

RECESS APPOINTMENTS

- The President's authority derives from Article II of the Constitution: "The President shall have the Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session."
- The President's authority is further defined by the federal pay statutes (5 U.S.C. 5503), which prohibits the Treasury of the United States from paying anyone having a recess appointment unless:
 - the vacancy arose within 30 days before the end of the session of the Senate;
 - if, at the end of the session, a nomination for that position was pending in the Senate (and the nominee is someone who has not had a previous recess appointment); or
 - if a nominee for the position (other than the person given the recess appointment), was rejected by the Senate within the last 30 days of the session.
- These statutory provisions mean that the President can give a recess appointment to an individual whose nomination was pending before the Senate at the time of recess unless: a) that individual had a prior recess appointment; or b) the Senate rejected that individual's nomination.
- These provisions also mean that the President can make a recess appointment to a position for which he has not previously nominated an individual provided: a) the position became vacant within 30 days prior to the recess (or during the recess, itself); and b) the President submits a nomination within 40 days after the next session convenes [the President is free to choose whether to nominate the recess appointee or another individual].
- The constitutional provision that a recess appointment expires at the end of the next session is an outer limit of the term's length. Formal Attorney General Opinions have ruled that the recess appointment automatically expires upon a confirmed successor taking office.
- The President can terminate the recess appointment of inferior executive branch officials at any time. However, in the case of appointees to independent regulatory agencies, he would have to provide cause (e.g., misfeasance, malfeasance, or other misconduct) to terminate the appointment before the end of the next session.

202 273 4483 P.002

NLRB GC

DENNIS M. DEVANEY

President George Bush nominated Dennis M. Devaney to the five year term of office expiring December 16, 1994 as a Member of the National Labor Relations Board. Mr. Devaney was confirmed by the Senate on August 3, 1990. He was initially recess appointed by Presidents Reagan and Bush to the Board.

Mr. Devaney came to the NLRB from the Federal Labor Relations Authority, where he was serving as General Counsel. As General Counsel of the FLRA, Mr. Devaney was responsible for investigation, filing complaints, and prosecuting charges involving unfair labor practices in the federal sector. He had direct authority and responsibility for employees in the national office at Washington, D.C., as well as for employees in nine regional and two subregional offices.

Prior to serving with the FLRA, Mr. Devaney was a Member of the U.S. Merit Systems Protection Board, the highest administrative tribunal for federal personnel appeals. As a Member of the relatively new three-member board, Mr. Devaney helped formulate precedential opinions involving security clearances, off-duty misconduct, performance-based personnel actions, and air traffic controller appeals. The Board also hears cases dealing with whistleblowers and alleged Hatch Act violations.

From 1979 to 1982, Mr. Devaney was in private practice in Washington, D.C. Prior to that he had been Counsel for the Food Marketing Institute and Assistant General Counsel for the U.S. Brewers Association. Mr. Devaney graduated from the University of Maryland in 1968 and received a Master's Degree there in 1970. He served in the U.S. Navy from 1970 to 1972. In 1975, he received a J.D. Degree from the Georgetown University Law Center.

William Benjamin Gould IV
Biographical Data
(Born in Boston, Massachusetts, July 16, 1936)

William B. Gould IV is Professor of Law at Stanford Law School and has held that position since July 1972. In February 1984, Professor Gould was named Charles A. Beardsley Professor of Law at Stanford Law School. A 1961 graduate of Cornell Law School, he studied comparative labor law at the London School of Economics ('62-'63) with Professor Otto Kahn Freund.

He has received the following degrees: A.B. 1958, University of Rhode Island; LL.B. 1961, Cornell Law School; LL.D. 1986, (Honorary) University of Rhode Island. Prior to Stanford, he was Assistant General Counsel of the United Auto Workers in Detroit ('61-'62); Attorney for the National Labor Relations Board in Washington D.C. ('63-'65); represented management in labor law matters with Battle, Fowler, Stokes & Kheel in New York, New York ('65-'68); Professor of Law at Wayne State Law School in Detroit ('68-'71); and Visiting Professor of Law at Harvard Law School, Cambridge, Massachusetts ('71-'72). Since Stanford, he was Visiting Professor of Law at Howard Law School in Washington, D.C. (1989).

