

Background

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Proposed Union Rules Harm Workers and Job Creation

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Abstract: *New regulations from the National Labor Relations Board (NLRB) and the Department of Labor are designed to swell the ranks of unionized labor at the expense of workers, employers, and the U.S. economy. The new NLRB rules that would shorten union-organizing elections to between 10 and 21 days are an attempt to rush to elections before employers can present counterarguments. The proposal to allow micro unions would enable unions to gerrymander bargaining units to disenfranchise workers who oppose union representation and would dramatically complicate labor negotiations. The Department of Labor's expansion of reporting requirements on the activities of labor relations consultants is a transparent attempt to discourage companies from educating their employees on the disadvantages of unions. Congress should specifically bar the NLRB and the Department of Labor from using any funding to implement these regulations.*

The Obama Administration is implementing regulations designed to push workers into unions. The President's appointees to the National Labor Relations Board (NLRB) recently announced proposals to shorten the time frame for union elections to as little as 10 days. The NLRB also plans to permit unions to organize multiple micro unions within companies instead of one larger unit. The Department of Labor has announced regulations that would require extensive disclosure about consultants that advise employers during organizing drives.

These measures would undermine employees' rights and discourage job creation. Congress should deny funding to implement these regulations.

Talking Points

- The National Labor Relations Board and the Department of Labor are developing regulations that would take away workers' rights and hurt job creation.
- The NLRB plans to implement snap elections that could occur as soon as 10 days after a union calls for a vote. This would deprive workers of their right to make an informed choice by preventing employers from rebutting union claims.
- The DOL plans to dramatically increase the regulatory burden on employers who hire labor relations consultants during union drives.
- The NLRB also plans to allow unions to represent a single job title in a company. This would enable unions to gerrymander bargaining units to disenfranchise workers who oppose union representation and force companies to negotiate with many micro unions in the same businesses.
- These regulations are designed to push workers into unions that they otherwise would not choose to join.

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Union-Organizing Elections

Union organizing in the U.S. takes place through government-supervised elections. Union organizers target a business and spend several months attempting to build employee support. When union organizers believe they have sufficient support, they petition the NLRB to conduct a secret-ballot election. In many cases, employers are unaware of the organizing drive until the petition is filed.

The NLRB conducts union elections relatively quickly. The median election occurs after 38 days, and the board conducts 95 percent of elections within two months.¹ Before the vote, the NLRB must first determine administrative issues such as the appropriate “bargaining unit”—the particular workers for whom the union would (and would not) negotiate contracts.

During the time before the election, most employers attempt to convince their workers not to unionize. They make their case and rebut untruths told by union organizers. After hearing both sides make their strongest cases, workers can cast an informed vote.

The NLRB’s proposed rules would change the system to facilitate union organizing at the expense of workers’ rights.

Snap Elections

The NLRB proposes to shrink the time frame for union elections to between 10 and 21 days.² The NLRB would accomplish this by delaying most administrative issues—such as challenges to the definition of the appropriate bargaining unit—until after the election. The rules would also require

employers to file any challenges to the board’s procedures within seven days or lose the right to challenge them. The NLRB intends to conduct union elections on as short a notice as possible.

Such snap elections would short-circuit the time employers have to make their case. If the election takes place within a matter of days, workers will base their decision largely on information received from the union.

Denying Workers an Informed Choice

Snap elections would not serve workers well because union organizers do not impartially advocate workers’ best interests. They are salesmen who are paid to persuade workers to become dues-paying union members. Unions may legally use any number of misleading tactics to win worker support.

Some organizers rely on aggressive sales tactics, such as “SPIN selling.” In SPIN (Situation, Problem, Implication, and Need-payoff) selling, organizers lead employees through the four emotional states to persuade them that a union will solve their problems at work—whether or not a union could actually help—and to secure a signed union-authorization card.³ Unions also train organizers to avoid the potential downsides to unionization, such as strikes and dues increases.⁴

Employees will hear the other side of the story only from management. Employers, not union organizers, will explain that unions often do not achieve their promised wage increases, but they always take up to 2 percent of workers’ wages in dues. Employers will also point out patterns of union corruption and clauses in union constitutions that levy stiff

