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# The Forgotten History of the Wagner Act

What Unions and the Biden Administration  
Have Conveniently Forgotten

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## Introduction

President Joe Biden on April 26, 2021, announced the creation of a special Task Force on Worker Organizing and Empowerment. The purpose of the board, which was headed by Vice President Kamala Harris and then-Labor Secretary Marty Walsh, was to “empower workers to organize and successfully bargain with their employers.” That is, to form unions.

Biden explained that expanding unionization was not merely a policy goal of his administration. Rather, it was something existing law *required* him to do. “Since 1935, when the National Labor Relations Act [NLRA] was enacted, the policy of the federal government has been to encourage worker organizing and collective bargaining, not to merely allow or tolerate them,” Biden claimed.<sup>1</sup>

The president was claiming that the federal government was – or, at least, was *supposed* to be -- not merely a neutral enforcer of laws and regulations but rather an active participant who took sides in the conflict-laden relationship between unions and management.

Biden’s take on the NLRA is hardly unique to him. The argument that the law requires the government to prod workers into joining unions has been frequently made by congressional lawmakers, labor leaders and other pro-union activists, especially in recent years.

“The stated purpose of the National Labor Relations Act is to encourage collective bargaining,” the late AFL-CIO President Richard Trumka told the Senate Health Education Labor and Pensions Committee in May 2019.<sup>2</sup>

The website of the National Labor Relations Board, which currently has a Democrat-appointed majority, states, “In 1935, Congress passed the National Labor Relations Act (NLRA), making clear that it is the policy of the United States to encourage collective bargaining by protecting workers’ full freedom of association.”

They are wrong.

The claim that the NLRA was meant to encourage unionization is contrary to the repeated claims of the late Sen. Robert Wagner, a New York Democrat and author of the law. In public statements and throughout the congressional debate over the law, which is known as the “Wagner Act,” the senator said his legislation sought to craft a balance between affirming the right of workers to collectively bargain and insuring that workers were not coerced into joining unions they did not wish to belong to.

This was the understanding of other major figures in politics and labor organizing at the time of the law’s passage. This balance was necessary because the legislation was introduced in large part as a reaction to an unintended effect of President Franklin Roosevelt’s main New Deal legislation, the National Industrial Recovery Act of 1933. That law inadvertently resulted in workers being forced by their own bosses into company-run unions.

To the limited extent that the NLRA does recommend collective bargaining, it is only as a means to the end of stopping labor strife that hurts the broader economy. A good present-day example would be how President Biden last year imposed a collective bargaining contract on the railroad industry and its unions to prevent a strike that threatened another supply chain crisis<sup>3</sup>. Biden did that under the authority of an earlier labor law, the Railway Labor Act, but he was acting in response to precisely the kind of scenario that the NLRA’s backers feared.

The NLRA affirms the rights of workers to collectively bargain, but only as a voluntary expression of the First Amendment right of association. This is shown in the fact that Wagner’s legislation intentionally did not take a position on “closed” union shops, i.e., cases where workers were obliged by the collective bargaining contracts to join or otherwise support their workplace’s union. Had Wagner and the bill’s other supporters meant to encourage collective bargaining for all workers, they could have simply mandated closed shops in the original law. They did not.

<sup>1</sup> President Joe Biden, “FACT SHEET: Executive Order Establishing the White House Task Force on Worker Organizing and Empowerment,” April 29, 2021, <https://www.whitehouse.gov/briefing-room/statements-releases/2021/04/26/fact-sheet-executive-order-establishing-the-white-house-task-force-on-worker-organizing-and-empowerment/>

<sup>2</sup> AFL-CIO President Richard Trumka, prepared remarks for hearing before House Education and Labor Committee, “The Protecting The Right To Organize Act: Deterring Unfair Labor Practices,” May 8, 2019, <https://www.congress.gov/event/116th-congress/house-event/LC64594/text?s=1&r=25>

<sup>3</sup> Katy Ferek and Tarini Parti, “Biden Signs Legislation Preventing Railroad Strike,” Wall Street Journal, Dec. 2, 2022, <https://www.wsj.com/articles/biden-signs-legislation-preventing-railroad-strike-11669996971>



As Wagner himself put it during the 1934 Senate hearings, “That is all that this bill does, so far as I can see. It leaves the worker a free man to organize or not to organize as he chooses.”<sup>4</sup>

Union leaders of the time agreed. John Lewis, president of the United Mine Workers, said during the hearings, “The bill introduced by Senator Wagner does not presume to make the government a party to the formation of unions of the workers but it does undertake to protect the workers in the formation of unions if they elect to take that action.”<sup>5</sup>

## Industrial peace, undone

To understand confusion between the original intent of the NLRA and its presented-day interpretation, we need to understand how the law came to be in the first place. It was a legislative attempt to fix the labor section of an earlier law, the National Industrial Recovery Act of 1933.

