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The National Labor Perspective of the AFL-CIO

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When President Clinton signed the new welfare law two years ago, he proclaimed it would "end welfare as we know it." This is a rather catchy phrase that has been repeated by many supporters of welfare reform. Hidden behind this simplistic slogan, however, is the fact that the new welfare law represents a dramatic and complex change in social policy in this country.

The new welfare law abolished the Aid to Families with Dependent Children program, which was a federal centralized entitlement system and replaced it with a system of block grants to the states. The new law imposes tough work requirements, offers limited labor protections, and puts a cap on the receipt of benefits. Because of the tremendous impact the new law has on the workforce—not just welfare workers, but on existing workers as well—the American Federation of Labor and Congress of Industrial Organization ("AFL-CIO") and its affiliated unions have been very involved in this issue.

Under the new law, there is a major emphasis on moving welfare recipients into jobs. The federal government has scrapped the federal entitlement system and established a collection of work programs operated by the states. States are required to place 30% of their 1998 caseloads into work activities,
rising to 50% in the year 2002.\textsuperscript{4} Recipients are required to work a minimum of twenty hours a week.\textsuperscript{5} Clearly, there is an emphasis on work and on creating workers, but amazingly, the statute that mandates this is silent on the issue of worker protections.\textsuperscript{6} It does not even address the Fair Labor Standards Act,\textsuperscript{7} Title VII protections against unlawful discrimination,\textsuperscript{8} or other workplace laws.

From the outset, the AFL-CIO, working in collaboration with welfare groups and civil rights groups, urged the Clinton administration to address this glaring lack of explicit labor protections in the new law. As a result of those efforts, in May 1997 the U.S. Department of Labor ("DOL") issued policy guidance stating that the Fair Labor Standards Act, Occupational Safety and Health Act, unemployment insurance, and anti-discrimination laws apply to welfare workers as fully as they apply to regular workers.\textsuperscript{9} The key basis for determining coverage was whether welfare workers were deemed "employees" under the relevant statutes. The DOL emphasized that whether welfare workers are "employees," and thus entitled to coverage must be determined on a case-by-case basis.\textsuperscript{10}

Unfortunately, this DOL policy creates issues, but does not resolve them. Some states, following the issuance of the DOL's policy guidance, said they would not honor the policy unless ordered to do so by the courts. Recently, the California Department of Social Services was about to issue a draft instruction letter to its counties, instructing them not to apply the Fair Labor Standards Act to welfare workers engaged in work activities or community service. This action was obviously counter to the DOL's guidance. The California Department of Social Services is contemplating making a broad categorical conclusion that if one is engaged in certain activities under the new welfare regime, then they can never be an employee.

\textsuperscript{5} See id. § 607(c) (Supp. 1997).
\textsuperscript{10} See id.
The DOL explicitly said such determinations must be made on a case-by-case basis, and that coverage must be determined by the type of activities workers are involved in.\textsuperscript{11} Clearly, this opened the door for a plethora of legal arguments about worker protections.

Another key battleground is the right of welfare workers to organize and bargain collectively. Incredibly, the new welfare law is silent on whether the National Labor Relations Act applies to welfare workers.

The AFL-CIO believes that moving from welfare to work means moving from welfare to self-sufficiency. For workers leaving the welfare rolls, the key to becoming self-sufficient is a good paying job, which can be most readily attained by giving welfare workers the right to organize. This new Act is not just about moving to work and finding a job allowing workers to be self-sufficient. A good paying job is the pathway to self-sufficiency, which can be most readily attained by giving workers the right to organize.

To this end, in 1997, the AFL-CIO Executive Council passed a resolution declaring its support of efforts to organize welfare workers by integrating them into existing bargaining units and creating new bargaining units.\textsuperscript{12} Support has been given on a community level to organize welfare workers for the purpose of raising living standards and improving working conditions.\textsuperscript{13}

The good news is some of this is working. Some AFL-CIO unions have integrated welfare workers into their existing units. In addition, in cities across the country, civic groups are organizing welfare workers for the purpose of helping them obtain statutorily mandated benefits and improve working conditions.

From the AFL-CIO’s perspective, the key is to organize not only welfare workers, but all workers in the workforce. The right to organize in many respects has become illusory, and whether it is welfare workers or the existing workforce, helping unions organize workers remains a key part of the AFL-CIO’s mission. It

\textsuperscript{11} See id.


\textsuperscript{13} For information on one such group, see <http://www.acorn.org>, the website of the Association of Community Organizations for Reform Now.
will take serious legal challenges to determine whether welfare workers have the right to organize. As the legal landscape clears, more and more AFL-CIO unions will be increasingly active in this area.

A third related area of national concern to the AFL-CIO involves job training. The New York Times published a series of articles on the welfare workforce, one of which focused on training. A worker interviewed for the article complained that he "knew how to push a broom" before getting into his training program. That was a succinct and powerful way of saying that he was not picking up any real skills that would allow him to get a good job that paid a living wage, and that would enable him to take care of himself and his family. That is a vital factor that must be present to realistically strive to help these workers move from welfare to work. Providing real skills training is vital to helping individuals move from welfare to work.

Some AFL-CIO unions and state federations have been training welfare workers. District Council 37 has done it in New York City with school workers. The Laborers union has done it in Washington D.C. with public housing residents, and some AFL-CIO state federations have instituted apprenticeship programs in the construction industry. There is some progress being made, but labor unions, the state and local governments, community organizations, and private employers must do much more. The focus must be on helping former welfare recipients develop marketable skills. This puts a premium on developing effective training programs, and mandates that everyone must make a continuing effort on all levels.

