

**REMARKS OF ROBERT J. BATTISTA
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THE NLRB AT 70: ITS PAST AND ITS FUTURE
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I would like to thank my good friend and former Board Member John Raudabaugh for that kind introduction, and Professor Samuel Estreicher for inviting me to participate today in one of the truly outstanding conferences of its type in the nation.

This week marks the 70th anniversary of the introduction of the Wagner Act, which, when signed into law by President Roosevelt, gave birth to the Agency I chair – the National Labor Relations Board.

Much has changed over that 70-year period. We have gone from propeller-driven biplanes to rocket-powered moon shots; from Prohibition to Budweiser Super Bowl ads; from radio broadcasts to high definition TV. Things we take for granted now – the ubiquitous television, the computer, the cell phone – were merely futuristic dreams then.

It's against this wave of change that I would like to commemorate the 70th anniversary of the National Labor Relations Board by offering some observations about the Agency – about its storied past, its accomplishments, and its future.

I'll begin by offering certain beliefs I have formed over my 37-1/2 years as a practitioner before the Agency, and my 2-1/2 years as its Chairman.

My first proposition is that the NLRB is a remarkably stable, reliable, resilient institution that has been able to adapt, as necessary, to changes in society over seven decades. The Wagner Act, as amended by the Taft-Hartley Act of 1947 and Landrum-

Griffin Act of 1959, and as interpreted by the 60 Board Members who have come and gone, has worked exceedingly well in guiding this nation's primary labor policy.

Secondly, I submit that the main reason for the Act's success and longevity, is that it is predicated on such fundamental democratic principles as freedom of choice to be represented or not; democracy in the workplace through rule of the majority; and participation in the workplace through free collective bargaining and voluntary agreements. Together, these principles constitute a "rule of law" in the workplace that fosters and yields industrial stability. The statute's success can be attributed to its enduring principles, while at the same time allowing for flexibility and change in the dynamic labor relations field. The law was meant to ebb and flow, to change from time to time within the boundaries set by the statute and subject to review by the courts.

Third, I believe the NLRB will remain relevant and at the center of national labor policy, notwithstanding the decline of organized labor, which represents less than 8 percent of employees in the private sector. Unions will be with us for the foreseeable future and the NLRB will continue to protect the freedom of choice employees enjoy to be represented, or to refrain from being represented, by them. The Act protects nonunion employees and union members in the private sector. In doing so, the law provides for stability and predictability in American labor relations.

Fourth, Congress envisioned a minimal role for government in enforcing the National Labor Relations Act. The purpose of the law is to define an environment within which labor and management can resolve their differences. The Board is the referee, but the action takes place between the parties. Simply stated, the design and purpose

of the Act is to advance industrial democracy within a free and open economy but with a minimum of Federal regulation.

Finally, I will address some criticism of the Board, which goes with the territory of administering the legal centerpiece of the controversial, and often contentious, field of labor relations. Often the Board's critics fail to recognize that our job is to enforce the law as written. They also don't seem to understand or neglect to mention that Congress established the Board's structure anticipating that changing administrations would appoint persons who are free, within statutory limits, to reflect the labor policy of the administration making the appointments. At the same time, reasonable stability in Board decisions is necessary so that companies, unions, and employees can understand and follow the law.

Let us now go back to the beginning and examine how this law and the Labor Board came into being. Doing so will help illuminate our situation today and, hopefully, our future direction.

The NLRA had its origin in the depths of the Great Depression. President Franklin Delano Roosevelt was in his first term. The economy was in grave danger, unemployment was dangerously high. There was an epidemic of disruptive, and sometimes violent, strikes by employees trying to achieve recognition of the right to join unions. During this period, an individual employee had no bargaining power concerning wages and other conditions of employment. Union organizing efforts were strongly resisted by employers. Between 1933 and 1935, 70 percent of all strikes, involving two million workers, resulted from the refusal of employers to recognize or bargain with unions.

How did Congress and the Executive Branch deal with this volatile labor relations crisis that was threatening the country's economic stability? I will make three important points: (1) Congress took an incremental approach, with step-by-step experimental solutions to determine what made sense and would work. (2) In moving the country toward a national labor policy, Congress also drew upon America's traditional values of self-government, free choice, majority rule, and good-faith dealings. (3) Congress opted for the government to have a limited role as the administrator of its various legislative solutions to labor relations problems. It rejected solutions that were extreme, undemocratic, or with a heavy government hand.

