

NATIONAL LABOR RELATIONS BOARD:

TWO NEW BOARD MEMBERS APPOINTED

On July 5, 1935, the Wagner Act was passed which became known as the National Labor Relations Act (NLRA). Under the federal statute, there are five individuals appointed to the National Labor Relations Board (NLRB) appointed by the President for a 5-year term. The purpose of the NLRB is to hear private sector disputes between employers, employees and unions regarding wages, hours and other terms and conditions of the working environment. Typically, the issues are related to employees who want to form a union; are in a union; or, employees and/or employers who desire to terminate their union relationship between the union and the employer and/or employees.

Although there are a number of federal sources for interpretation of private sector federal labor matters (e.g., federal courts, Sherman Antitrust Act; Clayton Antitrust Act; Railway Labor Act; Labor-Management Reporting and Disclosure Act; Norris-Laguardia Act; and Worker Adjustment and Retraining Notification Act), the NLRB typically makes the most important decisions in the private sector dealing with concerted work activity.

The NLRB Board member, as noted above, is appointed by the President. Currently, there are only two individual Directors on the NLRB. This is due to the fact that the previous three other Board member's terms expired during the end of the Bush Administration. The two current NLRB Board members are, respectively, a Republican and a Democrat. In order to try and assure balance, Congress provided in the enabling legislation that no more than three of the Board members of the NLRB could be members of the same political party.

President Obama has announced that he will be appointing two new members to the NLRB in May. Reflecting the President's political views, the two individuals being appointed are Democrats who have represented union clients for most of their practice. The third appointee to the NLRB will need to be a Republican or possibly a third party candidate as long as three Democrats serve on the NLRB. The Chair of the NLRB, per the NLRB, must be of the same political party as the President when a Board Chair is appointed by the President. A President can make an appointment of an NLRB Board member if the Congress is not in session, but the appointment only lasts until the Congress ends its term with the 2-year term for Congress. On May 1, 2009, two federal Circuit Courts came to conflicting decisions as to whether a two-member NLRB could make binding decisions. The Circuit Court held the two member NLRB had authority but the D.C. Circuit Court held the Board had no such authority to make any decisions.

There is no time requirement for the President to make an NLRB appointment. Under the current situation, the President does not need to make the 3rd appointment to the NLRB. As noted above, there is only one Republican now on the NLRB.