Label Letter
Union Label & Service Trades Department, AFL-CIO
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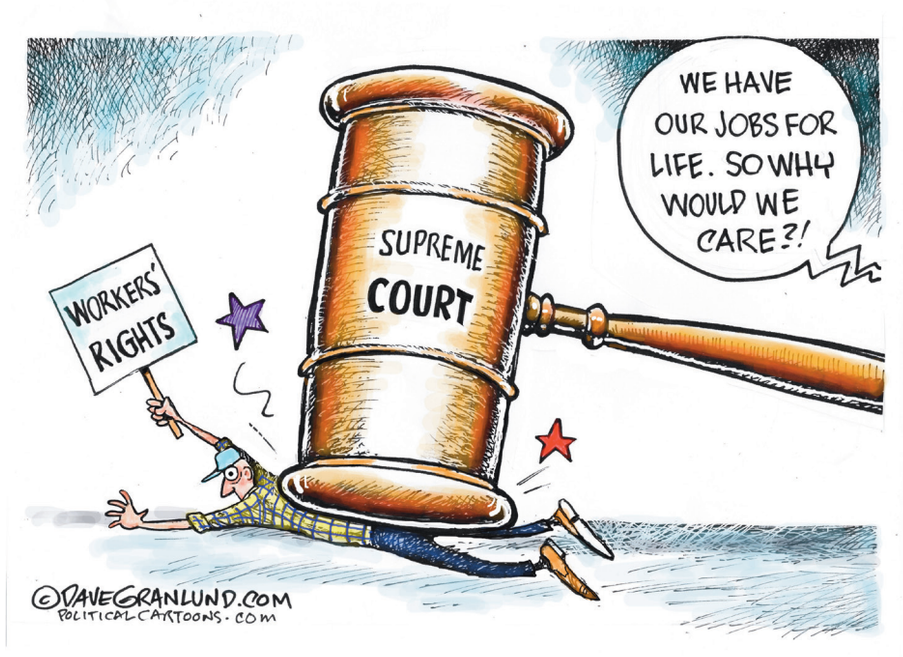
JUL-AUG 2018

Supreme Court Strips Workers' Rights in Forced Arbitration Case



On May 21, in Epic Systems v. Lewis, the Supreme Court ruled that an employer may lawfully require its employees to agree, as a condition of employment, to take all employment-related disputes to arbitration on an individual basis, and to waive their right to participate in a class action or class arbitration.

Employees of the Wisconsin-based tech firm Epic Systems sued their firm to recover overtime pay. They sought to void arbitration agreements they were forced to sign as a condition of employment which required them to pursue complaints in private arbitration, not in the courts.

The Supreme Court, in a majority decision written by the newest justice, Neil Gorsuch, sided with Epic and ruled that the 1925 Federal Arbitration Act trumped the protections for collective action contained in the 1935 National Labor Relations Act (NRLA), even though NLRA was passed by Congress after the Arbitration Act.

The decision was issued in three consolidated cases, all of which were part of a similar pattern. In each one, a worker is presented with an arbitration clause that requires all employment disputes be submitted to arbitration on an individual basis. The worker is told that if he wants to continue in the job, he will be deemed to have assented to the clause. Subsequently the worker files a class action lawsuit on behalf of himself and other workers similarly situated, alleging that the employer has violated the federal minimum wage and hour law. The employer moves to dismiss the lawsuit claiming the worker is bound by the arbitration clause and therefore is precluded from bringing a class action in a judicial or arbitration tribunal.

Employers have increasingly added group-action waivers to their arbitration clauses. Today over half of nonunion companies impose arbitration agreements on their workers, and nearly all include group-action waivers, according to the Economic Policy Institute.

In the minority dissent read from the bench, Justice Ruth Bader Ginsburg called the decision "egregiously wrong." The minority dissent argued that workers were granted significant rights under the New Deal's NLRA including the right to pursue litigation collectively, and that an employer-dictated waiver would violate it.

