

AFL-CIO Chief, Ex-NLRB Chair Rip 'Toothless' Labor Law

By **Braden Campbell**

Law360 (May 8, 2019, 8:30 PM EDT) -- Labor law advocates including AFL-CIO President Richard Trumka and former National Labor Relations Board Chairman Mark Gaston Pearce blasted federal labor law as impotent at a hearing Wednesday on a sweeping Democratic proposal to overhaul union rights by upping penalties for labor law violators and easing workers' paths to forming unions.

The House Education and Labor Committee Health, Employment, Labor and Pensions Subcommittee heard more than two hours of testimony on the Protecting the Right to Organize Act, or PRO Act, which would make several amendments to the National Labor Relations Act making it tougher for employers to thwart worker organizing.

Witnesses Trumka, Pearce and Jim Straus, a former University of Pittsburgh Medical Center worker fired for trying to organize his colleagues, said workers' wages have stagnated even as corporate profits have hit record highs, placing much of the blame for this disparity in fortune on NLRA protections they and multiple lawmakers called "toothless."

"This is a car with three wheels and an underpowered engine," said Pearce, an Obama board appointee whose term expired last year.

Among the 84-year-old act's biggest flaws is its lack of meaningful penalties for employers that violate its restrictions on interfering with workers' rights to organize, labor advocates said Wednesday. The NLRA lets workers file charges with the labor board accusing their employers of unfair labor practices, but the board can only tell businesses to stop, not fine them. Even then, employers don't have to comply with the board's orders unless an appeals court enforces them.

The PRO Act, introduced last week in the House and Senate, would empower the NLRB to assess monetary penalties when an employer fires or otherwise causes "serious economic harm" to a worker for exercising their organizing rights. The bill would also empower the board to enforce its own rulings, without having to ask a circuit court to do so.

Provisions like these would have helped Straus, he told lawmakers. Straus described how he joined an organizing drive at the Pittsburgh hospital in 2012, only to be fired over his vocal support for the union. After years of litigation, the NLRB said UPMC fired him illegally. The hospital has since appealed to federal court, where the case is pending, Straus said.

"Working people like me at UPMC and around the country are supposed to have union rights, but we have to risk everything to exercise them," Straus said. "And even when our employers violate our rights and are found guilty, they just appeal and delay."

The bill would also empower the board to seek court injunctions immediately reinstating workers claiming they were fired in retaliation for organizing, which Trumka discussed in a line of questions from Rep. Andy Levin, D-Mich. Trumka said retaliation has a "tremendous chilling effect," effectively telling workers "support the union and I'll fire you as well."

"Going in and immediately getting an injunction would have showed two things," Trumka said. "It would have showed, one, the employer acted illegally, and two, the government was willing to stand up and protect workers."

Republican lawmakers and their witness, former Republican NLRB Chairman Philip Miscimarra, said Wednesday the PRO Act would make unions too strong, allowing them to "weaponize labor relations."

Miscimarra took aim at a provision in the bill that would let unions engage in so-called secondary or solidarity strikes, in which one union strikes at one employer to give other workers leverage over their employers.

"That type of widespread turmoil in the economy, especially given the economy that exists today, would be debilitating to people exposed to that conflict," said Miscimarra, now a partner at Morgan Lewis & Bockius LLP.

Miscimarra also criticized parts of the bill that would make employers turn over workers' contact information to unions and bar so-called captive audience meetings, which are mandatory meetings in which businesses try to dissuade workers from organizing. He said the former invades worker privacy and the latter violates businesses' free speech rights.

--Editing by Jack Karp.