

Scott Walker's plan to end collective bargaining has deep roots in GOP

JUDITH DAVIDOFF | The Capital Times | jdavidoff@madison.com | Posted: Wednesday, February 23, 2011 10:00 am

When did Al Jazeera start caring about Madison, Wisconsin? That would be since last week, when the Qatar-based news agency contacted WisconsinEye for permission to use video of the tens of thousands of public workers and their allies who were swarming the Capitol to protest Gov. Scott Walker's plan to strip collective bargaining rights from public sector unions.

It was in fact a banner week for the 5-year-old public affairs news service, said Christopher Long, president and CEO of WisconsinEye, in a news release. "The demand for our coverage of this story is way beyond anything we've seen before. Use of our website is off the charts."

As news spread of the protests — and the exodus of 14 Democratic senators to Illinois to avoid a vote on Walker's budget repair bill — national media also swarmed.

As one of the protesters' signs said, "GOVERNOR WALKER: THE WHOLE WORLD IS WATCHING." Though meant as a warning, Walker, a well-known media hound, is more likely basking in the attention. Let's face it. If he succeeds at eliminating collective bargaining rights in Wisconsin — the first state to establish the practice for public sector unions in 1959 — he will be the darling of the Republican Party. But he needs to move fast as he now has competition.

Tennessee, Indiana, Ohio and other states are also looking at measures that would curtail union power. Like Wisconsin, the executive and legislative branches in those states are controlled by Republicans.

As Herman Cain, conservative radio host and potential 2012 presidential candidate, said when addressing the tea party rally at the Capitol Saturday: "Wisconsin is ground zero for the rest of the nation, with we, the people, taking this nation back."

Walker says current and future budget holes are forcing his hand. Yet even though the American Federation of State, County and Municipal Employees (AFSCME) and the Wisconsin Education Association Council (WEAC), the state's largest public sector unions, have agreed with Walker's proposal that their members should pay 5.8 percent of their salaries toward pensions and 12.6 percent of their health care premiums, the governor says he won't negotiate on his plan to strip public workers of almost all of their bargaining rights.

This reinforces the belief held by many Democrats and others that Walker is using the recession and structural budget deficit to manufacture a crisis in order to cripple public sector unions, which, for the most part, are heavy Democratic backers here and elsewhere. As the 2010 elections showed, public sector unions were the only groups with enough cash and people power to counter the corporate money that flowed to Republicans once spending restrictions were lifted by the U.S. Supreme Court ruling in the Citizens United case.

And it's not just partisans who have come to this conclusion. "I think it's fair to say that this is not about solving a fiscal crisis. This is about trying to end unions' influence in Wisconsin on the public sector side," says Peter Davis, general counsel for the Wisconsin Employment Relations Commission, which, among other things, mediates labor disputes and oversees union elections. "It's extraordinarily well-done and well-orchestrated and tightly written and I tip my hat in some way to whoever is behind this. I doubt they're from Wisconsin."

One suspect is the team of Charles and David Koch, the billionaire brothers who own Koch Industries and whose combined fortune is estimated at \$37 billion.

Campaign finance records compiled by the Wisconsin Democracy Campaign and the Center for Responsive Politics show that the Koch Industries PAC gave Walker \$43,000 in his race against Milwaukee Mayor Tom Barrett and about \$1 million in the last election cycle to the Republican Governors Association, which funded some \$3.4 million in attack ads against Barrett. In a New York Times article Tuesday, Tim Phillips, the president of Americans for Prosperity, a Virginia-based group created and financed in part by the Koch brothers, said his group had worked with Walker even before the November elections to try to encourage what the reporter characterized as a "union showdown." Phillips said his group is also working in Ohio, Indiana and other states on anti-union measures.

The Koch brothers also fund conservative think tanks like the Cato Institute and the American Legislative Exchange Council

(ALEC), which argue that unions stifle innovation, hurt public services and limit private growth.

Whether any such group actually helped write the budget repair bill is hard to know. Senate Majority Leader Scott Fitzgerald, R-Juneau, did tell the crowd attending a WisPolitics luncheon earlier this month that he was surprised to learn at a post-election gathering organized by ALEC "how much momentum there was" for enacting "right to work laws." These laws make it harder for workers to unionize and push for changes in the workplace.

