Chairman Tom Cole

Subcommittee on Labor, Health and Human Services, Education, and Related Agencies
House Committee on Appropriations

FY 2016 Budget Hearing - National Labor Relations Board
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Opening Statement As Prepared

Good Morning. Welcome to today's witnesses, Mr. Mark Gaston Pearce, Chairman of the National Labor Relations Board, and Mr. Richard Griffin, Jr., the Board's General Counsel. Thank you both for your testimony today. I look forward to discussing NLRB's fiscal year 2016 budget and some recent Board decisions and regulations that I find particularly troubling.

I see that NLRB's budget request includes an additional 30 new FTE. I look forward to discussing the rationale for such a large request. I also look forward to discussing a few policy items I find deeply concerning.

The National Labor Relations Act of 1935 recognized the right of employees to organize labor unions in private industry. All governments were excluded from the Act's definition of an "employer." No government is covered by the Act. For decades, NLRB recognized Indian tribes' exemption from NLRA's jurisdiction as they are sovereign governments. It is incomprehensible to me why the Board would attempt to assert jurisdiction over Indian tribes after so much history and precedent. These Nations have a right to self-determination. I'd like to discuss your rationale for infringing upon the sovereignty on Indian tribes this morning.

As I'm sure you're aware, just last week the House passed Senate Joint Resolution 8, providing for disapproval of the NLRB regulation on case-representation procedures. For an agency that's supposed to be bipartisan, this is a very one-sided rule. The rule reduces the amount of time allowed between when a union files a petition and NLRB holds an election to just two weeks. I think that two weeks is certainly not enough time to organize something as important as the election of union representation, and it appears most of my colleagues in Congress agree.

The rule also requires employers to provide the email addresses and phone numbers of employees to prospective unions. But what if an employee doesn't use email or important election correspondence gets caught in their spam filter? Under this rule, with such short time notice, an election could be petitioned and held before an employee even finds out about it.

I recognize the right of employees to elect union representation and I support the NLRB's mission to ensure that those elections are fair. But this rule advances neither goal. It only makes it easier for unions to organize a workplace.

I also have questions about the NLRB's decision on Specialty Healthcare, which changes longstanding precedent of what constitutes a bargaining unit by dramatically changing the scope. I wonder if one employee could now be considered a bargaining unit? Isn't the "collective" the point of collective bargaining? That all employees have the right to decide if they want to be represented by a union for purposes of negotiating terms of employment?

Finally, I'm deeply disturbed by NLRB's review of its current joint employer standard. Recent complaints issued against McDonald's for employment decisions which are the sole responsibility of independent franchise owners suggest what will come out of this review. The trial bar must be thrilled because I can't understand who else will benefit from this.

The franchise model has been the basis for many successful small businesses. Small businesses are the job creation engine of our economy. And in many cases, sub-contractors are an integral part of a contractors' ability to successfully bid for projects.

The franchisor and the primary contractor have no control over the employment decisions of the distinct entities with which they enter into contractual arrangements. Why then should they be liable for those decisions? It seems to me that the unions and their lawyers want to be able to sue for more money and NLRB appears set to enable them. I hope you can convince me otherwise.

I will ask questions about these issues shortly. I yield now to the Ranking Member, Ms. DeLauro for her opening statement.

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