In 1932, Congress passed the Norris-LaGuardia Act, which limited the power of the courts to issue injunctions or restraining orders against strikes, absent violence or fraud. More importantly, the law declared that employees were free to join unions and bargain collectively.

In the following year, Congress embraced a government-industry cooperative approach with passage of the National Industrial Recovery Act (NIRA) of 1933. Antitrust laws were suspended to permit voluntary "Codes of Fair Competition" and under Section 7(a) of the Act employees were given "the right to organize and bargain collectively through representatives of their own choosing without employer interference or coercion." The voluntary codes of the NIRA collapsed in May 1935 when the Supreme Court declared the NIRA was unconstitutional.

In February 1935, Senator Robert Wagner of New York introduced a new bill, the National Labor Relations Act, which sought to protect the right of employees to join

unions without fear of discharge, to guarantee the right to strike, and to require employers to bargain with the union selected by their employees.

Seventy years ago this week the Senate passed S. 1958, which became the Wagner Act, and referred it to the House for consideration. The House and Senate resolved their differences on June 27, 1935, and the new law was signed by President Roosevelt on July 5, 1935.

The statute defined employee rights and sought to implement them by forbidding certain unfair practices by management, including:

- Interference with employees in the exercise of legitimate union activities.
- Company assistance, domination or control of an employee organization or union.
- Discharge of or discrimination against an employee because of union membership or activity.
- Discrimination against an employee for having filed charges or given testimony against an employer under this Act.
- Refusal to bargain collectively with unions chosen by the employees.

To administer the statute, a new National Labor Relations Board was created.

The Act established a permanent board of three members with two primary responsibilities: (1) to conduct elections among employees, upon request, to determine if they want to be represented by a union (and, if so, which union); and (2) to investigate and remedy unfair labor practices.

Congress also empowered the new NLRB to make findings of fact and to issue cease-and-desist orders and affirmative remedial orders enforceable in court. The law

also granted the Board the right to seek enforcement of its own orders in the U.S. Courts of Appeals.

Under the new law, the secret ballot took the place of the recognition strike. Representation elections were to be based on the concept of exclusive representation. For the first time, employees had the legal right to join unions and to bargain with their employers over the terms and conditions of their employment. Introduction of this innovative rule of law in labor relations met with massive opposition. Over 80 injunctions were brought to prevent the Act's implementation. For 2 years, the Wagner Act was defied and ignored while industrial strife continued. Then, in 1937 in the pivotal Jones and Laughlin case, the Supreme Court upheld the constitutionality of the Act and sustained Congress' power to regulate employers whose operations affect interstate commerce, even though they were not directly engaged in commerce.

Gradually over time, management and labor began the slow, and often difficult, process of shared participation and shared responsibility for industrial self-government. Strikes for recognition, so common before the Act, sharply declined in number. The ballot box became a substitute for the recognition strike. The labor agreement, setting wages, hours, and working conditions mutually agreed upon, came to be valued by both labor and management as the standard by which they would judge each other's conduct. Contract disputes increasingly were submitted to impartial arbitration, without resort to force or compulsion. Dire predictions that free enterprise could not survive the rule of law in labor relations proved wrong, for the economy began to prosper as never before.

The 1935 statute was criticized as one-sided since it prohibited only unfair labor practices by management. This onslaught of criticism grew over the years and gained momentum during World War II when the shortage of employees gave unions additional economic power which sometimes was abused. With the end of the war, industry-wide strikes in coal mining, shipping, steel, auto, and other basic industries, led Senator Robert Taft of Ohio to propose amendments to the Wagner Act. In 1946 alone, there were 5,000 strikes, involving 4.6 million workers.

Taft's amendments were adopted in the Taft-Hartley Act of 1947, which balanced the rights of employees and the obligations of employers against corresponding rights and obligations of unions. The amendments also sought to protect neutral employers from secondary boycotts, and severely restricted recognition strikes.

