The State of the Union
Are they still viable?

Amanda Mansfield, Roanoke Children’s Theatre
Editorial Advisory Board

Valley Business FRONT has organized an Editorial Advisory Board in order to help direct coverage. FRONT selected a group of 16 diverse business professionals, who will serve as a sounding board throughout the 18 month rotational term that will turn over every year and a half.

The board will be given the task of helping FRONT understand the issues and develop coverage. “We’re journalists,” says Editor Dan Smith, “and not business experts. This group of distinguished business professionals—whose range in age, experience, level and specialty is impressive—will give us a solid handle on how business runs and what the primary issues and key players are in this region. My guess is that our coverage of business will be especially useful because of this group of people.”
Labor unions have never played a huge role in the lives of working people in Virginia, but they are still an important part of understanding how Virginia works.

Private and public workers in Virginia are free to form and join unions. However, Virginia is one of 22 “right to work” states, which means that employees cannot be forced to join a union, whereas in states like Michigan and Ohio where union presence is strong, it is the unions that negotiate work contracts with employers.

Virginia is also one of two states, along with North Carolina, that prohibit public employees from collective bargaining. So, fewer teachers, police officers and firefighters belong to unions in Virginia than in other states.

Out of 3.4 million employed workers in Virginia, only 161,000, or 4.6 percent, are union members, according to a 2010 report from the Bureau of Labor Statistics (BLS). In fact, Virginia ranks among the states with the lowest union participation. Nationwide, union membership has been declining for decades. According to the BLS, in 2010 unions represented 11.9 percent of workers, about 14.7 million people. In 1983, union membership nationwide was 20.1 percent.

“What we are witnessing in Wisconsin and elsewhere is the death knell of Big Labor,” wrote Washington Post columnist Robert J. Samuelson on February 27, 2011.

But are unions poised for a comeback in non-union states like Virginia, and elsewhere?

On July 27, 2011, after three years of negotiations with the company over working conditions, employees at the IKEA Swedwood furniture plant in Danville voted 221-69 to unionize. Verizon workers from Massachusetts to Virginia, who are members of the Communications Workers of America and the International Brotherhood of Electrical Workers, elected to strike August 7 after negotiations over salary and benefits failed. In Wisconsin, protests at the
Pickets have a high profile in the Verizon strike.

Union vocabulary >

**Closed shop**: A business that hires only union members, either by choice or by agreement with the unions. The Labor-Management Relations Act made closed shops illegal. (Cornell Law School, Legal Information Institute)

**Collective bargaining**: The negotiations between an employer and a group of employees to determine the conditions of employment. The result of these procedures is a collective agreement. Employees are often represented in bargaining by a union or other labor organization. Collective bargaining is governed by federal and state statutory laws, administrative agency regulations, and judicial decisions. (Cornell Law School, Legal Information Institute)

**Public employee**: A person who is employed by a municipal, county, state, or federal agency or state college or university. (UMBC glossary of labor relations terms)

**Right to work state**: A state that has a law prohibiting union security agreements

**Union security agreement**: A contract between an employer and a union requiring workers to make certain payments (called “agency fees”) to the union as a condition of getting or keeping a job. Although it is illegal to require an employee to join a union, workers may be required to instead pay agency fees if such an agreement is in place. Union security agreements are prohibited in right to work states.

**Union shop**: A business in which a majority of the workers have voted to name a union as their certified bargaining agent. Employers may hire nonunion workers, but these workers must join the union within a specified amount of time.

(Source: Nolo’s Plain-English Law Dictionary)

state capitol in Madison have been ongoing since February, when the legislature voted to eliminate the collective bargaining rights for public employees.

During four and a half months of negotiations, professional football players, who are members of the National Football League Players Association, were literally “locked out” of their facilities, weren’t paid and lost healthcare benefits. The football players demanded better health insurance coverage, increased workplace safety, and more support for retired players, citing the massive disparity between players’ salaries and revenue NFL owners receive.

No longer viable

“I had a client years ago, a manager who went out on the floor and said, ‘I am the king and you are my subjects.’ And he wondered why they wanted a union,” says Bayard Harris, a labor and employment law
attorney at Woods Rogers PLC and professor of labor relations, human resource management, and business law at Roanoke College.

