

OBAMA'S NATIONAL LABOR RELATIONS BOARD NOMINATIONS CONFIRMED BY SENATE

Labor & Employment Alert
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On July 30, 2013, the Senate confirmed all five of President Obama's nominations to serve as members of the National Labor Relations Board (NLRB). The now-confirmed NLRB members include the current board chairman, Democrat Mark Gaston Pearce. Chairman Pearce's term on the NLRB was set to expire in August. Also appointed were Democrat Kent Hirozawa, Chairman Pearce's chief counsel; Democrat Nancy Schiffer, a retired associate general counsel at the AFL-CIO; Republican Philip A. Miscimarra, a management-side labor and employment attorney from Morgan Lewis & Bockius LLP; and Republican Harry I. Johnson III, a management-side labor and employment attorney from Arent Fox LLP.

The confirmations mark the end of a heated battle in the Senate over Obama's prior recess appointments of Richard F. Griffin Jr. and Sharon Block. The confirmations will ensure that the NLRB continues to operate with a quorum (even after the expiration of Chairman Pearce's first term in August of 2013). Although it is always somewhat difficult to predict, given that the majority of the NLRB will continue to be Democrats, it is probable that the new NLRB will remain employee-friendly in its approach to the interpretation of the labor law.

Although the newly confirmed board will avoid future issues about the authority of this governmental body to act, it is likely the appointments will not negate the ongoing issue that is pending in the *Noel Canning* case of whether the recess appointments were valid. The new board could potentially reissue decisions called into question by *Noel Canning*. Regardless, it is not anticipated that the Obama administration will end its battle over *Noel Canning* because the D.C. Circuit Court's decision has a major impact on executive power outside of the narrow issue of the recess appointments.

As the board becomes active and begins to decide cases, both new matters and cases impacted by the *Noel Canning* case, including the *Hispanics United of Buffalo, Inc.*, *Piedmont Gardens*, *WKYC-TV, Inc.*, *Nurses & Allied Professionals (Kent Hospital)*, and *Alan Ritchey, Inc.* cases, it will become clear whether the NLRB will continue its trend towards labor friendly decisions and policy making.

Attorneys

Elizabeth McPhail

Practices & Industries

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