The sweeping changes brought by Taft-Hartley also affected the structure of the Board and its administration. For 12 years, management groups had criticized the Board's seeming dual role as prosecutor and judge. Under Taft-Hartley, an independent General Counsel was to act as a prosecutor, and the Board would continue its judicial functions. The Board was expanded from three to five Members and authorized to sit in panels of three Members to decide cases. Congress preserved the Wagner Act's statement of employee rights in Section 7, but new language was added to provide that employees had the right to refrain from those activities.

The reaction of organized labor against the curtailment of its new-found power was at least as great as that of management after the passage of the Wagner Act. Taft-Hartley was derisively termed the "Slave Labor Act" and great efforts were made to

nullify it through Presidential veto. However, Congress overrode President Truman's veto and Taft-Hartley became law.

In 1959, Congress passed the Landrum-Griffin Act in response to congressional findings of labor union corruption, racketeering, and other misconduct. In addition to changes related to union corruption and racketeering, including a "Bill of Rights" for union members, the Landrum-Griffin changes tightened secondary boycott prohibitions, outlawed "hot cargo" agreements, and authorized the Board to delegate most of its authority in representation cases to its regional directors, subject to discretionary review.

The steps I have outlined in the formation of a U.S. labor policy, especially passage of the original Wagner Act and its subsequent amendments, were dynamic experiments in our national industrial life. They responded to changes necessary at the time and offered remarkably reasoned and balanced solutions in the long run. The result was a U.S. labor policy that sets forth statutory rules to protect the legitimate rights of employees, unions, and employers, while at the same time safeguarding the overriding interests of the public.

But that's enough about legislative history. As the saying goes – "That was then and this is now." What does all this history have to do with us today? We are in another century. We have left Kansas so to speak; things have changed. Global competition requires flexibility and innovation. How can an agency grounded in the New Deal era address the needs of the public in the 21st century?

Legal scholars, social scientists, and industrial relations practitioners have been debating this issue for years. Some observers argue that the NLRB is outmoded and

becoming irrelevant. Others argue that unions are no longer needed in the American workplace or that unions cannot function within the structure of the National Labor Relations Act. Allow me to offer my assessment and leave you with some observations I have come to after 40 years in this business.

As I have emphasized, the National Labor Relations Act is the cornerstone of industrial democracy in this country. The genius of the Act is that it sets forth enduring fundamental principles, and yet allows for flexibility and change. It accomplishes the former by setting forth fundamental principles in clear and compelling language – again, principles that are grounded in America’s traditional values: self government, free choice, majority rule, and good-faith dealings. It allows for flexibility and change by using broad language that gives the Board the freedom to act within the parameters of those principles.

Utilizing this approach, I think that the Board has been, and continues to be, a highly effective institution. The Board issued 576 decisions in fiscal year 2004, and it collected \$205.3 million in backpay. Our productivity this past year was especially significant because the output included eight major decisions that required extra attention and effort by all the staffs: San Manuel, IBM, Brown, Brevard, Oakwood Care, Lutheran Heritage, Crown Bolt, and Harborside. Getting these significant cases out the door was a major accomplishment, especially in light of the Board’s overall productivity.

Over the past 70 years the Agency has processed over 2 million cases, issued over 65,000 published decisions in adjudicated cases, and collected \$1.67 billion in backpay. It also has conducted 415,000 elections involving over 40 million workers. I

think you will agree that these accomplishments are hallmarks of an active, dynamic, and successful agency.

True, there are criticisms regarding the length of time it takes to fully litigate an unfair labor practice case before the NLRB, and we are working to reduce the time it takes to issue decisions. But it is also true that the vast majority of cases are resolved without the necessity of formal litigation.

Historically, the Board's settlement rate has been extraordinarily high. Of the roughly 28,000 – 30,000 unfair labor practice charges filed with the NLRB each year, about one-third are found to have merit, and over 90% of those meritorious cases are settled. Overall, about 98% of all unfair labor practice cases filed in the field offices are resolved in a median of some 91 days, and without the necessity of an appeal to the five-Member Board.

Besides adjudicating unfair labor practice cases, the Board's second major responsibility is conducting union representation elections. Although some critics say the election process takes too long, the median time from petition to election is a respectable 42 days. This includes the time necessary for parties to seek Board review of the decisions of Regional Directors regarding preelection issues such as unit scope and supervisory status, with the Board considering 12-15 such cases per week.

