COALITION FOR A
DEMOCRATIC WORKPLACE

Support the Use of the Congressional Review Act to Rein In the Runaway NLRB

Statue Allows Congress to Disapprove Federal Agency Rules

Organized labor is pushing unelected bureaucrats at the National Labor Relations Board (NLRB or Board) to make sweeping policy changes aimed at increasing union membership rolls at the expense of employees and employers. One of the Board's most controversial actions is the "ambush" elections rule, which attacks both employer free speech rights and employee free choice. The rule will drastically shorten timeframes for union representation elections, effectively limiting legal communication between employers and employees about the pros and cons of a particular union or unionization generally prior to the election. The rule also tramples on employee privacy rights by requiring employers to hand over employee phone numbers and email address to union organizers. Fortunately, the Congressional Review Act (CRA or Act) provides an avenue for Congress to repeal the Board's ambush election rule and return proper balance to our nation's labor laws.[1]

THE PROBLEM

On December 12, the Board issued a final rule making dramatic changes the NLRB's longstanding union representation election procedures (elections held to determine whether or not employees want to be represented by a union). The rule, which goes into effect on April 14, 2015, will shorten the time between the union filing a petition for election and NLRB holding of an election from the current median time of 38 days to as few as **14 days**. This effectively limits employers' ability to communicate with employees prior to a representation election and encourage the kind of "back door" organizing that unions sought to achieve through the misnamed Employee Free Choice Act. The changes made by the rule are similar to those the NLRB attempted in push through in a 2011 rule. A federal court, however, struck down the 2011 rule on procedural grounds before it was implemented.

The Board restarted the rulemaking process in February of 2014 and released the final rule on December 12.[2] Some of the provisions of the Board's rule include:

[1] The Coalition for a Democratic Workplace also supports the Workforce Democracy and Fairness Act (H.R. 4320 and S. 2178 in the 113th Congress) which, among other things: (1) allows employers at least 14 days to prepare their case for the Board; (2) requires a campaign period of at least 35 days prior to an election, guaranteeing workers have an opportunity to hear both sides of the unionization debate; (3) reinstates the long-standing criteria the Board has traditionally used for determining the appropriateness of a proposed bargaining unit; and (4) allows employees to choose how they may be contacted by union organizers.

[2] CDW, along with the Chamber of Commerce, the National Association of Manufacturers, the National Retail Federation, and the Society for Human Resource Management, which together account for millions of employers and their employees, filed a lawsuit on January 5 to block the Board's new rule. A copy of the complaint is available on www.myprivateballot.com.

- Requires that all pre-election hearings be set to begin within eight days after a hearing notice is issued.
- Mandates that employers file a "statement of position" by noon on the day before the hearing begins. The statement of position must include a list of prospective voters with their names, job classifications, work shifts and work locations.
- Provides regional directors with discretion to limit the scope of pre-election hearings by excluding evidence on voter eligibility and delaying the resolution of those issues until after the election.
- Requires an employer to provide, within two business days of the election agreement or decision directing an election, employee personal telephone numbers and e-mail addresses.

The proposal is intended to increase union organizing and dues revenue streams at the expense of employees, who will not have the opportunity to hear both sides before voting on union representation, and employers, who are effectively denied free speech and due process rights.

THE CONGRESSIONAL REVIEW ACT ALLOWS FOR CONGRESSIONAL REVIEW AND REPEAL OF AGENCY ACTION

Fortunately, the Congressional Review Act establishes special streamlined congressional procedures for disapproving regulations issued by federal agencies. Before any rule covered by the CRA can take effect, the federal agency that promulgates the rule must submit it to Congress. If Congress passes a joint resolution disapproving the rule, and the resolution is enacted, the rule cannot take effect or continue in effect. Some advantages of using the CRA to strike down agency rulemakings are as follows:

- A disapproval resolution can clear the Senate with a simple majority vote of 51
- Expedites the legislative process by ensuring that resolutions approved by the House and Senate will be identical, eliminating the need for a conference report
- If the joint resolution is approved by the President, the agency may not reissue either that rule or any substantially similar one, except under authority of a subsequently enacted law

There is precedent for use of the CRA, as the Act was used to nullify OSHA's controversial ergonomics standards in 2001. In response to the finalization of the Board's ambush regulation, Senator Lamar Alexander (R-TN), Chairman of the Senate Health, Education, Labor and Pensions (HELP) Committee, and John Kline (R-MN), Chairman of the House Education & Workforce Committee have sponsored [Resolution #], which if enacted, will effectively "repeal" the NLRB's ambush regulation.

* * *

The Coalition for a Democratic Workplace supports the use of the CRA to invalidate the Board's disastrous ambush election regulation. The time has come for Congress to use its oversight policy and rein in the out-of-control NLRB. [Resolution #] is the best way for Congress to accomplish this goal and re-level the labor-relations playing field.