

May 11, 2009

Senator Tom Harkin (D-IA)
Member of the Senate Health, Education, Labor and Pensions Committee
731 Hart Senate Office Building
Washington, DC 20510

Representative George Miller (D-CA)
Chairman of the House Education and Labor Committee
2205 Rayburn House Office Building
Washington, DC 20515

Re: Investor Support for S. 560 and H.R. 1409

Dear Senator Harkin and Representative Miller,

We, the undersigned investors representing \$372 billion in assets under management, are signatories of the United Nations-sponsored Principles for Responsible Investment (PRI).¹ The PRI is a network of global investors who recognize that environmental, social and governance issues can affect the performance of investment portfolios. As long-term investors seeking both sustainable financial performance and the protection of human rights, we are writing to express our support for the Employee Free Choice Act (EFCA; S. 560 and H.R. 1409).

As investors, we understand that constructive and positive labor relations are essential for improving corporate performance, efficiency and workplace safety. Effective partnerships between employees and employers enhance productivity and corporate loyalty, enabling companies to attract and retain skilled staff in order to better drive corporate innovation. A 2006 study by the International Labour Organization (ILO) found that the OECD economies that are the highest economic performers are those with high union density and a high level of cooperation between labor and business interests.² We believe the proposed legislation would help balance the relationship between worker and employer in the U.S., and better protect workers when they face unlawful conduct by employers while exercising their globally-recognized workplace rights.

The freedom to form or join a union of one's choice and to bargain collectively for the terms of employment are fundamental human rights enshrined in the U.N. Universal Declaration of Human Rights and the core conventions of the ILO.

Human rights organizations have pointed with concern to critical gaps between U.S. law and the ILO conventions, a gap that, in our view, can create risks for both employees and employers. We believe that the Employee Free Choice Act will help to bridge that gap, and to align U.S. law more closely with international norms.

An Economic Imperative

The Economic Policy Institute notes that the stagnation of average wages, despite the rise in productivity over the past few decades in the U.S., is linked in large part to the decline in union density. As unions declined, both union and non-union workers lost the economic benefits of collective bargaining. At the

¹ For more information, please see: <http://www.unpri.org>.

² "In Search of the Optimal Labor Market Policies," by Peter Auer, International Labour Organization, 2006.

same time, investors have witnessed executive compensation skyrocket. These trends have contributed to dangerous and unprecedented disparities in wealth and income in the United States.

In the face of a global economic collapse born largely in the U.S. market, a key component to a global recovery is strengthening the purchasing power of American workers. Today, consumer activity accounts for roughly 70 percent of the U.S. economy. For many years, U.S. workers sustained their consumption through debt, yet such debt-driven consumption is clearly not sustainable. Workers need to be adequately rewarded for their productivity, and earn the income they need to purchase basic goods and services.

The decline in unionization in the United States, exacerbated by a variety of anti-union responses from companies and weaker U.S. labor law, has damaged the fragile relationship between management and employees and depressed the prospects for sustained economic recovery.

Benefits for Companies

Despite strong opposition to the Employee Free Choice Act from some U.S. businesses, unionization can have strong long-term benefits for individual companies. Studies have shown that union-represented employees have lower turnover rates than non-union employees, leading to lower training and hiring costs, and a more experienced workforce.³ This partly explains why unionized workforces are associated with higher productivity gains in certain sectors.⁴ In addition:

- A study of 750 large, publicly traded firms found that companies with the best labor practices provided returns to shareholders that are three times greater than those of companies with weak practices.⁵
- A study of the importance of “intangible” factors revealed that a company’s quality of human capital is one of the four most important determinants of a firm’s future financial performance.⁶
- The presence of unions often helps to ensure that workplaces are free of other labor and human rights abuses, such as child and forced labor.
- In unionized workplaces, employee health and safety are typically improved, and workers have a collective voice that can push for operational and production improvements with less fear of retaliation.

As fiduciaries with broadly-diversified portfolios, we must be cognizant of these trends and their impact on our investments. We believe that an environment where labor rights are respected and workers are able to negotiate with management at arms-length often provides fertile ground for future business growth.