Based upon the cases the Board considers every day, I can attest that the Act is alive and well, and that employees, unions, and employers are turning to the Board and its processes to assert and protect their statutory rights.

Notwithstanding this record of achievement, there are the nay-sayers. They point to the decline of unions and collective bargaining in the private sector and attempt

to hold the NLRB partially accountable. Historically, organized labor has served a vital role in this country; I believe that it will continue to serve such a role in the future. It is true that the percentage of union members in the private sector work force has dropped to under 8%, but this statistic does not tell the whole story. Organized labor represents significant portions of the work forces in the defense, energy, transportation, and shipping sectors of the economy, as well as the automobile industry and at other major industrial employers. Furthermore, organized labor is making major efforts to organize workers in new industries, with the SEIU, and UNITE/HERE, leading the way in the service industries. In short, organized labor is rethinking and restructuring. It is not going away.

I submit that the debate about the relevancy of the NLRB continues for two reasons. First, much of the debate appears to be politically motivated – not in the Democrat vs. Republican sense, but in the sense that the debate serves the self-interests of some of its advocates. As I noted previously, the Act brought forth a “rule of law” of labor-management relations with attendant rights and obligations. Neither management nor labor is able to use every weapon of industrial warfare in its arsenal. Pardon the military analogy, but in the interest of long-term industrial stability there are rules of engagement to which each side must comply. Some of those who argue that the NLRB no longer is relevant are openly seeking a return to the “law of the jungle,” where there are no rules of engagement and all weapons of industrial warfare can be used to accomplish one’s objective. This is not only irresponsible, it is short-sighted. History shows that the balance of power in industrial warfare can shift quickly and dramatically. Those who see themselves in a position of power today may find

themselves powerless in the future. At that point, the NLRB not only will be relevant, it will be their protector.

Second, the debate about the relevancy of the NLRB continues because the intertwined American and world economies are in a constant state of flux. Much of this change is driven by the need for employers to adapt quickly to competition at home and in the global marketplace. Various management techniques have been developed, adapted, and refined to maximize the ability to compete – indeed, to survive – in this marketplace.

Critics say that the Act is unable to protect employees in this environment, and at the same time, give employers the flexibility to compete. I disagree. The Act protects employees and gives flexibility. It does so through a prudent combination of enduring values and capacity for change.

The basic structure of the Act anticipates the need to address change. The Board, however, is not free to rewrite the Act, it must remain true to its enduring fundamental principles which include:

- The freedom of each employee to choose to be represented or not;
- The guarantee of good-faith bargaining if employees choose representation;
- An electoral mechanism to insure that employees are appropriately grouped together, and can vote in secret;
- The duty to sign and honor contracts that are freely agreed to; and
- The protection of employers from disputes in which they are not involved.

Within these principles, there is considerable discretion vested in the Board. Congress chose broad language, and then left it to the Agency to act in its discretion, so long as it did not depart from the principles. A few examples will suffice:

1. Congress said that an employer shall not “interfere with” Section 7 rights. Is it “interference” to prohibit employees from engaging in union solicitation on company property? The simple answer would be “yes,” but the Board has the discretion to distinguish between working time and nonworking time.
2. Should employees have the right to oust or change a representative? The simple answer is “yes,” but the Board has the power to limit this through contract-bar rules, certification year rules, and “reasonable time” insulated periods.
3. Should the duty to bargain include the duty to supply information? Again, the simple answer is “yes,” but the Board has the discretion to determine such matters as relevance and confidentiality.

With that in mind, it is not surprising that Board law changes from time to time. The Board’s freedom to act within parameters means that different Boards will act in different ways. Congress envisioned this freedom and basically said: so long as the Board does not stray from fundamental principles and explains itself, it has the power to change.

The changes can come about because of social and economic developments, or because of differing perceptions of what is right and just. As to the former, we must realize that the Act of 1935 must now be applied to such new phenomena as a world of

computers, transformed industries, global trade, and employee involvement committees. With these new realities, the law must adjust and change.

With respect to the differing perceptions, it must be recognized that Congress established an agency whose Members would serve relatively short and staggered terms. Obviously, the Board majority would reflect, to some degree, the governing philosophy of the appointing President. Purists may gnash their teeth at this, but it was part of the congressional design.

