Resolution 14

ONE LAW FOR WORKERS, ANOTHER FOR BANKERS—BANKRUPTCY ABUSES AND THE UNFINISHED BUSINESS OF FINANCIAL REFORM

OUR NATION'S BANKRUPTCY LAWS are rigged against working people. We confront one side of this reality when employers file for bankruptcy as a strategy to tear up collective bargaining agreements. Too often this means for retirees, as well as workers, lost health care and lost pensions.

We see the other face of bankruptcy when young workers who face high unemployment rates after graduation struggle to pay down student debt, and learn that unlike the pension obligation owed to their parents and grandparents, their student loan debt cannot be discharged by filing for personal bankruptcy.

Meanwhile, the bankruptcy system protects the interests of Wall Street investors, corporate executives and their attorneys. Bankruptcy law shields financial engineering deals by leveraged buyout funds that leave companies more vulnerable to bankruptcy. In bankruptcy, corporate executives move quickly to replace their own compensation arrangements with new, lucrative incentives that insulate them from economic dislocation. And corporate bankruptcy attorneys often charge more than $1,000 an hour, racking up millions in fees that receive preferential payment over other creditors.

The labor movement has long stood for the principle that the financial decline of a corporation should not mean that workers' retirement security should be put in jeopardy. After auto workers at the Studebaker-Packard Corp. lost their pensions in 1963, the labor movement fought for the Employee Retirement Income Security Act to require protections for vested pension benefits. After workers at Enron lost all of their retirement savings in 2001, the labor movement fought for the Sarbanes-Oxley Act's restrictions on company stock in 401(k) plans. But today, bankruptcy law is being abused by corporations to "reorganize" by terminating pensions and retiree health benefits like United Airlines did in 2005. Workers across entire industries such as steel, mining and the airlines have seen their retirement erased in corporate bankruptcy.

Recent bankruptcy cases show the fundamental unfairness of our nation's bankruptcy laws. The giant coal companies—Peabody and Arch Coal—created Patriot Coal to shed their obligations to tens of thousands of retired miners and their families. Then Patriot filed for bankruptcy and sought to stop paying these benefits altogether. The miners whose health care had been stolen from them had worked for decades for Peabody and Arch Coal to earn their benefits at significant risk of workplace accidents and occupational diseases like black lung. Most of these workers never worked a day for Patriot Coal, a company created by Peabody Energy to spin off its unionized operations and avoid $1 billion in such "legacy" liabilities. And after this maneuver, Peabody and Arch have gone on as profitable businesses.

And then there is the heartbreaking bankruptcy story of Hostess. On two separate occasions in the 2000s, Hostess workers, represented by the Bakery, Confectionery, Tobacco Workers and Grain Millers International Union, made tremendous sacrifices to help the company emerge from bankruptcy. Yet, management did not reinvest those wage and benefit concessions back into the company. In fact, Hostess came out of bankruptcy with more than $1 billion in debt, more than it had when it first filed for bankruptcy in 2004. Struggling with unsustainable debt levels, the company improperly diverted workers' pension contributions to fund its operations and gave its CEO a 300% pay increase. When it became clear union members were going to fight these maneuvers, the company declared bankruptcy in 2012 and used Section 1113 of the U.S. Bankruptcy Code to rip up its collective agreements. Despite the threat of liquidation, BCTGM members fought back against Wall Street by striking the company—their only viable option in a bankruptcy system rigged against workers.

Now anti-worker politicians are using these same corporate tactics to betray government employees and retirees. In Michigan, Republican Gov. Rick Snyder authorized a bankruptcy filing for the city of Detroit. He appointed an emergency financial manager who is a bankruptcy attorney from the same law firm that represents Peabody Energy. Despite severe concessions by workers to keep the city afloat, the emergency financial manager forced the city into bankruptcy in a blatant attempt to end-run the Michigan constitution, which protects the pensions earned by public employees.

The labor movement demands reform of our nation's bankruptcy laws in order to protect workers from disproportionate economic sacrifice. Reform must provide better protection for unpaid wages and benefits and grant workers a separate claim in bankruptcy court for lost pension benefits. Bankruptcy reform should curb executive pay largesse by ensuring that executives do no better than ordinary workers in bankruptcy and by limiting management "incentive" compensation programs. Personal bankruptcy law should be amended to help young workers facing crushing student debts and homeowners facing foreclosure with underwater mortgages. Finally, reforms must prevent employers from using bankruptcy to abolish collective bargaining agreements at will.

The treatment of workers in corporate bankruptcy stands in stark contrast to the way "too-big-to-fail" financial institutions are treated when they face bankruptcy. During the 2008 financial crisis, the federal government ran to the rescue of Wall Street by providing $700 billion in bailout loans. For example, after A.I.G. received $180 billion in taxpayer loans, the company paid hundreds of millions in bonuses to executives in the business unit that was responsible for the firm's collapse. At the time, some argued that to not pay these executive bonuses would abridge the "sanctity of contracts."

