

OPEN FORUM

(Editor's Note: This is the testimony of Dr. Gordon Lafer, a professor at the Labor Education and Research Center of the University of Oregon, before the U.S. House of Representatives Subcommittee on Health, Employment, Labor and Pensions on the Employee Free Choice Act.)

By **DR. GORDON LAFER**

Over the past two years, I have conducted extensive research measuring the extent to which National Labor Relations Board elections match up to American standards developed from the Founding Fathers to the present — for defining “free and fair” elections. Unfortunately, I must report that NLRB elections look more like the discredited practices of rogue regimes abroad than like anything we would call American.

THE ROLE OF SECRET BALLOTS

Before going into the substance of my findings, I want to say a word about secret ballots, since so much of the debate around labor law reform has focused on the role of secret ballots. To some, it may seem that as long as an election ends in a secret ballot, it must be fair. In the workplace, one might imagine that even in the worst case, if a worker is intimidated by his or her employer, one could lie to one's supervisor and pretend to be opposing the union; as long as, at the end of the day, you cast your ballot in the privacy of a vot-

NLRB-controlled union elections are un-American

ing booth, you are free to exercise your conscience.

It is critical to note that the American democratic tradition — from the Founders to the present — fundamentally rejects this view. In elections to public office, while the secret ballot is a necessary ingredient, there are a whole set of standards that must be met in the leadup to election day — such as equal access to the media and voters, free speech, etc. — which are equally crucial elements of defining a “free and fair” process. Indeed, our government has often condemned elections abroad when there was no question that they ended in a secret ballot, because they failed to meet these other, equally important standards.

Unfortunately, with the exception of the secret ballot — which NLRB procedures protect in some ways and undermine in others — every other aspect of NLRB elections fails to meet American standards defining “free and fair” elections.

I would like to focus on just three dimensions of democratic elections: access to voters; free speech; and protection of voters from economic coercion.

Access to Voter Lists — The first step in any American election campaign is getting a list of eligible voters, and it is law that both parties must have equal access to the voter rolls.

In NLRB elections, however, management has a complete list of em-

ployee contact information, and can use this for campaigning against unionization at any time — while employees have no equal right to such lists. Employers use legal maneuvers to delay union elections for months. Only after all delays have been settled does the union have a right to the list of eligible voters. A federal commission found that on average, unions received the voter list less than 20 days before the election. Even then, the NLRB requires employers to provide workers' names and addresses — but no apartment numbers, zip codes, or telephone numbers.

If we imagine this system being applied to congressional elections — where one candidate had the voter rolls two years before election day, while his or her opponent was restricted to a partial list and only got it a month before the vote — none of us would call this a “free and fair” election.

Economic coercion of voters —

When the founders of our country created the world's first democracy and gave the vote to the common people, they were particularly concerned that employers might use their economic power over workers to influence their political choices. In general, Alexander Hamilton warned, “power over a man's purse is power over his will.”

For this reason, there are a wide range of federal and state laws that make sure employees can make political choices free from economic coercion.

In elections to Congress, it is illegal for a private corporation to tell its employees how they should vote, or to suggest that if one party wins business will suffer and workers will be laid off. Supervisor or managers can't say anything to those they oversee that amounts to endorsing one side or the other. It is noteworthy that federal law doesn't require that employers spell out a quid pro quo threat stating, for instance, that anyone caught wearing a button supporting the “wrong” candidate will never get a promotion. It is understood that employees naturally

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