The Current Climate for Unions in the United States

Based on our engagements with a wide spectrum of employers across industries on workplace standards and labor rights issues, we find that U.S. companies often engage in a range of anti-union tactics which, though often legal, clearly chill the exercise of freedom of association and the right to collective bargaining. “Captive audience meetings,” “predictions” of workplace closings, and prohibitions of union organizers at work sites are commonplace in the U.S. in our experience. The ILO and U.N. Global

³ *What Do Unions Do?* by Richard Freeman and James L. Medoff, Basic Books, 1984.

⁴ “What Do Unions Do to Productivity? A Meta-Analysis,” by Christos Doucouliagos and Patrice Larouche, *Industrial Relations* 42(4), 2003.

⁵ *The Human Capital Edge*, by Bruce Pfau and Ira Kay, McGraw-Hill, 2002.

⁶ *Invisible Advantage: How Intangibles are Driving Business Performance*, by Jonathan Low and Pam Cohen Kalafut, Perseus Publishing, 2002.

Compact believe these practices are not in accordance with “freedom of association”: “Employers should not interfere in workers’ decision to associate, try to influence their decision in any way, or discriminate against either those workers who choose to associate or those who act as their representatives.”⁷

Under the existing National Labor Relations Act, employers in the U.S. have a statutory right to express their views during a union campaign, so long as they do not interfere with employee free choice. This is where we believe the current workplace laws regarding worker organizing and unionization unacceptably tilt towards the employer. Prominent human rights organizations agree with this assessment. In an August 2000 report, Human Rights Watch found that “freedom of association is a right under severe, often buckling pressure when workers in the United States try to exercise it.”⁸ The report concluded that “workers’ freedom of association is under sustained attack in the United States, and the government is often failing its responsibility under international human rights standards to deter such attacks and protect workers’ rights.”⁹

Workers, Not Employers, Should Decide If and How They Join a Union

As the law now stands in the U.S., it is employers—not workers—who decide what method may be used for unionization (either majority sign-up or secret ballot election). We believe workers should have the right to choose how they want to form a union, just as they have that right in dozens of countries around the world. (The attached Appendix A provides more detail on the international prevalence of the majority sign-up or “card check” process for unionization.) In reality, we believe that a choice of methods is necessary and appropriate, since there is credible evidence that the secret ballot process has been abused in the U.S.

We therefore add our names to the growing list of economists, non-governmental organizations, academics, and businesses that support the Employee Free Choice Act and urge its speedy passage.

Sincerely,



Daniel F. Pedrotty
Director, AFL-CIO Office of Investment
AFL-CIO Employees Staff Retirement Fund



Conrad MacKerron
Director, Corporate Social Responsibility Program
As You Sow Foundation



Michael O'Sullivan
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⁷ *The Labor Principles of the United Nations Global Compact: A Guide for Business*, by the ILO and UN Global Compact, 2008, p. 15.

⁸ *Unfair Advantage: Workers’ Freedom of Association in the United States Under International Human Rights Standards*, by Human Rights Watch, August 2000, p. 10.

⁹ *Ibid.*, p. 12.



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Appendix A: Global Majority Sign-up Provisions

The following countries allow workers to join unions through either an automatic sign-up process through centralized bargaining, or a majority sign-up process very similar to the one highlighted in the EFCA legislation:

Argentina, Austria, Bahamas, Belgium, Brazil, Canada (provinces of Manitoba, New Brunswick, Prince Edward Island, Quebec, and federal jurisdiction), Denmark, Dominican Republic, Ecuador, El Salvador, Fiji, Finland, France, Germany, Hungary, Indonesia, Ireland, Israel, Italy, Japan, Luxembourg, Mongolia, Netherlands, Norway, Portugal, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Trinidad and Tobago, Turkey, the United Kingdom, and Uruguay.

Additionally, we believe the majority sign-up process highlighted in the current EFCA legislation is a fair and reasonable one, since many other nations recognize unions through a card check sign-up process with one-third of employees or less indicating their support to form a union. They include:

Bahrain (no majority support needed), Costa Rica (33%), Dominica (20%), East Timor (10 workers), Guatemala (25%), India (10-15%, depending on state), Morocco (35%), New Zealand (15 workers), Panama (40 workers), Peru (20 workers), and Thailand (20%).