The NIRA was the main legislation that was intended to enact the president’s “New Deal” to rebuild the nation’s shattered economy. This was the height of the Great Depression. The national unemployment rate stood at 24.9%, according to the FDR Presidential Library.<sup>6</sup> A total of 12.8 million people were unemployed that year. FDR had been elected on the promise on getting the country back on its feet. The economic shock of the depression had given him the political support needed for drastic action.

The NIRA, among other provisions, granted workers the right to collective bargaining. This was not the first such law granting workers this right. The Railway Labor Act was passed in 1929, covering the transportation industry. The NIRA went far beyond that. For the first time, all private sector businesses would be obligated to accept unions.

The relevant section of the NIRA reads, “[E]mployees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.”<sup>7</sup>

FDR said the purpose of this legislative provision was “industrial peace,” saying it “calls upon every individual in both groups to avoid strikes, lockouts or any aggressive action during the recovery program.”<sup>8</sup> It was intended as an antidote to any strife that would disrupt the economic recovery. Roosevelt notably did not say it was necessary for situations beyond that. It was a pre-emptive capitulation to the threat of union-related violence, both from the unions and from the companies’ strikebreakers.

It had the opposite effect. The year following NIRA’s passage proved to be a particularly bloody one in terms of labor strife. With collective bargaining now backed by federal law, labor groups made aggressive pushes to organize industries that had thus far resisted unionization.

Trucking came to a halt in Minnesota in May 1934 after the Teamsters organized a strike by 3,000 truckers. The strike stretched into July. In one incident, police fired on strikers, killing two and injuring 67. The governor was obligated to call in the National Guard to maintain the peace.<sup>9</sup>

Also in 1934, west coast longshoremen went on strike for 83 days beginning in May, closing ports in California, Oregon and Washington state. Six protesters were killed in various clashes with police.<sup>10</sup> An estimated 10,000 auto

<sup>4</sup> Senator Robert Wagner, quoted in *Legislative History of the National Labor Relations Act, 1935*, Volume 1, National Labor Relations Board, first published 1959, reprinted 1985, page 505, [https://books.google.com/books?id=YqUEsl4InS4C&printsec=frontcover&source=gbs\\_ge\\_summary\\_r&cad=0#v=onepage&q&f=false](https://books.google.com/books?id=YqUEsl4InS4C&printsec=frontcover&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=false)

<sup>5</sup> United Mine Workers President John Lewis, quoted in *Legislative History of the National Labor Relations Act, 1935*, Volume 1, National Labor Relations Board, first published 1959, reprinted 1985, page 140.

<sup>6</sup> “Great Depression Facts,” Franklin D. Roosevelt Presidential Library and Museum, accessed June 8, 2023, <https://www.fdrlibrary.org/great-depression-facts>

<sup>7</sup> National Industrial Recovery Act (1933), National Archives, accessed June 8, 2023, <https://www.archives.gov/milestone-documents/national-industrial-recovery-act>

<sup>8</sup> President Franklin Roosevelt, “Statement on the Appointment of The First National Labor Board,” August 5, 1933, UC Santa Barbara’s The American Presidency Project, accessed June 8, 2023, <https://www.presidency.ucsb.edu/documents/statement-the-appointment-the-first-national-labor-board>

<sup>9</sup> Minnesota Digital Library, University of Minnesota, “Minneapolis Teamsters Strike of 1934.” Accessed June 8, 2023, <https://mndigital.org/projects/primary-source-sets/minneapolis-teamsters-strike-1934>

<sup>10</sup> Nadine Jelsing, “How a 1934 waterfront strike was a major turning point for West Coast labor,” Oregon Public Radio, July 11, 2022, <https://www.opb.org/article/2022/07/11/1934-west-coast-ilwu-longshore-big-strike-labor-victory/>.

