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## NEWS & ANALYSIS

**Don't mess with our cans!** – A federal judge in Texas has issued a **preliminary injunction** stopping the United Food and Commercial Workers union from placing strike-related labels on food and beverage products manufactured by Mott's LLP, which is owned by Texas-based Dr. Pepper Snapple Group. In May, more than 300 employees at a Mott's apple processing plant in New York went on strike in a dispute over pay and benefit cuts proposed by the company. The union encouraged individuals sympathetic to the workers' position to download a document and tape a 7/8 inch strip to Mott's containers that were available for sale to the general public. The strips claimed that Dr. Pepper Snapple had made \$555 million in profits in 2009 and that its CEO's pay had doubled in 2007-2009, but that the company was proposing wage cuts of \$1.50 an hour for its workers.

The court found the union was violating federal anti-tampering laws by placing the strike-related labels on Mott's products. The judge found that the union's actions would damage the goodwill Mott's has built, causing irreparable harm to the company if allowed to continue. Noting that the injunction would not prevent the union from communicating with Mott's customers through advertising in the print media, on the radio or over the internet, the judge found that the "injury that would be inflicted on Mott's if the requested relief is denied, would be greater than the injury upon the UFCW if the requested relief is granted."

**Question Becker's ethics? No way!** – On July 20 the inspector general of the National Labor Relations Board concluded that Board Member Craig Becker did not violate government ethics rules when he participated in a Board decision in a rep-

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resentation case brought by a local affiliate of the Service Employees International Union, Becker's former employer. Becker, who is a recess appointee to the Board because his nomination by President Obama did not receive support from Senate Republicans, **has served as associate general counsel for the SEIU and as staff counsel for the AFL-CIO.** According to the inspector general's report, both the federal courts and the NLRB recognize that international unions and their affiliated locals are separate legal entities; therefore, Becker's ethics pledge to recuse himself from any matter "directly" and "substantially related" to the SEIU did not apply.

However, the opposition to Becker's participation in SEIU cases has been continued by the National Right to Work Legal Defense Foundation, which has requested that Attorney General Eric Holder investigate whether Becker has violated his ethics pledge. In its letter to Holder, the NRTW foundation contends that the inspector general's investigation focused on whether Becker should have recused himself from particular NLRB cases, an issue legally distinct and separate from compliance with his ethics pledge. The letter contends that because of the SEIU's control over its affiliated locals and its reliance on *per capita* taxes and membership dues paid by its locals, it cannot function without the locals and holds control over them. Any idea what Attorney General Holder will do with this letter?

**Women and children first!** – It is not surprising that the future, if any, of organized labor in the private sector will depend upon unions' attracting female workers, and younger workers of both sexes. A **recent report** published by the Labor Project for Working Families, the Cornell University Industrial Labor Relations Labor Programs, and the University of California-Berkeley Labor Center, confirms that unions must treat women's work and family needs as priorities. Women report problems with child care, paid family leave, maternity benefits, and elder care, and most young workers are concerned about work-life balance. According to the report, social media, such as Facebook and similar sites should be used to show workers how they will benefit from unionization, but social media should not replace face-to-face interaction with workers.

Outreach to young workers is a priority of the newly elected top officers of the AFL-CIO. The federation wants to identify best practices for new modes of organizing. It will play a coordinating role for all the youth programs that its unions currently have and develop a new program that is consistent throughout the labor movement. Young workers will be mobilized for the midterm political election and be given leadership opportunities. The federation also intends to develop a text messaging plan incorporating action items that young workers can plug into.

**EFCA? Trust us . . . we have a plan . . . just as soon as we figure out what it is.** – At the recent convention of the Communication Workers of America, House Speaker Rep. Nancy Pelosi (D-Calif.) said she hopes the Employee Free Choice Act will soon be the law of the land. Pelosi did not provide a time frame for meeting that goal, as the legislation remains stalled in Congress. President Barack Obama also recently told members of the AFL-CIO Executive Council that he intends to keep fighting for the passage of the EFCA "though the Senate is going to be tough. It's always been tough, it will continue to be tough, but we'll keep on pushing." When asked about how Obama could help pass the EFCA, AFL-CIO President Richard Trumka replied, "We are working to come up with a way to pass it, and there are active participants in it." However, Trumka declined to provide any details.