1. Lafe E. Solomon, “Summary of Operations (Fiscal Year 2010),” memorandum to all employees, Office of the General Counsel, National Labor Relations Board, January 10, 2011, at <http://mynlrb.nlr.gov/link/document.aspx/09031d4580434379> (July 13, 2011).
2. National Labor Relations Board, Notice of Proposed Rulemaking, *Federal Register*, Vol. 76, No. 120 (June 22, 2011), p. 36831.
3. James Sherk and Ryan O’Donnell, “EFCA: High-Pressure Spin Selling and Creative Organizing for Labor Unions,” Heritage Foundation *WebMemo* No. 2335, March 11, 2009, at <http://www.heritage.org/Research/Reports/2009/03/EFCA-High-Pressure-Spin-Selling-and-Creative-Organizing-for-Labor-Unions>.
4. Jennifer Jason, statement in hearing, *Strengthening America’s Middle Class Through the Employee Free Choice Act*, Subcommittee on Health, Employment, Labor, and Pensions, Committee on Education and Labor, U.S. House of Representatives, 110th Cong., 1st Sess., February 8, 2007, p. 30, at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_house_hearings&docid=f:32906.pdf (July 13, 2011).

finances against workers who stray from union rules. Employers are free to tell workers what the union organizers do not.

Workers deserve to hear from both sides and have time for reflection. They should have the right to consider whether union representation will truly benefit them. The government should not push workers into unions, much less deny them the time to consider the downsides. The NLRB's proposed rule undermines employees' ability to make an informed choice.

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Micro Unions

The NLRB also proposes to authorize the formation of "micro unions" within businesses. Current law defines the appropriate bargaining unit as similarly situated workers who share a community of interests. For example, in a unionized retail store, the appropriate bargaining unit might include the cashiers, greeters, and shelf stockers—hourly employees under the direction of the store manager.

The NLRB recently proposed to allow unions to define an appropriate bargaining unit as workers with the same job title.⁵ This would permit separate unions and separate collective bargaining negotiations for each type of worker. Allowing such micro unions would hurt both workers and businesses.

Disenfranchising Workers. Under the board's proposal, unions could organize micro unions at businesses in which most workers oppose unionizing. For example, most workers might oppose unionizing at a store in which the union had majority support among cashiers. The union could organize a unit representing just cashiers, excluding shelf stockers and greeters. This would allow

unions to gerrymander bargaining units to create one in which they have majority support.

This disenfranchises the employees who do not want a union. One of the downsides of unions is the risk of strikes shutting down the business. Gerrymandered micro unions deprive these workers of the ability to vote against taking this risk. All employees would bear the downsides of unionizing if a minority chooses union representation.

Preventing Career Advancement. Unions insist on work rules that strictly define what work can and cannot be done by members of the bargaining unit. Separate unions representing individual job titles would prevent companies from training workers for and assigning them to jobs in different bargaining units as needed.

For example, the machinists union would not allow a company to train a welder to operate their machines. They would insist that their members perform all precision machine work. This would limit employees' opportunities to learn new skills and employers' ability to assign workers where they are needed most, which would both reduce productivity and limit workers' opportunities to advance within the company.

Redistributing Wages. Permitting micro unions would also enable unions to redistribute wages from nonunion workers to union members. Unions know that companies in competitive markets have little ability to increase total pay. Businesses cannot raise prices without losing customers. Consequently, unions typically negotiate contracts that keep average pay—and total costs—constant. Unions reward their supporters by redistributing wages within the company. Union contracts typically give lower pay to high performers and higher pay to less productive workers.⁶

If the NLRB allows micro unions, they will also attempt to redistribute wages to their members at the expense of nonunion workers. Micro unions will threaten to strike to get higher pay for their members, forcing companies to choose between a strike

5. Specialty Healthcare and Rehabilitation Center of Mobile and United Steelworkers, District 9, Petitioner, 356 NLRB 56 (2010), at <http://www.nlr.gov/sites/default/files/documents/236/356-56.pdf> (July 13, 2011).

6. Brigham R. Frandsen, "Union Wage Setting and the Distribution of Employees' Earnings: Evidence from Certification Elections," presented at the 2011 annual meeting of the American Economic Association, Denver, July 12, 2010, at <http://www.aeaweb.org/aea/2011conference/program/retrieve.php?pdfid=42> (July 13, 2011).

shutting down their operations or giving higher pay to unionized units and lower pay to nonunion units. Faced with such a choice, many employers would give in to union demands. This would also put pressure on nonunion employees to unionize to prevent their pay from being redistributed.