This is not to say that Congress intended that one party would blindly overrule the precedents of the other party. As stated before, all holdings must be within the fundamental principles set out in the Act, and all changes must be explained. The Board is an administrative agency, charged with not only an interpretative, but a policy-making role. It is not an Article III court and thus the doctrine of stare decisis does not strictly apply. However, all responsible Members recognize the value of having stability, predictability, and certainty in the law. But, if a Member honestly believes that a prior precedent no longer makes sense, and that a change would be within the fundamental principles described above, he/she can vote to change the law. To be sure, the values of stare decisis counsel against an onslaught of changes. But prudently exercised, change is proper and indeed was envisioned by Congress.

Similarly, because of the limited terms of Members, and the fact that a Board majority will generally reflect the philosophic views of the President, it is not surprising that some Boards will be viewed as leaning liberal and pro-union and other Boards will be viewed as leaning conservative and pro-employer. In view of the structure set up by

Congress, this should not be seen as startling. But again, prudence requires that a given Board not swing radically to the left or right.

Indeed, the Board has not had radical swings to the left or right. Most of the law is well-settled, and the parties litigate the facts under those principles. In a few areas, the law has gone through periods of flux, but it has ultimately settled at an accepted point. For example, the Board struggled for years on whether misrepresentations are objectionable conduct in an election context. But, in Midland National Life Insurance, 263 NLRB 127, the Board ultimately held that such conduct would not ordinarily be objectionable. The law has been so for 23 years. Similarly, the Board wrestled for years as to the burdens of proof in discrimination cases under Section 8(a)(3). Finally, the Board articulated a clear test in Wright Line, 251 NLRB 1083. The law has remained stable for 25 years. In addition, the Board held for a time that interrogation about Section 7 activity was per se coercive. After judicial criticism, the Board abandoned this approach in Rossmore House, 269 NLRB 1176. The law has been so for over 20 years. Finally, the Board once held the view that plant relocations were contract modifications, even if the contract contained no clause proscribing relocations. Milwaukee Spring I, 265 NLRB 206. The Board later abandoned that view, and held that, at most, relocations were bargainable. Milwaukee Spring II, 268 NLRB 601. The law has remained unchanged for over 20 years.

These are examples of Board fluctuations that ultimately resulted in stability. I submit that the fluctuations are part of the deliberative process built into the Act and that the ultimate stable point was true to the Act's fundamental principles.

By being true to its principles, and yet flexible enough to change, the Board has continued to serve the national interest in having a living industrial democracy. Notwithstanding this, we hear cries that the Board is becoming irrelevant. Some of these cries come from organized labor. These critics believe that unions could do better without the electoral procedures and protections built into the Act. They endorse neutrality agreements and other mechanisms for private resolution of questions concerning representation. At bottom, they seek card-check recognition, either through agreement or through legislation. The notion of ballot box democracy, that is, voting in the privacy of a booth, is viewed with suspicion.

That sentiment is understandable. Union membership in the private sector has declined. There are those who say that the Board is responsible for this decline in union strength, i.e., that Board law and lax enforcement are the reasons for the decline. I do not believe that this case has been made. There are a host of social and economic changes that bear on this issue. A few of these are: the change from an industrial economy to a service economy; the pressures of a competitive global economy; the fact that employees no longer work for one employer for their entire working lifetime; and indeed, the social legislation, which organized labor to their credit has championed, has made unions less necessary to some.

With respect to the impact of the law on the decline of union membership, I would note first that the Act is neutral. It does not encourage employees to vote one way or the other. It does not put its thumb on the scale in employer-union bargaining. To be sure, there may be instances where one party or the other interferes with employee free choice, and, in some cases, the law deals with this too slowly and ineffectively.

However, as I stated, the vast majority of our cases settle quickly. Furthermore, the Act is not punitive. We are forbidden to use punishment as a deterrent.

It may be that, with the decline in union density in the private sector, the Board does not play as prominent a role as it did in the past. However, unions continue to organize, and recent developments suggest that union organizational efforts may be intensifying. In addition, when unions do organize, and proceed to NLRB elections, their “win” rate is substantial, 57% in fiscal year 2004. As I have said many times, the forecasters of doom for unions have generally been wrong.

