



## Legal Alert: President Recess Appoints Three Members to NLRB

1/6/2012

**Executive Summary:** In what House Speaker John Boehner called "an extraordinary and entirely unprecedented power grab by President Obama," on January 4, 2012 the President announced his intent to recess appoint Democrats Sharon Block and Richard Griffin and Republican Terence F. Flynn to the National Labor Relations Board (NLRB). These appointments will restore a quorum to the Board, which fell to two members when Member Craig Becker's recess appointment expired January 3, 2012.

President Obama nominated Ms. Block and Mr. Griffin on December 15, 2011<sup>[1]</sup> and nominated Mr. Flynn on January 5, 2011. Mr. Flynn is currently Chief Counsel to NLRB Board Member Brian Hayes. He previously served as Chief Counsel to former NLRB Board Member Peter Schaumber and, prior to that, was Counsel in the Labor and Employment Group of Crowell & Moring, LLP.

Senator Mike Enzi (R-Wyo.), Ranking Member on the Senate Health, Education, Labor and Pensions (HELP) Committee issued a statement shortly after the President's announcement, expressing disappointment with the President's decision. Senator Enzi noted that the Senate only had one day to consider the nominations of Ms. Block and Mr. Griffin before it adjourned on December 16 and neither has filed a committee application or gone through the vetting process. Additionally, Republican leaders have questioned the legality of the appointments because there is a dispute regarding whether the Senate, which held brief *pro forma* sessions over the break, was actually in recess when the appointments were made.

Not surprisingly, Big Labor has applauded the President's action, with AFL-CIO President Richard Trumka commending the President "for exercising his constitutional authority to ensure that crucially important agencies protecting workers and consumers are not shut down by Republican obstructionism." The recess appointments restore a quorum to the Board, which enables it to continue to take action. The U.S. Supreme Court has held that the NLRB has no authority to take action without a three-person quorum.

The recess appointments likely will be challenged in court. We will keep you updated on any developments in this area. If you have any questions regarding this Alert or other labor or employment related issues, please contact the Ford & Harrison attorney with whom you usually work.

[1] For more information on Ms. Block and Mr. Griffin, please see our December 16, 2011 Legal Alert, *President Announces Plan to Nominate*

Two NLRB Members; Board Publishes Procedural Rule for Periods When it Lacks Quorum, available at:  
<http://www.fordharrison.com/shownews.aspx?show=7818>.