

ISSUE BRIEF

National Labor Relations Act

The National Labor Relations Act (NLRA) was enacted to guarantee workers the freedom to form unions free from employer interference, but today the NLRA provides no such guarantee. As documented by a recent Human Rights Watch report, U.S. labor law and practice fall short of international human rights norms for freedom of association. Violations of workers' freedom of association in the United States include legal loopholes that allow unchecked employer interference, inadequate remedies, procedural delays and the exclusion of millions of workers from labor law protections.

The NLRA—or Wagner Act—of 1935 extended to most private-sector employees “the right to self-organization, to form, join, or assist labor organizations” and “to bargain collectively through representatives of their own choosing.” The NLRA defined a set of unfair labor practices (ULPs) for which employers could be charged —most commonly for firing or refusing to hire workers because of their union activity. The NLRA also established the National Labor Relations Board (NLRB) to investigate and sanction ULPs and to oversee the election process for choosing union representation. The Taft-Hartley Act of 1947 defined an additional set of ULPs for which unions could be held liable.

U.S. law fails to guarantee freedom of association. Freedom of association—including the right to form and join unions —is a fundamental human right recognized under the U.S. constitution, international law and enshrined in the 1948 Universal Declaration of Human Rights and the 1966 International Covenant on Civil and Political Rights. As documented in a 2000 report by Human Rights Watch, U.S. labor law and practice fail to ensure workers' freedom of association because of legal loopholes that allow unchecked employer interference, inadequate remedies, procedural delays and inadequate coverage.

Employer interference is unchecked. Private employers in the United States routinely interfere with workers' freedom to form unions (see “Employers Block Freedom to Form Unions”). Yet many forms of employer interference and coercion are perfectly legal under the NLRA. For example, the NLRA's one-sided communication rules allow employers to wage coercive anti-union campaigns in the workplace—including captive audience and one-on-one meetings—while unions are severely limited in their ability to communicate with workers.

Remedies are inadequate. The NLRA prohibits some forms of employer interference, but its remedies are so weak they fail to deter rampant employer misconduct. The typical remedy for firing union supporters is back pay minus the worker's interim earnings—often a meager amount. The typical remedy for refusing to bargain with workers' representatives is an order to do nothing more than show up at bargaining sessions. The typical remedy for most other employer ULPs is an order to post a written notice in the workplace promising not to violate the law. By contrast, the NLRA allows employers to sue unions in federal court for damages and injunctive relief.

Procedural delays weaken the process further. The effectiveness of NLRA remedies is further weakened by the ability of employers to drag out legal proceedings until long after union supporters have been fired or intimidated. NLRB investigations and complaints consume an average of nearly three months. Delays between the issuance of a complaint and an administrative hearing average six months. Administrative hearings average several months; delays before issuance of a decision average four to five months. Delays before the NLRB decides an appeal average 10 months but can take three years; appeals of NLRB decisions to federal court can take another three years.

NLRB funding is inadequate. One reason for such procedural delays is that NLRB funding has failed to keep up with the growing volume of cases—especially ULP cases. The number of NLRB cases has tripled since the 1950s, while NLRB staffing fell from 3,000 full-time positions in 1980 to 2000 in 1998.

NLRA coverage is limited. International human rights law guarantees the right of “every person” (with limited exceptions) to form and join a union and bargain collectively, yet 32 million U.S. workers are denied collective bargaining rights under the law. (Many millions more who have the legal right to bargain collectively nevertheless lack actual union representation.) The NLRA excludes from its protections public employees, managers and supervisors, independent contractors, employees of certain small businesses, domestic workers and agricultural workers. Only 78 percent of 115 million private-sector workers—and only 66 percent of 20 million federal, state and local government workers—enjoy collective bargaining rights under the NLRA, the Railway Labor Act (RLA) or other provisions of law (see “The Railway Labor Act”).

Congress must oppose NLRA coverage and authority curtailment. Given the inadequacy of NLRA coverage, Congress must oppose a legislative proposal that would deny collective bargaining rights to even more employees of small businesses by indexing the annual sales threshold for NLRA jurisdiction. In light of the minimal deterrent effect of NLRA remedies, Congress must also oppose a legislative proposal that would undermine the NLRB’s enforcement authority (see “NLRB and OSHA Attorneys’ Fees”).