In sum, while I have no crystal ball, I believe that unions will continue to play an important role in our society, and the Board stands ready, willing, and able to protect the rights of employees who choose to unionize as well as the rights of those who do not. But, more fundamentally, I believe that the Board has a statutory obligation to protect ballot box democracy. By saying this, I do not mean to signal a result on any particular case that comes before me. Nor do I suggest that voluntary recognition, based on signed union authorization cards, is improper. The Board may wish to tinker with procedures, and devise ways to expedite them, but one must be careful to preserve the fundamental values that underlie the Act.

The need to adapt to changing times is an ongoing challenge for the Board. Technology also is bringing changes to the workplace, and the Board must consider issues that were only science fiction at the time the Act was drafted.

There are a number of areas where the Board will need to consider the impact of technology and the evolving workplace. For illustrative purposes, I would like note three: electronic mail, supervisory status, and the mobile work force. These are by no

means the only issues we are facing, but they illustrate the tension between technological advances and other workplace changes, and the boundaries of our New Deal-era statute.

First, consider how E-mail has become an integral part of the American workplace. Are the computer systems used for E-mail a tool, like a phone, or should “cyber-space” be viewed as a work area? Is E-mail more analogous to solicitation, or to distribution of literature? Should the Board attempt to apply its traditional access, time and space limitations to email and other technological issues, or should it develop new principles? What factors should be taken into account? These are difficult questions with potentially wide-ranging implications on how business is conducted.

Let’s turn to the second area, determining supervisory status in an era of an empowered work force. As you know, in NLRB v. Kentucky River, 532 U.S. 706 (2001), the Supreme Court admonished the Board to be attentive to the statutory definition of a supervisor, while also acknowledging that the Board may determine, within reason, what scope of discretion a person must have to constitute a supervisor under the Act. While Kentucky River arose in the context of registered nurses and their professional status, the court did not limit its comments to professional employees. Rather, the court spoke in broad terms about the statutory definition of supervisor and the Board’s authority to interpret the Act.

In the context of an empowered work force, the Board will have to address a number of questions. For example, has sufficient authority has been granted to the empowered work force to satisfy the statutory definition of supervisor? What is the significance of the fact that this authority may have been granted through collective

bargaining? How does group authority differ from individual authority? If group authority is managerial in nature, what is the impact of the Supreme Court's Yeshiva University decision finding faculty members to be managers, not employees, based upon their collective authority?

Third, the Board must address how to deal with an increasingly mobile work force. Technology has made it possible for many businesses to allow workers to work in nontraditional settings. Telecommuters can work from anywhere – at home, on the beach, or on a mountaintop. Traveling workers no longer need to return to a central office to process their work. E-mail and the Internet allow for orders to be submitted, work to be distributed, and for business otherwise to be transacted without the necessity for face-to-face interaction. Operations can be decentralized, in many cases without regard to geographic boundaries.

When a union cannot stand at the gate and hand out literature to the work force at shift change, what access rules apply? Is the mobile work force analogous to the logging camps, mining camps, and mountain resort hotels mentioned by the Supreme Court in Lechmere, Inc. v. NLRB, 502 U.S. 527, 439 (1992). If access to the employer's property were justified under a Babcock/Lechmere analysis, what "property" exists that would allow the union reasonable access to the work force? What significance, if any, should be given to the fact that a work force is truly mobile? What if the employer offers to accommodate the union's request for access to its work force? What if the union objects to the accommodation offered?

Given the trends in technology and the evolving workplace, it is only a matter of time before the Board will be considering these and other related questions. Some may

be addressed in the context of our consideration of E-mail related issues. Others will arise separately. Still others will arise in other contexts entirely.

The future will present the Board with a wide array of issues as it continues to adapt to the constantly changing American workplace. As the Supreme Court noted in Kentucky River, however, the Board's ability to adapt is limited by the text of the Act. Our challenge is to address these new issues with flexibility and innovation while remaining faithful to the 70-year old statute we are charged to enforce.

This brief historical overview was intended to convey a picture of the Board as an institution that has encountered and withstood difficult times, has ably dealt with change, but has shown a vitality, energy, and resilience, that has enabled it to be so successful over 70 years.