Political involvement: Volunteer Speaker for Clinton-Gore in 1992 in Bay Area; Delegate to Democratic Party "Mini"-Convention in Kansas City, Missouri in 1974; Member of Santa Clara Democratic Party Central Committee 1975-79; Contributor to the Congressional Black Caucus Statement on Judge Haynsworth's appointment to the Supreme Court by Nixon; Volunteer advisor on labor to Senator Robert Kennedy, '67-'68 Presidential Campaign; Precinct Delegate and Delegate to the 1962 Michigan Democratic Party Convention.

A member of the National Academy of Arbitrators since 1970, Professor Gould has arbitrated and mediated more than 200 labor disputes since 1965. Some of the more prominent are: in 1989, wage dispute between the Detroit Federation of Teachers and the Board of Education of that city as well as 1992 salary disputes between the Major League Baseball Players Association and the Major League Baseball Player Relations Committee. In 1990-1991, he served as Chairman of the City and County of San Francisco Task Force on Collective Bargaining, appointed by the Mayor of San Francisco. Professor Gould is past Secretary of the Labor and Employment Law Section of the American Bar Association, Member of the Advisory Council of the Cornell University Law School; former Member of the Advisory Council of the New York State School of Industrial and Labor Relations (Cornell University); and Consultant to the Foreign Policy Council of the Rockefeller Foundation in New York City. In 1983-84, he was Co-chairman of the California Bar Ad Hoc Committee on Wrongful Dismissals which issued a report on February 8, 1984, providing recommendations to the California Legislature on this subject. Professor Gould was a member of the Episcopal Diocese of California Lambeth '88 - Subcommittee on Christianity and Social Order.

In 1975, Professor Gould was Overseas Fellow and Visiting Fellow of Law at Churchill College, Cambridge, England, and Visiting Scholar at the University of Tokyo Law Faculty as a Rockefeller Foundation Conflict in International Relations Fellow. In 1978, this time as a Guggenheim Fellow, he was again Visiting Scholar at the University of Tokyo Law Faculty and, that year, also received a Fulbright-Hays Award to be Distinguished Lecturer in the Kyoto-American Studies Summer Seminar in Japan. In 1982-83, Gould was a Fellow at the East-West Center in Honolulu. In 1985, he was a Visiting Fellow at the Australian National University Faculty of Law. In 1988, he was a Visiting Professor of law at the European University Institute, Department of Law, in Florence, Italy. In the summer of 1991, Gould was a Fulbright Visiting Professor of Law at the University of Witwatersrand Law Faculty in Johannesburg, South Africa. He is a member of the Executive Committee of the International Society for Labor Law and Social Security (U.S. National Branch).

Author of more than 50 law journal articles, Gould is also the author of a number of books: Black Workers in White Unions: Job Discrimination in the United States, (Cornell University Press 1977); A Primer on American Labor Law, (MIT Press 1982, 2nd edit. 1986); Japan's Reshaping of American Labor Law, (MIT Press 1984); Strikes, Dispute Procedures and Arbitration: Essays on Labor Law (Greenwood Press 1985); Labor Relations in Professional Sports (Auburn House 1986). Recipient of the Certificate of Merit from American Bar Association Gavel Award Committee, 1983 for A Primer on American Labor Law, a book which has been translated into Spanish, German, Japanese, and Chinese. Gould has recently completed a book on national labor policy which will be published by MIT Press in May 1993. He is currently at work on a biography of his great-grandfather, William B. Gould, an Afro-American Civil War veteran which focuses upon his diary kept between 1862 and 1865; a book dealing with the way in which baseball has changed since World War II; and a book on the transition in South Africa and will teach a course on that subject in Spring 1993.

Professor Gould was lead counsel in Stamps v. Detroit Edison Co., 365 F. Supp. 87 (E.D. Michigan 1973), a class action involving racial discrimination in connection with hiring and promotion, which resulted in a settlement of \$5,350,000, the largest per capita settlement in the history of employment discrimination litigation. He acted as Consultant to the Equal Employment Opportunity Commission in 1966-1967 and at that time wrote a position paper on seniority and discrimination which has become the framework for both the EEOC and subsequent federal court decisions. He was the Commission's expert witness in EEOC v. Pan Am which resulted in a \$17.2 million dollar settlement on February 3, 1988, the largest award or settlement entered into under the Age Discrimination Act at that time. Among the labor and constitutional cases in which he has served as lead counsel are: Stamps v. Detroit Edison Co., supra; United States v. Trucking Employers, Inc., 561 F. 2d 313 (D.C. Cir. 1977); Mogk v. City of Detroit, 365 F. Supp. 698 (E.D. Michigan 1971).