"Employees' rights to band together to meet their employers' superior strength would be worth precious little if employers could condition employment on workers signing away those rights," Ginsburg wrote.

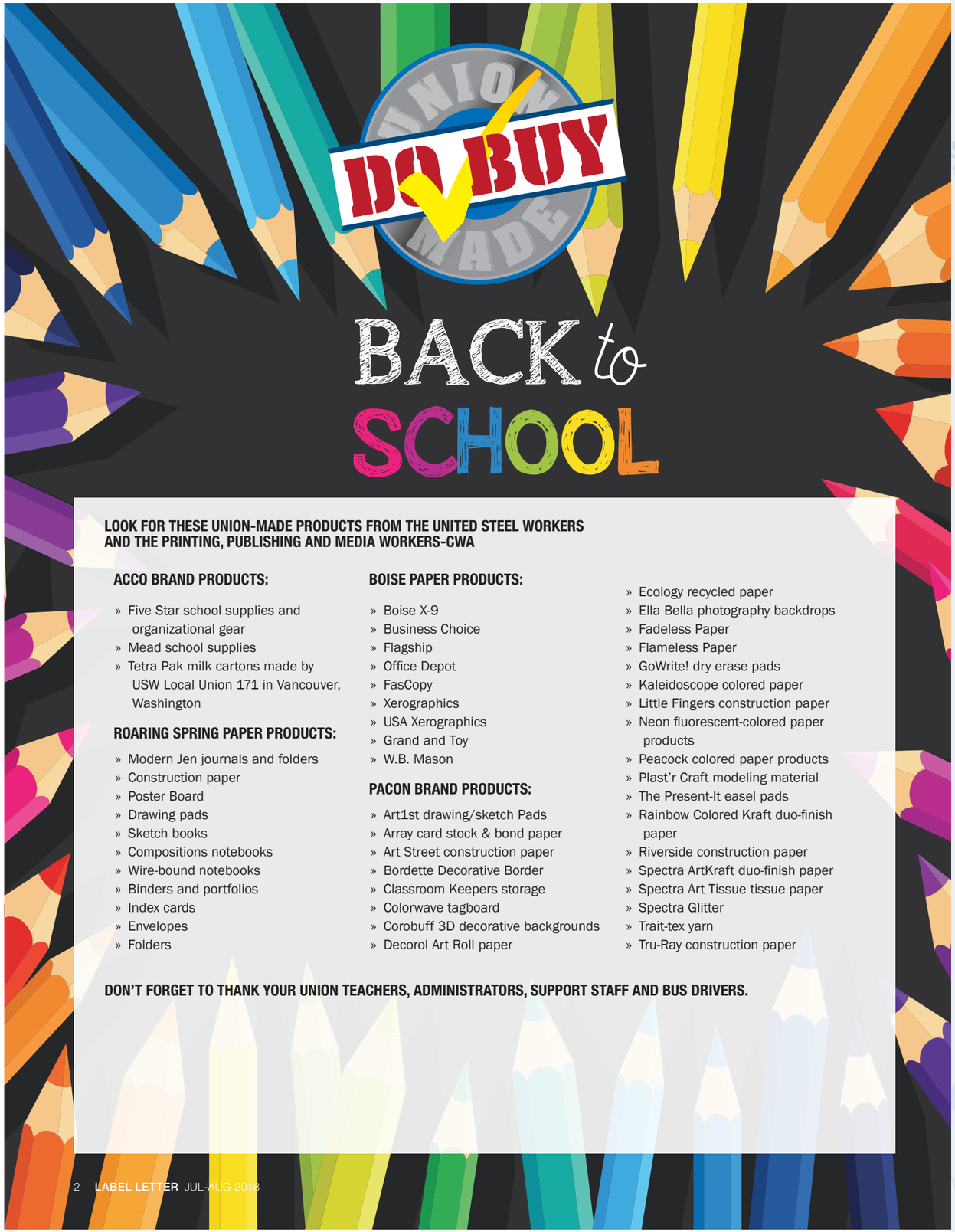
"Expenses entailed in mounting individual claims will often far outweigh potential recoveries," noted Ginsburg.

