

STATEMENT OF SENATOR ORRIN G. HATCH  
ON THE NOMINATION OF CRAIG BECKER  
TO THE NATIONAL LABOR RELATION'S BOARD

Mr. Chairman and Senator Enzi, you know my strong views regarding one of today's nominees - Craig Becker. In my opinion – and in the opinion of many, many others - Mr. Becker has very disturbing and controversial written views regarding national labor policy and the National Labor Relations Board, which he has described as being able to bypass Congress, and thus this Committee, with his version of labor law reform. His views on labor law reform appear to be far outside the mainstream.

Mr. Chairman, you know that over the years I have expressed admiration for the NLRB as, in some cases, even a model federal agency. I have supported increased funding for the agency during both Republican and Democratic Administrations. I have supported most of the nominees to the agency in both Republican and Democratic Administrations - union lawyers, management lawyers, academics and neutrals.

But, knowing what I read from Mr. Becker's own writings about his views on labor law and the NLRB, and based upon his written responses to the questions that I and others on this Committee submitted to him about those views, as well as his conduct in drafting the President's labor Executive Orders while employed by the SEIU to benefit his employer, which is directly contrary to the President's promise not to allow such conduct on his Transition Teams, I'm afraid that I cannot support his nomination for a five-year term on the NLRB.

Let me briefly detail some of Mr. Becker's views as expressed in his own words, so that at least the members of this Committee will know them. I and a number of my colleagues will engage in much more extended debate regarding his views on the Senate Floor should his nomination be reported out of Committee, so that all of our colleagues and the public are educated and informed about his views.

Here are just a few of his written views, quoting him directly, as to an employer's statutory rights with regard to NLRB elections and union organizing, and what his views would mean in the workplace:

“The core defect in union election law...is the employer's status as a party to labor representation proceedings.”

“The alternative [that I] propose here is to eliminate the formal role of employers in union elections.”

“it could be argued that industrial democracy should be made more like political democracy by altering the nature of the choice presented to workers in union elections. Such a reform would mandate employee representation, and the question posed on the ballot would simply be which representative.”

Since the passage of the Taft Hartley Act in 1947, the law has recognized a reciprocal right of employees to either choose to join or not join a union.

In Mr. Becker’s world, employees “choice” would be limited to “which union”

“employers should have no right to raise questions concerning voter eligibility or campaign conduct.”

Under existing law, employers, like unions, have a right to voice their opinions as to whether a petitioned-for unit of employees is appropriate. Employers also have under existing law, like unions, the right to challenge individual employee’s eligibility to vote and to have a nonsupervisory observer at the polling place to make sure that any of the employer’s challenges are made.

In Mr. Becker’s world, the only voice that is to be heard is the Union’s voice. And, the only challenges to voter eligibility are to be made by unions.

“elections should be removed from the workplace, where employers have the last word.”

Currently, the NLRB recognizes that absent evidence demonstrating that a fair election simply cannot be held at the workplace, the most logical and most convenient place for employees to vote is at their workplace. Elections are decided by a majority of employees actually voting. The workplace is where most employees will be able to vote, and the NLRB carefully supervises the elections to prevent any interference by employers.

In Mr. Becker’s world, no evidence is necessary... we should automatically assume that the workplace is an inherently hostile place.

“captive audience meetings at any time, not simply during the final twenty-four hours before an election, should be grounds for overturning an election.”

Currently there are protections built into the Act and in legal precedent protecting employer free speech rights to communicate its views about unions to its employees so long as such speech does not contain any threats of reprisal or promises of benefits for voting one way or the other.

In Mr. Becker's world, employers would not enjoy the same free speech rights that apply to everyone else.

“employers should be bound by their own restrictions on solicitation and distribution”

No solicitation and distribution rules are designed for outsiders so as to prevent disruption of work.

In Mr. Becker's world, employers would have no greater standing with their employees than outsiders and would have no greater rights than outsiders to communicate with their own employees at work.

Becker's Views on Expanding Union's Right to Strike:

“repeated grievance strikes... are strikes aimed at discrete grievances, deployed repeatedly, and typically of short duration. Their protection is key to the continuing viability of the NLRA framework...”

“the NLRA can and should be read to protect repeated grievance strikes-would breathe new life into the right to strike.”

“The intention of the NLRA was not to eliminate labor grievances, but rather to channel them into strikes, a form in which they can be addressed without either severing the employment relationship or incurring even greater economic and social disruption. Protection of repeated grievance strikes would advance this purpose.”

Under existing law, intermittent strikes are unprotected. Intermittent strikes are a series of concerted refusals to work during a short interval, followed by resumptions of work. In holding that intermittent strikes are not protected the NLRB and Courts have long recognized the devastating effect that intermittent strikes would have on interstate commerce.

In Mr. Becker's world every strike is a good strike, no matter what the duration or how often it is employed.

Mr. Becker's View on who is a Statutory Supervisor:

“that Congress did not intend the exclusion of supervisors created by the amendments to reach employees who stood in closer proximity to the rank and file than to management even if they had authority to assign and direct other employees.”

In Mr. Becker's world, front-line supervisors who assign and direct work would not be supervisors for the purposes of the National Labor Relations Act. This would mean that they

would be included in the bargaining unit with the employees they supervise, subject to the same union work rules, subject to union discipline if they cross a picket line or report to work during a strike. They could be made to distribute union authorization cards and solicit support for the union. That would be a radical change in labor law and would deprive the employer of the legitimate expectation that supervisors have a primary duty of loyalty to the employer. The above quotations highlight just a few of Mr. Becker's extreme views. Remember, he has written that many of these changes, including "surprise" elections within a very short time from a union's petition, can be accomplished by the NLRB without interference from Congress or the legislative process. For labor law reforms that the unions seek, why not just turn over the NLRB to Mr. Becker?

Mr. Chairman, Craig Becker should be given a hearing to explain these views. His written responses to our questions never disassociated himself from these views. He merely said that he would keep an open mind. With views this far outside the mainstream that assurance is hardly comforting.

When Ted Kennedy and I were leading this Committee we put through a number of so-called "packages" for the National Labor Relations Board without hearings. Those, however, were appropriate, balanced packages. This package is hardly appropriate or balanced. I know how Ted and I would have handled this situation. We would have packaged Mark Pearce and Brian Hayes, and reported them out of Committee. Then we would have fought over Craig Becker, perhaps urging the White House to come up with a more suitable nominee. Why doesn't the Committee adopt that approach in this case?

Mr. Chairman, Craig Becker is the most radical nominee to the NLRB in my experience in the Senate. I must vote no with regard to Craig Becker's nomination to be a Member of the National Labor Relations Board.