93 DEC 9 P1:39 U.S. DEPARTMENT OF LABOR 93 DEC 9 P7:10

White House Liaison
200 Constitution Avenue, N.W.
Washington, D.C. 20210
Tel: 202-219-7464
Fax: 202-219-7971

Date: Dec. 9, 1992

To: John Podesta / PR

Fax Number: 456-2215

From: Richard Scavides

Number of Pages: 1- A 24
(including cover sheet)

☐ Action
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COMMENTS:



**UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL**

Washington, D.C. 20570

December 9, 1993

**TO: John Podesta, Assistant to the President
and Staff Secretary**

**FROM: Daniel Silverman
Acting General Counsel
National Labor Relations Board**

Subject: Lack of Quorum at NLRB

This is in response to the request for my views on the consequences of delaying the appointment of a third Board member. For the reasons set forth below it is my belief that a delay of a week or two is tolerable but that any delay beyond that time will cause serious adverse consequences to substantive case processing as well as has significant adverse political consequences.

The Board has decided that with only two members, it must suspend making all casehandling decisions. In this regard, the Board acted consistently with previous Boards when this situation has developed. In order to avoid the extremely adverse consequences which would have occurred if injunctive relief could not have been authorized to stop some of the most serious unfair labor practices, the three-member Board delegated its authority to the General Counsel to authorize such injunction proceedings. This occurred just before the end of the term of former member John N. Raudabaugh.

However, decision making in all other casehandling matters has been suspended because there are only two members on the Board. Regional Directors under delegation from the Board continue to have the authority to issue decisions directing elections which are conducted to determine if a union is to represent an employer's employees. However, the employer, union or employee parties to these cases have the right to file with the Board, a Request for Review of the Director's decision. During this period when the Board has only two members, it has permitted elections to be held in these cases, but the ballots are impounded, no vote count is taken, and the results of the elections are not announced. Thus, a resolution of the question of whether or not employees are going to be represented by a union and, consequently, whether or not an employer has to bargain with

John Podesta, Assistant to the President and
Staff Secretary
Page Two
December 9, 1993

the union are left unresolved until a three-member Board can act on the Request for Review. These elections, of course, are of great significance to the employees, the union and the employer involved; leaving their relationship in such an uncertain state for any significant period of time will not only create instability in the workplace but may also delay the commencement of collective bargaining. It is this function of the Board, more than any other, which in my view will result in significant public reaction should the Board not have a quorum for more than another week or two.

Additionally, those significant and serious unfair labor practice cases where it is necessary to petition for contempt of a Circuit Court decision, are authorized by the Board. The Board has not yet spoken on the question of whether or not it will continue to authorize the filing of petitions for contempt in the absence of a third member. However, should the Board direct the filing of such a petition, undoubtedly the case would be compromised and delayed by a challenge to the Board's current authority to take such case action.

A similar situation exists with regard to the approval of formal settlements in which the party which had filed the charge of unfair labor practices refuses to enter into the settlement of the case. These settlements involve some of the most serious unfair labor practices and often are based on charges filed against repeat violators of the National Labor Relations Act. Formal settlements are effectuated by the issuance of a Board Order and a Judgment of a U. S. Circuit Court. Should the two-member Board approve such a settlement, issue an Order and seek Court Enforcement of that Order, the propriety of such actions by the Board would be open to challenge by the objecting charging party who may attempt to prove them to be invalid. A delay in the approval of a settlement, will delay the commencement of the remedy which usually involves back pay, offers of reinstatement and other matters to restore the status quo ante.

Prior to the departure of Member Raudabaugh, the three-member Board made a sustained and successful effort to decide many unfair labor practice complaint cases. As a result, the Board is more current, with respect to such cases, than it has been in many years. Under these circumstances a delay of a month or two would not likely create any crisis in the unfair labor practice area.

