

Inside The NLRB

PULLING BACK THE CURTAIN ON A POWERFUL AGENCY

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The [National Labor Relations Board](#) (NLRB) is a little known 76-year-old independent agency whose members wield enormous influence over the workplaces of America's private employers. Though designed to be an impartial mediator between organized labor and management, the current NLRB is exhibiting an anti-business bias illustrated by everything from attempting to limit the ability of employers to exercise their free speech rights to giving them less time to respond to unionizing efforts.

"Board law has always swung when control has changed from a Democrat to a Republican and vice versa," says former NLRB chairman Peter Schaumber, who was appointed by former President George W. Bush and served on the board for eight years. "The pendulum under this Obama board has swung like it never has before. It is way outside the area within which board law would routinely oscillate. It has made radical changes to board law, all of which is intended to reverse the decline of union density in the private sector."

Randy Johnson, U.S. Chamber Senior Vice President of Labor, Immigration & Employee Benefits, adds, "When organized labor failed to pass its top priority, the card check bill, we knew it was only a matter of time before the administration used the regulatory process to tilt the playing field in organized labor's favor during union campaigns."

For years, the NLRB, which oversees union organizing elections and investigates unfair labor practice charges under the National Labor Relations Act (NLRA), had been deadlocked with one Republican and one Democratic member and three empty seats.

President Obama broke the deadlock by appointing two additional Democrats soon after his election. Since then, the 3-1 board has revisited established labor law and has issued questionable decisions with a clear bias in favor of unions and organizing, say several business groups.

The anti-business majority on the board is rushing to rewrite labor law because it will soon lose its majority. Chairwoman Wilma Liebman, the third longest-serving member in the NLRB's history, completed her third term and had to step down on August 28, 2011. Fellow Democrat Craig Becker, an Obama recess appointee, will have to step down at the end of the year, leaving a deadlocked board.

Employers Being Pushed Around

In its highest profile move so far, the NLRB's general counsel in April [filed a complaint against The Boeing Company](#) for building a new airplane manufacturing plant in Charleston, South Carolina. Boeing's plant was completed in July and has created thousands of new U.S. jobs. The NLRB has alleged that Boeing discriminated against union workers in violation of the NLRA by, basing its decision, in part, not to locate the new manufacturing plant in Puget Sound, Washington, on a history of regular strikes at that facility. Even though Boeing has invested in excess of \$1 billion to build the new facility, the complaint seeks to force Boeing to move the work to Washington state.

"What we're seeing from this administration—as it stands by while unions try to put themselves in between our companies and employees—is an attack on not just right-to-work states but on every state that is attempting to put their people to work," Republican South Carolina Gov. Nikki Haley said in [an August statement](#). "For months, the people of our state have waited on answers from the president, and they haven't gotten any."

Adds Johnson, "The precedent that the NLRB is attempting to establish here is so fundamentally unsound and troublesome that it cannot be ignored. The company's actions were well within the bounds of the NLRA, and the board appears simply to be attempting to create new rules that would put unions on a pedestal above all other entities."

The Chamber [supports legislation](#) introduced in reaction to the NLRB complaint against Boeing. The bill, which was passed by the House, would curb the NLRB's legal authority by prohibiting it from ordering a company to relocate its workers.

The NLRB is also considering [other rule changes](#) that would increase union leverage in every aspect of labor-management relations.

Most recently, it issued a ruling that overturned a 2007 decision that gave workers nationwide the right to secret ballot elections to protect themselves from union bosses' bullying and coercive tactics. The 2007 decision involving automobile parts manufacturer Dana Corp. gave workers an opportunity to request a secret ballot election within a 45-day window following a card check organizing effort.

At the end of August, the NLRB issued a decision allowing for "micro union" organizing. The ruling changes technical procedures to give a union much greater deference in determining which employees are to be covered by a new union. It allows labor organizers who aren't able to organize an entire company to target smaller groups of company employees based on specific job descriptions while making it much harder for employers to argue that an alternative is more appropriate. Being able to target smaller employee groups gives the union a beachhead for future organizing efforts and forces employers to bargain with a potential proliferation of tiny units, critics charge.

"This is an earth change in board law that will permit unions to cherry-pick the size of a union," says Schaumber. "Board law has never gone in that direction. Allowing a union to decide what the unit is going to be threatens the employer and guarantees a proliferation of mini units."

More Changes on the Horizon

The NLRB in September issued a new rule requiring businesses to post notices explaining employees' rights to unionize. [According to the Chamber](#), the rule creates a new unfair labor practice, exposing businesses to significant and costly liability for failure to comply. The rule, which applies to virtually all private employers in the United States, is scheduled to take effect on January 31, 2012.

Nevertheless, the Chamber and the South Carolina Chamber of Commerce [jointly filed a lawsuit](#) challenging the NLRB poster rule. "The NLRB has no authority to impose any of these requirements," according to Robin Conrad, executive vice president of the [National Chamber Litigation Center](#), the Chamber's public policy law firm. "This is nothing more than labor regulation run amok. Adding insult to injury, the board's new rule violates the First Amendment by forcing employers to use their own resources to post the NLRB's pro-union message on the company's own property."

Business leaders are also awaiting a final NLRB rule to shorten the period for union elections. Under the NLRB's proposed "ambush election" rule, scheduling an election would have to occur in as few as 10 days following the filing of a petition, down from the current median period of 38 days. "It changes the entire preelection procedures to favor the unions and disfavor the employer," Schaumber says. "Again, the purpose is to try to prevent employers from expressing their views on unionization."

Whatever happens between now and the end of the year, the stage has been set for sweeping changes to workplace policies, [the Chamber has warned](#). "The NLRB has the ability to create rules for union organizing and collective bargaining in ways which would ensure that labor unions would have the upper hand to the long-term detriment of both employees and employers," says Johnson.