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Congress Should Stop Environmental Blackmail by Unions

James Sherk

Most Americans support protecting the environment, and the goals of most environmental laws are worthy. Increasingly, however, organized labor is using environmental laws to blackmail companies into agreeing to their demands. Many unions threaten to delay or block the process of obtaining environmental permits unless a company agrees to build its facilities using only union labor. The inflated costs of union labor get passed on to consumers and taxpayers.

The government does not enforce contracts signed under duress. Congress should specify that union-only construction agreements are unenforceable when unions have either threatened to object to environmental permits or have actually done so.

Construction Unions Trying to Regain Monopoly Status. A labor union is a cartel. It attempts to raise the wages of its members by monopolizing the supply of labor. Unions want to force companies to choose between hiring union workers at inflated wages and abandoning a project as uneconomical. They do not want companies to have the option of hiring non-union workers at market wages.

In the construction industry, unions have lost their labor monopoly. Today only 13 percent of private construction workers belong to a union, down from 40 percent in 1973.[1] Businesses no longer need to hire union workers at 40 percent above fair market rates. This means more construction projects, more construction jobs, and less expensive buildings for businesses and homeowners. Since competition forces business to pass their cost savings on to consumers, it also means lower prices for products and services.

This benefits everyone but unionized construction workers. Just as ending a business monopoly benefits consumers and the economy, so does ending a labor monopoly. Unions, however, want to get their monopoly powers back. Now they are misusing environmental laws to do so.

Environmental Laws Have Worthy Goals. Almost all Americans value a clean environment. The government has passed many laws intended to protect the planet from wanton pollution. Before beginning most major construction projects, contractors must obtain environmental permits and pass environmental impact reviews. Labor unions, however, use environmental laws to accomplish much less worthy goals.

Using Environmental Laws for Blackmail. Organized labor uses environmental regulations to blackmail corporations into hiring unionized workers. Many environmental laws allow residents and community groups to challenge environmental permits or to file environmental impact statements of their own.

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214 Massachusetts Avenue, NE
Washington, DC 20002–4999
(202) 546-4400 • heritage.org

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Unions frequently threaten to take advantage of these options if a company will not sign a project labor agreement (PLA). In a PLA, a company agrees that its construction contractor and all subcontractors will only employ unionized workers. If the company does not sign a PLA, the union will fight the environmental permits at every step of the process. They will commission and submit their own impact studies that invariably show that the project would devastate the environment. Even if the union cannot prevent the project from going ahead, it can often delay its start by more than a year, costing the company millions of dollars.[2] If the company agrees to shut out non-union workers, the union will make the environmental complaints go away.

It is an offer that many companies cannot refuse:

- When the city of Roseville, California, applied for permits to build a new power plant in 2004, California Unions for Reliable Energy submitted a detailed request for environmental information about the project to use in filing objections. The city estimated that union-induced construction delays and higher permitting costs would increase the cost of the project by $15 million, while hiring union workers would only raise costs by $3 million. The city signed a PLA and the union withdrew its information request.[3]
- The Service Employees International Union (SEIU) raised environmental objections to Sutter Health's $465 million hospital expansion in Sacramento, California. Sutter spent more than $2 million on environmental impact reports and held more than 30 public meetings before the city council unanimously approved the project. The SEIU raised no objections until after it began negotiations to organize workers at several Sutter Hospitals. It then filed suit in court alleging environmental violations not found in the earlier studies or the previous five years of public meetings. Though Sutter did not capitulate, delays cost the hospital between $3 million and $5 million per month.[4]
- Indeck Energy Services, Inc., applied to build several cogeneration power plants in upstate New York. The Building and Construction Trades Council objected to Indeck's environmental impact statement and requested a meeting with Indeck President Russell Lindsay. The National Labor Relations Board (NLRB) explained that the unions told Lindsay that "they would stop every Indeck project in New York unless it went union." Indeck agreed to use only unionized workers, and the unions reversed their environmental objections, instead expressing their strong support for the project.[5]

Organized labor abuses America's environmental laws. Their objections have nothing to do with protecting the environment. As soon as a company agrees to hire only union workers, the union drops its environmental complaints. This strategy makes it more expensive for a company to resist union demands than to hire unionized firms—and is nothing less than blackmail.

Coerced PLAs Should Not Be Enforced. Section 8(e) of the National Labor Relations Act specifies that employers may not sign union contracts agreeing to refrain from doing business with a non-union (or any other) employer. The proviso to Section 8(e) creates a specific exception for construction unions and allows PLAs.[6]

However, the government does not enforce contracts signed under the threat of force. A construction contractor who forced a homeowner to sign a contract at gunpoint agreeing to only use his company for home improvements could not enforce it

1. Barry T. Hirsch and David A. Macpherson, "Union Membership and Coverage Database from the Current Population Survey." Database available online at Unionstats.com, at *www.trinity.edu/bhirsch/unionstats/*.
2. Kathy Robertson and Celia Lamb, "Unions Wielding Environmental Law to Threaten Foes," *The Sacramento Business Journal*, January 29, 2006, at *http://sacramento.bizjournals.com/sacramento/stories/2006/01/30/story2.html?page=1*.
3. *Ibid*.
4. *Ibid*.
5. *Glens Falls Building and Construction Trades Council*, 350 NLRB No. 42 (2007).
6. 29 USC §158(e).

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in court. The same is true for labor unions. The NLRB recently ruled that the principle that contracts made under duress cannot be enforced applies when unions use environmental blackmail to obtain a PLA.

Despite signing a PLA specifying the use of only unionized workers, Indeck constructed its power plants using both union and non-union labor. The unions sued for breach of contract in federal court, and the case ultimately went before the NLRB. In *Glens Falls Building and Construction Trades Council*, the NLRB ruled that because Indeck was coerced into signing it, the PLA was invalid and the unions could not sue Indeck for ignoring it.

The NLRB made the right decision. The government should not permit unions to abuse environmental laws to blackmail companies. It is one thing for a worker to withhold his labor unless he receives higher wages. It is another to threaten to use the government to stop the project unless he gets that raise. Because a future Board could reverse this legal interpretation, Congress should codify the administrative ruling.

Congress should amend the National Labor Relations Act to specify that the government will not enforce project labor agreements signed after unions use or threaten to use the regulatory process to block or delay construction projects. A company that unions blackmail into singing a PLA should be free to disregard the PLA and hire non-union workers once it has the necessary environmental permits to begin construction.

Conclusion. The government should protect the environment, but it should not allow unions to use environmental laws to blackmail businesses. Union monopolies damage the economy and cost taxpayers and consumers millions of dollars. The government should not enforce contracts signed under the threat of regulatory interference. Congress should codify the recent *Glens Falls* decision by the NLRB. Congress should change the law so that the government does not enforce project labor agreements signed after regulatory blackmail.

—James Sherk is Bradley Fellow in Labor Policy in the Center for Data Analysis at The Heritage Foundation.