and job rights…Wherever these laws have been passed, wages are lower, job opportunities are fewer and there are no civil rights. We do not intend to let them do this to us. We demand this fraud be stopped. Our weapon is our vote."

How prophetic. If King were alive today, however, he might conclude that organized labor has yielded to demands of labor peace without the concomitant guarantee of labor justice. Perhaps it's time for unions to stop relying on tepid politicians and get back to the lifeblood of the movement — grass roots campaigns launched in solidarity with other unions. King knew that if they could divide the movement, then it would surely fall. It's time for labor to stand together — public sector and private sector unions alike. It's time for members to stay active and get involved.