



The Daily Dish

Eakinomics: What's Left of the Obama Union Push?

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The Obama Administration had a strong and undisguised desire to increase the number of unionized workers. To that end, it engaged in a series of regulations intended to enhance collective bargaining:

- A new Department of Labor (DOL) overtime pay rule that sharply raised the salary threshold below which individuals would be eligible for overtime pay.
- The DOL persuader rule that forced lawyers providing firms advice about collective bargaining to disclose every single one of their clients and, thus, reduce the incentive to provide such advice.
- The joint employer decision of the National Labor Relations Board (NLRB) that made firms liable for the conditions of employees in franchises or temp agencies if the firm exerted either a direct or indirect control over the terms of their employment. This would permit unions to collectively bargain with the larger employer and spread more broadly the union net. The Obama DOL broadened the joint employer rule past the private sector in a separate regulation.
- The NLRB micro-union rule that permitted union votes for sub-units of a firm (e.g., the shoe salesforce in a department store), making it easier to get consensus to form a union.
- The “quickie election” rule from the NLRB that sped up the time for an election from an average of 38 days to as little as 10 days, and gave unionizers access to employee data like telephone numbers and email addresses.

As nicely [summarized](#) by AAF's Ben Gitis, not all of the union agenda has survived. The

overtime pay rule suffered a number of legal defeats, was ultimately tossed entirely, and the Trump Labor Department has started anew on the rule. The persuader rule also met a legal demise, given its violation of attorney-client privilege. The Trump DOL did a u-turn on the joint employer rule.

However, the remainder of the joint employer rule survives. If another case arose, a Trump-appointed NLRB could reverse the precedent. Or, an appeals court could rule to overturn the decision — but there is the risk that it could embrace it as well. Accordingly, probably the surest route to reversing the decision is for Congress to pass legislation returning to a standard of direct control as the test of an employer-employee relationship. Similarly, there is legislation intended at turning back micro-union and quickie election rules as well.

In the end, the top-down attempt to engineer unions was probably futile. Unionization rates have been falling steadily for decades and the majority of union members are now in the public sector. Whether Congress finishes unwinding the Obama union agenda or not, this is likely to continue.