Our mission has been to resolve labor disputes peacefully by providing an orderly regulatory process within which labor, management, and employees can resolve their differences. Fulfilling this important mandate has been an immense task but we have succeeded for 70 years and will be successful in the future.

For those nay-sayers who want to marginalize the NLRB, they should not forget the bitter lessons of history that we have experienced. The NLRB was challenged in its early days, first by management, and later by labor unions leading to the 1947 and 1959 amendments. Congress found the voluntary approach of the NIRA boards didn't work so it moved on to the framework we have with the NLRB today that does work. To be sure, there have been pitfalls, but if the Board were no longer here -- would labor upheavals so prevalent in the 1930's be more commonplace? Would the law of the jungle prevail? I assure you we are better off with the road taken. The congressional

give and take has reached a point of equilibrium in the Board's history, assuring its continued success.

The genius of the statute, the wisdom of Congress to change direction, and the flexibility of the NLRB to make adjustments to a changing industrial landscape over the years, all have resulted in a success story for this great agency.

In adapting to changes over time the Board should look to its origins for guidance. As I have shown, the Act was not created in one step in a sweeping, comprehensive approach to regulate all aspects of all industries. Rather, it came about in a series of steps, some of which were admittedly unsuccessful.

Behind this mission was a premise advanced by the statute's proponents that was stated as follows by its main author, Senator Wagner:

Democracy cannot work unless it is honored in the factory as well as the polling booth; men cannot be truly free in body and in spirit unless their freedom extends into the places where they earn their daily bread.

The preservation and advancement of democracy, including the protection of human rights, was a guiding principle of the Twentieth Century in the United States. This march for democracy, which of course continues to this day in all parts of the world, was achieved at great cost in lives and treasure, after four major wars. Now in this new century, we find ourselves in a global war on terrorism.

Achieving democracy is not easy and never cheap. This country has initiated and maintained massive foreign aid programs which have enhanced economic well-being, health, and stability around the world. Domestically we enacted legislation and developed many programs to meet needs of all Americans.

Nowhere is this more apparent than in the U.S. system of industrial democracy that grew out of the New Deal era and has expanded with the enactment of legislation in the areas of occupational safety and health, equal employment opportunity, pension reform, health care, minimum wage, family leave, among others. None of these were in place when the National Labor Relations Act was enacted seven decades ago.

This statute has been a major contributor to the success of all these programs by establishing and promoting the principles of individual and collective-bargaining rights, freedom of choice, and by recognizing that human rights in the workplace are deserving of governmental protection. In sum, the U.S. has found a long-term, satisfactory solution for dealing with labor-management problems with this remarkable statute.

President Reagan recognized the linkage between the Act and democracy when he stated on the occasion of the NLRB's 50th anniversary in 1985, a message that still resonates today:

A free labor movement is essential to the preservation and expansion of free enterprise. Since its passage in 1935, the National Labor Relations Act has been a bulwark of support for this vital American heritage. In conducting union representation elections and processing unfair labor practice charges, the NLRB has helped build a peaceful industrial relations system that is the model for the free world.

Winston Churchill once said that "Democracy is the worst form of government, except for all those others which have been tried from time to time." It is true that, in a democracy, decisions can take an enormous amount of time; the debates can be contentious; policies can change from A to B and back to A; partisan views are expressed and acted upon; and the whole system can be wracked by inefficiencies. And yet, the fundamental values that are inherent in a democracy far exceed these

transitory problems. We would not, for even one moment, trade away the principles of free speech, open debate, and uncoerced and independent free choice.

And so it is with the industrial democracy that is enshrined in the Act. There are cases in which the Board decision takes too long; the arguments of the parties can be contentious and sometimes bitter; the law has sometimes gone from A to B and then back to A; Board members may reflect their prior background, including their social and political views; the decision-making system is less efficient than would be true of a one-person dictatorship. And yet, we would not, for even one moment, trade away the fundamental values of free speech, open debate, and uncoerced and independent free choice.

Finally, as with democracy itself, we must forever strive to improve the system. We must search for ways to eliminate unnecessary delay, to be open-minded about new ideas, to lower the decibel of contentious debate, and to make the system more efficient, while at the same time remaining true to the statute that we administer. Nothing more is required; nothing less is permitted.

Thank you for your attention.

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