

Labor Board Serves Unions, Not Workers

'Ambush Elections' Stack the Deck Against Employees

January 9, 2011 by [Mark Carter](#)

As seen in the January 9th issue of the *Charleston Daily Mail*.

Organized labor has diagnosed the sickness that has generated the steady decline of its membership over the last three decades: Employees know too much. On Dec. 21, the National Labor Relations Board took up the issue by implementing yet another administrative regulation to keep employees in the dark.

Will it work?

For decades, the NLRB has protected an employee's right to learn the facts about the benefits and adversities associated with being represented by a union in the workplace. Unions have legal rights to campaign for votes in elections amongst workers, as do employers. If either threatens or coerces employees during an organizing campaign, the election result can be set aside and the offending party can be held accountable. Since 2010 the current administration has been systematically acting to erode those rights to ensure that to the degree employees learn anything about being represented by a union, the source of that information is singularly the union itself.

How?

In 2011 the NLRB implemented a rule (scheduled to take effect in late April) requiring all employers to post a notice informing employees of their rights to form a union. The notice will be required to be posted forever. In 2011 the U.S. Department of Labor proposed a rule that requires employers to disclose attorney-client privileged communications to the federal government for public disclosure if the employer obtains legal advice to aid it in complying with labor law during an organizing campaign. The goal is to ensure employers do not communicate with employees during an organizing drive out of fear of violating labor law so the employees hear only the union's campaign rhetoric.

Now, the NLRB has implemented an "ambush election" regulation. This regulation would shorten an organizing campaign from an average of about 40 days to as little as 10 days. The goal is to insure that employees obtain the information from only one source — the union. Employers, presumably, will have too little time to communicate with employees, and be too nervous to do so if they could, because any advice they receive regarding how to comply with the law would be subject to public disclosure by the U.S. Department of Labor. The loser is not the employer. The loser is the employee. The system is being rigged to ensure employees act only on the rhetoric of one candidate in an election — and that is the candidate that collects their pay in the form of dues if they win.

Will the NLRB interpret the regulation fairly?

On Jan. 4 the president announced he was unilaterally placing three members on the Board — one of whom is the general counsel of an international union — without the confirmation of the U.S. Senate. The president is designating the members as "recess"

appointees, even through the U.S. Senate has not recessed. Beyond taking action that will likely lead to a court challenge, this move signals that the NLRB will likely remain committed to an aggressive agenda to increase the rolls of organized labor even if it means depriving workers of the information they require to make a reasoned decision.

Will it work?

Organized labor and the administration underestimate the intelligence of the American worker. Workers can, and do, seek out information during organizing drives. It is a career-changing decision for many. Those employees who value job stability, direct access to their employer and the ability to be evaluated based on their own merits have and will continue to educate themselves and their fellow workers. The current administration's efforts to game the system is a losing one that underestimates the intelligence of the American worker.