But there is no evidence in the drafting file at the Wisconsin Legislative Reference Bureau that ALEC or any other group had a hand in the bill; the only drafting instructions are from a Department of Administration budget analyst to a drafting attorney in the Wisconsin Legislative Reference Bureau. (Of course political operatives have likely gotten more careful in this regard since AT&T's fingerprints were found all over draft legislation deregulating the cable and telephone industries in Wisconsin.)

Labor leaders say they expected that Walker, once in office, would ask for hefty increases to public worker insurance and pension payments. But they say they did not foresee his move to end collective bargaining.

"If he had run on a platform that was going to eliminate collective bargaining for a big chunk of organized labor, that would have changed the votes of a lot of people," asserts Jack Bernfeld, associate director of AFSCME's Council 40, which has some 32,000 members in local government and the private sector. "His campaign wasn't about busting unions. But that is what this is."

But, as Frank Emspak, a faculty member of the UW-Extension's School for Workers points out, the wider move among Republicans to cripple public unions has been longstanding and not all that quiet. "It's not a hidden agenda," he says.

A quick search of the Internet, in fact, yields multiple conservative sources for the blueprint for Walker's plan.

• • • •

Fellows of the Hoover Institution at Stanford University include such well-known conservatives as former Secretary of State Condoleezza Rice, economist and columnist Thomas Sewell and former U.S. Attorney General Edwin Meese. According to SourceWatch, run by the Madison-based Center for Media and Democracy, the institution has long provided a platform for high-profile conservative scholarship and is influential in American conservative and libertarian movements.

In August 2010, Hoover published a piece by law professors John O. McGinnis and Max Schanzenbach titled, "The Case Against Public Sector Unions." There is no evidence these two had any hand in writing Walker's bill, but they could have easily done so.

In their piece, McGinnis and Schanzenbach immediately identify what they see as the cause of many state structural budget deficits: "It is no secret that the primary cause of the states' long-term problems are their bloated public sectors — particularly their public pension obligations." They say that public sector unions have not only used their influence to gain such perks for their members as high wages and early retirement, but they have done so at the "expense of the public." For instance, they note, teachers unions have fought charter schools and merit pay. It is the "strong organizational rights of these unions," they add, protected and aided by state laws, that enable "their outsized influence on public policy."

But with crisis comes opportunity, say McGinnis and Schanzenbach. "The dire straits of states offer the chance for entrepreneurial governors to abolish public employee union privileges, like the right to strike, to collectively bargain, to seek binding arbitration and to collect dues. Public employee unions are the great reactionary force in public life today, using their privileged position both to defend the rewards their members receive and to block innovation. As a result, this recession offers a political opening for both liberal and conservative governors."

And in a March 2010 bulletin on public sector unions, the director of tax policy studies at the Cato Institute comes to much the same conclusion about public sector unions as McGinnis and Schanzenbach.

"Collective bargaining gives a privileged position in our democracy to government insiders who focus on expanding the public sector to their personal benefit," writes Chris Edwards. "The special position of unions is strengthened in states that have mandatory union fees and dues."

Concludes Edwards: "To put citizens and taxpayers back in control of their governments, collective bargaining and forced union dues should be outlawed in the public sector."

While it's debatable who exactly would be in control under such an approach, outlawing collective bargaining and required union

dues are two key pieces of Walker's budget repair bill. Under the proposal, most local and state employees would no longer be able to negotiate with their employers on such issues as benefits and work conditions. Bargaining on wages still would be allowed, but any increases would be capped based on the Consumer Price Index. Police officers, firefighters and state troopers would be exempt from the union changes; Department of Natural Resources wardens and some other agents would not be. The bill also calls for hefty employee contributions to health insurance and pension plans.

In addition, unions would be required to take annual votes to maintain certification and prohibited from collecting dues through payroll deduction. Union members would also be allowed to opt out of paying dues altogether.

Under these new rules, says attorney Davis, union members may well determine that the cost of dues exceeds the benefits of membership.

