



Is a New NLRB Sheriff Coming to Town?

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For the first time in a decade, the National Labor Relations Board is operating with a full slate of five members. But Congress still needs to confirm—or not—a general counsel to enforce the board’s agenda. On August 1, the Obama administration quietly nominated Richard Griffin, former union attorney and NLRB member (by recess appointment). We should all take note—as NLRB GC, Griffin would wield the authority to reshape the legal landscape for union and non-union employers alike.

If Griffin’s name sounds familiar, it should. President Barack Obama recently withdrew his nomination from the board to placate Congressional Republicans. Now, Griffin has resurfaced as the GC nominee without the fanfare that swirled around him as a board candidate. The GC nominee never gets as much attention, but he (or she) should. The GC has the power to make things extremely uncomfortable for employers, regardless of whether they are operating in a union setting.

Deemed independent from the five-member board, the NLRB GC is responsible for overseeing a vast network of 34 regional offices charged with investigating and prosecuting dozens of unfair labor practice charges filed each and every day. In that capacity, he has broad subpoena power and is authorized not only to issue complaints, but to draw upon the vast authority of the federal courts by pursuing injunctive relief and enforcement orders.

It may seem premature to gauge how Griffin might exercise his newfound authority (assuming he is confirmed). However, we do have the benefit of reviewing his body of work as a board member. His record over the past 18 months suggests a distinct predilection toward the rights of organized labor. That should come as no surprise, given his union background.

Chances are Griffin would be free to continue advancing the board’s agenda. If you’re already operating in a union environment, expect more pressure to agree to concessions. If you haven’t already appeared before the board, be prepared for that to change if Griffin is confirmed.

The board is leveraging the employee handbook as a vehicle to pursue employers for violations in the following areas: confidentiality (wages/discipline/investigations), electronic communications, complaint policies, class action waivers, dress codes, access rules, social media restrictions, and at-will disclaimers.

The bottom line is that Griffin makes no bones about his allegiance to unions, and as GC he would set the enforcement agenda. His nomination makes it more important now than ever for employers to review their handbook policies and procedures for potential encroachments on Section 7 rights. Long-term policies that may appear entirely innocuous on their face (at-will statements, for example) are more susceptible to agency scrutiny than ever before. Consequently, it is important to apply a comprehensive approach that critically evaluates policy language from the NLRB's perspective.

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