

# Obama nominates Block, Griffin to regular NLRB seats

WASHINGTON, D.C. (PAI) — President Barack Obama has nominated Sharon Block and Richard Griffin Jr. to the National Labor Relations Board (NLRB), setting up yet another confrontation with Senate Republicans over the Board, its powers, decisions, and future.

Griffin, a former general counsel for the Operating Engineers, and Block, a former top aide to the late Massachusetts senator Edward M. Kennedy, have been serving on the Board since January 2012. They were appointed by the president during a congressional break, after Republicans blocked their confirmations.

The five-member NLRB oversees enforcement of the laws governing union organizing drives, strikes, and contract negotiations in the private sector. Republicans have been trying to hamstring the agency for years — but with much more fervor since the Board charged The Boeing Company with illegally retaliating against Machinists District 751 in Washington after it decided to build a multi-million aircraft assembly plant in right-to-work South Carolina. The union complaint was withdrawn in December 2011 after the Machinists reached agreement on a new contract.

However, attempts to dismantle the NLRB have continued.

Republican senators have filibustered every nominee put forth by the president. That's because without a quorum the agency can't operate. [In 2010, the U.S. Supreme Court concluded in a 5-4 decision that the Board was not authorized to make rulings with less than three members.]

The NLRB lost its quorum early in January 2012, when the term of Craig Becker — also a recess appointee — expired. Becker was general counsel to

both the AFL-CIO and Service Employees International Union.

With Congress in a break, Obama named Block, Griffin, and Terry Flynn to the Board. Block and Griffin are Democrats. Flynn is a Republican. The Board was whittled to three members in May 2012 when Flynn resigned. Flynn quit after the NLRB's inspector general found that he had leaked inside information to outside sources — some of it to former Board member Peter Schaumber, a labor adviser to Mitt Romney's presidential campaign.

Then, in January 2013, the U.S. Court of Appeals for the D.C. Circuit ruled that the NLRB was operating without a quorum. The court ruled that the Senate technically wasn't in recess when Obama made the appointments. [The Senate had been meeting in 1-minute-or-less sessions, every three days — a Republican strategy to prevent the president from making any "recess" appointments]. It ruled that Obama's appointments were not constitutional, the NLRB didn't have a quorum and, thus, it could not decide on cases.

The case on appeal before the D.C. Circuit arose from an unfair labor practice charge brought against Washington soft drink distributor Noel Canning by the Teamsters Union. The NLRB had ruled in favor of the union.

The Hill newspaper called the D.C. Circuit ruling an "extraordinary decision" that, if upheld, will nullify decades of NLRB appointments. The Hill reported that President Carter made the first recess appointment in 1980, when Republicans filibustered his nom-

ination. Since then, five presidents have made 26 NLRB recess appointments. Only three of these appointments — one by Bush I, two by Clinton — would be valid under the (D.C. Court) ruling. George W. Bush made the most NLRB recess appointments, seven, none of which were constitutional, according to the D.C. Circuit.

The Obama Administration disagrees with the ruling and is expected to appeal the decision.

Meanwhile, the Chamber of Commerce is advising employers to appeal unfavorable decisions from the past

year to the D.C. Circuit "as quickly as possible" because other Federal Courts might uphold the recess appointments.

In the U.S. Senate, Labor Committee Chairman Tom Harkin (D-Iowa) supported the nominations of Block and Griffin. He also urged Obama to nominate Democrat Mark Gaston Pearce to a new term as the Board's chair, and to quickly nominate two Republicans to vacant minority-party seats so his committee can move all the names at once.

Pearce has said the NLRB plans to move forward with business as usual despite the court ruling.

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