

CONGRESSIONAL TESTIMONY OF

JENNIFER ANN ABRUZZO

HELP SUBCOMMITTEE HEARING

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I appreciate the opportunity to speak with the subcommittee today about the vital importance of protecting workers' rights in this country, including the fundamental right that employees have under the National Labor Relations Act (NLRA) to band together and seek better wages and working conditions.

I served the public for almost three decades at the National Labor Relations Board (NLRB) in various roles of increasing responsibility both in the field and headquarters, starting as a field attorney in Miami and ending as its General Counsel.

Ostensibly, this hearing is about restoring balance and ensuring fairness and transparency at the NLRB. Based upon my years of public service, working alongside many dedicated and talented career staff, I feel that I can speak with sufficient authority about the NLRB's fairness, transparency and commitment when protecting workers' rights and enforcing the statute when those rights are violated.

As to the theme of the hearing, I would submit that we need to restore balance and ensure fairness and transparency at all workplaces around the country. Congress enacted the statute with that goal in mind, and, throughout my almost 30-year career at the NLRB, I tried to fully effectuate Congress's mandate. In fact, while there were many practitioners representing deep-pocket companies

and other businesses that did not agree with my positions seeking to ensure that workers' rights were paramount over corporate interests, I believe all agreed that I was the most transparent General Counsel in the 90-year history of the NLRB, having issued many substantive memos fully explaining and justifying my positions.

For me, restoring balance and ensuring fairness and transparency means that the NLRB must hold true to the policy of the United States to encourage collective bargaining by protecting workers' full freedom of association. We all know that the power dynamics at workplaces are skewed in favor of employers. In enacting the NLRA, Congress sought to address that power imbalance by trying to level the playing field so that employees could act together and effectively negotiate with their employers to improve their conditions at work 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, 90 years later, it is more important than ever that the NLRB protect workplace democracy and ensure that employees feel empowered to freely exercise their rights to engage in union and other collective activities to better their lives.

As written and intended, the NLRA is a pro-worker statute, not a pro-employer or a pro-union one. And, I believe it is incumbent upon this Congress to restore the balancing intent of the 1935 Congress by ensuring that corporate interests are not elevated above workers' rights, which sadly is what the first Trump Board did and what I anticipate a second Trump Board will do once there is a quorum

comprised of one or more new politically-appointed and Senate-confirmed Board Members.

Speaking of a quorum, as you likely know based on Supreme Court precedent, the NLRB needs at least three members out of a total complement of five to issue decisions. On January 27th, after the President unlawfully fired Board Member Gwynne Wilcox – the first black woman on the NLRB - at the same time that he removed me, the Board lost its quorum and now is comprised of two white males, who can't issue decisions. And, who is benefitting from this dysfunction? Not workers, but employers, who may feel emboldened to violate the law with impunity and retaliate against their 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 lawbreaking activity. So, at the same time that billionaires and corporations are pushing for more tax cuts at the expense of working families, they are trying to silence their workers. This is a travesty. Corporate billionaires and CEOs are getting rich off the backs of their employees. The ones that should get more money, benefits, protections and tax breaks are workers and their families.

In order to comply with Congress's statutory mandate, not to mention the Constitution and the law, Board Member Wilcox, a very experienced attorney with a wealth of labor law knowledge, should be returned to her rightful position at the NLRB so that she can continue to protect the rights of workers in this country and the Board can start issuing decisions that help workers, families and communities thrive. And, I implore more Members of Congress to call on the President to reverse course.

As mentioned, as members of Congress, I believe it is your duty to ensure that the statute Congress enacted is adhered to. This includes fighting to maintain the protections for Board members from Presidential removal except for malfeasance in office or neglect of duty. And, it also includes the maintenance of the independence of the NLRB's decision-making processes from interference. If the President gets the absolute power to ignore statutes passed by Congress and remove any executive official at his whim, as he seeks, 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, for example?

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 legislative responsibilities to all of us who voted for you. You cannot allow the President to give his billionaire corporate donors a blank check to trample upon the rights of workers to unionize, collective bargaining, and act together to improve their circumstances. Are you as outraged, on behalf of all workers in this country, whose interests you are elected to represent, as I am?

Further, 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, which is the only federal agency that enforces the only federal labor law in the country. When I started as General Counsel, the NLRB had hit its lowest staffing level since 1985 due to years of underfunding.

The significant decrease in staffing, particularly in the field offices where the vast majority of the NLRB's service to the public is done, is detrimentally affecting many in this country.

While Congress provided a modest budget increase in FY 2023 - the first increase in funding in nearly a decade – the NLRB just doesn't have the resources it needs to address case intake. And, to add insult to injury, the incursion of DOGE, coercion of OPM and OMB, and recent Executive Orders have made matters worse. Despite the best efforts of dedicated and talented staff, the lack of sufficient funding has hampered 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. What this means in real terms for working people is that, until Congress fully funds the NLRB, workers will continue to experience long delays in getting the remedial relief to which they are entitled for myriad violations of their rights. Unfortunately, corporations can afford to drag out the process for years, but most workers cannot.

A sufficiently funded NLRB, which in my mind means a \$100M increase at least, will help ensure that the NLRB can robustly do its job of promoting productive labor management relations at all workplaces, inuring to the benefit of workers, their families, communities, and employers alike.

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 commerce throughout the country. Congress sought to eliminate that by empowering employees to freely speak out about their workplace issues and to seek a seat at the bargaining table to address them. Specifically, it gave employees the right to: self-organize; join, support, or assist a union; collectively bargain through representatives of their free choosing; act together for mutual aid or protection; or refrain from these acts. That Congress rightly understood that negotiated increases in wages and benefits would help struggling families and lift up the failing economy.

And, you have the power to make the law even more balanced and fair for workers by passing legislation that would, for example, broaden the scope of workers and employers covered by the law, better address interference with employee free choice, create monetary penalties for significant violations, and facilitate good faith bargaining and reaching first contracts in a timely manner.

In conclusion, 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 the NLRB can fully do its job of encouraging employers to respect employee voice and choice, to listen and address their employees' mutual concerns, to be fair and transparent with workers and their representatives, and to recognize their workers for the value that they add to their employer's profit-making enterprises, 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 wide-scale 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 recognition, dignity and respect that they so richly deserve.

This is all about protecting workers and their families, whose interests you were elected to represent.

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.