



Republican Policy Committee

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Clinton Launches Congressional By-Pass For Union Pay-Back

New Clinton Labor Regs: Rigging The Federal Procurement Process In Big Labor's Favor

In addition to the executive order dealing with federal construction projects (the subject of an April 11 Republican Policy Committee paper), President Clinton is expected to issue new regulations that would make the “satisfactory record of labor relations and other employment practices” a new eligibility requirement in the granting of federal contracts.

As outlined in a March 25 memo to Union bosses by AFL-CIO President John Sweeney (and earlier the subject of Vice President Gore’s February 18 speech in Los Angeles), the proposed procurement regulations seek to accomplish three things:

- (1) Require federal departments and agencies to evaluate whether a bidder for a government contract has a satisfactory record of labor relations and other employment practices in determining whether or not the bidder is a “responsible contractor” eligible to receive a particular government contract;

This regulation would require that companies bidding for federal contracts have a spotless record of compliance throughout the federal regulatory spectrum, including: collective bargaining laws, wages and benefits, equal opportunity and health and safety. In an era of regulatory overkill — when OSHA can issue a \$13,200 fine to a roofing company for having a broken shovel in the back of a truck and the NLRB cites employee-employer discussions about coffee breaks as a violation of the National Labor Relations Act — the new Clinton regs are clearly a move in the wrong direction.

- (2) Prohibit government reimbursement of federal contractors for “the costs they incur in unsuccessfully defending against or settling unfair labor practice complaints” brought against them by the NLRB; and
- (3) Prohibit government reimbursement of contractors for the money they spend “to fight the unionization of their employees.”

Given the NLRB's recent track record (of strong pro-union bias), these regs are sure to have disastrous effects. In recent years, the NLRB has overturned the fact-finding decisions of even its own Administrative Law Judges when the latter have found in favor of employers. Moreover, the current Board's decisions (against employers) are being overturned by the federal courts at record levels. One federal judge, in the *Purdue Farms, Inc. v. NLRB* (July of 1996) case described the NLRB's behavior as follows: "[T]he only possible explanation for the Board's behavior is the one proposed by the employer: 'that the NLRB is manipulating its election rules capriciously in order to foster the interests of [the union].'" Clearly, employers and their employees will not benefit from any further manipulation by the White House in favor of big labor.

Excerpt From Labor Policy Association Report: Discussion of Clinton Regulations

On February 19, 1997, the Labor Policy Association (LPA) issued a press release detailing some of the more troubling aspects of the new labor initiatives announced by Vice President Gore in his Los Angeles speech to the AFL-CIO. The following paragraphs are selections from the LPA report:

"A few months ago, the General Accounting Office issued a report on the consequences of such a debarment policy [i.e., those proposed in the Clinton regs and executive order] on the employees of federal contractors. **It found that at least 13% of the \$182 billion in federal contracts in FY 1993 would have been affected by such an executive order based on NLRB action alone.** In addition to contracts with major corporations, the study identified contracts with Duke University (AIDS research) and Loyola University Medical Center (biomedical research) as being vulnerable to being shut off under such a rule.

"Vice President Gore's announcement occurs two years after he made an announcement to the same AFL-CIO meeting that the President would issue an executive order cutting off federal contracts with companies who exercise their right to maintain operations during strikes by hiring permanent strike replacements. That order [striker replacement] was struck down one year later by the D.C. Circuit Court of Appeals as being pre-empted by the National Labor Relations Act. **In its decision, the court suggested that an executive order like the one proposed by Vice President Gore [in his February 18, 1997, Los Angeles AFL-CIO speech] would also be pre-empted, citing the Supreme Court's 1986 *Wisconsin Department of Industries* decision.** The Clinton Administration decided not to seek review of the D.C. Circuit decision, implicitly acknowledging that it would lose the case before the U.S. Supreme Court."