workers in Toledo, Ohio, went on strike beginning that April. Bloody clashes resulted in the deaths of two picketers.<sup>11</sup> There were violent clashes in Sheboygan, Wisconsin, in July of that year, following manufacturing workers' demands that Kohler Co. unionize.<sup>12</sup> The Bureau of Labor Statistics reported that 1.5 million workers were involved in 1,856 strikes that year.<sup>13</sup>

## Enter, company unions

The reaction of the business community to the NIRA's affirmation of Collective bargaining rights was best summarized by the old axiom, "If you can't beat them, join them." If businesses were going to be forced to accommodate unions, they were going ensure that the unions accommodated them.

The companies created their own unions and pushed their workers to join. Union membership swelled following the NIRA's passage. Francis Gorman, president of the United Textile Workers told Congress that the number of unions had swollen by 65% in the first year since the law's passage.<sup>14</sup> An estimated two million more people were unionized under the law. Corporate unions were the main beneficiary.

American Federation of Labor President William Green estimated that 400 companies had organized their own employee representation group in the year following the NIRA's passage.<sup>15</sup> The Iron and Steel Institute, a pro-industry research group, reported that of the 2.5 million workers surveyed 45% bargained under "internal representation plans" and only 9% expressed a wish for independent representation.<sup>16</sup>

General Motors set up a "Chevrolet Employees Association" on Dec. 30, 1933 to cooperate with Chevrolet management. Chrysler Motors Co. created a its own union for its workers that same year. Carnegie Steel Co. created one on June 19, 1933. Chicago-

based Illinois Steel Co., created one on June 14, while Cleveland-based American Steel and Wire Co., created one on June 15. These were not unprecedented: Bethlehem Steel Co. had created an employees' union in 1919.

While the NIRA said workers could not be coerced into joining a corporate union, workers could – in theory anyway – join them voluntarily. The extent to which the workers' joining was truly voluntary was suspect. Management offered various enticements to their employees and, in at least some cases, these unions did appear to have genuine grassroots support. By and large though, corporate unions appeared to be little more than window-dressing that was meant to meet the technical letter of the law while allowing the companies to fend off truly independent unions. Traditional independent unions openly derided these new organizations.

A corporate union has an obvious conflict of interest: If it represents both management and the workers, it is unlikely to push aggressively for higher wages and benefits above what management is willing to grant. Yet if the intention of the law was primarily to promote labor peace, then corporate unions could be said to fulfill that function, as they did represent a means for management to pro-actively address worker concerns and grievances.

UMW President John Lewis told the Senate Education and Labor committee in 1935, "Industries do organize on a national scale, Senator, and the Industrial Recovery Act encourages such organization on such scale. ... Labor is deeply grieved because of the bad faith evinced in the attitude of the major industries of this country."<sup>17</sup>

"We would have better never passed section 7(a) [of the NIRA] than to delude men and women in the belief that they could exercise certain rights," William Green, president of the American Federation of Labor,

<sup>11</sup> United Food and Commercial Workers Local 324, "Toledo Auto-Lite Strike," posted January 1, 2012, <https://ufcw324.org/toledo-auto-lite-strike/>

<sup>12</sup> Wisconsin Historical Society, "Kohler Strike," accessed June 8, 2023, <https://www.wisconsinhistory.org/Records/Article/CS2337>

<sup>13</sup> Bureau of Labor Statistics, "Analysis of Strikes and Lockouts in 1934," published January, 1936, <https://www.bls.gov/wsp/publications/annual-summaries/pdf/work-stoppages-1934-and-1935.pdf>

<sup>14</sup> United Textile Workers President Francis Gorman quoted in Legislative History of the National Labor Relations Act, 1935, Volume 1, National Labor Relations Board, first published 1959, reprinted 1985. The 65% claim appears on page 302, [https://books.google.com/books?id=YqUEsl4InS4C&printsec=frontcover&source=gbs\\_ge\\_summary\\_r&cad=0#v=onepage&q&f=false](https://books.google.com/books?id=YqUEsl4InS4C&printsec=frontcover&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=false)