Japanese employers must bargain with all unions, even if they represent a single employee.

And in the U.K., as a result of the 1999 Employment Relations Act, its Central Arbitration Committee can certify unions solely on the basis of a majority sign-up process without an election.

Notes

Argentina: Union representation automatically granted without showing of majority support through centralized bargaining (automatic representation). Source: Lesley O'Connell, "Collective Bargaining Systems in 6 Latin American Countries: Degrees of Autonomy and Decentralization," Inter-American Development Bank, May 1999.

Austria: Automatic representation. Source: Jelle Visser, "More Holes in the Bucket: Twenty Years of European Integration and Organized Labor," 26 *Comp. Lab. L. & Policy J.* 477, 2005.

Bahamas: Employers are required to recognize a union when more than half of the employees sign recognition cards (majority sign-up). Source: Statutes of the Bahamas, Chapter 321 Industrial Relations, Part III Recognition of Trade Unions, 1 March 1971.

Bahrain: No demonstration of majority support needed to establish a union and demand recognition. Source: Ministry of Labour of the Kingdom of Bahrain, Trade Unions Law, enacted in 2002; Heba F. El-Shazli, Middle East and North Africa Regional Program Director of the American Center for International Labor Solidarity (Solidarity Center), interview by American Rights at Work, 30 July 2008.

Belgium: Automatic representation. Source: Franz Traxler, "Bargaining (De)Centralization, Macroeconomic Performance, and Control Over the Employment Relationship," *British Journal of Industrial Relations*, 41:1, March 2003.

Brazil: Automatic representation. Source: O'Connell 1999.

Canada: Majority sign-up is the recognition procedure in five jurisdictions: federal jurisdiction, Manitoba, New Brunswick, Prince Edward Island, and Quebec. Source: John Logan, London School of Economics, "International Comparison of Union Recognition and Bargaining Rights," Aug. 2008, unpublished brief on hand.

Chile: The law requires a majority vote by secret ballot, with at least 10% of the company's workers voting (in companies of 50 or more). In practice, workers do not face fierce resistance to organizing by employers. Source: U.S. Department of Labor, "Labor Rights Report: Chile," Bureau of International Labor Affairs, July 2003; Email from Teresa Casertano, Americas Regional Program Director of the Solidarity Center, to American Rights at Work, 7 Aug. 2008.

Costa Rica: Employers must recognize and bargain with the union when it demonstrates that at least one-third of the workplace is members. Source: Solidarity Center, "Union Recognition and Bargaining Rights: Americas Region," unpublished brief on hand, 2008.

Denmark: Union representation automatically granted without showing of majority support through centralized bargaining commonly practiced, though not codified into law (Automatic representation—common practice). Source: Traxler 2003.

Dominica: A union is formed when 20% of the workforce wants to organize, and unions represent nearly one-third of the workforce. Source: International Trade Union Confederation, "Internationally Recognised Core Labour Standards in the Organisation of Eastern Caribbean States (OECS)," Report for the WTO General Council review of the trade policies of the OECS, Nov. 2007; The Trade Unions Act of 1956, summary by Invest Dominica Authority of the Commonwealth of Dominica.

Dominican Republic: Majority sign-up. Source: Solidarity Center, 2008.

East Timor (Timor-Leste): 10 workers are required to register a union, and employers must bargain with registered unions. Source: Labour Code, UNTAET/REG/2002/5, Oct. 2005; ITUC 2007; U.S. Department of State, "Country Reports on Human Rights Practices," 2007.

Ecuador: Majority sign-up. Source: Solidarity Center, 2008.

El Salvador: Majority sign-up. Source: Solidarity Center, 2008.

Fiji: Majority sign-up. Source: U.S. Dept. of State, 2007; International Trade Union Confederation (ITUC), "Annual Survey of violations of trade union rights," 2007.

Finland: Automatic representation. Source: Visser 2005.

France: Employers are obligated to bargain with a union without a demonstration of membership. Source: Logan 2008.

Germany: Automatic representation—common practice. Source: Visser 2005.