"The genius of it all is if all a union can do is bargain a wage rate, and at the same time you're having to pay more for health and pension and have, say \$600 dues, if you're having trouble making ends meet you might make a pragmatic decision and say, 'I don't have enough money to pay for nothing.'"

• • • •

Though there is clearly a re-energized effort under way by Republicans to thwart public unions, GOP efforts to dilute union power date to the late 1940s with the passage of the Taft-Hartley Act, says the School for Workers' Emspak.

The act was a response to the 1935 Wagner Act, which established bargaining rights for unions and led to a growth in union power. About 10 years ago, J. Mack Swigert, the last surviving member of the team at the Cincinnati law firm that helped draft the 1947 Taft-Hartley Act, was interviewed by the Workers Independent News service, founded by Emspak and located on University Avenue. In that interview, Swigert said the debate at the time within the Republican Party — which controlled Congress — was over whether the bill should aim to abolish unions outright or lay the groundwork for a slow decline. Moderate Republicans chose the latter course.

One of the more "crippling aspects of the bill," says Emspak, was its "right to work" provision, which allows states to outlaw the practice of requiring all union members in a bargaining unit to pay union dues. If only a fraction of employees are paying in, says Emspak, it becomes extremely difficult for a union to meet their legal obligations to represent all workers in that bargaining unit.

But while private sector unions have since struggled, public unions have gained strength. "There is no question the rate of unionization has gone down in the private sector while it's gone up in the public sector," says Joseph Slater, an expert in labor law at the University of Toledo College of Law.

While nationally only 7 percent of workers in private fields belong to unions, almost 40 percent of public employees are unionized, says Slater. That's "especially remarkable," he adds, because nine states don't allow any public workers to collectively bargain.

Many attribute the rights gained by public unions in the last few decades to the extension of collective bargaining rights to public employees. UW-Madison historian William Jones says the conditions were ripe for Wisconsin to pioneer the country's first law extending those rights to public workers. The state had already produced such progressive social reforms as Social Security, and UW-Madison by then was well-known as a center for labor studies. Furthermore, the birthplace of what is now the country's largest public employee union, AFSCME, was Madison.

Once Wisconsin took action in 1959, other states followed suit.

Even before then, Jones says, public unions had been on a growth spurt due to the expansion of municipal and county governments and public services. At this time, says Jones, the people who really benefited from unions were those low on the economic ladder, including poor African-Americans in the South. "They were the low-wage municipal workers, garbage collectors, maids, janitors, orderlies and nurses aides in hospitals and their wages were extremely low."

Jones says the movement by right-wing forces to pass state "right to work laws" in the 1950s was not particularly successful. When they hit a wall, he adds, they shifted tactics in the 1960s and began "attacking public employees. And they were successful."

Jones says some of the biggest attacks against public unions came in the 1970s, when some cities, like New York City, were in dire financial straits. He said many public unions at the time cut a deal with municipal employers, agreeing to forgo wage

increases in exchange for better benefit packages. That alleviated the immediate crisis for governments, because, unlike a paycheck, health and pension contributions are spread out over time.

Jones calls it an "irony" that the attacks on public unions are now focusing on their benefits. "They made a deal that was really in the interest of the fiscal interests of cities and states, and now they're being attacked for having these plush benefit packages."

• • • •

And it is indeed these benefit packages that Walker points to as the source of Wisconsin's fiscal woes. In countering claims that his move to end collective bargaining for public employees is politically motivated, Walker's office has sent out successive bulletins to the news media making a case for Wisconsin's fiscal emergency.

One on Monday, with the subject line reading, "Collective bargaining is a fiscal issue," offered examples to back up the governor's plan to end bargaining rights for public unions. School districts could save up to \$68 million a year, Walker's office said, if teachers participated in the state employee health plan rather than WEAC's own health insurance plan. (Steve Lyons, Public Affairs Director of the WEA Trust, disputed Walker's claims Tuesday, calling them "simply inaccurate.")