<sup>15</sup> American Federation of Labor President William Green, quoted in Legislative History of the National Labor Relations Act, 1935, Volume 1, National Labor Relations Board, first published 1959, reprinted 1985, page 107, [https://books.google.com/books?id=YqUEsl4InS4C&printsec=frontcover&source=gbs\\_ge\\_summary\\_r&cad=0#v=onepage&q&f=false](https://books.google.com/books?id=YqUEsl4InS4C&printsec=frontcover&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=false)

<sup>16</sup> *Ibid.*

<sup>17</sup> United Mine Workers President John Lewis, quoted in Legislative History of the National Labor Relations Act, 1935, Volume 1, National Labor Relations Board, first published 1959, reprinted 1985, page 170, [https://books.google.com/books?id=YqUEsl4InS4C&printsec=frontcover&source=gbs\\_ge\\_summary\\_r&cad=0#v=onepage&q&f=false](https://books.google.com/books?id=YqUEsl4InS4C&printsec=frontcover&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=false)

told Senate Education and Labor Committee on March 14, 1934.<sup>18</sup>

### ‘The free choice of the men’

Sen. Robert Wagner introduced the NLRA primarily to address the problem created by these corporate unions. “[A]mbiguities of language and the absence of enforcement powers [in the NIRA] have enabled a minority of employers to deviate from the clear intent of the law and to threaten our entire program with destruction,” Wagner said in a March 11, 1934 *New York Times* op-ed. The NLRA would “clarify and fortify” the labor provisions of the existing law.<sup>19</sup>

Wagner was careful to say in the same op-ed that he was not opposed to company unions in all cases. “If by company unionism one simply means the right of employees to confine their activities to a single employer unit when they wish to do so, I do not object to that principle in the slightest and there is nothing contrary to it in the bill that I have introduced.”

Unions nevertheless viewed Wagner’s legislation as addressing the corporate union issue. “Can a government so big and democratic as this permit such a condition to exist? We believe that this bill proposed by Senator Wagner will at least go a long way to remedy situations such as this,” the AFL’s Green testified.<sup>20</sup>

The business community was not about to give up its company unions without a fight. James Emery, general counsel of the National Association of Manufacturers, told the Senate committee that the term “company union” was itself a misrepresentation. These were unions, period. “An epithet is worth an army at times and that is an epithet that has been used with utmost freedom by those who want to misrepresent the most modern form of employment relationship that has been developed between employer and employee,”

Emery declared. Wagner’s proposed new law “ignores successful and practical experiments in new forms of collective relationships,” he said.<sup>21</sup>

Wagner himself was forced to concede that he didn’t think company unions were inherently wrong provided they were truly voluntary. “Wherever I have spoken – somehow or other the statement has not been accurately reported. I have always used the word ‘dominated’ when I have spoken. I can understand that there can be an independent union within a plant so long as it is the free choice of the men,” he told the committee.<sup>22</sup> How to ensure that they were voluntary was a trickier question.

Thus, the issue of workers being potentially forced into unions was front and center throughout the debate on the NLRA. Wagner and others were trying to thread a needle: to ensure that collective bargaining rights existed and that those rights could be exercised in a meaningful way.

Wagner was adamant throughout the process that the legislation was only affirming the right of workers to have a union, not corraling them into one against their wishes. “The free choice of the worker is the only thing I am interested in,” he said during the 1934 Senate hearings.<sup>23</sup>

The senator fumed even then that his legislation was being willfully misread. During an exchange with one witness, Dr. Paul Brissenden, professor of economics Columbia University, Wagner thundered, “this propaganda which has been pretty widespread, that the purpose of this act is to impose some particular union upon the manufacturers of the United States, as a matter of fact, I want to know whether you agree with me that this bill does not do anything of this kind except that it does make a worker a free man so he may decide whether he wants a union or not, and, if he

<sup>18</sup> American Federation of Labor President William Green, quoted in Legislative History of the National Labor Relations Act, 1935, Volume 1, National Labor Relations Board, first published 1959, reprinted 1985, page 134, [https://books.google.com/books?id=YqUEsl4InS4C&printsec=frontcover&source=gbs\\_ge\\_summary\\_r&cad=0#v=onepage&q&f=false](https://books.google.com/books?id=YqUEsl4InS4C&printsec=frontcover&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=false)

<sup>19</sup> Senator Robert Wagner, “Company Unions: A Vast Industrial Issue,” *New York Times* op-ed, March 11, 1934