In addition to the dramatic affect on welfare recipients, the new welfare law is having a significant impact on the existing workforce as well. It is important to remember that welfare workers are not operating in a vacuum. As they continue to enter into the workforce, their presence will have a direct influence

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16 See id.
on existing workers. This will be most evident in the area of job displacement.

Although the new statute addresses the issue of job displacement, it does not go far enough. In fact, the former welfare laws offered more protections. The former law prohibited an employer from laying off an existing worker, partially displacing an existing worker through a reduction in hours and benefits, or interfering with collective bargaining agreements and infringing upon promotional opportunities. The new statute does not go that far. It merely prohibits laying off an existing worker or hiring a welfare worker to fill a job for someone who is already on layoff.

AFL-CIO have responded to this by addressing the issue of job displacement directly in their collective bargaining agreements. Unions are beginning to negotiate language into their contracts to help ease the devastating impact of job displacement, and, on occasion, have required employers who bring in a welfare worker to pay that worker the wages and benefits provided by the contract. This helps eliminate the creation of a two-tiered workforce.

Some AFL-CIO unions have also negotiated language into their contracts that explicitly states that job displacement issues are subject to the grievance arbitration procedure embodied in the contract. This is extremely important, because if an existing worker is displaced by a welfare worker, that displaced worker may well find himself on welfare. To avoid this cruel game of musical chairs, the issue of job displacement must be addressed directly. It certainly remains a challenge.

One of the other challenges that worker advocates, including unions, face concerns educating existing workers about the new law. It is important for the existing workforce to understand some of the facts, nuances, and impacts of the welfare law, because this statute has great potential to pit existing workers against the new workforce.

When welfare workers are subject to exploitation and abuse, because they do not have labor protections, the wages and working conditions of all workers suffer. Once the existing workers

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18 See id.
realize the common interests that they share with welfare workers, the two groups can begin working together to achieve common goals.

Some AFL-CIO unions have begun educating their members by identifying issues of mutual concern between workfare workers and the existing workforce. Such important efforts must continue.

The welfare reform has been allegedly deemed a "success". Federal, state, and local officials have said that welfare reform is working and people are moving from the welfare rolls into real jobs. There continues to be, however, great difficulty in measuring the true success of welfare reform, and the significant movement from welfare into real jobs that many politicians proclaim is not apparent.

The early returns suggest many people are moving off the welfare rolls because of sanctions. They are being punished for not following the rules and not keeping appointments with caseworkers. The welfare rolls are going down, but that in itself is not an accurate measure of the success of welfare reform.

It is startling to see the use of sanctions with increasing regularity by the states. One report has stated that in a three-month period last year 38% of the people who left the welfare rolls nationwide left as a result of sanctions. In the first year of Tennessee's new welfare program, 40% left welfare as a result of sanctions, compared to the 29% who left welfare rolls for employment. In Indiana last year, 50% of those who left the welfare rolls left as a result of sanctions. Similar statistics can be cited in New York and in states across the country.

People are leaving welfare, but the key question is where are they going? While nobody knows for sure, because a tremendous number of them are being sanctioned off the rolls, they probably are not, for the most part, going to new jobs.

The Washington Post recently published an article highlighting the disarray in the collection of data that would enable

19 See, e.g., Robert Pear, Most States Meet Work Requirement of Welfare Law, N.Y. TIMES, Dec. 30, 1998, at A1 (reporting that "28 percent of adults on welfare roles are engaged in some sort of work activity").
21 See id.
22 See id.
the federal government to gauge the effectiveness of welfare reform.\textsuperscript{23} Many states are having computer and technical problems gathering the necessary data the law requires in order to measure the new law's effectiveness. It is unlikely that this problem will be resolved in the near future. Now, the states are required to provide sixty-seven pieces of information to the federal government to help gauge the effectiveness of welfare reform.\textsuperscript{24} There is a proposed rule that would raise that number to 178 pieces of information.\textsuperscript{25} If states are currently having trouble gathering this data, it is likely that these additional requirements will make the situation worse before it gets better.

Therefore, it is too early for anyone to proclaim that welfare reform has been a success. It is also too soon to say it is effectively working to improve lives. It is not too early, however, to say there are problems, and that there are significant challenges in the area of labor protections, the right to organize, job training, and job displacement.

The AFL-CIO, working with its affiliated unions, central labor councils, and state federations, will continue to try to meet these challenges in the months and years ahead. This will be done not only on behalf of welfare workers, but on behalf of all workers in our nation's workforce.


\textsuperscript{24} See id.; see also 42 U.S.C. § 611 (1994 & Supp. III 1997) (compelling states to provide data on families who receive assistance under the welfare reform law); 20 C.F.R. § 645.240 (1999) (requiring all states to report financial data pursuant to instructions issued by the Department of Labor and participant data pursuant to instructions issued by the Department of Health and Human Services); U.S. Dep't of Health and Human Servs., Emergency TANF Data Report (last modified Oct. 7, 1997) <http://www.acf.dhhs.gov/programs/ofa/pi976/pi930rep.htm> (requiring states to electronically submit sixty-eight fields of information to the DHHS and DOL).

\textsuperscript{25} See Vobejda & Havemann, supra note 23.