CONNECTICUT HOSPITAL ASSOCIATION

TESTIMONY OF
JOHN G. ZANDY, PARTNER – WIGGIN AND DANA
ON BEHALF OF
CONNECTICUT HOSPITAL ASSOCIATION
BEFORE THE
LABOR AND PUBLIC EMPLOYEES COMMITTEE
Tuesday, March 1, 2005

HB 6758, An Act Concerning Union Activities Relative To Certain Recipients Of State Funds

Good afternoon Senator Prague, Representative Ryan and members of the Committee. My name is John Zandy, and I am a partner at the law firm of Wiggin and Dana. I am appearing on behalf of the Connecticut Hospital Association and I appreciate the opportunity to testify on **HB 6758, An Act Concerning Union Activities Relative To Certain Recipients Of State Funds**.

HB 6758 would require an employer receiving state grants, financial assistance, state loans or other state-funded incentives under title 32 of Connecticut's general statutes to permit union organizers to distribute authorization cards on the employer's premises. It would also require employers to recognize a union if it can demonstrate majority support through a card check verified by an independent arbitrator appointed by the Connecticut State Board of Labor Relations in consultation with the employer and the union. Violation of HB 6758 would be an unfair labor practice under section 31-105 of the Connecticut General Statutes.

This bill if passed would be preempted, and therefore invalid, because it would establish standards inconsistent with the substantive requirements of the National Labor Relations Act ("NLRA"). The NLRA provides for a formal process for employees to select and reject their bargaining representatives through secret ballot elections conducted by the National Labor Relations Board ("NLRB"), and it also provides the NLRB with the authority to address unfair labor practices, including union organizers' access to private property and any disputes arising out of interference with an employee's exercise of his or her right to determine union representation. Not only does this bill seek to eviscerate the proud tradition of federal labor relations policy by denying employees a secret ballot election, which has been the hallmark of federal labor relations policy for nearly seven decades, it impermissibly attempts to grab federal jurisdiction from the NLRB and give it to the State Labor Relations Board. If this bill is enacted, it will no doubt be challenged, injunctive relief will be granted, lengthy and costly litigation will follow, and it will be thrown out.

Further, HB 6758 would effectively ban secret ballot elections for a system that would not adequately protect employees' right to choose or reject union representation freely and without coercion. It is a self-evident truth that secret ballot elections supervised by the federal government are superior to a system relying solely on the legitimacy of cards that are signed in the presence of an interested party – generally a pro-union worker or a union organizer. The Supreme Court of the United States has expressed its view that a card check is an inferior process to secret ballot elections and its position is shared by the NLRB and the many federal appellate courts that have examined this issue.

There are very few decisions that an employee makes about his or her job that are more important than whether to be represented by a union and employees should have the right to be informed. Because card signing can occur quickly and secretively, it is possible that a union will achieve the 51% necessary for recognition before the employer or employees opposed to unionization have an opportunity to communicate meaningfully with their employees and co-workers about unionization; for example, communications about a union's history on strikes, dues, fees, fines, assessments and other obligations of membership. Further, because there would be no reason for card signing to continue after recognition has been achieved at 51%, it is probable that a large percentage of affected employees, possibly as high as 49% percent (and certainly those employees perceived by the union as disinterested or pro-company), would never be given the opportunity to express a personal choice one way or the other before being compelled to accept union representation.

Stated simply, it is wrong and not fair or just to take employers out of the mix and deprive them of their right to communicate with their employees, a right protected by Section 8(c) of the NLRA. Imagine if the challenger in a political election could campaign and poll the electorate without the incumbent's knowledge, wait until the polls show that the challenger has majority support, and then demand the office without a campaign. This bill would do just that and it would lead to an exodus of employers from Connecticut.

Also, there is no need to bypass the NLRB as this bill attempts to do because the NLRB is not ineffective as unions argue. For fiscal year 2003, there were 2937 NLRB elections held and unions won 53.8% of them, which has been a fairly consistent number over the last 40 years. For fiscal year 2004, 93.6% of all initial representation elections were conducted within 56 days, with a median time period of 39 days from the filing of the petition until the election, a number which has improved slightly over past years.

Finally, it is important to note that mandatory recognition through card checks is something that unions want but is not universally supported by their members. Zogby International conducted interviews of 703 union members chosen at random from a Zogby database of self-identified union households nationwide. All calls were made from Zogby International headquarters in Utica, N.Y., from June 25 through June 28, 2004. The margin of error is ± 3.8 percentage points.

When asked whether workers should have the right to vote on whether they wish to belong to a union? 84% said yes. When asked what is the fairest way to decide on a union – card check or a government supervised election? 53% said a government supervised election. When asked whether the current secret-ballot process is fair? 71% said it was. When asked whether they agreed that stronger laws are needed to protect the existing secret-ballot election process and to make sure workers can make their decisions about union membership in private, without the union, their employer or anyone else knowing how they vote? 63% said yes. When asked whether Congress should keep the existing secret-ballot election process for union membership, or whether Congress should replace it with another process that is less private? 78% said Congress should keep the secret-ballot election. When asked what percentage of workers should have to vote for a union before that union represents all the workers? 51% said two-thirds and only 27% said at least half.

Some critics of the NLRA have said it should be amended. If they are right, this would be a job for Congress, not the State legislature.

Thank you for your consideration.