

Shrinking Government Bureaucracy Rethinking the National Labor Relations Board

Free Market Reforms to Better Serve the Needs of American Workers

By *Trey Kovacs**

The National Labor Relations Board (NLRB), the federal agency that oversees private sector labor relations in the United States, has long outlived its usefulness. Created under the 1935 National Labor Relations Act, it was intended to implement workplace regulations and resolve labor disputes. It has both a rulemaking and an adjudicatory role.

However, the NLRB no longer operates as it was intended by Congress—as a neutral arbiter in labor disputes. During the past eight years, the NLRB overturned a cumulative 4,559 years of its own precedent.¹ This radical reversal of Board policy stems from politicization of the agency.

Throughout the NLRB's history, its partisan composition has depended on control of the presidency. The Board is composed of two Republican and two Democratic members, with a chairman from the president's party. This has caused case precedent to flip-flop depending on which party holds the White House. This politicization of the NLRB and oscillation of Board policy has eroded union and employer confidence in the institution, as uncertainty reigns among those regulated by the NLRB due to ever-changing Board precedent.

In addition, the NLRB has proven ineffective in its labor dispute resolution role, doing less work at greater cost to the taxpayer. From 1980 to 2016, the Board's annual caseload fell by 58 percent, from more than 57,000 cases to 24,200, and its output of published decisions fell by 78 percent from 1,343 to 298. Yet during that same period, the NLRB's annual budget appropriation increased from \$112 million to \$274 million.²

Eliminating the National Labor Relations Board would improve the resolution of private sector labor disputes. Currently, unions and employers have incentive to file cases in hopes of reversing NLRB policy. Increased consistency in decision making by federal courts would likely undermine the incentive to attempt to reverse policy.

Abolishing the NLRB also would lessen uncertainty regarding labor policy and make it easier for businesses to plan for the future.

The agency's rulemaking authority and election duties should be transferred to the Department of Labor, which already has expertise in these areas.

* *Trey Kovacs is a policy analyst at the Competitive Enterprise Institute.*

The Board's adjudicatory authority should be transferred to federal district courts. This involves reforming Section 10 of the National Labor Relations Act to revise the NLRB's adjudicatory authority.

Under this proposal, NLRB Regional Directors would continue to investigate unfair labor practice claims and determine whether they are meritorious. For cases that are found to have merit, the complainant could then file a charge in the appropriate federal district court. This would bring about more consistent and fair decisions and less flip-flopping of precedent. Federal judges serve lifetime appointments and are less likely to come from the ranks of a union or management, with the bias that comes from that experience.

In addition, sending labor disputes directly to federal court would expedite vindication of unfair labor practice claims. Currently, a case must weave its way through several levels at the NLRB before it can be appealed to a federal court. It is time to cut out the middleman.

Notes

¹ Michael J. Lotito, Maurice Baskin, and Missy Parry, "Was the Obama NLRB the Most Partisan Board in History?" Coalition for a Democratic Workplace and Littler's Workplace Policy Institute, December 6, 2016, <http://myprivateballot.com/wp-content/uploads/2016/12/CDW-NLRB-Precedents-.pdf>.

² John Raudabaugh, "The Raudabaugh Report: NLRB Productivity Cost Analysis FY1980–FY2016," National Right to Work Legal Defense Foundation, Accessed July 10, 2017, <http://www.nrtw.org/the-raudabaugh-report-nlr-productivity-cost-analysis>.