After Harris graduated high school in the early 1960s, he got a job at a local textile mill. A union was trying to organize workers there, and one of the organizers followed him home, which scared him. Based on that experience, Harris took courses in law school to specialize in labor relations.

“Frankly, the unions were needed in the 1930s, ’40s, and ’50s,” Harris says. “Modern unions are no longer viable and necessary. They’re too expensive. Legislation that has been passed since the ’60s, OSHA, other safety measures, anti-discrimination laws, FMLA, and a host of other statutes that are now in place make unions unnecessary.”

Despite a decades-long legal career representing management interests, Harris does his best to “put my union hat on” when teaching labor relations at Roanoke College. He divides his class into teams to simulate a union campaign and negotiations with management.

“The labor relations course dovetails with human resource management,” says Harris. “The mantra is: motivate, retain and develop your company’s talent. Employees need to be treated fairly. Modern human resource management isn’t just payroll. Today, human resource managers study sociology, psychology and risk management. They ensure that employees’ rights and feelings are protected. Businesses can cultivate a union free environment by complying with the necessary standards of a modern human resource management.”
An image problem

“It seems like unions have become the villains. We are why companies move,” says Jim Houchins, president of the United Auto Workers Local 2069 at the New River Valley Plant of Volvo Trucks, North America, in Dublin. Houchins thinks that union members are the scapegoats for companies looking to increase profits by relocating overseas. “I feel like it is CEOs: if they know how to outsource, they get a job,” he says.

“We don’t want our company to lose customers,” says Houchins, who is fiercely proud of the trucks Volvo produces. He says that if a truck is broken down or malfunctioning, and it is difficult to obtain a missing part, union representatives and management work together to find a solution. “We’ll figure out how to fix the trucks so we don’t have to send them to another vendor. The union gives you a better quality product. We are here to help, and if the company isn’t here, we’re not here.”

Volvo management provided a statement that supports Houchins’ sentiments: “Every Volvo truck we sell in the U.S. is built at our New River Valley plant in Dublin. Working together with the UAW to establish agreements that promote future success is crucial in remaining competitive with other manufacturers producing trucks in lower cost environments, and keeping the kind of good paying manufacturing jobs we offer in the plant in this country. We’re pleased with the new 5-year contract agreed to in
New union initiatives >

A series of recent initiatives and decisions by the National Labor Relations Board of late have been especially favorable to labor unions, says Gentry Locke Rakes & Moore attorney Todd Leeson.

“In August 2011, the Obama Labor Board issued several decisions that will aid unions in their efforts to organize new members,” Leeson says. “A company in [this region that] wishes to remain union-free must assess the morale of its workforce and ensure that it treats its employees with fairness, dignity and respect. An employer who ignores this advice acts at its peril.”

Leeson says that three of the four members of the National Labor Relations Board “strongly support labor unions. Thus, it should be no surprise that in late August 2011, the board issued three labor-friendly decisions and announced a final rule that will lead to more union organizing.”

March of this year (2011), which provides stability to help us continue to grow our business and ensures our NRV employees a great quality of life."

Looking out for the little guy

“Businesses every day negotiate for goods, services and raw materials. But to negotiate work, there’s something wrong with that,” says Gary Kendall, an attorney with Michie Hamlett in Charlottesville and general counsel for the Virginia AFL-CIO.

“The founding fathers of this country were wise men,” says Kendall. “The key to this working is checks and balances. Without unions, and their national presence, there is nobody to act as a check or balance to big business. So many of the businesses say, ‘We’ll regulate ourselves.’ That’s like going into a prison and saying, ‘We don’t need a warden’.”

Todd Leeson of Gentry Locke Rakes & Moore in Roanoke has been counsel of record for more than 60 labor relations cases in district court. He has defended companies in more than 150 Equal Employment Opportunity charges alleging various forms of harassment, discrimination and/or retaliation and frequently advises companies on labor issues.
The new rules, in brief, according to Leeson are:

- The Board issued a final rule effective Nov. 14, 2011 that will require virtually all employers to post workplace notices informing employees of their rights to organize;

- (The board overruled Dana Corp., a 2007 NLRB decision, and held that employees who objected to an employer’s decision to accept a union based on a card check would be barred from seeking a decertification election for at least six months after the parties’ first bargaining session);

- The Board overruled MV Transportation, a 2002 NLRB decision, and restored the “successor bar” doctrine requiring a successor employer to recognize an incumbent union for at least six months after the parties’ first bargaining session;

- The Board overruled a 20-year old precedent and held that smaller bargaining units of CNA’s in non-acute health care facilities are appropriate under the law—this decision will have ramifications in all industries.

