

AUGUST 13, 2013

FINALLY! NLRB HAS FIVE SENATE-CONFIRMED MEMBERS

On August 12, 2013, for the first time since August 21, 2003, the National Labor Relations Board has a full complement of five Senate-confirmed members. Four new members, all nominated by President Obama and confirmed last month by the U.S. Senate, have been sworn into office. NLRB Chairman Mark Gaston Pearce was also confirmed last month to an additional five-year term on the Board.

The Senate's confirmation of these members came as a result of a compromise that avoided the so-called "Nuclear Option" that could have changed the Senate's rules, putting an end to the filibuster strategy often used by both parties on occasion. The confirmation also ended years of legal controversy over the recess appointments of three of the members. President Obama had re-nominated a full slate of five members earlier this year, but with the compromise, he withdrew the nominations of Sharon Block and Richard Griffin, both Democrats with strong union backgrounds and who had been the focus of much controversy as recess appointments.

Here is the background information on the current members of the NLRB:

- **Mark Gaston Pearce** (Democrat) is Chairman, a position he has held since August 2011. He has served as a Member of the NLRB since March 2010. He previously served as a Board Member of the New York State Industrial Board of Appeals, and he has taught labor studies courses at Cornell University's School of Industrial Labor Relations Extension. His term ends August 27, 2018.
- **Nancy Schiffer** (Democrat) was Associate General Counsel to the AFL-CIO from 2000 to 2012. Previously, she was Deputy General Counsel to the UAW from 1998 to 2000. She also worked as Associate General Counsel for the UAW from 1982 to 1998. Her term ends December 16, 2014.
- **Harry I. Johnson, III** (Republican) was a partner with law firm Arent Fox LLP, a position he held since 2010. Previously, Mr. Johnson worked at the Jones Day law firm as a partner from 2006 to 2010 and as an associate from 1994 to 2005. His term expires on August 27, 2015.
- **Kent Hirozawa** (Democrat) was chief counsel to NLRB Chairman Pearce. Mr. Hirozawa previously served as a field attorney for the NLRB. His term expires on August 27, 2016.
- **Philip A. Miscimarra** (Republican) was a partner in the Labor and Employment Group of Morgan Lewis & Bockius LLP, a position he held since 2005. Before that he was an attorney at Seyfarth Shaw LLP. His term expires on December 16, 2017.

FORMER NLRB MEMBERS TO HOLD NEW POSITIONS?

Even though the President withdrew the names of Sharon Block and Richard Griffin as potential NLRB members, he did identify important positions for both of them. Mr. Griffin was nominated by the President to replace Lafe Solomon as NLRB General Counsel. The General Counsel position wields much power internally in the NLRB because it is the General Counsel who has the final say on filing complaints with the NLRB. In other words, the General Counsel plays a significant role in setting labor policy by deciding to pursue cases that forward the administration's labor relations agenda. The appointment of the NLRB General Counsel requires Senate confirmation. Ms. Block will hold the position of Senior Counselor to Secretary of Labor Tom Perez in the U. S. Department of Labor. Ms. Block's appointment does not require Senate confirmation.

WHAT WILL THE FUTURE BRING?

Private employers will need to be on the watch for a rejuvenated NLRB now at full strength with a Democrat majority no longer hamstrung by the legal wrangling over recess appointments and lack of a quorum to conduct business. Employers may see a renewal of NLRB rule-making in the areas of "Quickie Elections" and the Employee Rights Poster that have been put on hold due to multiple legal challenges. Case law developments in the evolution of social media issues and the broad interpretation of employee rights can also be expected, especially if Mr. Griffin is confirmed by the Senate. Stay tuned as the new NLRB flexes its muscle and charts a new path in labor relations.

If you have questions, please contact Steve Lyman at slyman@hallrender.com or your regular Hall Render attorney.