Initially, the Justice Department had joined with the National Labor Relations Board and was arguing for the workers' rights, but when the Trump Administration weighed in, the Justice Department switched sides and took a pro-business stance.

"Every American needs to know that the Trump administration sided not with the workers in this case, but with the corporations that want to strip away workers' rights," said Christine Owens, Executive Director of the National Employment Law Project. "Very few workers are willing to take on their employer by themselves and risk termination, abuse, or worse. Few workers can afford to spend thousands of dollars to pursue an individual case. Collective and class actions exist for this very reason, so that regular people can pool their claims and get a lawyer to pursue their case."

Justice Ginsburg urged Congress in the dissent to correct the court's ruling.

"Congressional action is urgently in order to correct the court's elevation of the Arbitration Act over workers' rights to act in concert," she said.



LOOK FOR THESE UNION-MADE PRODUCTS FROM THE UNITED STEEL WORKERS AND THE PRINTING, PUBLISHING AND MEDIA WORKERS-CWA

ACCO BRAND PRODUCTS:

- Five Star school supplies and organizational gear
- Mead school supplies
- Tetra Pak milk cartons made by USW Local Union 171 in Vancouver, Washington

ROARING SPRING PAPER PRODUCTS:

- Modern Jen journals and folders
- Construction paper
- Poster Board
- Drawing pads
- Sketch books
- Compositions notebooks
- Wire-bound notebooks
- Binders and portfolios
- Index cards
- Envelopes
- Folders

BOISE PAPER PRODUCTS:

- Boise X-9
- Business Choice
- Flagship
- Office Depot
- FasCopy
- Xerographics
- USA Xerographics
- Grand and Toy
- W.B. Mason

PACON BRAND PRODUCTS:

- Art1st drawing/sketch Pads
- Array card stock & bond paper
- Art Street construction paper
- Bordette Decorative Border
- Classroom Keepers storage
- Colorwave tagboard
- Corobuff 3D decorative backgrounds
- Decorol Art Roll paper
- Ecology recycled paper
- Ella Bella photography backdrops
- Fadeless Paper
- Flameless Paper
- GoWrite! dry erase pads
- Kaleidoscope colored paper
- Little Fingers construction paper
- Neon fluorescent-colored paper products
- Peacock colored paper products
- Plast'r Craft modeling material
- The Present-It easel pads
- Rainbow Colored Kraft duo-finish paper
- Riverside construction paper
- Spectra ArtKraft duo-finish paper
- Spectra Art Tissue tissue paper
- Spectra Glitter
- Trait-tex yarn
- Tru-Ray construction paper

DON'T FORGET TO THANK YOUR UNION TEACHERS, ADMINISTRATORS, SUPPORT STAFF AND BUS DRIVERS.

WALK IN MY SHOES

Jim Rihel, VA Ratings Specialist President AFGE Local 940 Philadelphia

I am a government employee. I work for the Veterans Affairs Administration (VA), as a ratings specialist, which means that I review medical evidence for benefits. I am also the local president of AFGE Local 940 in Philadelphia.

At the VA we've been hit pretty hard over the last few years. The media, lawmakers, the public, and even the president have portrayed us as lazy, unqualified workers who are somehow wrecking the Veterans Administration. It's not true, but because of the scrutiny we've endured, we've seen a lot of changes that affect our work atmosphere, like the VA Accountability Act and now the recent Executive Orders that were signed by President Trump last month.

These EOs and the Accountability Act are really scary, it is clear they are trying to strip away our ability to represent our members.

