Resolution 1

ENACTING LABOR LAWS THAT ADDRESS THE NEEDS OF ALL WORKERS IN THE UNITED STATES

ENACTED IN 1935, our nation's basic labor law, the National Labor Relations Act, no longer fulfills its promise to U.S. workers. The law of the land still eloquently declares it "to be the policy of the United States" to encourage[e] the practice and procedure of collective bargaining and...protect[] the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection." But the law no longer furthers that policy. Immediately after the law was enacted, millions of workers exercised their newly achieved rights to build the American labor movement and the American middle class, but as the economy evolved and employer opposition became more virulent and sophisticated while the law stood still, that progress stalled and then reversed.

In fact, from its inception, the law left vast numbers of employees outside its protection.

Progress toward expanding the right to organize and bargain in the public sector that began in 1959 in Wisconsin and continued through the 1980s recently has been halted, if not reversed, in the face of a well-funded effort to blame government workers for the fiscal ills of the public sector brought on by the recent recession.

Today, federal labor law no longer fits the economy, the employment relationship or the workplace and, after almost 80 years of practice, employers, aided by the Taft-Hartley amendments of 1947 and a multibillion-dollar industry of "union-avoidance" consultants, have nearly perfected the subtle and sometimes not-so-subtle exercise of the very economic power the act was designed to counterbalance to "persuade" employees to remain unrepresented.

Employers increasingly interpose various forms of intermediaries between themselves and the employees whose labor is essential to the enterprise in order to escape legal obligations to those employees and avoid any duty to bargain with their chosen representative. While exercising control over their livelihood, employers even characterize employees as independent contractors, in an effort to deprive them of the right to organize and bargain collectively.

Twice in the last 40 years, a majority in both houses of Congress and the president have supported labor law reform legislation, but in both cases the reform was blocked by a minority in the Senate through a filibuster or threatened filibuster. More recently, a minority in the Senate frustrated with the National Labor Relations Board's carrying out of its "responsibility to adapt the Act to changing patterns of industrial life," blocked confirmation of members in a deliberate effort to deprive the board of a quorum, casting the protection of workers' rights into a state of legal limbo for a period of almost two years. It took a coalition led by the labor movement to force an end to the obstruction of executive branch administration of not only labor law, but consumer and environmental protection laws as well, clearing the path for Senate confirmation of a full five-member NLRB for the first time in a decade.

The AFL-CIO and affiliated unions together with a broad coalition of progressive allies must embark on a multiyear political and legislative campaign to obtain fundamental changes in our nation's labor laws. The campaign should be founded on the principle that vibrant organizations of working people and electoral and governance reforms are both critical components of economic prosperity and a democratic revival in

the United States, and that the former cannot be realized without the latter.

The AFL-CIO urges the introduction of a labor law reform bill in Congress as soon as possible to address the failures of the current law. Labor law reform should remedy employers' increasingly sophisticated and well-funded evasion of the intent of the original act to redress "inequality of bargaining power" and also the growing misfit between the NLRA and the modern economy and employment relationship. The reforms should speak to the critical place of labor organizations and collective bargaining in redressing growing income inequality and the resulting imbalance in our political system.

Specifically, the reforms should ensure that all workers have the right to organize and engage in collective bargaining. The protections of labor law should extend to employees who lack significant supervisory authority; workers who have been classified as independent contractors, but who have no real economic independence from the employers they serve; all government workers; and all agricultural workers. Public safety personnel and others who serve the public and those who labor in the fields should no longer be treated as second-class citizens when it comes to their workplace rights. Reform at the federal level should be coupled with reform at the state and local levels to ensure such comprehensive coverage.

The reforms should ensure that all workers and all employers know their rights and obligations by requiring that all covered employers physically or electronically post a balanced notice describing employees' rights under the applicable labor law as they are required to do under other laws.

The reforms should create a fair process through which workers can exercise their right to "representatives of their own choosing," including permitting access to the workplace by union representatives so they can speak to workers, requiring more prompt provision of a complete eligibility list, prohibiting compelled attention to campaign speech, expediting elections and routinely remedying interference with a fair election by substituting other, reliable evidence of majority support.

The reforms should guarantee that all workers who choose to be represented enjoy the fruits of that representation in the form of a first contract by providing for supervised bargaining, mediated bargaining and, as a last resort for any remaining issues not otherwise resolved, binding interest arbitration.

The reforms should ensure that the entity that holds the real authority over workers' terms and conditions of employment, even if it is not the workers' direct employer, comes to the table in bargaining.

The reforms should ensure that the National Labor Relations Board, the Federal Labor Relations Authority and all other bodies essential to the enforcement of our nation's labor laws maintain a quorum and are fully able to enforce the law at all times.

The reforms should eliminate the one-way exception to the sweep of federal labor law pre-emption that permits states to adopt so called "right to work" laws that undermine the principle of majority rule, but bars states from creating additional paths to recognition based on majority support similar to those adopted by several states for public-sector employees.

The reforms should create stronger and timelier remedies for unfair labor practices.

The reforms should not simply reaffirm a right to representation and to work under a collectively bargained agreement that is never realized by the vast majority of U.S. workers, but should expressly encourage the exercise of that right and include sufficiently strong substantive changes to make the right meaningful and real for all workers.