## THE GOOD, THE BAD AND THE UGLY

**Laborers International Union bails on Change-to-Win, back to AFL-CIO.** – The general executive board of the Laborers International Union has voted to rejoin the AFL-CIO effective October 1, more than four years

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after the 500,000-member union disaffiliated from the federation. Terence O'Sullivan, General President of the LIU, praised his union's participation in the Change-to-Win federation, which provided "invaluable assets in building the union's organizing and research efforts." O'Sullivan claims the Laborers' ongoing efforts to organize the weatherization and residual construction segments of the industry would not have been launched without Change-to-Win. The LIU is the third union to leave Change-to-Win in the past two years. The Carpenters Union and UNITE HERE announced their disaffiliation from the federation in September 2009. The remaining unions of Change-to-Win include the SEIU, the Teamsters, the UFCW and the United Farm Workers.

In a related development, SEIU Secretary-Treasurer Anna Burger, who was chairman of Change-to-Win since its creation, resigned from both positions three weeks ago. Burger and the former SEIU president were instrumental in leading the SEIU and several other unions out of the AFL-CIO to form Change-to-Win. A meeting of the Change-to-Win leadership council to discuss new leadership has been postponed.

**Two-member cases keep NLRB busier than one-armed paper hanger.** – Fifteen days after the **Supreme Court ruled** that Section 3(b) of the National Labor Relations Act requires at least three members to render decisions, the NLRB outlined its plans for handling the approximately 600 two-member rulings it made during a 27-month period. Ninety cases pending in federal appeals courts and six at the Supreme Court have been remanded to the Board for further consideration. Per the terms of the plan, each remanded case was to be reconsidered by a three-member panel consisting of Chairman Wilma Liebman and Member Peter Schaumber, who issued the two-member rulings, and a randomly assigned third member. However, Member Schaumber's term on the Board expired August 27, 2010, so presumably the other Board members will have to take up the slack. About 500 other cases resolved by the two-member Board were closed through compliance with the original Board decision, settlement, withdrawal, or by other means. Still more are in some stage of litigation or compliance stemming from the original decisions.

On August 6, the Board released decisions in four of the two-member cases. In each of the cases, the three-member panel simply "rubber stamped" the two-member decision. If this becomes a trend, that backlog may be gone before we know it.

**Quality, not quantity?** – The Bureau of Labor Statistics has reported that the number of representation elections from 1997 through 2009 declined a whopping 60 percent. During this same period the number of elections won by unions decreased 48 percent. Because the number of election wins declined at a slower rate than the number of elections, there was an overall increase in the *percentage* of elections won by unions – from 51 percent in 1997 to 66 percent in 2009.

**Majority of Americans support unions -- just barely.** – Fifty-two percent of Americans approve of unions, according to a Gallup poll released on August 12. Support for unions peaked at 75 percent in the 1950's. In 2009, 48 percent said that they approved of unions, the lowest figure since the poll began in 1936. According to Gallup, the more negative appraisal of unions in the last two years could be a backlash against the pro-union policies of the Obama Administration, including recent legislation providing aid to states that will preserve thousands of education and public sector jobs. Forty-six percent of those polled in 2010 predicted that unions will become weaker in the future.

**UNITE HERE and SEIU settle "divorce."** – UNITE HERE and the SEIU have resolved their two-year dispute that began after a faction broke away from the former and joined the latter. The settlement agreement ends the

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dispute over the representation of the estimated 450,000 workers whom UNITE HERE represented before the break-up, the ownership of Manhattan real estate, and the ownership of the Amalgamated Bank.

UNITE HERE is releasing its claim on the bank, which was founded by the Amalgamated Clothing and Textile Workers Union, one of the predecessor unions to UNITE. The union's headquarters in Manhattan will be restored to UNITE HERE, which will retain exclusive jurisdiction in the gaming and hotel industries. Most of the apparel and laundry industries will come under the jurisdiction of Workers United, the union formed by the breakaway faction. In the food service industry, UNITE HERE will retain jurisdiction to organize workers in the private sector, and Workers United will have more jurisdiction in the public sector.

Most labor observers have viewed the infighting between UNITE HERE and the SEIU as a waste of time and resources at a time when the labor movement was hurting for new members. With the dispute settled and new leadership in the SEIU, there is some speculation that the SEIU may be poised to leave Change-to-Win and return to the AFL-CIO.

***About Constangy, Brooks & Smith, LLP***

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