Testimony of David R. Osborne
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Public Hearing on HB 950
Before Pennsylvania House Labor & Industry Committee
The Honorable Jason Dawkins, Chair
The Honorable Ryan E. Mackenzie, Republican Chair
April 25, 2023; 9:00am

Chairmen Dawkins and Mackenzie:

Good afternoon. Thanks to Chairmen Dawkins and Mackenzie for the invitation to testify on this resolution, and thanks to the rest of the committee for your attention to this issue.

My name is David Osborne; I am Senior Fellow for Labor Policy at the Commonwealth Foundation for Public Policy Alternatives, a free-market think tank that advances policy ideas and proposals to help all Pennsylvanians flourish.

Last week, several legislators introduced HB 950 as a joint resolution that would, according to the co-sponsorship memo, "cement" or "enshrine" the "fundamental right to organize and collectively bargain." It is also clearly intended to prevent the General Assembly from enacting a Right to Work law in Pennsylvania. The bill language was taken verbatim from the Illinois state constitutional amendment narrowly approved last year.

There are many potential dangers in HB 950. This is an ill-conceived, poorly worded, and ultimately self-destructive bill that will undermine the ability of the General Assembly to do its job, invite expensive litigation against the commonwealth and every state and local government, and permit collective bargaining agreements to supersede countless state laws. It will unintentionally hurt the employees we all want to help.

Regardless of the merit of the intent behind it, HB 950 is not the right vehicle.

Introduction

I'd like to focus on some of the major flaws that are obvious from the face of the bill. But before I get into specifics, you need to be aware of what HB 950 is asking of you as legislators. The second sentence begins: "No law shall be passed." Take notice of it and what follows, because in voting for it, you are waiving your right to legislate in at least one very important realm of human affairs—and, by its terms, you will be completely unable to fix problems that may result from HB 950. Put simply, this amendment opens a door that, by design, *you will be unable to close*.

HB 950 is not about Right to Work

First, HB 950 isn't just about Right to Work, as proponents have suggested. Instead, by its own terms, HB 950 applies to *any employee*, public or private. That means HB 950 will apply not just to steelworkers and pipefitters, but to every public employee: state executive branch employees, county and borough workers, teachers and school district staff, judicial clerks, parking meter attendees—anyone we can call an "employee" of anyone else. Even your legislative staff could unionize against you under HB 950.

In fact, for most *private*-sector employees—including the steelworkers and pipefitters—this bill would do absolutely nothing. That's because most private-sector employers are already covered by the federal National Labor Relations Act ("NLRA"), which will preempt any conflicting state laws or constitutional provisions, and Pennsylvania is already a compulsory union state. Private-sector unions and employees would have little to gain from HB 950, and I'd suggest that they would be far better served if this committee were to focus on growing our economy and making Pennsylvania more attractive to out-of-state businesses.

HB 950 is not about good governance

Second, HB 950 would surrender state and local government policy to unelected, unaccountable union executives. HB 950 casually includes a new "fundamental right" to organize and collectively bargain, as well as an absolute prohibition on the General Assembly from passing any law that "interferes with, negates or diminishes the right of employees to organize and bargain collectively." Because this is a state constitutional amendment, it would supersede any state laws passed by the General Assembly, and not just on labor issues.

In fact, whether it was intentional or not, this language effectively "constitutionalizes" nearly everything public-sector unions do. Think: if the government can't lift a finger to even "diminish" the right to organize or bargain, then every organizing campaign, strike, or collective bargaining agreement trumps any state law, and unions never lose another battle. Union executives will be more powerful than any lawmaker or elected body.

Immediately after HB 950's language is placed in the state constitution, we'll see a flood of union lawsuits arguing that statutes over everything from public education, pensions, the budget, and public health and safety arguably "interfere with" or "diminish" union executives' ability to come up with their own preferred collective bargaining agreements. Unending strikes, union coercion, and union destruction of property will be constitutionally protected.

