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H.R. 5/S. 55: BENEFITTING FEW AT THE EXPENSE OF MANY

One of the most counterproductive things Congress could do, in light of a persistently high rate of unemployment, is to enact legislation that would increase the cost of labor. Yet, "The Workplace Fairness Act of 1993" (H.R. 5/S. 55) would do just that. This legislation, which Congress failed to pass in 1992, would amend the National Labor Relations Act (NLRA) and the Railway Labor Act (RLA) to prevent employers from permanently replacing workers involved in union-organized strikes. President Clinton supports the Act and, if passed, has promised to sign it.

> ***This legislation does not level the playing field, but heavily tilts it in favor of workers who choose to strike.***

H.R. 5/S. 55 would have unfortunate social and economic consequences. It would reduce the cost to workers of going on strike and increase the cost of strikes to non-striking employees and employers. The result would be higher unit labor costs, fewer jobs, lower levels of output, and less income for the country as a whole. It would also hurt the ability of American businesses to compete effectively in the world marketplace. American jobs would be lost and replaced by foreign workers overseas. Union bosses and some union workers would gain power at the expense of employees generally. In short, "The Workplace Fairness Act" is unfair legislation that would cause widespread economic hardship so that a few could gain power.

Tilting the Playing Field

Union leaders and Congressional supporters of this legislation claim that it is necessary to balance workers' bargaining power against that of management. According to Senator Howard Metzenbaum (D-OH), "the balance of power has shifted too far in management's direction."

These claims are not consistent with the legal rights currently granted to strikers. Under the NLRA, workers can strike without fear of being permanently replaced when the dispute involves a claim of unfair labor practices. If the strike is solely over economic matters, such as wages or fringe benefits, employers have the right to replace striking workers with permanent employees. This does not mean, though, that striking workers have no further claim on their former jobs. The current law gives striking workers precedence over all other job applicants as new positions open up or as old positions are vacated within the company.

Employers are not the only target of H.R. 5/S. 55. "The Workplace Fairness Act" would unfairly discriminate against any worker who chooses either to remain on the job or to return to his job before a strike is settled. If, following a strike, the size of the company's work force is reduced, the returning striker would get priority in job retention over those who remained on the job. Workers who choose to strike would be rewarded while those who choose to stay on the job would suffer. This legislation does not level the playing field, but heavily tilts it in favor of workers who choose to strike.

Besides virtually eliminating management's right to hire permanent replacements for striking

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workers, H.R. 5/S. 55 would give striking workers exclusive rights to jobs they refuse to perform and which their employers have no contractual obligations to reserve for them. This would significantly rearrange the costs and benefits that are associated with a strike and have a negative impact on employment and on the economy as a whole. Labor costs would be driven up and productivity would be stifled, reducing the overall demand for labor, and increasing the likelihood that unemployment rates will stay high. Combined with President Clinton's proposed new taxes, H.R. 5/S. 55, should be viewed as part of a one-two punch that American business and workers cannot afford.

Some Economic Realities

In supporting this legislation, Sen. Metzenbaum claims that under current law "the right to strike is no more than the right to lose one's job." Before our policy makers accept this assertion, they should carefully consider the simple economics of labor disputes. Supporters of the legislation would have one believe that employers have no incentive to bargain with striking workers so long as they have the right to replace them. In this view, employers incur no costs in replacing striking workers.

However, terminating and permanently replacing any part of an existing work force imposes significant search and training costs on an employer. The more highly skilled are the striking workers, the greater are the costs to replace them. These costs are generally so high that they preclude permanently replacing striking employees. If this were not the case, the record of labor disputes would show that employers routinely replace workers striking over economic issues. The evidence, however, shows that employers seldom permanently replace striking workers. Such replacements were rare even during the 1980s when, according to some bill supporters, employers gained an upper hand in labor-management disputes. A 1990 General Accounting Office (GAO) report concludes that there is "little supporting data" to suggest that there has been an increase in permanent striker replacements since 1981.