<sup>20</sup> American Federation of Labor President William Green, quoted in Legislative History of the National Labor Relations Act, 1935, Volume 1, National Labor Relations Board, first published 1959, reprinted 1985, page 136, [https://books.google.com/books?id=YqUEsl4InS4C&printsec=frontcover&source=gbs\\_ge\\_summary\\_r&cad=0#v=onepage&q&f=false](https://books.google.com/books?id=YqUEsl4InS4C&printsec=frontcover&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=false)

<sup>21</sup> James Emery, general counsel of the National Association of Manufacturers, quoted in Legislative History of the National Labor Relations Act, 1935, Volume 1, National Labor Relations Board, first published 1959, reprinted 1985, page 415, [https://books.google.com/books?id=YqUEsl4InS4C&printsec=frontcover&source=gbs\\_ge\\_summary\\_r&cad=0#v=onepage&q&f=false](https://books.google.com/books?id=YqUEsl4InS4C&printsec=frontcover&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=false)

<sup>22</sup> Senator Robert Wagner, quoted in Legislative History of the National Labor Relations Act, 1935, Volume 1, National Labor Relations Board, first published 1959, reprinted 1985, page 440, [https://books.google.com/books?id=YqUEsl4InS4C&printsec=frontcover&source=gbs\\_ge\\_summary\\_r&cad=0#v=onepage&q&f=false](https://books.google.com/books?id=YqUEsl4InS4C&printsec=frontcover&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=false)

<sup>23</sup> *Ibid.*



wants one, what particular union he wants to represent him, or whether he wants to remain unorganized.”<sup>24</sup>

There was considerable pressure for the NLRA to explicitly authorize closed shop policies, or even mandate them. “There is frequently a great deal of talk to the effect that a closed shop destroys the freedom of the workers to be independent of work if he wishes to be. Well, to a certain extent, of course, it does, but in a complicated modern society like ours, nobody is going to be entirely free,” testified Robert Hale, a Columbia University law professor, during the Senate hearings.<sup>25</sup>

Wagner refused to consider this. “The new legislation that I am proposing does not dictate any policy as to the closed union shop. That is a problem that labor must work out itself.” Had he wanted to encourage collective bargaining, he surely would have supported such a policy.<sup>26</sup>

Some public voices were highly skeptical of the federal government legitimizing collective bargaining. Fr. Charles Coughlin, a Catholic priest and popular radio commentator in the 1930s, supported collective bargaining in principle but warned his listeners that obligating workers to join unions was effectively double-taxation since they would be paying union dues in addition to regular taxes.

“No one denies that industry needs to be placed over the congressional knee and soundly spanked,” Coughlin told his listeners in a May 1934 broadcast, then added that any legislation needed to set up “a code of fair play for labor as well as fair play for industry.”<sup>27</sup> Coughlin was a controversial figure whose later opposition to entering World War II and antisemitism would make him notorious, but in the early 30s his influence was immense.

Wagner’s legislation gained traction after the NIRA itself became endangered. The law was challenged all the way to the Supreme Court, which heard oral arguments in the beginning of May 1935. The justices ruled unanimously on May 27 that the NIRA was unconstitutional, nullifying the law. Wagner’s bill became the main legislative vehicle to ensure collective bargaining rights remained in effect in private industry. The NLRA passed Congress and was signed by President Roosevelt on July 6, less than two weeks after the nullification of the NIRA.

## Not what you think it means

The nub of unions’ and the Biden administration’s argument regarding the NLRA is that the text of the law itself says the policy of the government is “encouraging” collective bargaining.

The relevant section in the NLRA, as currently amended, is this: “It is declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.”

So, yes, the word is *mentioned* in the law. Note however that this follows a long preamble about eliminating “certain substantial obstructions to the free flow of commerce.” This is a reference to the labor riots that happened throughout 1934. The country was still struggling to get out of the Great Depression and Congress was eager to see the end to the strikes that were keeping the economy stuck in neutral. Creating a process for letting management and workers sit down and negotiate a collective bargaining deal was seen a way out of that dilemma.

