



House Republican Attacks on the National Labor Relations Board Hurt All Workers

By David Madland and Karla Walter
November 30, 2011

Introduction

House Republicans are using every tool available to them—including their budget, regulatory, and legislative-oversight powers—to wage a coordinated attack on workers’ rights by trying to eviscerate the National Labor Relations Board, or NLRB. This effort jeopardizes the basic rights and well-being of all workers, not just those who are in unions.

The NLRB protects workers’ rights to join together in unions and collectively bargain, which helps build a strong middle class. And the NLRB directly helps nonunion workers by protecting their right to speak up about workplace problems without fear of employer retribution.

When state governments in Ohio and Wisconsin passed laws stripping public-sector workers of their collective-bargaining rights this past spring, union and nonunion residents stood together in dramatic displays of opposition because they understood that the effort was an attack on all workers. Republicans in Congress are displaying a similar disdain toward workers’ rights but instead of a single bill they are using a number of targeted attacks to launch a coordinated assault.

These actions have not yet received the same level of attention as the Ohio and Wisconsin laws but they deserve comparable scrutiny because they follow a similar playbook yet the combined effect of these federal efforts would be even more damaging.

As in Ohio and Wisconsin, workers are the scapegoats for a problem they have nothing to do with. In these states workers were supposedly the cause of budget woes—not the Great Recession or the Republican governors’ tax cuts for the wealthy. At the federal level, workers’ rights are allegedly the cause of high rates of unemployment—not the failed Republican economic agenda of tax cuts for the rich and deregulation, not Wall Street speculation that cratered our economy, and not the low level of demand for goods and services by consumers with depressed incomes.

The idea that workers' rights are causing our economic problems is absurd. Unions are a shrinking factor in the economy, and when they were at their strongest, the U.S. economy was at its strongest. Moreover, the NLRB has been around for more than 75 years, during which the United States experienced tremendous investment and job growth. Finally, other countries that have much stronger laws protecting worker rights and are much more heavily unionized—among them Australia, Canada, Germany, and the Netherlands—are doing better or at least as well as the United States in this economic downturn.

Yet House Republicans need a scapegoat—and see an opportunity to hobble a weakened opponent—so they have ramped up their attacks to extreme levels. Over the past year, Republicans in Congress voted to slash funding for the NLRB, attempted to block enforcement of existing worker-protection laws, and even threatened to shut down parts of the federal government in order to advance their goals.

All workers—not just the unionized—should care about these attacks. So let's detail the House Republican assaults on the National Labor Relations Board and what these attacks would cause if successful.

The National Labor Relations Board protects the rights of nonunion workers

The National Labor Relations Act, which is enforced by the NLRB, provides the right for private-sector workers to come together to discuss wages and work conditions and push their employer for improvements. Everything from formal meetings that workers might set up to discuss a problem, such as workplace health and safety, as well as activities we all take for granted, such as talking about a new company policy around the water cooler or complaining with our coworkers about wages over Facebook, are protected by the National Labor Relations Act.

If an employer retaliates against workers and fires or otherwise disciplines them for exercising these rights, the NLRB can require it to reverse the penalty, reinstate these workers, and pay them for lost wages.

Republicans never mention this role of the NLRB in their attacks but protecting the rights of nonunion workers is a central function of the agency. Indeed, few other agencies boast such a broad mandate to protect workers' rights—union and nonunion alike.

Most private-sector workers are covered by the NLRA—with some exceptions including independent contractors, managers, and rail and air industry workers. As a result, the NLRA provides protections to 77 percent of all private-sector workers in the United States.

Polling data shows that most Americans rely on this ability to collaborate with coworkers to solve workplace problems. Seventy percent of Americans believe that employees are more successful in getting problems resolved at work when they bring up these problems as a group rather than as individuals, according to a 2003 Peter D. Hart Research Associates Poll. And 63 percent of working Americans reported that they joined together with co-workers to solve a workplace problem in 1997—the last year that question was asked—according to the Pew Research Center for the People and the Press.