As a union representative, I've always had to get permission to use my allocated time, but now, under the EOs, I will have to get written permission to do any act of union representation. So that means, if I'm in my office and have been given permission to help Person A and then Person B walks in and needs help, I could technically get in trouble if I help them without going back and asking for permission to do so. Additionally, they may try to take away our union office space soon.

Everything they are doing affects my ability to help AFGE members. And, worse yet, in most of the Accountability cases where we are currently representing members, they are disproportionately black, or female, or veterans, or over the age of 40, or any combination there of.

Once the EOs take effect, I think that type of discrimination is going to get even worse. I believe it is going to empower management to fire people they don't like, because they can.

Already at the VA, they make changes on a whim, which causes problems for the employees. For example, last July, they changed the standards at the VA on a Friday afternoon, with no notice. When employees arrived at work on the following Monday, to new standards, management had no idea how to deal with the changes. This left the employees to attempt to figure it out on their own.

Employees at the VA are some of the most dedicated and caring people I have ever had the pleasure to work with. I've watched these people be disciplined for choosing to stay at work after their shift ends because a veteran needed to drop off paperwork and couldn't get there during normal business hours. They are dedicated to helping "their vets." And yet, they are under continuous attack from all sides.

I work as a union representative because I want to help them. They are part of my family. As an AFGE member, I have 320,000 AFGE brothers and sisters across the country that have my back. And in today's climate, we all have to stand together, regardless of the agency we work for. We must stand together or we will fall apart! ■

Spotlight the Label National Association of Letter Carriers (NALC)

The National Association of Letter Carriers is the sole representative of city delivery letter carriers employed by the U.S. Postal Service.

Since it was founded in Milwaukee in 1889, the NALC has had a long and distinguished history of defending the rights of letter carriers before abusive supervisors, unfair presidential administrations and indifferent Congresses. NALC is the only force that fights to protect the interests of city letter carriers.

On March 17, 1970, letter carriers in New York City led a general postal strike against what was then known as the Post Office Department to protest poverty-level wages. Carriers and other postal workers throughout metropolitan New York—and soon in other cities across the country—followed suit. This successful strike by nearly a quarter-million postal workers led to the Aug. 12, 1970, signing of the Postal Reorganization Act which, among other things, gave NALC the authority to bargain collectively for national agreements with the newly created United States Postal Service.

The NALC is governed both by a constitution and by the will of delegates to NALC's biennial national conventions. For day-to-day operations, NALC's Executive Council leads the union. The Council is made up of 10 resident national officers: president, executive vice president, vice president, secretary-treasurer, assistant secretary-treasurer, director of city delivery, director of safety and health, director of retired members, director of life insurance and director of the NALC Health Benefit Plan. Three trustees are also on the Council, as are the national business agents who represent the union's 15 geographical regions. ■

Workplace Democracy Act Introduced in the House and Senate Aims to Strengthen Unions

Senator Bernie Sanders (I-VT) and and Representative Mark Pocan (D-WI), along with their Democratic colleagues introduced the Workplace Democracy Act on May 9, 2018, in the House and Senate. Speaking to a crowd of union members and supporters, Sanders said, "We must no longer tolerate CEOs and managers who intimidate, threaten or fire pro-union workers, who threaten to move plants to China if their workers vote in favor of a union, and who refuse to negotiate a first contract with workers who have voted to join unions."

The legislation aims to curb corporate abuses, wage stagnation, protect workers from being penalized for organizing activity, and streamline the process for join labor unions.

Pocan, a member of the International Union of Painters and Allied Trades, spoke about the bill stating, "The Workplace Democracy Act restores real bargaining rights to workers and repeals the right to work laws like those that Governor Walker has used to undercut American workers. I'm proud to introduce this legislation with Senator Sanders and stand up for the millions of middle class families who are under attack by Republican leaders."

