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Judge expresses doubts about Worker Freedom lawsuit

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For the two business groups seeking to overturn Oregon's Worker Freedom Act, an April 9 court appearance seemed to go poorly.

In the hearing before federal Judge Michael Mosman, attorneys for Associated Oregon Industries (AOI) and the U.S. Chamber of Commerce never got to explain in detail why they think the law is preempted by the National Labor Relations Act, or say much to support their contention that it chills the First Amendment free speech rights of employers. Instead they spent most of the hour in court defending their decision to name Oregon Labor Commissioner Brad Avakian and Portland-headquartered Laborers Local 296 as defendants in the case.

Lead attorney Scott Osborne — from the Portland office of anti-union law firm Jackson Lewis — seemed

hard-pressed to show that the law has concretely harmed any employer, or that the harm was coming from those two defendants.

The Worker Freedom Act, which took effect Jan. 1, makes it illegal for Oregon employers to fire or otherwise penalize workers for refusing to take part in employer-led anti-union meetings. In other words, workplace anti-union meetings must be voluntary. But enforcement of the law is to be by employee lawsuit, not legal action by Oregon's labor commissioner or unions like Local 296. Workers fired for refusing to attend anti-union meetings can sue and win reinstatement, back pay, triple damages and attorney's fees.

No such suits have been filed yet, and when he opened the hearing, Judge Mosman got right to the point. His primary concern would be "judiciability" — in other words, whether the lawsuit was suitable for court.

Mosman questioned each side, cutting through lawyerly arguments.

Osborne, the business group attorney, built his case around a campaign by Local 296 to unionize a Silverton-headquartered cooked meat processor, BrucePac. BrucePac is a member of AOI and also a client of Osborne's firm, Jackson Lewis. In a written statement, BrucePac's CEO said the company paid good money (to Jackson Lewis, presumably) to develop an anti-union campaign that relies on expressing its viewpoint in mandatory meetings. If it can't hold mandatory meetings, it forfeits a crucial element of its communications strategy.

So how did AOI and the Chamber end up suing Avakian and Local 296? As deconstructed by Mosman, the justification went like this: If BrucePac were to hold a mandatory meeting, a worker might refuse to attend and be disciplined. Then probably Local 296 would file a complaint

with Avakian, demanding that he enforce the law. Avakian would probably go to the Oregon Department of Justice (DOJ) to get a legal opinion as to whether a separate statute requires him to enforce the Worker Freedom Act, and the DOJ would probably tell him he had to enforce it, which he would then do.

In other words, Judge Mosman suggested, Osborne was presenting a string of hypotheticals.

"Why can't you wait until a couple of 'probably's are eliminated before you bring this to court?" Mosman asked.

Because, Osborne said, employers are feeling the impact of the law right now.

To back that up, Osborne read a passage from the April 2 issue of Northwest Labor Press, which described mandatory meetings as "a primary tool employers and anti-union consultants use to defeat union cam-

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paings."

"Our speech is being chilled," Osborne said.

"There's no First Amendment right to require others to listen to speech," countered John Dunlop, attorney for the Oregon Department of Justice, which is representing Commissioner Avakian.

David Rosenfeld, lead attorney for Local 296, echoed that argument, and called it "pure speculation" for the plaintiffs to predict what the union would do. Rosenfeld wouldn't disavow Local 296's right to inform

workers about the Worker Freedom Act, or help them file suit if an employer violated the Act. But it would be up to the union whether to do those things, Rosenfeld said, and AOI and the Chamber have no way of knowing what Local 296 might do. AOI and the Chamber might just as well pick a couple of pro-union workers and sue them, Rosenfeld said, on the grounds that the

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Unions to remember fallen workers at memorial service in Salem April 28

SALEM —The Oregon AFL-CIO will hold a memorial service at the Fallen Workers Memorial at noon Wednesday, April 28 —Workers Memorial Day.

The Fallen Workers Memorial is located on the Capitol Mall near the main entrance of the Labor and Industries Building, 350 Winter St. NE.

Gov. Ted Kulongoski has issued a proclamation declaring April 28 Workers Memorial Day in Oregon.

The memorial service will include the reading of the names of the 58 Oregon workers killed on the job in 2009, as well as the eight Oregon soldiers killed in military service last year. (A list of those names appears on Pages 8 and 9 of this issue.)

The Oregon AFL-CIO also is asking union members to make arrangements with their employers to observe a moment of silence that day.

Additionally, on Monday, April 26, the Northwest Oregon Labor Council will hold a memorial service at its monthly delegates' meeting, as will the Lane County Labor Council on



The Oregon AFL-CIO will hold a Workers Memorial Day service at the Fallen Workers Memorial in Salem at noon, Wednesday, April 28.

April 28.

Michael Wood, administrator for the Oregon Occupational Safety and Health Administration, is scheduled to speak at the NOLC meeting, which also will include a presentation of colors by the Oregon Military Funeral Honors Program. The meeting starts at 7 p.m. at the IBEW Local 48 Hall,

15937 NE Airport Way, Portland.

Workers Memorial Day was enacted by the AFL-CIO in 1989 to remember workers killed or injured on the job. April 28 was chosen because it is the anniversary of the creation of the Occupational Safety and Health Administration and the day of a similar remembrance in Canada.

How does health insurance reform affect union members?

On March 23, President Barack Obama signed into law the Patient Protection and Affordable Care Act. How will it affect union members? It's complicated.

"The American Nurses Association (ANA) tried to boil this down, but everyone is having difficulty because it's such a huge document, and there are so many bits and pieces to it," said Barbara Crane, ANA board member and president of the five-state National Federation of Nurses.

The new law phases in, piece by piece, over eight years. Its key features are:

- Reforms of abusive insurance in-

dustry practices;

- Tax penalties on uninsured individuals and some employers that don't offer health insurance; and

- Ways to make it easier for individuals and small businesses to get insurance.

For those who have employer-provided health insurance coverage, the law tries to let them keep it. That includes most union members: 83.5 percent of union members have employer-provided health insurance, compared to 62 percent of non-union employees.

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