John Podesta, Assistant to the President and
Staff Secretary
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December 9, 1993

Finally, it should be noted that a particular representation case, contempt matter, formal settlement or unfair labor practice case will be presented where prompt action by the Board would be in the public interest. Depending upon the nature of the situation the public outcry over the inability of the Board to act, may be significant. I believe that the accumulated delay of action in these areas should be avoided if there is any practical way to bring the complement of the Board members to three. I believe it would be most beneficial if this could be done in no more than two weeks so that the Board can resume issuing decisions in all of these important areas of labor-management relations law.

Please let me know if any further information would be helpful.


Daniel Silverman

cc: Richard Socaredes

THE WHITE HOUSE
WASHINGTON

94 JAN 7 P5:52

December 30, 1993

MEMORANDUM FOR THE PRESIDENT

FROM: JAN PIERCY, DEPUTY DIRECTOR OF PRESIDENTIAL PERSONNEL

RE: John C. Truesdale
National Labor Relations Board
Member -- Recess Appointment -- PA
(Democratic seat for a term to expire upon the
confirmation of Margaret Browning)

I. Background.

The National Labor Relations Board is an independent agency created by the National Labor Relations Act of 1935 (the "Act"). The Board administers the Act, the Nation's principal labor law, and is vested with the power to prevent and remedy unfair labor practices alleged to have been committed by private sector employers or unions and to safeguard employees' rights to organize and determine whether and under what circumstances to have unions as their bargaining representative.

The five-member Board is currently comprised of two sitting members. They are Chairman James Stephens, a Republican whose term expires August 27, 1995 (upon the confirmation of a new chairman, Stephens will continue to hold his seat as a member of the Board) and Dennis Devaney, a Democrat whose term expires December 16, 1994.

The term of the Board's former third member, John Raudabaugh, a Bush recess appointment, expired when Congress adjourned for the year in late November. Since that time the board has been functioning without a quorum and while it has continued to operate -- due to the fact that many of its powers have been delegated to its Acting General Counsel -- in our opinion it is now necessary and appropriate to make a recess appointment and return the Board to full functioning, pending confirmation of the appointees discussed below.

The following other nominations for seats on the Board are now pending:

1. On June 28, 1993, William Gould, a Democrat from California, was nominated to serve as Chairman of the Board. After a hearing on October 1, 1993, his nomination was reported favorably out of the Senate Labor Committee on October 20, 1993. He is now awaiting a vote of the full Senate.

2. On November 1, 1993, Margaret Browning, a Democrat of Pennsylvania, was nominated for a seat on the Board. Hearings on her nomination are not yet scheduled.

3. We are in the final stages of the search process for the remaining non-Democratic seat on the Board.

II. Discussion.

John C. Truesdale, Democrat of Maryland, has had a distinguished and life long career of service to the Board. He currently serves as the Board's Executive Secretary, its chief clerk. Commencing in 1948 and interrupted only during the years 1957 to 1963 (during which time he worked for the National Academy of Science), Truesdale has served in a wide variety of positions at the NLRB, including as a Field Examiner, Administrative Analyst, Deputy Director and Director of Information, and Associate and Deputy Executive Secretary.

In 1977 President Carter appointed Truesdale to a seat on the Board, he has confirmed by the Senate and took office on October 25, 1977. When his term expired in August of 1980, President Carter re-appointed him but his re-confirmation was the victim of a Republican led effort to delay pending the outcome of the 1980 Presidential election. In October, 1980 President Carter gave Truesdale a recess appointment and he served until January 26, 1981, at which time he became Executive Secretary.

Truesdale is admired and respected by persons in both organized labor and management. There is perhaps no person who has a longer history and better understanding of the Board and its functions, which would enable Truesdale to participate as a full and active Board member from the first day of his appointment. Having said that, he is also acutely aware of the caretaker role he is being asked to play and offered his view that a recess appointee should not, in the ordinary circumstance, break any new ground.

III. Recommendation.

I recommend that you recess appoint **John C. Truesdale, Democrat of Maryland,** to a Democratic seat on the National Labor Relations Board.