Rep. Donald Norcross (D-NJ), a member of the International Brotherhood of Electrical Workers and the House Committee on Education and the Workforce, said that the "biggest economic challenge of our time is that people are in jobs that do not pay them enough to live on. While corporate profits soar, working people are getting smaller and smaller shares of the wealth they create."

According to a press statement from Rep. Pocan's office, the Workplace Democracy Act would make it easier to join union in a number of ways:

It would end right-to-work for less laws by repealing Section 14(b) of the Taft Hartley Act, which has allowed 28 states to pass legislation eliminating the ability of unions to collect fair share fees from those who benefit from union contracts and activities.

Under the legislation, when a majority of workers in a bargaining unit sign valid authorization cards to join a union, they must have a union. Companies would not be allowed to deny or delay a first contract with workers who have voted to join a union. Unions would be given the right to have their voices heard through secondary boycotts and picketing and workers would have the right to know when their company spends millions of dollars running anti-union campaigns.

The bill would also stop employers from ruthlessly exploiting workers by misclassifying them as independent contractors or denying them overtime by falsely categorizing them as a "supervisor."

The legislation is co-sponsored by several Democrats, including, by Senators Tammy Baldwin (D-WI), Cory Booker (D-NJ), Sherrod Brown (D-OH), Kirsten Gillibrand (D-NY), Kamala Harris (D-CA), Patrick Leahy (D-VT), Edward Markey (D-MA), Jeff Merkley (D-OR), Chris Van Hollen (D-MD), Elizabeth Warren (D-MA), Sheldon Whitehouse (D-RI), and Ron Wyden (D-OR).

Rep. Mark Pocan (D-WI) introduced the House version of the bill. The bill is cosponsored in the House by Representatives Brendan Boyle (PA-13), Katherine Clark (MA-05), Rosa DeLauro (CT-03), Mark DeSaulnier (CA-11), Keith Ellison (MN-05), Adriano Espaillat (NY-13), Marcy Kaptur (OH-09), Barbara Lee (CA-13), Donald Norcross (NJ-01), Jan Schakowsky (IL-09), Robert C. "Bobby" Scott (VA-03), Mark Takano (CA-41), Debbie Wasserman Schultz (FL-23), and Bonnie Watson Coleman (NJ-12). ■

Put a Union Label On It!

Union Members Volunteer at Fishing Derby

This article was written by Michael Gutwig, NW Labor Press

VANCOUVER, Wash.—Union volunteers were out in force Saturday, April 14, for the annual Klineline Kids Fishing event at Salmon Creek Park. Several unions donated money to the event, and members volunteered to help kids bait hooks, untangle lines, and catch fish.

The derby is put on by the Klineline Kids Fishing Nonprofit and the Washington State Department of Fish and Wildlife. It's goal is to get more kids involved in fishing. Some 2,500 kids ages 5 to 14 and their parents attended. Kids got to keep two fish, and every child got a Zebco rod and reel. ■

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Trump Admin Attacks Federal Workers Again

The attack on federal workers continued in May when President Trump signed multiple executive orders limiting official time, making it easier to fire federal employees, and lengthening probationary periods for new employees. Each of these edicts are designed to weaken unions, federal employee compensation and civil service protections.

These, along with other moves by the Trump Administration, including imposing a contract on a union against its will, are bound to affect federal employees for the worse.

His first directive was to drastically cut "official time," which he would like to rename as "taxpayer-funded union time." Official time is the time allowed to union officials to represent all members of a bargaining union, whether they are a union member or not, in matters of interest to the workforce.

The American Federation of Government Employees (AFGE), the largest federal employee union, called the orders, "a direct assault on the legal rights and protections that Congress has specifically guaranteed to the two million public-sector employees across the country who work for the federal government."

AFGE filed a lawsuit asking that the Executive Order 13837 — slashing paid union time — be struck down by a federal court.

Executive Order 13836, directs federal agencies to renegotiate their union contracts to increase management authority to "reward high performers, hold low-performers accountable, or flexibly respond to operational needs." It also states that collective bargaining should not take more than a year.

