Unions seek renewed worker protections in Chapter 11 reform

"If employees are called upon to sacrifice in order to resurrect their bankrupt employer, bankruptcy law must require that everyone from the break room to the board room shares the pain," said Machinists General Secretary-Treasurer Robert Roach in testimony to the American Bankruptcy Institute's Commission to Study the Reform of Chapter 11.

The American Bankruptcy Institute is a non-profit organization of bankruptcy professionals, and is dedicated to research and education about bankruptcy.

"While Chapter 11 bankruptcy can provide struggling companies an opportunity to re-group and avoid liquidation, it is increasingly abused as a means to get a leg-up on the competition by placing an undue burden on employees and retirees. Companies are increasingly using bankruptcy as a means to take what they can from employees outside of the normal collective bargaining process, not just what is needed for a corporation to survive."

Roach's sentiments were shared by executives from the Air Line Pilots Association, the United Steelworkers and the Transport Workers Union (TWU) who also testified at the hearings aimed at reforming Chapter 11 law.

The hearing was just one in a series of hearings being held by the American Bankruptcy Institute focusing on reforming Chapter 11.

Roach pointed out that increasingly unionized employees are bearing the brunt of the financial burden in company restructuring.

The discussions focused on Section 1113 of the U.S. code, which gives debtors the authority to ask a bankruptcy court to reject labor contracts.

A labor-supported bill introduced by Rep. John Conyers (D-Mich.), H.R. 100, the Protecting Employees and Retirees in Business Bankruptcies Act, seeks to strengthen the standards the debtor must meet in order to win approval for a labor agreement modification or termination.

Steelworkers General Counsel David Jury says the bill would "force a debtor to justify worker concessions with a detailed business plan, establish a presumption against rejecting a CBA (collective bargaining agreement) when executives receive incentive pay or bonuses during or in the six months before bankruptcy, and require the court to make a finding that the debtor's proposal would not cause the purchasing power of the affected employees to materially diminish."

Lack of a business plan was an issue in the 2011 bankruptcy of American Airlines, said James Campbell Little, president of the TWU. "There were not market-tested projections or a business model against which all constituents were being asked to make sacrifices."

In prepared testimony, retired bankruptcy Judge Steven Mitchell stated, "authorizing companies to reject a CBA or terminate retiree benefits were easily the most difficult decisions I had to make."

No one on the panel disagreed that the current process puts workers' jobs and retirement security at greater risk.

The commission plans to issue its recommendations in April 2014.

(Editor's Note: Steven M. Hedberg, chief operating officer of Aequitas Capital in Lake Oswego, Oregon, serves on American Bankruptcy Institute's Commission to Study the Reform of Chapter 11. This article appeared in the Label Letter newsletter of the Union Label & Service Trades Dept., AFL-CIO.)

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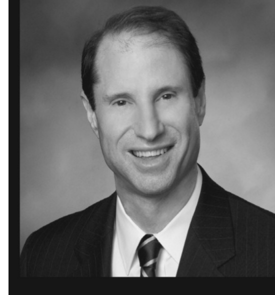

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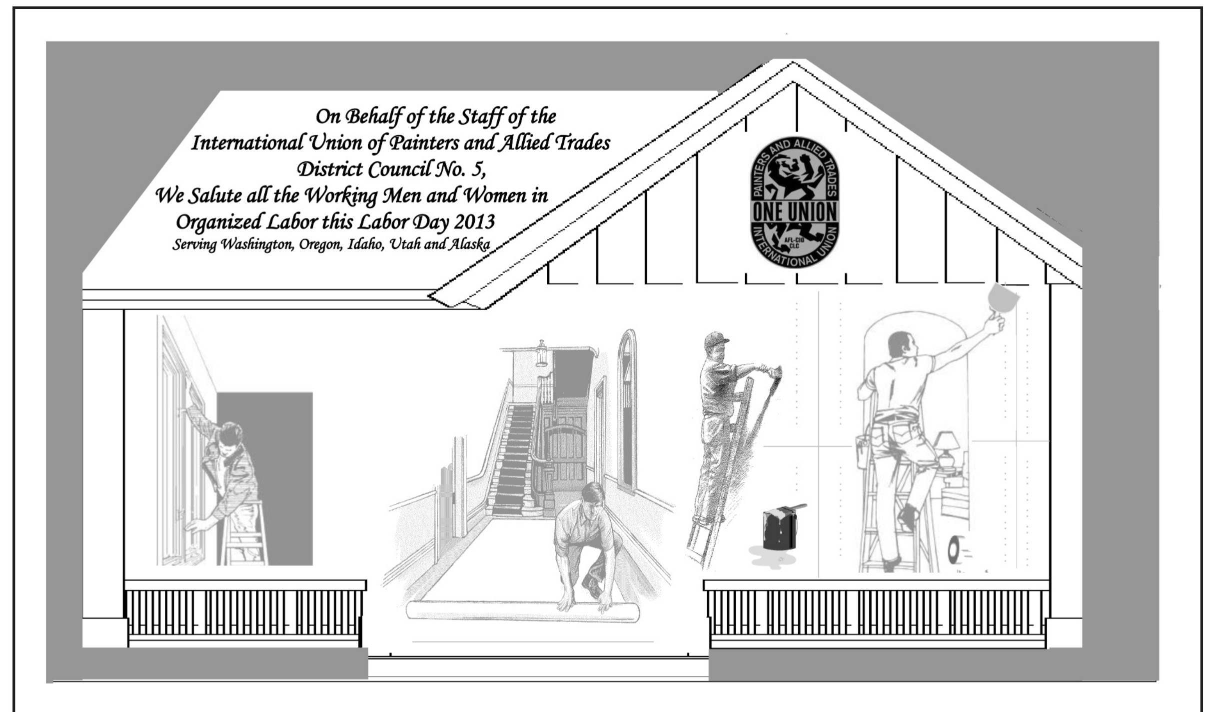

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