It would only make sense for an employer to replace strikers permanently when the costs of a new compensation package for striking workers is expected to be higher than the costs of terminating and replacing them. Replacement costs include the costs of the replacement workers' pay package, plus all training costs, and the cost in lost output due to the inexperience of the new workers. These costs give employers a strong incentive to negotiate with striking workers rather than to replace them. Supporters of H.R. 5/S. 55 ignore this.

H.R. 5/S. 55 would encourage strikes by reducing workers' costs of striking while increasing the potential benefits of striking. Currently, the costs of striking include (1) the value of wages lost during a strike (less any union support), (2) the value of the wages that would be lost if striking workers are terminated and permanently replaced, and, (3) in such cases, the costs of searching for new employment, less the wages that would be earned in the new employment. In determining whether to strike, workers weigh the costs against the potential benefits, and resort to a strike only when they anticipate that it will produce a settlement in which the present value of the additional compensation gained is greater than the costs of striking. By eliminating all costs associated with the possibility of being permanently replaced, H.R. 5/S. 55 would give workers an incentive to increase their demands and make them less willing to negotiate. By providing job protection to strikers, while leaving nonstrikers exposed to loss of their jobs, this legislation would also put pressure on those employees who would otherwise continue working to join a strike.

Not only would H.R. 5/S. 55 make it cheaper for employees to strike, it would also raise the pay increases, in terms of both wages and benefits, that management would be willing to accept. This is because eliminating the option of hiring permanent replacements raises the costs of a strike to employers.

With strikers demanding more valuable compensation packages and management more willing to accept them, the net effect must be to increase the direct cost to businesses of worker compensation packages. Since the change in bargaining strength of employers and workers would not be accompanied by a gain in workers' productivity, the compensation increase would raise unit labor costs with no economic benefits to the business or society as a whole.

While this result might be desirable from the perspective of the employees who end up with higher pay, it could be disastrous for labor in general. It would mean fewer jobs. A basic principle of economics is that the higher is the cost of doing something, the less of it you do. The higher is the cost of labor, the fewer is the number of people who are employed and the slower is the rate of new job creation. This cannot be good news for those who are already out of work and in the job market. In a real sense, this legislation pits the interests of those who have jobs and choose to strike against the interests of the unemployed and all other workers.

The impact of H.R. 5/S. 55 extends far beyond workers' rights and labor management relations. It would have adverse consequences for everyone, even those who would benefit directly from the legislation. Higher labor costs would lead to efforts by business to substitute capital for labor, although less capital and labor alike would be employed. Because the substitution would occur only in response to higher labor costs, it would result in an increase in capital costs. For the economy as a whole, this means an overall increase in all production costs, hence reduced output, higher prices for consumers, and relatively lower incomes for everyone. Furthermore, H.R. 5/S. 55, by increasing the probability of a strike occurring, would increase uncertainty about business profitability, thereby making investment riskier. This additional risk would further increase the cost of capital, adding to the negative effects on output, employment, and income.

The increase in production costs that would result from implementing H.R. 5/S. 55 would hinder U.S. industries' effectiveness in competing in world markets, making American businesses less efficient and less able to respond to changes in world market conditions. This would translate into a smaller market share for American products at home and abroad. Ultimately, these developments would mean that American workers' jobs would be lost and permanently replaced by foreign workers overseas.

Conclusion

H.R. 5/S. 55 has no redeeming factors. It promises to impede economic progress, impair the competitive stance of the U.S. economy, and reduce the well being of all citizens. With the economy in a tenuous recovery, Congress should be finding ways to reduce, not increase, the cost of labor for American businesses. Passage of H.R. 5/S. 55 would make economic expansion and reduction in the unemployment rate, goals that President Clinton at least rhetorically supports, much more difficult. Congress should demonstrate that it is truly concerned about fairness and the interests of all workers by soundly rejecting "The Workplace Fairness Act of 1993."

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Note: Nothing written here is to be construed as necessarily reflecting the views of IRET or as an attempt to aid or hinder the passage of any bill before Congress.