Claiming that it takes six months to a year to remove a tenured federal employee for poor performance, and as many as eight months to exhaust any appeals, a White House spokesperson said the EO would "streamline the process." However, union representatives say it would politicize the hiring and firing of federal employees.

Finally, Executive Order 13839 would change the longstanding federal worker job security protections currently in place. Instead, workers would be subject to what amounts to an "at-will" environment. Managers would no longer be required to use "progressive discipline" and will not be held to a consistent standard of how discipline is handled. The EO shortens the timeframe for employees subject to Performance Improvement Plans (PIPs)—which provide employees a chance to improve their job performance following a poor evaluation or reprimand—to 30 days, government-wide. It currently runs between 60 and 120 days and changes the seniority rights provision replacing it with a "manager-evaluated performance ratings system. Again, union representatives believe that this order would allow managers to promote and fire at will, rather than for cause.

The National Treasury Employees Union president, Tony Reardon said that these executive orders indicate an administration threatened by workers with rights. "The truth is that these orders will disrupt workplaces of every agency, add red tape and impede quality work that taxpayers expect and deserve." ■

COALITION OF 13 UNIONS FILE LAWSUIT AGAINST TRUMP EXECUTIVE ORDERS

The Federal Workers Alliance (FWA), a Coalition of 13 Labor Unions filed a lawsuit in the U.S. District Court for the District of Columbia on June 13 and argued Trump's orders violated the rights of government workers to be represented by unions in their workplaces.

"The coalition is concerned that as systematic protections — such as representation, due process and the right to communicate with Congress — are eroded for federal employees, whistleblowers and other workers will fall prey to political corruption and extortion," the unions said.

Further, the unions' complaint stated that Trump has no authority under Congress or the Constitution to issue the executive orders. They argue that in issuing the orders, Trump attempted to rewrite portions of the Federal Service Labor-Management Relations, which was passed by congress to "strengthen and promote collective bargaining in the federal sector. It was also created as a bulwark against unchecked executive power," the complaint stated.

Randy Erwin, national president of the National Federation of Federal Employee and FWA co-chairman said, "Trump seeks nothing more than the full authority to fire anyone who disagrees with him or challenges his ideology. By limiting the rightful authority of unions to lawfully represent their members, he gets closer to instilling a culture of fear and intimidation in the Executive Branch."

The coalition has also asked the Office of Personnel Management to issue a preliminary injunction to block the orders. ■

Why are BLS Stats Misleading?

The unemployment rate "officially" reported by the Bureau of Labor Statistics through May 2018 was 3.8 percent. According to BLS, that is the lowest rate of unemployment since 2000 and is a sign that the job market is highly competitive, but that rate doesn't tell the real story, according to several economists who study the issue. The real measure, in economists' jargon, is labor force participation.

When the BLS completes its surveys of households, every adult is put into one of three categories. Those who have a job are labeled "employed." Those who are not working but are searching for a job are "unemployed," and those who are neither working nor looking for work are counted as out of the labor force.

Several economic organizations analyze labor force participation dynamics, and, unlike the BLS, they count the "discouraged worker" or "no longer looking for work" in the labor force participation rate. When factored in, massive inconsistencies arise between the reported BLS unemployment rate and the more evenly applied Hornstein-Kudlyak-Lange Non-Employment Index (NEI). The NEI is an alternative to the standard unemployment rate that includes all non-employed individuals and accounts for persistent differences in their labor market attachment.

According to a May 2018 report, the calculated NEI rate was closer to 7.78 percent for full time workers and the labor participation rate was 62.7 percent of the over 16 workforce.

WHY IS THE NEI BETTER THAN THE BLS UNEMPLOYMENT DATA?

