

STATEMENT OF JENNIFER ANN ABRUZZO  
SENATE COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS  
“LABOR LAW REFORM PART 1”

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Thank you and I appreciate the opportunity to speak with the HELP Committee today about the vital importance of protecting workers’ rights in this country, including the fundamental rights that employees have to organize, collectively bargain, and act together to seek better wages and working conditions.

I worked at the National Labor Relations Board (NLRB) for almost thirty years in various roles of increasing responsibility both in the field and headquarters, including most recently as its General Counsel.

Ostensibly, this hearing is about labor law reform, specifically tied to diagnosing issues and exploring current proposals. Based upon my years of public service, I feel that I can speak with sufficient authority about the shortcomings of the NLRA itself in actually empowering workers as intended and about issues precluding the NLRB’s full and robust protection of workers’ rights and enforcement of the statute when those rights are violated.

We all know that the power dynamics at workplaces are skewed such that corporate power dominates to this day. In enacting the NLRA, Congress sought to address that power imbalance by trying to level the playing field so that employees could act together, unionize, and effectively negotiate with their employers to improve their wages and working conditions without fear of retaliation. Congress, back then, rightly recognized that the only way to combat the power imbalance and unfairness at workplaces was by fostering strength in numbers among employees. And, now, 90 years later, it is more important than ever that we have robust labor law and a fully functional and independent NLRB that protects workplace democracy and ensures that employees feel empowered to freely exercise their rights to engage in union and other collective activities to improve their lot in life. Corporate billionaire donors and CEOs don’t need more money or more tax breaks, workers and their families do.

As written and intended, the NLRA is a pro-worker statute. And, I believe it is incumbent upon this Congress to restore the balancing intent of the original Congress by ensuring that corporate interests are not elevated above workers’ rights and that workers gain true power over their working lives.

Over the course of my tenure at the NLRB, I unfortunately saw employers engage in many tactics to undermine their workers’ union and concerted actions and to squelch their workers’ voices and choices about union representation by, for example, abusing the agency’s processes,

engaging in delay tactics, forum shopping, bringing constitutionality challenges, seeking and obtaining injunctions precluding continued NLRB enforcement mechanisms, and creating new employment models to avoid liability and being held accountable for breaking the law.

And, despite the hard work of dedicated and talented NLRB career staff, the NLRB, as a chronically underfunded and understaffed agency, remains unable to fully and timely address violations of workers' rights and truly effectuate the policy of the United States of encouraging collective bargaining by protecting workers' full freedom of association.

So the problems are that neither the NLRA, nor the NLRB, are fully empowering and protecting workers in this country. Here are some solutions:

If you are to put working families first, as I believe you must, then you need to give millions more in funds to the NLRB. The NLRB has not been sufficiently funded by Congress for at least the past decade, being flat funded much of that time despite increased inflationary costs. What this means in real terms for working people whose rights have been violated is that their cases at the NLRB are languishing, despite the best efforts of the dedicated career staff, because of the significant decrease in staffing, particularly in the field offices where the vast majority of the NLRB's service to the public is done. Unfortunately, corporations can afford to drag out government processes, but workers cannot.

To add insult to injury, the incursion of DOGE and related coercion of OPM and OMB, along with threats by the Administration during this most recent government shutdown to fire furloughed government workers to further reduce staff all serves to weaken the NLRB's ability to protect workers, enforce the statute, and get remedies for workers who are fired or otherwise adversely affected because they exercised their rights to organize, collectively bargain, and engage with one another about their workplace issues. But, providing the NLRB with the funding that it needs – which I believe necessitates an increase of at least \$100 million to its current budget – is not enough.

Nor is confirming two new Board members enough, although I do believe it is crucially important to have a quorum to start issuing decisions that help workers, families and communities thrive. For eight months and counting, this Administration has failed to take action to enable the Board to function. As a result, employers are benefitting from the dysfunction and have been violating the law with impunity and retaliating against workers who are unionizing or otherwise acting together to make their work lives better because there is no functioning Board to hold them accountable for their lawbreaking activity. So, at the same time that corporate billionaires are getting more tax cuts at the expense of working families, they are also trying to silence their workers. That's a travesty. Corporate billionaires and CEOs are getting rich off of the backs of their employees. They don't need more money or tax breaks, workers and their families do, along with good, affordable healthcare.

Next, as you address the Board quorum issue, I urge you to include Board Member Wilcox, a very experienced attorney with a wealth of labor law knowledge, who was unlawfully fired by the President, in the mix and fight to maintain the statutory independence of the Board. As Senators, it is your duty to ensure that the statute Congress enacted, as well as the Constitution and the law, is adhered to. This includes the protections for Board members from Presidential removal absent just cause. And, it includes the maintenance of the independence of the NLRB's decision-making processes from interference. If the President gets the absolute power to remove any executive official at his whim, as he seeks, what is to stop him from directing agency decisionmakers to go after his foes but not his friends? What is to stop him from threatening to remove and actually removing a Board member if they don't issue a decision in favor of a corporation that donated millions during his campaign or that continues to add to the coffers through purchases of Presidential meme coins or crypto wallets?

Under the U.S. Constitution, there remain, for the moment at least, three separate and co-equal branches of government. It is your responsibility as one of those co-equal branches of government not to allow the executive branch to usurp your responsibilities to all of us who voted for you. Are you outraged, on behalf of all workers in this country, whose interests you are supposed to represent? I know I am.

And, last but certainly not least, in order to truly promote productive labor-management relations that inures to the benefit of workers, their families, their communities, employers' operations, and the broader economy and to truly empower workers to freely speak out about their issues of mutual concern at the workplace and demand a seat at the bargaining table to address them, Congress needs to do a major overhaul of the current statute to address the gaps that sadly just keep widening.

There is already legislation out there, such as the PRO Act, that would, among other things, broaden coverage of employees and employers, promote organizing and first contract bargaining, enable workers to better exercise their power, and assess reasonable costs for violations. I am all for its passage, but I don't think it's enough. If we are serious about elevating collective worker power and workplace democracy, then we should expand our thinking and consider models that have been successfully implemented elsewhere, such as sectoral bargaining.

As a reminder, the NLRA was enacted during the Great Depression because employees lacked sufficient channels of communication with their employers to improve their circumstances and that led to a lot of workplace conflict and industrial instability affecting the economy. Congress rightly understood that providing employees with the right to organize and collectively bargain would help struggling families through improved, union-negotiated wages and benefits and would help lift up the failing economy. Employers should respect and recognize their workers for the value that they add to their employer's profit-making enterprises.

So, if this Congress acts in contradiction of the public policy of the United States as stated in the preamble of the NLRA by elevating corporate interests above workers' rights and fails to ensure

that there are fully functional, independent agencies, robust laws with equally robust enforcement, and other mechanisms out there that all promote worker power, workplace democracy, collective bargaining, and true fairness, then I expect that workers will not only elect different legislators next fall, but will return to the self-help activities pre-dating 1935, including widescale protests and strikes, in order to re-take control of our governance, to gain or regain the benefits that were earned through hard work, and to receive the dignity and respect that they so richly deserve.

Let's all do our part to ensure that we remain a country of the people, by the people, and for the people.

Thank you and I look forward to your questions.