Walker's memo also said collective bargaining was to blame for a policy under which the Milwaukee Teachers Education Association tried to get health care coverage for Viagra at a cost of \$786,000 a year to taxpayers. The public is also on the hook for \$4.8 million for a Corrections Department policy that allows employees to call in sick, yet collect overtime if they work a shift later the same day, the memo noted.

Walker has also said on numerous occasions that his proposal will provide needed "tools" to local government leaders, who will soon be faced with large reductions in state aid, so that they can balance their own budgets without resorting to layoffs or reductions in services.

Yet neither the Wisconsin Counties Association, which represents 71 of Wisconsin's counties, nor the League of Wisconsin Municipalities, which has 190 cities and 393 villages as members, appears too eager to accept the proffered gift. Officials from both groups confirm their members have not asked for an end to collective bargaining.

"Our platform reflects members' points of concern and we haven't addressed collective bargaining in proposals as sweeping as what the bill contains," says John Reinemann, legislative director for the counties association. "While we have some platform positions calling for changes to mediation, we don't have any calling for change to the concept of collective bargaining."

And while the municipalities league has also not yet taken a formal position on Walker's repair bill, all eight responses from members on the group's website register opposition to either steep increases in employee contributions for health insurance and pensions or the elimination of collective bargaining rights.

The way Davis of the Wisconsin Employment Relations Commission sees it, "There are probably almost no municipal employers out there who think this is a good idea. They, like everybody else, have gotten used to this relationship. We know what the rules of the game are. We fight from time to time, but it's within a framework and the contract provides a lot of guidance on how the world works."

If Walker's plan passes, he adds, managers will have "freedom and power but I think they're going to be afraid and unsure how to use it and the workplace will become a much tenser place than it is now. Morale is going to drop and everybody is going to pay a price."

Susan Stern, who teaches first grade at Lapham Elementary on Madison's near-east side, says the elimination of collective bargaining would net little opportunity for teachers to influence conditions at work. That would harm students as well, she says.

Class size and preparation, for instance, are two items currently governed by contract.

"Anyone who has taught for a long time knows what it's like to try to meet everybody's needs in large classes," she says.

After Stern appeared last week on the "The Ed Show" with host Ed Schultz on MSNBC, she got a phone call from Barbara Murphy, who owns Finish It! Furniture on Stoughton Road.

In an interview with The Capital Times, Murphy says she called Stern, a customer from years ago, not only because she thinks

that the elimination of collective bargaining for public employees is unfair, but because she is worried what the decreased incomes of public workers — estimated at roughly 8 percent — will mean to her own pocketbook.

“When the economy has been the way it has been for the last several years you know that small business has been having a tough time,” says Murphy, who confirms she votes for both Democrats and Republicans, depending on the issues. “How does this help us? It won’t help us.”

And, as labor experts point out, labor unrest has long tentacles. Howard Bellman, a longtime mediator and arbitrator and a former state labor secretary, says he thinks many people may not remember the teacher strikes of the 1970s, which hit such communities as Stevens Point, Wisconsin Rapids, La Crosse, Hortonville and Madison.

He recalls there was not much outcry at the time about the interruption of education. Rather, the pressure to settle came once people in the community and employers started experiencing a loss of income and productivity because children were out of school.

“Nobody loses two weeks’ income” from a school board granting a raise, Bellman says. “Nobody has to shut down their store.”

Law professor Slater says that collective bargaining laws have reduced the number of public sector strikes because they provide a road map to conflict resolution through mediation and arbitration.

Strikes would likely return if collective bargaining is eliminated, he says. “One of the things that history has shown us in Wisconsin and Ohio and elsewhere is that there will most certainly be other public strikes because there is no other mechanism to solve conflict.”

Whether a strike will be an option for public employees remains uncertain. According to the Legislative Reference Bureau, the governor’s bill would authorize state agencies to “discharge any state employee who fails to report to work as scheduled for any three unexcused working days during a state of emergency or who participates in a strike, work stoppage, sit-down, stay-in, slow down, or other concerted activities to interrupt the operations or services of state government, including specifically purported mass resignations or sick calls.”

Sounds like all angles are covered.

Steven Elbow and Paul Fanlund of The Capital Times contributed to this report.