The NEI is a weighted average of all non-employed people expressed as the share of the civilian non-institutionalized population 16 years and older. The weights take into account persistent differences in each group's likelihood of transitioning back into employment. Because the NEI is more comprehensive and includes tailored weights of non-employed individuals, it arguably provides a more accurate reading of labor market conditions than the standard unemployment rate.

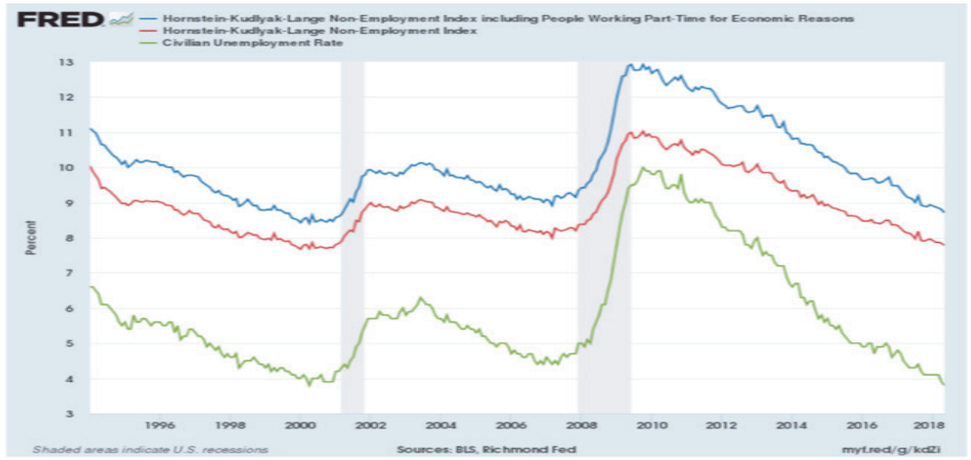
The BLS data doesn't account for discouraged workers. Workers who HAVE looked for a job in the last 12 months but haven't in the four weeks prior to the BLS survey are not included in its data. That skews the survey's results.

The NEI counts not only the unemployed, but also those out of the labor force, including individuals who want a job but have stopped looking and those who do not want a job (such as retirees, the disabled, students, and those who are neither retired, nor disabled, nor in school). Then, the NEI evaluates the different groups of non-employed according to the likelihood that the non-employed person will transition back into the job market.

The BLS doesn't separate part-time and full-time workers. In the BLS survey, people are considered employed if they have part-time or temporary jobs. They're also counted as being employed if they have low-skilled jobs that they took just to put food on the table. An additional version of the NEI is calculated to include people who are working part time but would like to work full time, a category called "part time for economic reasons" (NEI+PTER). That rate in May 2018 was 8.706 percent.

Part time workers are generally underemployed workers. Without addressing the issue of underemployment, the unemployment rate paints a distorted picture of where the labor market stands. Paying off debt or saving for retirement can be challenging for a worker with an underpaid, part-time gig. Dissatisfaction with work can also lead workers to be less productive and to turnover in the workplace.

Obtaining a reliable measure of labor market health should interest policymakers. To the extent that labor resources are fully utilized, fiscal and monetary policy may be less effective in boosting the economy to improve demand for labor. ■



Hornstein-Kudlyak-Lange Non-Employment Index, Federal Reserve Bank of Richmond, last modified June 7, 2018, https://www.richmondfed.org/research/national_economy/non_employment_index.

AFL-CIO NATIONAL BOYCOTTS

JUL-AUG

HOSPITALITY, TRANSPORTATION & TRAVEL

SUBMITTED BY UNITE HERE!