“Each of these decisions bears further scrutiny and analysis,” says Leeson. “The bottom line, however, is that these decisions, and other decisions likely to follow, will lead to more union organizing and/or make it easier for unions to add new members.

Leeson says, “A company in Southwest Virginia who wishes to remain union-free must assess the morale of its workforce and ensure that it treats its employees with fairness, dignity and respect. An employer who ignores this advice acts at its peril.”

—Dan Smith

Leeson says, “The optimal relationship I can have with a corporate client embroiled in litigation is one in which there is candid dialog with top management as to the likely legal ramifications, as well as the practical ‘real world’ options. I view my role as providing solid, practical advice and analysis to management so that it can decide what option would be in its best interests. I will then do everything in my power to achieve a favorable final result for the company.”

Dealing with labor’s attorneys can be a significant challenge he says. “In my interactions with opposing counsel, it is fair to say that some counsel are more reasonable than others, and some do not appear to have much control over their clients,” he says. “There are some cases that must be fully litigated. If there is a case that could be settled on mutually acceptable terms, direct negotiations by the parties, through counsel, is best. Mediation, however, has proven to be an effective tool to resolve challenging employment disputes.”

Gary Kendall is quick to dismiss the idea that unions are corrupt entities: “The Jimmy Hoffa stories and things like that are great drama, but in reality, the labor unions are regulated; pension funds are regulated. Unions have a tenth of the corruption, a hundredth, of a corporation. No organization of this size is going to be perfect. I would match the record of organized labor to the record of big business any day.”
Kendall also believes that the benefits of unions often go without consideration. “I once gave a speech to a group of small businessmen and the Chamber of Commerce,” he says. “I asked the group this question: ‘If the workers in this community don’t earn good union wages, who’s going to buy cars, appliances and furniture?’ You could see in the eyes of the audience; it was something they hadn’t thought about. Small businesses shouldn’t be anti-union. Labor creates income that helps support businesses.”

Kendall began working with unions 30 years ago, after meeting builders who had become sick due to asbestos exposure. He became interested in workplace safety issues and the labor movement and he lobbies for the AFL-CIO in Richmond and Washington. “I have never sent them a bill, I do everything pro bono,” he says of his lobbying work. “I’m lobbying on behalf of working people, and the rights of people who work for a living.”

As a lobbyist, Kendall believes he can advocate for those who often go unheard. “One employee can’t muster enough of a voice to speak out about what’s being done,” he says. “Workers are terrified for their families and well-being. And they’ve become the ping-pong balls for everybody who says we have to make cuts.”

Not all created equal

Laura Whitely, the secretary and treasurer of the American Federation of Musicians Local 123 in Richmond, has been working with the union since
1948, when she met her husband. “A lot of people don’t think musicians have a union,” Whitely says. “But there was a time you had to join or you couldn’t play.”

Local 123 largely covers the Richmond Symphony Orchestra, and absorbed the Roanoke AFM chapter when it could no longer support itself. “The union provides protection you can count on. Otherwise, you’re on your own,” Whitely says. “You can sign a contract, but that doesn’t mean they will honor it.”

The union also provides musicians freedom to concentrate on their craft, so they don’t have to worry about their benefits, work contracts, and bargaining. “It is enough of a job to keep practicing,” Whitely, who is not a musician, says.

She believes musicians should have a certain level of proficiency before joining. “If you’re not very good, you’re just wasting your money,” she says.

But some artists’ unions have restrictions that deter creative professionals. Amanda Mansfield, who works at the Roanoke Children’s Theatre and is a well-known actress in the region, opted not to be a union member, partly because of where she lives. “Union actors, designers and choreographers are generally highly experienced and have worked all around the country, bringing both their talents and current trends
CWA Local President Chuck Simpson explains a position.

Brandle Trigg of CWA shows her sentiment.
in theatre to Roanoke Children’s Theatre,” she says.

“RCT typically has one equity contract per show and hires regional and local professional adults and as well as local youth to round out the cast in our four productions per year. We follow rules and regulations established by The Actors Equity Association based on the size of our theater and the price of our tickets.

