

Changing Faces of Bidens NLRB

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President Joe Biden's early agenda as commander-in-chief includes a sea change of key players at the National Labor Relations Board and a not-so-subtle or surprising shift to pro-union policy.

Within the first days of his administration, Biden removed John Ring as NLRB chairman and appointed Lauren McFerran, the only Democratic NLRB member as the NLRB chairperson; and terminated the NLRB's general counsel, Peter Robb, after the attorney refused to resign. Robb's replacement, pending confirmation is Peter Song Ohr, a career NLRB lawyer and public servant. Ohr was the regional director in Chicago, where he issued pro-unionization rulings which tend to protect the collective bargaining process.

Despite the changes, the board will retain its Republican majority until August 2021. The board is comprised of five members who are appointed to staggered five-year terms:

- Lauren McFerran (Democrat), chair: Term expires December 2024
- William Emanuel (Republican): Term expires August 2021
- John F. Ring (Republican): Term expires December 2022
- Marvin Kaplan (Republican): Term expires August 2025
- One seat is vacant

Biden will likely appoint a Democrat to fill the vacant seat, but the pro-employer Republican majority will remain until sometime after August 2021, when Emanuel's term expires and Biden's next Democrat appointee faces Senate confirmation. Unlike the general counsel, the NLRA states board members cannot be terminated without evidence of "neglect of duty or malfeasance in office."

Employers should be prepared for drastic change at the NLRB over the next four years and those changes are not going to wait until Democrats control the board seats in August 2021. Ohr recently made the first of what could be many pro-union decisions when he directed the board to dismiss a complaint against an Embassy Suites hotel and the Unite Here local involving neutrality agreements. Robb was using the Embassy Suites/Unite Here case to try to limit the legality of neutrality agreements - contracts that limit an employer's rights to campaign against union organization and require the employer to remain neutral, which makes it easier for unions to organize. Ohr's action in dismissing the case was the complete opposite of Robb's intent to limit these agreements and shows the significance of Biden's decision to terminate Robb and replace him prior to the end of his former term.

Stay tuned. This is the just the beginning of change at the NLRB. The pro-employer environment that existed over the last four years will quickly give way to a pro-union agenda. Employers need to keep an eye on what is going on at the

NLRB to see how they must adapt to the changing policies.

If you have any labor-related questions or needs for your business, please [contact me](#) or anyone in the [Barley Snyder Employment Practice Group](#).

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