

LABOR CENTER REPORTER

BERKELEY, CA 94720
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CENTER FOR LABOR RESEARCH AND EDUCATION
INSTITUTE OF INDUSTRIAL RELATIONSNumber 156
July/Aug. 1985

UNION INPUT ON PENSION FUNDS

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Union members own a large amount of capital in their pension funds, yet unions have been stymied in their attempts to increase their input in the determination of how these funds are used because Taft-Hartley funds are governed by trustees that are equally divided between union and employer members. However, union trustees can increase their input in the decision-making process and thus increase their control over the funds. This article discusses ways to increase the input of union trustees.

The Importance of the Union Trustee--Although union members have a right to view the records of the trustees' meetings, usually they are unaware of this right and, even if aware of it, they generally don't have the training needed to understand the records. In addition, few union members have the time, money and interest to watch their trustees closely. Taft-Hartley trustees operate only with the non-legal outside constraint that they neither raise employer contributions too high nor cut benefits too much.

The effectiveness of the union trustees, then, is dependent on their own commitment and goals. Union trustees can be highly effective if they can devote the time needed to plan and execute their strategies.

The Union Trustees: Planning is Essential--Board meetings are so complicated that union trustees should meet beforehand to plan a course of action. Discussion at board meetings can be convoluted, motions phrased in a way that "yes" means "no" or vice versa, and issues requiring immediate resolution can be decided in favor of employer trustees simply by the failure of union trustees to recognize that timely action is required. Unless the trustees are prepared for board meetings, they will be unable to argue in support of favorable resolutions or to recognize amendments that undermine their own position.

Joint action by union trustees assures veto power over any board action since a majority is needed to pass motions. Such vetoed, or deadlocked, motions are resolved by compromise or by the submission of the deadlocked motion to an outside arbitrator or court. As we shall see, union trustees can usually win deadlocked motions, so that even a deadlocked motion can result in a union trustees' victory.

How Unions Can Win Employer Trustees' Support--Overall, union trustees can increase their input by winning the support of the employer trustees. First, unions can convince employer trustees to stop deadlocking motions that they will probably lose in arbitration. The two keys to winning deadlocked motions are a) to choose them carefully, and b) to carefully prepare cases being arbitrated. If the union trustees believe that their position in a particular dispute is weakly supported by the agreement establishing the pension fund or by the precedent of previous trustees' actions, they should usually defer to the employer trustees' position. Union trustees can usually win in arbitration cases where the pension agreement and past practice support their position, where the employer trustees have overextended their interpretation of the authorities, and when they have prepared their case well.

Second, union trustees can recognize the different perspectives of each employer trustee and formulate proposals accordingly. Employer trustees often represent different associations with differing concerns. Also, employer trustees, as hired labor relations people, are competitors to some extent and this may influence the amount of cooperation they accord one another as trustees. Union trustees' motions can be phrased to garner the support of one employer trustee in order to obtain a majority vote--and a union victory. The union trustees should meet with individual employer trustees to ascertain what modifications to a

motion would win their vote and should consider shelving a motion where such support is not forthcoming.

Third, although the trustees have a fiduciary duty to consider each issue separately, it may be possible that union trustees can resolve several issues simultaneously. The union trustees should be hesitant to resolve one issue in the employer trustees' favor if there are either related union trustees' proposals still unresolved or related union trustees' proposals forthcoming that will meet employer trustees' resistance. The relation between proposals may not always be readily apparent but careful study may reveal these connections. Employer trustees tend to be more conscious of union trustees' concerns when it means union trustee appreciation for employer trustee concerns.

Fourth, unions can fashion proposals in such a way that both employer and union trustees benefit. In formulating proposals that benefit both sides the union trustees not only succeed in their initiative, but also demonstrate expertise useful in dealing with the professionals of the pension fund. For example, due to recent developments in the law, employer trustees tend to oppose normal methods to increase benefits for pensioners. Union trustees can propose an innovative way of raising benefits that considers recent developments in the law such as increased health benefits rather than pension benefits.

By winning deadlocked motions, recognizing the perspective of each employer trustee, resolving issues simultaneously, and fashioning proposals that benefit both sides, union trustees can establish a situation in which union trustees' initiatives will regularly be successful.

The Professionals Hired by the Trustees--Pension fund professionals usually include actuaries, administrators, attorneys, auditors and investment managers who can be an impediment to the initiatives of the trustees. Because they work on trust funds full-time while trustees are only part-time, they are generally better prepared than trustees on issues facing the funds and can assert authority for their positions that trustees can't easily match. Trustees often defer to the professionals' opinions for fear that their own judgment would be in error.

Inevitably, in order to supervise and monitor the professionals, the trustees must learn part of the professionals' work. Trustees can compare the work of their professionals with that of competing professionals and then advise their professionals as to whether their work was correct and what changes are needed; they can attend conferences to learn the latest developments for pension funds; and they can obtain copies of professionals' reports before they are presented to a board meeting and be prepared to evaluate them and propose alternatives. Thus, the trustees can gain input on the professionals' recommendations. Professionals who are not cooperative with trustees should be changed for professionals who are. Once the trustees enforce their demand for cooperation and good work, professionals' role as an obstacle to trustees' initiatives will be reduced.

Unions can better influence the policies of its pension funds by having their trustees meet prior to board meetings, by applying the methods mentioned above for dealing with employer trustees, and by developing or finding professionals who will aid trustees' initiatives. Unions need to use these approaches and to develop others in order to exercise as much control as possible in a highly constrained situation.

--Ramon Castleblanch

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