<sup>24</sup> Senator Robert Wagner, quoted in Legislative History of the National Labor Relations Act, 1935, Volume 1, National Labor Relations Board, first published 1959, reprinted 1985, page 248, [https://books.google.com/books?id=YqUEsl4InS4C&printsec=frontcover&source=gbs\\_ge\\_summary\\_r&cad=0#v=onepage&q&f=false](https://books.google.com/books?id=YqUEsl4InS4C&printsec=frontcover&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=false)

<sup>25</sup> Robert Hale, Columbia University Professor of Law, quoted in Legislative History of the National Labor Relations Act, 1935, Volume 1, National Labor Relations Board, first published 1959, reprinted 1985, page 81, [https://books.google.com/books?id=YqUEsl4InS4C&printsec=frontcover&source=gbs\\_ge\\_summary\\_r&cad=0#v=onepage&q&f=false](https://books.google.com/books?id=YqUEsl4InS4C&printsec=frontcover&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=false)

<sup>26</sup> The 1947 Taft-Hartley Amendments to the NLRA would prohibit closed shops.

<sup>27</sup> Father Charles Coughlin, radio address, March 25, 1934, inserted into the record of congressional debate for the NLRA. A transcript of his remarks appears in the Legislative History of the National Labor Relations Act, 1935, Volume 1, National Labor Relations Board, first published 1959, reprinted 1985, page 488, [https://books.google.com/books?id=YqUEsl4InS4C&printsec=frontcover&source=gbs\\_ge\\_summary\\_r&cad=0#v=onepage&q&f=false](https://books.google.com/books?id=YqUEsl4InS4C&printsec=frontcover&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=false)

So, Congress was suggesting collective bargaining as a solution but, crucially, only in cases where “substantial obstructions to the free flow of commerce” were happening. Otherwise, the law affirms workers’ “full freedom of association,” a freedom that it pointedly does not say requires the existence of a union.

## Unions in steep decline

Unions have a simple pragmatic reason to argue that the NLRA encourages collective bargaining. Union membership has substantially shrunk in terms of the total U.S. workforce in recent decades and with it, the unions’ effectiveness as a political force and a counterweight to management.

Census Bureau data indicates that around a third of the workforce was unionized in the middle of the 20th century. When the Labor Department began monitoring the rate in 1983, it found that the number had shrunk to about 20%. The most recent Labor Department figure put the number at around 10%. Overall numbers have been stagnant at around 14 million for decades as the economy has grown. The number have stagnated despite the fact that the public sector unionization has become widespread. Only about 7 million private sector workers today hold a union card.

Declining union membership is seen by many progressives as an existential threat. They fear labor will dwindle to irrelevance, if not extinction. Virtually all major reforms to labor laws and regulations promoted by unions and their political allies in recent decades have focused on ways to boost union membership. The Employee Free Choice Act (EFCA), aka “card check” legislation promoted during President Obama’s administration, would have amended the NLRA by eliminating most secret ballot workplace elections. In effect, management would have been forced to recognize a union any time organizers presented enough cards they claimed workers intentionally signed.

The more recent Protecting the Right to Organize (PRO) Act, endorsed by the Biden administration, would, among other changes, eliminate all 26 state right-to-work laws. Workers in those states could then be forced to support a union or else lose their jobs. The push by unions and progressive groups to end “worker misclassification” is likewise driven by that hope that it will eventually boost union numbers. The “misclassification” that would be addressed is workers being independent contractors, aka “freelancers.” While organizing freelancers is not impossible, the NLRA’s rules and regulations were written with traditional employees in mind. Classifying “freelancers” or “independent contractors” as employees would therefore make organizing them vastly easier.

In short, the problem that EFCA, the PRO Act, and ending “worker misclassification” were all meant to address was diminishing union numbers. To justify these as policy, their advocates point to the NLRA itself and argue that it requires the federal government to boost unions’ numbers.

The claims are paradoxical. If this was intent of the law in the first place, why is it necessary to amend or update the law to enact policies to this effect? Union leaders and their allies claim that it is because the intent of the law been subverted. But the truth is that the intent of the law was never what they say it was in the first place.

Claims that it is settled law that the NLRA encourages collective bargaining are in a reality an attempt at short-circuiting debate over the law, and the left’s proposed legislation and other wished-for updates relating to it. Proposals like EFCA or the PRO Act need to be recognized for the radicalism they represent, not allowed to be hidden as merely cosmetic updates to affirm the NLRA’s supposed pro-union bias. Workers deserve a full debate about their freedoms.

It’s what Sen. Wagner would have wanted.





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