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Lawless Workplaces

Stewart Acuff and Sheldon Friedman**July 07, 2006**

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The last thing America's workers need is another economic kick in the groin, but the Bush labor board may soon deliver what could be its lowest blow yet.

In a series of pending cases known as Kentucky River, the Bush board could strip what remains of federal labor law protections from hundreds of thousands—perhaps millions—of workers whose jobs include even minor, incidental or occasional supervisory duties. The pending cases involve charge nurses in a hospital and a nursing home and lead workers in a manufacturing plant, but these workers could be just the tip of the iceberg.

The Bush National Labor Relations Board is easily the most anti-worker labor board in history, but even against this sorry backdrop, the scope of what they now are contemplating is breathtaking.

The consequences of bad labor board rulings in these cases have the potential to strip coverage in every nook and cranny of the workforce and create innumerable new opportunities for mischief by employers bent on denying workers' their fundamental human right to form a union. Long established collective bargaining relationships will also unravel, as employers emboldened by the NLRB's rulings assert that they no longer have a duty under federal labor law to recognize or bargain with their employees' unions. It will be back to the law of the jungle in industries like health care, where disruptions from labor disputes became so severe in the early 1970s that Congress passed special legislation to bring employees of private non-profit hospitals under federal labor law coverage.

The stakes are high for the public, too. In health care, for example, scholarly research has documented that heart attack survival rates are higher for patients in hospitals where nurses have a union than in hospitals where nurses do not.

Already in 2000, months before George W. Bush was declared president, Human Rights Watch issued a powerful report that found U.S. labor laws were grossly out of compliance with international human rights norms. That organization's bill of particulars was lengthy, but the first item on their list was the failure of U.S. labor law to cover millions of workers, including among others, managers and supervisors in the private sector.

Two years later, the Government Accountability Office estimated that 32 million workers lacked coverage under U.S. labor laws and thus were denied even the minimal protections afforded by these laws. Included in this number were nearly 11 million private sector managers and supervisors, even before the NLRB's rulings in Kentucky River.

The ink was barely dry on the GAO report before the huge numbers they reported became out of date, in the wake of a full-scale assault on workers' rights by the Bush administration, its labor board and right-wing Republican governors in several states. In the private sector, the Bush board stripped coverage from graduate student employees, certain disabled workers and employees of temporary help agencies. These retrograde rulings harmed large numbers of workers, but are a drop in the bucket compared with the possible impact of Kentucky River.

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Congress opened the door in 1947 by excluding supervisors from coverage as part of the notoriously anti-worker Taft-Hartley amendments to the National Labor Relations Act. Even that reactionary Congress, however, made it clear that it did not intend to deny coverage to professional workers, lead workers or others whose jobs did not include responsibility to hire, fire and discipline other employees.

Ever since, a shameful series of decisions by unelected judges and NLRB members has steadily expanded the supervisory exclusion. In its notorious 1980 *Yeshiva* decision, for example, the Supreme Court ruled that because professors at private universities participate in campus governance, they were supervisors and therefore not covered by federal labor law. Henceforth private universities could and did snuff out faculty organizing campaigns with impunity. Within a few years of *Yeshiva*, private university faculty collective bargaining virtually vanished.

The decisions pending in *Kentucky River* could be *Yeshiva* on steroids for workers who have ever given incidental direction to a colleague or coworker in the performance of their job. The United States is already paying a high price for its failure to protect workers' freedom to form unions; the Bush labor board's rulings may be about to make a bad situation dramatically worse.

It is therefore imperative to push back against the Bush board's assault on workers' rights. We must, moreover, go beyond good defense; we must win serious protections for workers' rights. The Employee Free Choice Act (EFCA) is the most significant federal legislative proposal in nearly 30 years to protect the freedom of America's workers to form unions and bargain collectively. Since its introduction in the 109th Congress by Ted Kennedy, D-Mass., and Arlen Specter, R-Pa., in the Senate (S. 842), and by George Miller, D-Calif., and Peter King, R-N.Y., in the House (H.R. 1696), EFCA has garnered 215 House cosponsors, just three shy of a majority, and 43 in the Senate.

EFCA's three main provisions are democratic majority sign-up, first-contract arbitration and stiffer penalties for illegal employer conduct. When EFCA becomes law, workers will be able to form and join unions without fear and coercion. EFCA will honor workers' choices, discourage employer interference, and create more democratic workplaces.

The AFL-CIO has declared a national week of action starting July 10 to protest against the Bush labor board at NLRB headquarters in Washington and at regional NLRB offices and other sites around the country. Members of Congress have been asked to urge the NLRB to permit oral arguments by workers who will be adversely affected by the pending decisions. This is the least the board can do before ruling in a matter of such importance, but so far its Bush-appointed Chairman Battista shows every indication that he will deny even this modest request to allow these workers to be heard.

The need is urgent and the stakes are high. These are important fights to protect workers' rights.