September 21, 2011

Dear Chairman Kline and Ranking Member Miller:

On behalf of millions of job creators concerned with mounting threats to the basic tenets of free enterprise, we thank you for holding today's hearing, titled, "Culture of Favoritism: Recent Action of the National Labor Relations Board."

The Coalition for a Democratic Workplace, a group of more than 600 organizations, has been united in its opposition to the so-called "Employee Free Choice Act" (EFCA) and EFCA alternatives that pose a similar threat to workers, businesses and the U.S. economy. Thanks to the elected officials who stood firm against this damaging legislation, the threat of EFCA is less immediate in this Congress. Politically powerful labor unions, other EFCA supporters, and their allies in government are not backing down, however. Having failed to achieve their goals through legislation, they are now coordinating with the National Labor Relations Board (NLRB or Board) and the Department of Labor (DOL) in what appears to be an all-out attack on business.

While the Board's actions have gained recent notoriety from the unprecedented attempt by the agency's Acting General Counsel to mandate where and how one company—Boeing—can operate and expand its business, this action is just tip of iceberg. During the last few years, the Board and DOL have issued a barrage of anti-business and anti-worker decisions and rules, which collectively amount to the greatest upheaval in U.S. labor law in over 50 years.

Just this summer, the Board issued two major decisions, one proposed rule and a final rule, while the DOL issued a proposed rule of its own. The negative impact of the decisions and rules on employees, employers and our economy is substantial and far-reaching.

On June 21, the Board proposed a rule on "ambush elections." Under the proposed rule, the NLRB would conduct representation elections in as few as 10 days after the union files a petition, as opposed to the current median of 38 days between petition and election. The reduced time frame would leave employers barely enough time to secure legal counsel, with little to no opportunity to talk with employees about union representation or respond to promises union organizers may have made to secure union support, even though many of those promises may be completely unrealistic.

A day earlier, on June 20, DOL released its "gag rule" proposal. The proposal would reverse 50 years of established law and require employers to disclose an otherwise confidential agreement when a consultant, lawyer, association or seminar presenter provides the business with materials used for communication with employees about unions, such as policies or prepared speeches, or revises drafts of such documents written by company management. This would be the case even if the consultant, lawyer, association or seminar presenter never actually interacts with the employees. Failure to report, or the filing of false or incomplete reports could result in civil and criminal penalties. The disclosure requirements are intrusive and designed to intimidate businesses, particularly small businesses, from relying on counsel or other consultants to assist in communicating with employees about unions.

The Board also issued on August 30 a final rule requiring for the first time in the 75-year history of the NLRA that employers post detailed notices in the workplace. The notice provides incomplete and biased information about the NLRA and NLRB, and fails to provide employees with adequately information about unions and labor law. Specifically, the notice omits details about the following:

- The right to refuse to pay union dues to the extent they are used for political purposes.
- The right to refuse to join a union or pay dues in Right-to-Work states.
- The right to decertify an unwanted union.
- The downsides to unionization, such as loss of the ability to negotiate directly with their employer, the fact that economic strikers can be permanently replaced or that unions can fine their own members.

Aside from the bias, the NLRB simply has no legal authority to require all six million covered employers to post a notice. The NLRA does not contain a posting requirement and NLRA gives the Board the power to act with respect to any given employer <u>only</u> if (a) a petition for election has been filed; or (b) an unfair labor practice charge has been filed.

Finally, on August 26, 2011, the NLRB issued decisions in two cases that bring us even closer to agency-imposed EFCA. In *Lamons Gasket Company*, the NLRB stripped workers of voting rights by ruling that employees cannot petition for a private ballot election after an employer voluntarily recognizes a union through "card check." Now, employees could be barred from challenging a union recognized through "card check" for up to a year, and far longer if the employer and union sign a contract. Every employee should have right to a secret ballot.

In *Specialty Healthcare*, the NLRB paved the way for the formation of "micro-unions," which make it easier for unions to organize by permitting them to form smaller bargaining units that often exclude those similarly situated employees who oppose unionization. This effectively disenfranchises them. Prior to the decision, bargaining units had to include employees who share

a “community of interest.” Smaller units were only permissible where the employees in the proposed unit had interests that were “sufficiently distinct from those of other employees to warrant the establishment of a separate unit.” This prevented swarms of small, “fractured units,” of similarly situated employees. As a result of the Board’s decision, businesses now face the possibility of having to manage multiple, small units of similarly situated employees with increased chances of work stoppages, as well as potentially different pay scales, benefits, work rules and bargaining schedules. This will greatly limit an employer's ability to cross-train and meet customer and client demands via lean, flexible staffing because employees will no longer be able to perform work assigned to other units. Employees also will suffer from reduced job opportunities, as promotions and transfers will be hindered by organizational unit barriers.

Again, we thank you for holding this important hearing. If left unchecked, the actions of the NLRB and DOL will fuel economic uncertainty and have serious negative ramifications for millions of employers, U.S. workers they have hired or would like to hire, and consumers.

Geoffrey Burr
Chair, the Coalition for a Democratic Workplace