Written by **Bob Adelmann** on September 19, 2024

Trump-appointed Judge Rules Against National Labor Relations Board

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Texas District Court Judge Mark Pittman, appointed to his position by President Donald Trump in 2019, ruled that the National Labor Relations Board (NRLB) may not pursue its claims against a "social care network" company. Findhelp, a company that "connects people and programs — making it easy for people to find social services in their communities," ran afoul of the NLRB when it allegedly fired two employees who were trying to impose a union on the company's other employees.

The NLRB, created through the National Labor Relations Act passed during the progressive Roosevelt regime in 1935, claims that its mission was, and is, to correct the perceived "inequality of bargaining power" between employers and employees by promoting unionization. Employees, according to the act's promoters, "do not possess full freedom of association or actual liberty of contract" with employers.

Progressive Attack on Capital

The NLRB is part of the progressive attack on the private ownership of capital, dating back to the days of Karl Marx and Friedrich Engels, who claim that their first priority in its attack is to abolish the right to own property privately. To quote from Chapter 2 of their Communist Manifesto, published in 1848:

> We Communists have been reproached with the desire of abolishing the right of personally acquiring property as the fruit of a man's own labor, which property is alleged to be the groundwork of all personal freedom, activity, and independence…
>
> You are horrified at our intending to do away with private property. But in your existing society, private property is already done away with for nine-tenths of the population; its existence for the few is solely due to its non-existence in the hands of those nine-tenths. You reproach us, therefore, with intending to do away with a form of property, the necessary condition for whose existence is the non-existence of any property for the immense majority of society.
>
> In one word, you reproach us with intending to do away with your property. Precisely so; that is just what we intend.

By effectively abolishing an employee's right to contract out his labor willingly and without coercion, he

is losing his precious right to his most intimate capital: his willingness and ability to sell his services to an employer.

It also accomplishes another Marxist objective: pitting employers against employees.

Socialists in the Roosevelt administration, taking advantage of the economic depression, saw their opportunity to inflict its agenda upon the nation's economy, and they took it. They were aided in great part by progressive Democrat Senator Robert F. Wagner of New York, who was part of the corrupt Democratic Tammany Hall regime that virtually controlled the city and the state for more than 100 years, and for whom the act is informally named: the Wagner Act.

The Board consists of an administrative law judge and five other board members. None of them may be fired except for cause, or by a motion approved by the board. They are, in other words, completed insulated from being fired by the president, despite powers granted him by the Constitution in Article II, Section 2: "He [the president] shall have power … [to] nominate … all other Officers of the United States, whose Appointments are not herein otherwise provided for."

Myers v. United States (1926) clarified that the president could not only nominate, but also terminate, those officers. As *Justia* noted, "the Constitution endows the President with an illimitable power to remove all officers in whose appointment he has participated."

When the Act was developed, it provided two layers of protection against this power, effectively turning the NRLB into a labor union's private fiefdom, free to attack employers, such as Findhelp, with impunity.

Ruled Constitutional

The liberal majority of the Supreme Court ruled that the NLRB was constitutional in 1937, 5-4, declaring that "[the right to organize a company's employees] is a fundamental right," adding,

> Employees have as clear a right to organize and select their representatives for lawful purposes as the [owner] has to organize his business and select its own officers and agents.
>
> Discrimination of the right to employees to self-organization and representation is a proper subject for condemnation by competent legislative authority.

The NRLB has been busy since 1935 "condemning" what it deems to be "unfair labor practices" ever since.

Currently, there are several lawsuits challenging the NRLB's fiefdom, with Findhelp's being just the most current one. Findhelp "asserts that the two layers of for-cause removal protections afforded to NLRB ALJs prevent the President from fully exercising his removal authority under Article II of the Constitution."

Judge Pittman agrees that Findhelp has a good argument sufficient for him to issue a temporary injunction against the NRLB's attack on the company.

Findhelp Is Not Alone

Findhelp has lots of company. Elon Musk's SpaceX, Amazon, Starbucks, and Trader Joe's have filed similar lawsuits against the NRLB, each making essentially the same claim. Musk's company's complaint says it well: "The NRLB's current way of functioning is miles away from the traditional understanding of the separation of powers, which views 'the accumulation of all powers legislative,

executive, and judicial, in the same hands' as 'the very definition of tyranny." It added, "The exercise of prosecutorial, legislative, and adjudicatory authority violates the separation of powers and due process" provided by the Constitution.

It was the former owner of Starbucks that put the matter well. He told a worker, "If you're not happy at Starbucks, you can go work for another company." For that he was cited by the NRLB as threatening to dismiss the unhappy worker.

The ruling naturally roused the ire of the worshippers of big government, including the *Huffington Post* and *The New Republic*. Each claimed that the Trump-appointed judge posed an existential threat to the NRLB and the whole structure of labor law that has morphed out of the act passed in 1935.