

National Pro-Union Policy Shift Has Begun

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National elections shape the nation's labor policy. Soon after his inauguration, President Biden began a pro-union shift involving the National Labor Relations Board (NLRB), the federal agency responsible for governing union-management relations. A key player at the NLRB is its General Counsel – the head lawyer who enforces labor laws and shapes important policies. Peter Robb had been the NLRB General Counsel during most of the Trump Administration. Mr. Robb's term of office was scheduled to end in November 2021, but the Biden Administration abruptly terminated his employment shortly after the inauguration. Terminating an NLRB General Counsel is controversial, having last happened 75 years ago, and reflects an anxious goal to move national labor policy in a more pro-union direction.

The NLRB is comprised of five board members, appointed by the President with the consent of the Senate, whose terms are staggered. The Board's current composition favors Republicans, but the Biden Administration has already designated a new NLRB Chairperson, Lauren McFerran, and will likely achieve a Democratic majority by this fall. The re-constituted NLRB is expected to begin issuing pro-union rulings before the end of this year.

Similarly, the Democratic-controlled Congress will generally be supportive of pro-union legislation. Probably the most controversial and concerning legislation is the "Protecting the Right to Organize Act (the "PRO-Act")." Last February, the House passed the PRO-Act, H.R. 2474, but the bill stalled in the Republican-controlled (at the time) Senate. The PRO-Act would dramatically change the National Labor Relations Act and significantly tip the labor-management balance in favor of unionization. For example, the PRO-Act would negate the Right to Work laws adopted by the majority of the states and make it very easy for unions to gain new dues-paying members. That is only one of about 40 possible labor law changes if the PRO-Act became law. Some of the other proposed changes will be covered in an upcoming article.

To conclude, during the coming weeks and months, employers and employees should carefully monitor the national shifting of labor policy in favor of unionization.