“As for me, I opted out of joining the union right at the start of my career in order to allow myself greater odds for finding work. Competition is fierce, and because of where I have lived, I would have severely limited my ability to work if I’d gone on and gotten those last two Equity points. Staying non-union let me work both in Equity and Non-Equity houses—and for all kinds of other theatres—and let me enjoy the freedom to choose.”

**Everything on the Line**

Chuck Simpson, president of the Communications Workers of America Local 2204, and an employee at Verizon Communications wants to give credit where it is due.

“When starting with C&P telephone company in 1993,” he says, “I realized very quickly that the great benefits, good wages, retirement and job security were there for us. [It was] not because the company had given it to us, but because our CWA Union had negotiated it for us.”

“Unions paved the way for the middle class, and pioneered benefits such as paid health care and pensions along the way. One of the primary reasons why our current

**Strength in union >**

“The reason many employers dislike the idea of a unionized shop is because they fear the loss of control in the way they operate their business,” says Eric Angel, recording secretary for the United Steelworkers Local 1023 and an employee at Yokohama Tire Corporation in Salem. “But in reality, a good labor/management relationship can enhance problem-solving and provide a more efficient process of communicating operational problems to various levels of management.

“ Strikes get a lot of publicity. However, they are infrequent and represent only a small percentage of labor/management negotiations. There is a misconception that union benefits and wages have broken companies, but the reality is that a union negotiating committee can only get what a company is willing to give, and often union members make sacrifices for their employer before the CEO and corporate boards do.

“All workers today are facing rampant disparity between incomes of the richest Americans and average Americans, and it will take a movement, not an institution, to change that. The structure of our unions today can provide the spark for such a movement, but it takes time and Americans have to feel the need to get involved—our economy was at its strongest when we were the most unionized,” Angel says.

—Laura Purcell
recession endures is that workers do not have the purchasing power they need to drive our economy,” says Naomi Bolden, a customer service sales representative for Verizon Communications and the Roanoke area vice president for Local 2204.

Bolden has worked both union and non-union jobs, and finds there is great disparity. “There’s a huge difference,” she says. Without a union, she says, “you don’t have a voice. You are just at the employer’s mercy.”

As Verizon employees and CWA members, Bolden and Simpson participated in the strike (in late August). “We’re fighting for everything we have gained over the last 50 years,” Bolden says. “Bargaining rights, healthcare, retirement benefits, vacation. Basically, [it adds up to] $20,000 a year per member lost with all the multiple concessions.”

If you don’t, we will

“I get along with the union representatives I deal with, but basically, the whole premise of unions and the need for unions no longer exists,” says Clinton Morse, an attorney at LeClair Ryan in Roanoke. In January, Morse and his colleague Mark B. Goodwin published the book Maintaining Non-Union Status: The Big Picture and the Nuts and Bolts.

“The purpose of the book is two-fold,” says Morse. “It has sections on good union-free management practices, things responsible companies can do to make unions unnecessary. Treat your employees fairly and involve them in meaningful ways in the business. They don’t need a voice from the outside the company to represent them,” says Morse, so long as the company treats its employees with respect.

Morse’s book also advises business owners about how to respond to union organizing. “If a company does a good job of communicating and educating employees on the pros and cons of unions, most employees will want to
avoid it,” says Morse. “The day-to-day wear and tear that unions inject into a workplace creates a needless ‘us vs. them’ mentality.”

“Unions call themselves the voice of working people. Unions do not act in the interest of people they represent. It isn’t reasonable for a union to demand the entire cost of healthcare for employees. If unions succeed in their demands, it causes companies to become uncompetitive, and the ultimate result is job losses,” Morse says.

“When I was a young labor lawyer in Houston, I worked with a man named Chris Dixie,” Morse continues. “He was a union labor lawyer, a wonderful lawyer and a great old gentleman. He was helping unions organize the Gulf Coast, at a time when they really were needed there.

“He was a great teacher. Every year, he would have a school at the University of Houston for managers of companies. His message was, ‘Either you take care of them, or we will.’ I’ve always remembered that.

“I think that’s the responsibility of every good company. They have to take good care of their employees, or unions will. Employees should always have the right to organize, if they’re not getting a square deal. It is the responsibility of business to make unions unnecessary.”