



EXPLAINER

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From Complaints to Contracts: Funding for the National Labor Relations Board

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There is renewed energy in the American labor movement. From [“Striketober”](#) of 2021 to recent union drives at [Amazon warehouses](#) and [Starbucks coffee shops](#), workers are striving for a fundamental reorganization of power in the workplace to amplify their voices and bargain collectively for better working conditions. [Polling has found](#) that “[n]early 50% of non-union workers or millions of American workers say they would vote for a union in their workplace.”

The [National Labor Relations Board \(NLRB\)](#) is an independent federal agency tasked with “[p]rotecting workplace democracy by promoting and enforcing the rights and obligations of employees, unions and employers under the National Labor Relations Act, in order to promote commerce and strengthen the Nation’s economy.” The [National Labor Relations Act \(NLRA\)](#) protects “the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.” Under federal law, employers are required to bargain with a union in good faith if employees decide to bargain collectively, making the NLRB essential to supporting workers seeking to exercise their right to organize their workplaces.

Despite its critical role in upholding workers’ legal rights, the NLRB’s funding, which is appropriated by Congress, has remained flat for nearly a decade. Funding has plateaued even with a greater demand for staff and resources to account for the recent uptick in workers exercising their legal rights under the NLRA. Congress has the opportunity to provide the NLRB with the increased funding necessary to carry out its mission and ensure that workers’ right to bargain collectively exists not only in theory, but in practice. Additional funding would ensure the NLRB can fulfill its mandate and meet the current needs of the re-energized labor movement.

The National Labor Relations Board

In 1935, Congress passed the National Labor Relations Act (NLRA, also known colloquially as the Wagner Act). The law formalized relations between unions and private employers following increased work stoppages by employees protesting poor working conditions. As a pillar of President Franklin Delano Roosevelt’s New Deal, the NLRA made explicit under Section 1 of the Act that:

It is declared to be the policy of the United States to... [encourage] the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.¹

To implement and administer the NLRA, Congress included a provision within the legislation to establish the National Labor Relations Board (NLRB), an independent federal agency. The NLRB serves two main functions: to conduct elections for workers seeking to be represented by a union, and to prevent, investigate, and remedy “[Unfair Labor Practices](#)” (ULPs). ULPs by employers include, but are not limited to: firing an employee or employees for organizing a union, retaliating against workers for filing grievances, or refusing to bargain with an established union.

The NLRB consists of a five-member board that is nominated by the President for five-year terms and confirmed by the Senate. The board acts as a quasi-judicial body that decides cases “on the basis of formal records in administrative proceedings.”² The NLRB’s General Counsel (GC) is independent from the board and is responsible for “investigating and prosecuting unfair labor practice charges, for processing representation petitions on behalf of the Board, and for overseeing the NLRB’s Regional Offices,” among other duties.

The GC also makes recommendations to the board regarding policy changes at the NLRB. For example, on April 7, 2022, current NLRB GC Jennifer Abruzzo [issued a memorandum](#) announcing that she would recommend to the board “to find mandatory meetings in which employees are forced to listen to employer speech concerning the exercise of their statutory labor rights, including captive audience meetings, a violation of the [NLRA].”³ If adopted, captive audience meetings—[a union-busting tactic employed by Amazon, for example](#)—would be deemed unlawful, meaning that workers would no longer be forced to attend anti-union meetings out of fear of retaliation from their employer.

In another example of the GC’s critical role at the NLRB, a [recent brief](#) from GC Abruzzo recommended that the board reinstate a previous legal doctrine commonly known as “Joy Silk” after a 1949 board decision in the [Joy Silk Mills case](#). [Currently](#), a private employer can compel an NLRB-conducted election by refusing to recognize a union organized by their employees. If the Joy Silk doctrine were to be reinstated, employers would have to present “good faith doubt” that a majority of the workers actually seek union recognition (for example, good faith doubt could occur if multiple unions are claiming to represent the workers). This then would lead to a

¹ National Labor Relations Act, Section 1, at 29 U.S.C. §151.

² *Introduction to the NLRB*, National Labor Relations Board, <https://www.nlr.gov/about-nlr/what-we-do/introduction-to-the-nlr>.

³ “NLRB General Counsel Jennifer Abruzzo Issues Memo on Captive Audience and Other Mandatory Meetings.” *News & Publications*, National Labor Relations Board, 7 Apr. 2022, <https://www.nlr.gov/news-outreach/news-story/nlr-general-counsel-jennifer-abruzzo-issues-memo-on-captive-audience-and>.

secret-ballot election conducted by the NLRB. Potentially returning to the Joy Silk doctrine and, accordingly, removing a major barrier to workers' right to organize illustrates the power the NLRB has to support workers seeking better working conditions.

