

NLRB Reform Act: Makes the NLRB an Umpire, Not an Advocate

The Problems

The NLRB is too partisan

- In recent years, the NLRB has whipsawed back and forth on important labor policy rules, creating confusion for employers, employees and unions.
- Today, the majority of the five-member board is made up of appointees who follow the president's political leanings.
 - President Obama has appointed 3 labor union lawyers to the board
- Board member confirmations have become a political battleground.

The NLRB has an activist general counsel

- The NLRB's two most recent general counsels have exceeded their statutory authority and brought questionable cases that threaten American jobs.
 - The general counsel brought the complaint against Boeing for building an additional production facility in the right-to-work state of South Carolina; and it is the general counsel who is now permitting suits against the franchisors for alleged unfair labor practices by franchisee employers.
- The NLRB's general counsel has virtually unchecked authority and discretion to investigate, evaluate, and prosecute unfair labor practice cases and oversee elections.

The NLRB is too slow to resolve disputes

- Last year, 30 percent of the board's caseload – 109 cases – had been pending for more than a year. These 109 cases do not include the 436 decisions returned after *Noel Canning*.
 - For 7 years one case regarding union organizers demanding access to an employer's private property has been pending. (*Roundy's*)

The Solution – the NLRB Reform Act:

Ends partisan advocacy

- A six-member board of 3 Republicans and 3 Democrats and a required majority of 4 will force both sides to enforce the law and reach consensus.
 - There is a precedent for a six-member board - the Federal Election Commission (6 members – 3 Republicans and 3 Democrats).
- The 5-year terms of the Board members will be synchronized over time so that they are linked in bipartisan pairs, which will make confirmation easier.

Reins in the general counsel

- Any party subject to a complaint issued or authorized by the general counsel could seek review of the complaint in federal district court within 30 days of the issuance or authorization of the complaint.
- Parties subject to a NLRB complaint would have new discovery rights allowing them to obtain memorandum and other documents relevant to the complaint within 10 days.

Encourages timely decision-making

- If the NLRB fails to decide a case within 1 year, either party in the case may appeal to a Federal Court of Appeals for a *de novo* review of the case, or decide to accept the finding of the Administrative Law Judge (ALJ) or Regional Director.
- Funding for the entire NLRB would be reduced by 20 percent if the board is not able to decide 90 percent of its cases within one year over the first two-year period post-reform.