

President Obama to Abandon Recess Appointees to the NLRB

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The drama surrounding President Barack Obama's recess appointments to the National Labor Relations Board ("NLRB") took an unexpected twist this week as the President announced his intention to nominate three new members.

As we have reported, earlier this year the D.C. Circuit in *Canning v. NLRB* struck down President Obama's January 2012 appointment of three members, holding that the President improperly exercised his recess appointments power while Congress was still in session. The ruling has called into question hundreds of decisions rendered when the recess appointees constituted a majority of the board. The Obama Administration has vowed to appeal that ruling to the U.S. Supreme Court.

Unveiling the new nominees, the President stated that this time he would go the conventional route and seek Senate approval for three individuals who would replace the recess appointees. President Obama has nominated current NLRB Chairman Mark Gaston Pearce, attorney Harry I. Johnsor and attorney Philip A. Miscimarra.

"I urge the Senate to confirm them swiftly so that this bipartisan board can continue its important work on behalf of the American people," the President stated in a press release.

President Obama is still expected to challenge the *Canning* ruling and lock in the mostly pro-union NLRB decisions from the past year. This week's announcement, however, indicates that the President is weary of the cloud hanging over his recess appointments.

Senate confirmation of the new appointees would give the NLRB the credibility that some believe it now lacks. The announcement also puts Senate Republicans on the hot seat: If they block his nominees, Obama might then justify the recess appointments by arguing that Senate approval is impossible.

We will continue to follow this unfolding story.

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National Labor Relations Board (NLRB)