Guatemala: Employers must recognize and bargain with the union when it demonstrates that at least 25% of the workplace are members. Source: Solidarity Center, 2008.

Hungary: Automatic representation. Source: Silvana Sciarra, "The Evolution of Collective Bargaining: Observations on a Comparison of the Countries in the European Union," 29 *Comp. Lab. L. & Policy J.* (2007).

India: A 1956 national convention mandates that an employer must bargain with any union that can demonstrate the support of at least 10% of the workforce (15% in some states), which the employer verifies through dues check-off. Source: Logan 2008.

Indonesia: Majority sign-up. Source: Email from Jamie Davis, Indonesia Program Director of the Solidarity Center, 21 July 2008.

Ireland: Automatic representation. Source: Sciarra 2007.

Israel: Automatic representation. Source: Collective Agreements Law, 5717-1957, 1 March 1957.

Italy: Automatic representation. Source: Visser 2005.

Japan: Employers must recognize and bargain with all unions present in the workplace, even if they only represent one employee. Source: Sumi Shin, "Global Migration: The Impact of 'Newcomers' on Japanese Immigration and Labor Systems," 19 *Berkeley J. International L.* 265 (2001).

Luxembourg: Automatic representation. Source: European Trade Union Institute's "Worker Participation" website.

Mongolia: Automatic recognition. Source: U.S. Dept. of State, 2007; Foreign Investment and Foreign Trade Agency of the Government of Mongolia, "Law on Labor of Mongolia," May 1999.

Morocco: Employers must bargain with a union that demonstrates it has the support of at least 35% of the workplace. Source: The Labor Code of Morocco, Articles 396-473; El-Shazli 2008.

Netherlands: Automatic representation. Source: Visser 2005.

New Zealand: Employers are obligated to bargain with unions once they register with at least 15 members. Source: Richard A. Epstein, "Employment and Labor Law Reform in New Zealand," 33 *Case W. Res. J. International L.* 361 (Summer 2001).

Norway: Automatic representation—common practice. Source: Traxler 2003.

Panama: 40 workers are required to register a union, and employers must bargain with registered unions. Source: Solidarity Center, 2008.

Peru: Requires a union to represent at least 20 employees to become the collective bargaining agent at that workforce. Source: U.S. Dept. of State 2007; Casertano 2008.

Portugal: Automatic representation. Source: Traxler 2003.

Slovenia: Automatic representation. Source: Logan 2008.

South Africa: The law does not specify the minimum percentage of membership required for an employer to recognize and bargain with a union. Through common practice, many employers and unions agree to recognition upon a demonstration of majority support, while other employers agree to recognize multiple unions in a workplace. Source: Logan 2008.

Spain: Automatic representation. Source: Traxler 2003.

Sri Lanka: Employers are required to bargain with a union that demonstrates it has the support of 40% of the workplace. Source: Dept. of State 2007; Email from Timothy Ryan, Asia/Europe Regional Program Director of the Solidarity Center, 16 July 2008.

Sweden: Automatic representation—common practice. Source: Traxler 2003.

Switzerland: Automatic representation. Source: Traxler 2003.

Thailand: Employers are required to bargain with a union that demonstrates it has the support of 20% of the workplace. Source: Email from Rudy Porter, Thailand Program Director of the Solidarity Center, 18 July 2008.

Timor-Leste (East Timor): 10 workers are required to register a union, and employers must bargain with registered unions. Source: Labour Code, UNTAET/REG/2002/5, October 2005. ; Dept. of State 2007.

Trinidad and Tobago: Majority sign-up. Source: ITUC, 2007.

Turkey: Automatic representation. Sural, Nurhan. "Turkey: Captive Audience Speeches in the Labor-Management Setting in Turkey," 29 *Comp. Lab. L. & Policy J.* 191 (Winter 2008).

United Kingdom: As a result of the 1999 Employment Relations Act, the Central Arbitration Committee may certify a union on the basis of majority support without an election. Source: Jared Gross, "Recognition of Labor Unions in a Comparative Context: Has the United Kingdom Entered a New Era?" 78 *Chi.-Kent. L. Rev.* 357, 2003.

Uruguay: Automatic representation. Source: Solidarity Center, 2008.