Please support the workers in these hotels by continuing to boycott the following properties:

- ANCHORAGE, AK: Hilton; Sheraton
- CALIFORNIA: Hyatt Regency Santa Clara, Hyatt Regency Sacramento, Hyatt Fisherman's Wharf San Francisco, Hilton Long Beach, Le Meridien San Diego, Hilton LAX—*This includes the Crowne Plaza Hotel LAX, Yokoso Sushi Bar, the Landing Restaurant, Century Taproom, and the Boulevard Market Cafe.*
- RHODE ISLAND: Renaissance Providence Downtown Hotel
- SEATTLE: Grand Hyatt Seattle and Hyatt at Olive 8 Seattle

OTHER

SUBMITTED BY Farm Labor Organizing Committee (FLOC)

- Reynolds American, Inc., Vuse e-cigarettes

FOOD

SUBMITTED BY United Steelworkers (USW)

- Palmero Pizza

SUBMITTED BY Bakery, Confectionery, Tobacco Workers and Grain Millers International Union (BCTGM)

- Mondelez International Snack Foods (those made in Mexico)

LEGAL

SUBMITTED BY American Federation of State, County & Municipal Employees

- Gleason, Dunn, Walsh & O'Shea
- Mcdonald, Lamond, Canzoneri and Hickernell

When some labor disputes with businesses cannot be resolved, the AFL-CIO supports its affiliates by endorsing their boycotts. A boycott is an act of solidarity by voluntarily abstaining from the purchase or use of a product or service.

POLICY GUIDELINE FOR ENDORSEMENT OF AFFILIATES' BOYCOTTS

The AFL-CIO Executive Council has developed policy guidelines that regulate how the federation endorses boycotts undertaken by its affiliates. To get AFL-CIO sanction, boycotts should be directed at primary employers.

THE GUIDELINES INCLUDE THESE PROVISIONS:

- All requests to the national AFL-CIO for endorsement must be made by a national or international union.
- Any affiliated union with a contract in force with the same primary employer will be contacted by the AFL-CIO to determine whether there is an objection to the federation's endorsement.
- Affiliates will be asked to provide the AFL-CIO with background information on the dispute in a confidential information survey. Prior to endorsement of the boycott, the executive officers, or their designees, will meet with the national union's officers, or their designees, to discuss the union's strategic plan and timetable for the boycott, or other appropriate tactics, and to discuss the federation's role.
- The national or international union initiating the boycott is primarily responsible for all boycott activities; the AFL-CIO will provide supplemental support.
- Boycotts will be carried on the AFL-CIO national boycott list for a period of one year, and the endorsement will expire automatically at the end of that time. National and international unions may request one-year extensions of the listings for actions where an organizing or bargaining campaign is actively in place.

(These guidelines were adopted by the AFL-CIO Executive Council in April 2011.)

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End Notes

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By Rich Kline, *President, UL&STD*

Vigilance and Awareness Required to Protect Our Freedom, Rights

Most of us go about our daily lives with little concern for the broad events that affect our lives. Oh, yes, occasionally some particularly egregious act will catch our attention and rile us.

Typically, we move along with our lives oblivious to trends. We become accustomed to our realities, personal, familial and societal. This acceptance can be a philosophical strength when we face illness or personal loss.

But it can be a serious problem when society is changing around us for the worse and we are bound up in our limited concerns. And society is certainly changing.

Leaders in government are enriching themselves and their friends. Constitutional protections and legislated safeguards are being ignored or overridden by executive order. Children are being separated from their parents.

The free press is constantly maligned by the least transparent federal administration in history. Workers rights and union rights are assaulted. The power of the pardon is being abused. Environmental protections of our air and water are undermined. Workplace safety is in jeopardy. The value of science is derided.

Yet, it is possible to live in the midst of growing evil and to be unaware of it because our attention is focused inward.

As a country, we are being subjected to propaganda, misinformation and outright lies. The danger is that we may become accustomed to and accepting of this environment of deceit, corruption and cruelty.

In the current situation, Americans need to be vigilant and aware of what is happening. This is no time for complacency. Who could have guessed that our basic institutions, freedoms and rights could have come to be so threatened?

It was written long ago that the price of freedom is eternal vigilance. Now is the time to be vigilant, determined and active. ■