Burdens on Business Operations. Micro unions would also harm business operations. Negotiating dozens of separate collective bargaining agreements would impose immense costs in both time and legal fees. Fragmented bargaining units would also make shutdowns more likely. Tensions between units and disputes over what work belongs to which union would threaten operations. Any unit performing an essential function could strike, stopping work for all employees.

Preventing companies from reassigning workers between bargaining units would hurt efficiency and productivity. Separate unions for each job title would impose enormous costs on businesses, handicapping U.S. business in the global economy.

The Burden on Employers Seeking Advice

The Department of Labor also proposes to revise the regulations regarding union “persuader” activities. The Labor–Management Reporting and Disclosure Act requires employers to report the activities of labor relations consultants hired to help persuade employees to remain nonunion. The act excludes consultants who merely advise employers during a union drive. The Labor Department has interpreted this to mean that consultants who meet with employees must file reports, but that consultants who never interact with workers do not.

The Obama Labor Department proposes to reinterpret these regulations so that even most consultants who never interact with employees would be

required to file detailed reports. These regulations equate employer communication of the downsides of unionizing with intimidation. They include stiff penalties—including criminal violations—for failing to report “persuader” activities.

Educating workers about the drawbacks of unionizing is socially beneficial. Workers should hear the strongest arguments from both sides before they vote. These regulations are intended to discourage employers from educating their employees. This benefits union organizers, not workers.

Snap elections would deny workers the time to make an informed choice, while micro unions would disenfranchise workers who do not want their workplace organized.

Less Hiring and a Weaker Economy

The Obama Administration is promulgating regulations designed to push workers into unions, whether or not union membership would benefit them. Snap elections would deny workers the time to make an informed choice, while micro unions would disenfranchise workers who do not want their workplace organized. These changes would increase union membership at companies where the workers are ambivalent about organizing. This would have serious consequences for the overall economy.

Economic research shows that unions harm the companies they organize by reducing profitability. Consequently, unionized companies invest less and create fewer new jobs than nonunion companies. Employment at newly organized companies typically falls between 5 percent and 10 percent.⁷ In general, employment in unionized businesses grows 3 percent to 4 percent more slowly than employment in nonunionized firms.⁸

7. Robert J. Lalonde, Gerard Marschke, and Kenneth Troske, “Using Longitudinal Data on Establishments to Analyze the Effects of Union Organizing Campaigns in the United States,” *Annales d’Economie et de Statistique*, Vols. 41–42 (January–June 1996), pp. 155–185, and Richard B. Freeman and Morris M. Kleiner, “The Impact of New Unionization on Wages and Working Conditions,” *Journal of Labor Economics*, Vol. 8, No. 1 (January 1990), pp. S8–S25.

8. David G. Blanchflower, Neil Millward, and Andrew J. Oswald, “Unionization and Employment Behavior,” *Economic Journal*, Vol. 101, No. 407 (July 1991), pp. 815–834; Jonathan S. Leonard, “Unions and Employment Growth,” *Industrial Relations*, Vol. 31, No. 1 (Winter 1992), pp. 80–94; and Richard J. Long, “The Effect of Unionization on Employment Growth of Canadian Companies,” *Industrial and Labor Relations Review*, Vol. 46, No. 4 (July 1993), pp. 691–703.

If employees feel the need to unionize to protect themselves against an abusive boss, they have that right—management gets the union it deserves. However, unions discourage businesses from expanding and hiring. The government should not push workers into unwanted or unneeded unions.

Congress Should Deny Funding

The Department of Labor and the NLRB are pushing regulatory agendas that undercut employee rights and discourage job creation. Congress cannot stop the Administration from promulgating these rules, but it can and should deny funding to implement these regulations. When appropriating funding for the NLRB and the Department of Labor, Congress should:

- **Prohibit** the NLRB from spending money to conduct elections in less than five weeks;

- **Prohibit** the NLRB from spending money to conduct elections under new bargaining unit standards; and

- **Prohibit** the Department of Labor from spending money on reporting requirements for consultants who do not meet with employees.

Conclusion

The federal government should protect workers' free choice, not push them into unwanted unions and force them to pay union dues. Unionizing a company is a serious step that often weakens businesses and reduces job creation. Workers should unionize only when and if it would actually benefit them, not when union organizers want to collect their dues.

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