In recent years the NLRB has protected the rights of nonunion workers to engage in “protected concerted activity” to improve wages, benefits, and working conditions in a number of prominent cases. In these cases, nonunion workers have filed charges against their employer and asked the NLRB to investigate.

The NLRB investigated several complaints by nonunion workers that have used social media to communicate with each other about workplace conditions. Case in point: An NLRB administrative law judge found this fall that five workers were illegally fired from a Buffalo, New York, nonprofit organization when they corresponded on Facebook about working conditions, including workload and staffing issues. The judge awarded the discharged workers reinstatement and back pay.

The NLRB also recently ruled that employers can’t fire workers preemptively to stymie employees from communicating with each other. The board found that when Parexel International, LLC, a pharmaceutical research company, fired a worker who had inquired about wage inequalities in order to suppress further discussions of wages and possible discrimination among employees, the company had interfered with the worker’s right to raise issues of mutual concern with coworkers regarding wages and work conditions. The NLRB also found that a Wyndham Resort Development Corp. worker was engaged in protected concerted activity when he asked questions of his supervisor, in front of co-workers, about a new dress code that would apply broadly to him and his colleagues.

In all these cases the NLRB provided oversight to ensure that nonunion workers were able to discuss workplace issues with their colleagues—a basic right that would be in jeopardy if the Republican agenda succeeds.

These workers’ rights are not trivial. More than 200,000 nonunion Target Corp. workers and consumers signed a petition protesting the retailer’s plans to open stores at midnight on Thanksgiving, requiring workers to leave celebrations early in order to report to work. If workers face workplace retaliation for signing the petition, it’s likely the only protection these workers would receive would come from the NLRB.

The National Labor Relations Board protects workers' rights to join unions, helping nonunion workers too

Moreover, House Republicans' attempt to weaken the National Labor Relations Board would also undercut the financial well-being of nonunion workers. That's because the NLRB protects workers' rights to join unions and collectively bargain—rights that are essential for a strong middle class.

When these rights are enforced and unions are strong, they can ensure that workers are paid fair wages, receive the training they need to advance to the middle class, and are considered in corporate decision-making processes. Unions also promote political participation among all Americans, give ordinary Americans a voice within our government, and help secure policies that support the middle class, such as Social Security, family leave, and the minimum wage.

But as unions became weaker over the past four decades, they became less able to perform these functions—and the middle class withered. In 1968, when 28 percent of all workers were members of unions, the share of income going to the nation's middle class was 53.2 percent. Since then union membership steadily declined alongside the share of income going to the middle class. By 2010 the middle class only received 46.5 percent of income as union membership dropped to less than 12 percent of workers.

As unions weakened, the wealthy reaped the lion's share of the economy's gains. The share of pretax income earned by the richest 1 percent of Americans more than doubled between 1974 and 2007, climbing to 23 percent from 9 percent. And for the richest of the rich—the top 0.1 percent—the gains have been even more astronomical. Their share of income quadrupled over this period, rising to 12.3 percent of all income from 2.7 percent.

Without strong unions, the middle class increasingly lost out to the wealthy. If unionization rates increased by 10 percentage points—to roughly the level they were in 1980—the typical middle-class household, unionized or not, would earn \$1,479 more a year.

And without a healthy and growing middle class, consumer purchasing power cannot fuel an economic recovery.

Republican attacks on the National Labor Relations Board

Over the past year Republicans in Congress engaged in a range of actions designed to prevent the NLRB from enforcing workers' rights. They voted to slash funding for the agency. And they are attempting to block enforcement of existing worker-protection laws and stymie efforts to modernize regulations—even threatening to shut down the agency in order to advance their goals. Let's look at each of these attacks in turn.

