

NLRB at full strength for the first time in more than a decade

WASHINGTON, D.C. — For the first time in more than a decade, the National Labor Relations Board (NLRB) has a full complement of five permanent board members confirmed by the U.S. Senate. The NLRB is an independent agency that is tasked with conducting elections for labor union representation and protecting the rights of some 80 million workers.

The five board members are Democrats Mark Gaston Pearce, Nancy Schiffer and Kent Hirozawa, and Republicans Phillip Miscimarra and Harry Johnson III.

Pearce is the incumbent chair of the NLRB. He was sworn in as a board member on April 7, 2010, following his recess appointment, and was confirmed by the Senate on June 22, 2010, to a term ending on Aug. 27, 2013. He will be sworn in as chair later this month for a term ending Aug. 27, 2018.

Schiffer was formerly deputy counsel for the AFL-CIO. She was sworn in on Aug. 2, for a term ending Dec. 16, 2014.

Hirozawa was chief counsel to Pearce at the NLRB. He was sworn in on Aug. 5, 2013, for a term that expires on Aug. 27, 2016.

Miscimarra and Johnson III are management-side labor attorneys. Miscimarra was sworn in Aug. 7, for a term that expires on Dec. 16, 2017. Johnson was sworn in Aug. 12, for a term ending Aug. 27, 2015.

The confirmations were part of a deal struck in mid-July between Senate Republicans and Democrats, and President Obama. Facing possible Democratic changes in Senate rules to prevent filibusters of executive branch nominees, Senate Republicans agreed to end filibusters on seven positions, including the secretary of Labor, the administrator of the Environmental Protection Agency, the chair of the Export-Import Bank, and the NLRB members.

In exchange, Obama agreed to withdraw two of his nominees to the NLRB

— Richard Griffin Jr. and Sharon Block. The two had been serving recess appointments since January 2012. Their appointments, however, set off a firestorm among the GOP, primarily because one of them, Griffin, is a former attorney with the Operating Engineers.

Since Obama took office, Republicans have made it clear they want to dismantle the NLRB. Sen. Lindsey Graham (R-S.C.) went as far as to say, “The NLRB as inoperable could be considered progress.”

Shutting the agency won’t happen with Democrats in control of the Senate (they hold a 54 to 45 edge, with one independent who caucuses with them). But crippling it is possible.

The NLRB requires three members to have a quorum and to conduct business. To meet that quorum, Obama has had to end-run GOP filibusters with recess appointments. A recess appointment doesn’t require Senate confirmation.

Shortly after the appointment of Griffin and Block, Republicans and the U.S. Chamber of Commerce joined a lawsuit brought against the NLRB by Noel Canning, a Yakima, Wash., can-

ning and bottling company. Noel Canning sued to overturn an NLRB order that it broke the law by refusing to enter into a collective bargaining agreement with the Teamsters Union representing its production employees. A federal appeals court in Washington, D.C. concluded that the NLRB’s decision was legally supportable, but that it could not be enforced. The panel of judges held that the Obama recess appointments were invalid and that, without them, the NLRB lacked the necessary quorum to conduct business.

The Obama Administration has appealed the decision to the U.S. Supreme Court, which will hear the case in October. The outcome could render invalid more than 1,000 cases the NLRB has ruled on under the recess appointees — which is just what Republicans want.

(Editor’s Note: On Aug. 2, President Obama nominated Griffin to be general counsel of the NLRB, succeeding Lafe Solomon. Solomon was named acting general counsel by Obama on June 21, 2010. Solomon’s nomination was sent to the Senate on Jan. 5, 2011.)

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