Yet, again, it will be impossible for the General Assembly to correct any of these problems because HB 950 waived the General Assembly's right to pass laws that in any way "interferes with, negates or diminishes the right of employees." You've abrogated your authority to correct any resulting imbalance, address any unintended consequences, or even regulate extremely harmful union conduct.

During the pandemic, the American Federation of Teachers ("AFT")—the national affiliate for Philadelphia's and Pittsburgh's teachers unions—demanded that Congress provide not just masks and other health-related resources, but another $750 billion in new federal funds for state and local education spending. But AFT was unwilling to give anything in return; AFT insisted on keeping schools closed, suspending teacher evaluations, reducing class sizes, and eliminating student evaluations during the pandemic.

How would the General Assembly resist such a demand from a public-sector union with HB 950 in place? Wouldn't denying their request—or spending less than $750 billion, as Congress did—be "interfering with" or "diminishing" the ability of public employees to bargain over wages, conditions of employment, and workplace safety? These issues are very much alive in the school spending context, where the Philadelphia Federation of Teachers ("PFT") argued that "[t]he lack of funding has had a direct and adverse impact on the goals and objectives of the PFT."

HB 950 is not about collective bargaining

Third, HB 950's broad language extends collective bargaining beyond its place in existing law; this is not collective bargaining as we know it. Never before have employees been permitted to bargain over what HB 950 calls "economic welfare and safety," terms not defined by HB 950. This, together with the broad definition of "employee" that would allow even management-level employees to unionize, gives unions unprecedented access to policymaking tools and no real counterbalance in government.

Collective bargaining, at its best, is like a game of football between two, equally matched teams. The hope is that close competition will result in the best possible outcome, with either team doing as much as it can to close the game out. One team has to win, but we want it to be a really close game.

HB 950 would turn union executives into 1994's Penn State team, with Kerry Collins at quarterback, Ki-Jana Carter at running back, and Bobby Engram at wideout. And it would turn the government into the Thiel College Tomcats team, but force Thiel to play without any equipment. It's not even close.

HB 950 is not about helping employees

Finally, and perhaps most important to this committee, real-life employees will be hurt by HB 950. Nowhere in HB 950 is there anything protecting individual rights of public employees. The Public Employe Relations Act ("PERA"), for example, protects individual employees' right to join a union but also refrain from joining a union, 43 P.S. § 1101.401; it lays out an election process that includes notice and secret ballot mechanisms, *id*. at § 1101.605; it preserves an individual's right to present grievances directly to their employer, *id*. at § 1101.606; and it makes union restraint or coercion of public employees an unfair labor practice, *id*. at § 1101.1201(b).

Under HB 950, union executives will be allowed to organize, campaign, bargain, and strike with no regard for how it impacts individual employees.

Not only is HB 950 silent with respect to these individual protections, but it brazenly permits unions to make union membership a condition of employment, something that hasn't been legal since the "closed shop" 100 years ago. This requirement undoes decades of protections for employees that would force them to be union members and to pay dues even against their own religious and ideological values.

Not coincidentally, this portion of HB 950 will also be ruled unconstitutional by our federal courts, which have recognized that employees cannot be forced to become union members as a condition of employment. *Kabler v. UFCW 1776KS*, No. 1:19-CV-395, 2020 WL 1479075, at *3 (M.D. Pa. Mar. 26, 2020) ("*Janus* clearly would prohibit an employer from forcing non-union members to join a union as a precondition to their accepting public employment.").

For private-sector employees, this arrangement would be illegal and preempted under the NLRA, which prohibits any union membership requirements. 29 U.S.C. § 158(a)(3); *see NLRB v. Gen. Motors Corp.*, 373 U.S. 734, 740 (1963) (noting Congress's intent with the Taft-Hartley Act to address "the most serious abuses of compulsory unionism . . . by abolishing the closed shop.").

Conclusion

Turning unionization into a super-constitutional entitlement has only been done once—late last year, in Illinois—and the results have yet to be realized. You should see HB 950 for what it is: a boon to union executives who want to run state and local governments but a harm to employees who rely on you to preserve and respect individual rights.

Once you open this door, you can't close it.

Thank you. I would be happy to address any questions you may have.