Slashing NLRB funding

Three-quarters of House Republicans voted to eliminate all funding for the NLRB this past spring, a move that would have prevented the enforcement of labor law for several months. The measure failed to pass the House, but the majority recently released a budget bill, H.R. 3070, which would slash NLRB funding. The legislation would cut funding for the NLRB by 19 percent compared to President Barack Obama's budget request for fiscal year 2012 beginning this past October.

These cuts would represent a 18 percent reduction compared to the NLRB's FY 2011 and 2010 budget authority, and an 11 percent cut compared to FY 2009, the last budget overseen by President George W. Bush.

Blocking government enforcement powers

The same budget bill contains dozens of antiworker riders to prevent the government from enforcing new regulations to improve worker protections. The bill, for example, would prevent government from requiring employers to display a poster informing workers of their rights to form unions and collectively bargain (just like the posters that now inform them of their right to be paid a minimum wage), and from modernizing and reducing unnecessary delays in the union-election process.

The NLRB introduced the rule to modernize the union-election process because the current process allows for manipulation of the timing of elections—leading to delays that can help cause elections to never occur. Thirty-five percent of the time that workers file a petition for an election, the election does not end up happening. The NLRB has scheduled a vote today on a portion of the rule—but the budget bill and standalone legislation authored by Rep. John Kline (R-MN) would prevent the agency from instituting these changes. The House is scheduled to vote on Kline's bill today.

House Republicans also passed a bill that would gut the NLRB's enforcement power in cases where a company moves operations or eliminates work to punish workers that exercise their legally protected rights. Under the bill it would still be against the law to retaliate against workers, but the NLRB would no longer have much power to do anything about it.

House Republicans are even using congressional subpoena power to stall implementation of new regulations and ongoing enforcement investigations. House Oversight and Government Reform Committee Chairman Darrell Issa (R-CA) issued a subpoena for all internal documents related to the NLRB's ongoing investigation of The Boeing Company after the agency issued a complaint alleging that the airlines manufacturer broke the law and punished unionized workers who had exercised their legally protected right to strike.

This represented the first time since 1940 that the NLRB has been subjected to a congressional subpoena, according to acting general counsel for the NLRB, Lafe Soloman. And the agency had already released more than a thousand pages of information on the case to Congress.

Shutting down the NLRB

Finally, Republicans have threatened to do away with the NLRB or cripple its ability to act. Rep. Issa threatened, “We could eliminate the NLRB or take the premise and statutorily change it,” because the agency issued the complaint against Boeing.

Senate Republicans indicate they will be slow to confirm any new Democratic members nominated to the NLRB—even though it will be down to only two members by the end of the year due to term expirations. This maneuver plays upon a recent Supreme Court ruling that requires three board members to issue decisions.

Recently, there have even been reports that the NLRB’s Republican member may resign or otherwise try to deny the NLRB the three-person quorum it needs to act.

This willingness to completely shut down the NLRB does not appear to be an idle threat. Republicans blocked legislation to reauthorize Federal Aviation Administration, or FAA, funding this past summer in protest of a new administrative rule that provides a fairer path to unionization for airline and rail workers who are not covered by the National Labor Relations Act. The new rule would allow these transportation workers to decide by majority vote whether to unionize. Congress eventually passed a temporary funding extension, but not before Republican tactics led to a two-week shutdown of the FAA—a move that cost taxpayers more than \$30 million in revenue each day in uncollected transportation taxes, halted 250 airport construction projects (employing 70,000 private-sector workers), and furloughed 4,000 federal employees.

Block Republican shenanigans

Republicans are becoming increasingly aggressive in their attempts to implement extreme policies and knee-cap the NLRB. But these attempts to undermine workers’ rights hurt union and nonunion workers alike. Americans count on our labor laws to protect their voice on the job and help give them some power in the economy and political process. Workers and their allies must stand together to make sure that Republican attacks are not successful.

David Madland is the Director of the American Worker Project at the Center for American Progress Action Fund and Karla Walter is a Senior Policy Analyst with the project.