Appropriations for the NLRB

Despite more workers seeking to unionize their workplaces, including high-profile campaigns at Starbucks shops and Amazon warehouses, Congress has not provided additional funding for the NLRB to carry out its responsibilities since Fiscal Year (FY) 2014. While the NLRB has received \$274 million each fiscal year since 2014, according to the [Economic Policy Institute](#), “funding levels have not kept up with inflation in the last decade, which translates to an effective 20% funding cut.” The following chart illustrates the NLRB’s history of funding since FY2014:

Fiscal Year (FY)	NLRB Proposed Budget (in millions)	Proposed Budget Increase/Decrease Compared to Prior Fiscal Year Allocation (%)	FY Funding Allocation from Congress (in millions)	Administration
FY2014	\$285	+8	\$274	Obama
FY2015	\$278	+1.4	\$274	Obama
FY2016	\$278	+1.4	\$274	Obama
FY2017	\$275	-0.4	\$274	Trump
FY2018	\$258	-6.2	\$274	Trump
FY2019	\$249	-10	\$274	Trump
FY2020	\$242	-13	\$274	Trump
FY2021	\$247	-11	\$274	Trump
FY2022	\$302	+9	\$274	Biden
FY2023	\$319	+16	TBD	Biden

To meet the needs of workers seeking to form or join a union, the NLRB requires additional staff to handle the recent uptick in labor activity. According to the NLRB’s [FY2023 Congressional Budget Justification](#), “more than three-quarters (77%) of the NLRB’s budget goes directly to staffing costs.” However, staffing for the NLRB has decreased 39% since FY2002 and field staffing has shrunk by 50%.⁴

⁴ “Union Election Petitions Increase 57% in First Half of Fiscal Year 2022.” *News & Publications*, National Labor Relations Board, 6 Apr. 2022,

The lack of adequate funding and consequent staffing constraints make it particularly difficult for the NLRB's 26 field offices to fulfill their mandate. According to NLRB GC Abruzzo, "[the staff] do all the investigations, they do all the litigation, they do all of the settlements, they do all of the compliance work, they conduct all of the elections, they do most of the outreach. They are the public face of the agency, and yet that's where we are hurting the most."⁵ To highlight the delta between NLRB staffing levels and a recent increase in caseload, GC Abruzzo notes, "[p]etitions for union elections are up over 30% in the first quarter of FY22" and "unfair labor practice charges have increased 14%—from 7,255 to 8,254" during the same period, yet "[t]he board's staffing levels are at the lowest point since 1958—about 1,200 workers." As Congress has not updated the NLRB's funding levels to meet the increased number of complaints and petitions, the NLRB's field offices are forced to do substantially more work with insufficient resources.

On March 28, 2022, President Biden released his proposed [FY23 Budget](#),⁶ which called for \$319 million for the NLRB, a 16% increase in funding for the board compared to the previous fiscal year. On April 26, Rep. Donald Norcross (D-NJ-01) and other members of Congress [led a bipartisan letter](#) to the House Appropriations Committee requesting that the committee provide at least \$368 million for the NLRB in any FY2023 appropriations legislation and to include reforms that would reduce burdens for workers seeking to unionize. April 29 marked the final deadline for members to submit such funding requests to the Appropriations Committee, which is expected to mark up and vote on spending bills in the summer.

Conclusion

As Congress begins considering FY2023 appropriations bills, members of Congress have an opportunity to recognize the critical role the NLRB plays in the fight for workers' rights and fund the agency with enough resources to carry out its mission. While the working class in America continues to push for workplace democracy, better wages and conditions, and dignity at work, corporations and monied interests are desperate to stop workers from bargaining collectively to receive their fair share. By ensuring that the NLRB has enough funding to remain a strong, independent agency, Congress can in turn support the interests of working people, not those of the wealthy and corporations.

<https://www.nlr.gov/news-outreach/news-story/union-election-petitions-increase-57-in-first-half-of-fiscal-year-2022>.

⁵ Kullgren, Ian, and Robert Iafolla. "Starbucks Store Unionizing Surge Tests Cash-Strapped Labor Board." *Bloomberg Law*, 27 Apr. 2022, <https://news.bloomberglaw.com/daily-labor-report/starbucks-store-unionizing-surge-tests-cash-strapped-labor-board>.

⁶ For more, read the Progressive Caucus Action Fund's [Key Takeaways from President Biden's Fiscal Year 2023 Budget Request](#).