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Obama's Sneaky Back Door to Card Check

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Another of Barack Obama's "wrecking balls for America" is likely to come up in a lame duck session following the November election. It's a pay-back to unions for tens of millions of dollars of support for Obama in the 2008 election. Called "card check," it is a tactic designed to dramatically increase unionization throughout the American workforce—with the political objective of a vastly increased fund-raising base for the Democrat Party.

Recognizing that he would not be able to get card check pushed through Congress, President Obama installed his secret weapon—labor lawyer Craig Becker—on the National Labor Relations Board last spring. After the U.S. Senate had earlier rejected Becker's nomination on a 52-33 cloture vote in February, Obama thumbed his nose at Congress and sneaked Becker into place by recess appointment in March.

"Card check" (if implemented) allows a workplace to be organized if 50% of workers at the site sign a union card, indicating they want to unionize. There is no secret ballot to allow worker privacy in exercising their choice, and no chance to "decertify" until after the first negotiated contract has expired. In other words, if workers experience buyer's remorse after 50% of them have consented to unionization, they will nevertheless be stuck with it until the first contract negotiated has run its course and expired.

At the end of August, Becker's considerable influence on the Board was manifested: the NLRB dropped a bombshell with a 3-2 decision to revisit its Dana Corporation ruling. In the decision rendered in 2007, the NLRB recognized that card check is an inferior substitute to secret ballots. Therefore, it held that when a company recognizes a union via card check, workers have the right to force an immediate secret vote on whether they really want to join that union.

The Dana ruling was (and is) about protecting workers from union harassment. The reasoning goes, if card check is as popular as unions claim, labor leaders should have no problem letting workers vote by secret ballot to ratify or reject a card-check process.

Becker Behind the Scenes, Pulling the Levers

Michelle Malkin, writing at her blog on August 18, 2010, noted, "Becker's anti-business views date back to his days as a UCLA professor, when he argued that unions should not be subject to the same rules of democracy and fair elections as everyone else. He favors radical rewriting of union organizing rules and elimination of the secret ballot process by administrative fiat."

As a key lawyer for the Service Employees International Union (SEIU), Becker has maintained that the NLRB has "legal authority" to unilaterally impose card check and thereby eliminate secret ballots in union elections.

Forget ethics. The contractual ethics commitment that Becker signed in April states, "I will not for a period of two years from the date of my appointment participate in any particular matter involving specific parties that is directly and substantially related to my former employer or former clients, including regulations and contracts." Becker has ignored that commitment, and has refused to recuse himself from numerous NLRB cases involving the SEIU and its affiliates.

In the Dana case of 2007, Becker filed a brief for the AFL-CIO, arguing that there is no essential difference between card check and secret ballots. He made clear his position that he considers Dana-style protections "bad labor-relations policy."

In 2009, Becker generously provided his legal expertise to the White House, serving as an Obama transition team member for labor issues and helping draft several union-backed executive orders.

Obama chose to go around Congress in appointing Mr. Becker. Now, our largely irrelevant Congress could at last demonstrate some cojones if members would stand up to Obama and expose Becker's conflicts of interest. But that might be too much to ask.

The NLRB has requested briefs from all parties by November 1. By any reasonable standard, Becker's clearly expressed bias against Dana should preclude him from ruling on it.