We vow to remember the lessons of the 2008 Wall Street financial crisis that created the worst economic recession since the Great Depression. The labor movement strongly supported the Dodd-Frank Wall Street Reform and Consumer Protection Act that enacted many measures to curb abusive and speculative activity by Wall Street. However, many of its provisions remain to be implemented by government regulators. We continue to call for the full implementation of the Dodd-Frank Act, and we urge government regulators to reject the delaying tactics of Wall Street lobbyists.

The creation of the Consumer Financial Protection Bureau is perhaps the Dodd-Frank Act's most visible contribution to protecting working people from the rapacious greed of Wall Street. Since its establishment, the bureau has received more than 175,000 complaints from consumers, sought to halt predatory practices by mortgage lenders, ordered credit card companies to return $425 million to consumers and investigated shady lending practices on college campuses. We congratulate the CFPB on its work, and commit to fight any effort by Wall Street to undermine the independence and effectiveness of the bureau.

The labor movement places a high priority on implementing the remaining provisions of the Dodd-Frank Act. We strongly believe that all executive pay reforms called for by the Dodd-Frank Act must be swiftly implemented, including the disclosure of CEO-to-worker pay ratios. The SEC must act to close existing loopholes and to ensure that financial professionals providing investment advice, including brokers, owe a duty to act in the best interests of the investors for whom they are working. Regulation of the derivatives markets must be put into place as soon as possible to prevent risky derivatives trading from once again threatening the health of the real economy. Finally, bank regulators must establish an orderly liquidation process that is both workable and credible so that when a too-big-to-fail financial institution does fail, it may be unwound without triggering a systemic financial crisis.

The best way to prevent future government bailouts of too-big-to-fail financial institutions is to end too-big-to-fail once and for all. Since the financial crisis, our banking system has become even more concentrated, as failing firms have been gobbled up by big banks. Between 1935 and 1990 the three largest banks held, on average, 10% of total bank assets. Today, the three largest banks hold more than 40% of bank assets. This concentration of banking power places our entire financial system at greater risk and increases the likelihood that government will bail out Wall Street banks again in the future.

We need to make banking boring again. During the Great Depression, the Glass-Steagall Act was adopted to separate commercial banks, which take deposits and make loans for consumers and businesses, and investment banking, which entails more risky and speculative activity. The Glass-Steagall Act prohibited banks backed by government deposit insurance from engaging in overly risky activities. During the 50 years after passage of the Glass-Steagall Act, bank failures were rare and our economy generated the longest period of broad-based prosperity in our nation's history.

In the 1980s, Wall Street lobbyists pressured financial regulators to erode the firewalls between commercial and investment banking, and critical provisions of the Glass-Steagall Act were repealed entirely in 1999. It is time to end our country's 30-year experiment with financial deregulation, which has resulted in historic income inequality and stagnant economic growth. This starts with enacting a new Glass-Steagall Act to return banking to its proper role in our economy. We also need to limit concentration of the banking industry and break up too-big-to-fail financial institutions. To this end, we commend the work of Sens. Sherrod Brown, Maria Cantwell, Angus King, John McCain, David Vitter and Elizabeth Warren to reform our banking system.

But financial reform cannot be limited to overhauling our banking system. Government regulators must also provide greater oversight of the "shadow banking system" of complex financial instruments, including credit default swaps and other derivatives, hedge funds, repurchase agreements and structured investment vehicles. This shadow banking system mimics the role of banks in our capital markets without the same level of regulatory oversight. It is the fabric that binds countless financial institutions to one another and creates the interconnections that can cause systemic crisis.

Finally, it is time to rein in excessive speculation in the financial markets. Broad-based prosperity requires long-term investment, not speculative trading. We need to require Wall Street speculators to pay their fair share of taxes by implementing a financial speculation tax. A small tax on sales of stocks, bonds and complex financial instruments will raise needed tax revenue that can be invested to create jobs by rebuilding America's infrastructure. Moreover, a financial speculation tax will deter the type of casino capitalism that has become too rampant in our capital markets.

Everywhere we look in our capital markets, we see stark differences between the treatment of those with wealth and power compared to working people. The fight to restore our economy to health requires that we reform our bankruptcy laws and financial system. Workers who have played by the rules and helped create value for their employers deserve a fair shake when their employers file for bankruptcy. And we cannot ever again allow Wall Street to threaten Main Street with financial Armageddon. With these reforms, we can provide a shared prosperity for all.

Action items:

1. Launch a campaign to reform corporate and municipal bankruptcy law to protect workers' retirement security and collective bargaining agreements, and to prevent looting by corporate executives, bankruptcy attorneys and Wall Street.

2. Work with our community allies to demand personal bankruptcy relief for excessive student loans and underwater home mortgages by permitting bankruptcy judges to modify the terms of these loans just like other forms of debt.

3. Use our political voice to demand strong implementation of the Dodd-Frank Act, passage of new legislation to break up too-big-to-fail banks, and implementation of a financial transaction tax to make Wall Street pay its fair share.

4. Educate ourselves so that we do not forget the devastating consequences of lax Wall Street regulation, and to expose the unfairness of a bankruptcy system that favors corporations and creditors over workers and communities.