

Biden Starts Swiftly With Changes at Labor Board

By Jonathan J. Spitz, Richard F. Vitarelli and Thomas V. Walsh

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Minutes following his swearing in, President Joe Biden demanded that Peter Robb resign his post as General Counsel of the National Labor Relations Board (NLRB). Robb refused to resign and, in an unprecedented move, was summarily fired by the White House. This move was followed quickly the next day with the abrupt discharge of Alice Stock, who was named by the NLRB as acting General Counsel.

Robb has been a lightning rod for criticism from organized labor. He was confirmed by the Senate for a term slated to end in November 2021. Published reports say Biden had been under pressure to immediately remove Robb since Election Day.

It is not clear that the President has the unilateral authority to discharge the NLRB General Counsel. In 1950, President Harry Truman asked for the resignation of then-General Counsel Robert Denham, who complied with the request. An involuntary termination has never occurred.

Stock was a former management-side labor attorney and was brought to the NLRB by Robb in 2019. Critics of the current NLRB say the General Counsel, as its prosecutor, enabled the NLRB to issue precedent-changing decisions. However, that has always been a function of the General Counsel. Published reports speculate that Biden will appoint a General Counsel to inhibit the current NLRB's ability to issue further decisions deemed adverse to union interests. Many are calling these unprecedented moves a purge of Trump administration appointees.

In another move, the Biden administration replaced Republican NLRB member John Ring as the chairman of the NLRB with member Lauren McFerran. (He remains a sitting member until December 16, 2022.) McFerran is the sole Democrat member on the NLRB.

While these moves strongly suggest the new administration intends reversals at the NLRB, the composition of the NLRB remains at three Republicans and one Democrat, with one vacant seat. Republican member William Emanuel's term expires on August 27, 2021. Upon nomination and Senate approval of two (presumably) Democrat members after that date, the NLRB majority will flip from Republican to Democrat. Until that time, the Republican majority will retain a large measure of control.

For information on changes coming to the NLRB, please contact the Jackson Lewis attorney with whom you work.

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