John C. Truesdale, Democrat of Maryland

Approve _____ Disapprove _____

UNITED TECHNOLOGIES

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Hartford, Connecticut 06101
203/728-7000

INCLUDING LEAD SHEET, YOU WILL RECEIVE 2 PAGES

TO: The Honorable Bruce R. Lindsey DATE: 1-7-94
Executive Office of the President

FAX NO: (202) 456-2259

FROM: James F. Perretta
Phone Number: (203) 728-7807

TRANSMITTING FROM: (203) 728-6551 or Technet 439-6551

If all pages are not received, please call Linda Caron
at (203) 728-7853 or Technet 439-7853.



United Technologies Building
Hartford, Connecticut 06101
203/728-7807

James F. Perretta
Vice President
Industrial Relations

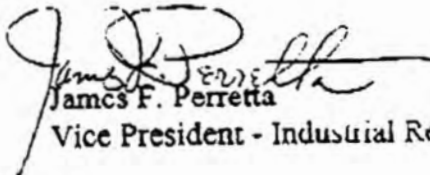
January 7, 1994

The Honorable Bruce R. Lindsey
Assistant to the President and Sr. Advisor and Director
Office of Personnel
Executive Office of the President
1600 Pennsylvania Avenue, N.W.
Washington, DC 20500

Dear Mr. Lindsey:

I am writing to inform you I support the nomination of Mary J. Harrington to the National Labor Relations Board.

Sincerely,


James F. Perretta
Vice President - Industrial Relations

ljc

BRIDGESTONE/FIRESTONE, INC.

50 Century Boulevard
P.O. Box 1408900
Nashville, TN 37214-8900
Phone: 615-872-5000
Fax: 615-872-1599

January 7, 1994

The Honorable Bruce R. Lindsey
Assistant to the President and
Senior Advisor and Director
Office of Personnel
Executive Office of the President
1600 Pennsylvania Avenue, N.W.
Washington, DC 20500

Dear Mr. Lindsey:

I strongly support the nomination of Mary J. Harrington
to the National Labor Relations Board.

I have known Mary for a number of years and believe her
education and background will be of great benefit to the
Board.

Sincerely,



Peter L. Schofield
Director, Industrial Relations

PLS:sh



Government Relations Office

1350 I Street, N.W. - Suite 400

Washington, D.C. 20005

ADDRESSEE/COMPANY

FAX NO.

**Hon. Bruce Lindsey
Executive Office of
the President**

202 456 2259

**From: James D. Burge, Corporate Vice President &
Director of Government Affairs/Human Resources
Phone: (202) 371 6920 Fax: (202) 842 3578**

Number of pages: 1 (including cover page) Date: 1-7-94

Bruce,

**Mary Harrington has the full endorsement of Motorola as
a candidate for the Republican seat on the National
Labor Relations Board.**

**Mary has listed me as a reference because of my high
regard for her as a human resource executive and a very
competent labor attorney.**

If there are any problems with this transmission, please call Regina Martin at (202) 371 4338

RECESS APPOINTMENTS

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 - the vacancy arose within 30 days before the end of the session of the Senate;
 - if, at the end of the session, a nomination for that position was pending in the Senate (and the nominee is someone who has not had a previous recess appointment); or
 - if a nominee for the position (other than the person given the recess appointment), was rejected by the Senate within the last 30 days of the session.
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- These provisions also mean that the President can make a recess appointment to a position for which he has not previously nominated an individual provided: a) the position became vacant within 30 days prior to the recess (or during the recess, itself); and b) the President submits a nomination within 40 days after the next session convenes [the President is free to choose whether to nominate the recess appointee or another individual].
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- The President can terminate the recess appointment of inferior executive branch officials at any time. However, in the case of appointees to independent regulatory agencies, he would have to provide cause (e.g., misfeasance, malfeasance, or other misconduct) to terminate the appointment before the end of the next session.

U.S. DEPARTMENT OF LABOR

White House Liaison
200 Constitution Avenue, N.W.
Washington, D.C. 20210
Tel: 202-219-7464
Fax: 202-219-7971

Date:

December 10, 1993

To:

Nester Davidson

Fax Number:

456-2604

From:

Richard Acord

Number of Pages:
(including cover sheet)

1-92

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COMMENTS:

93 DEC 10 PM 5:58



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, D.C. 20570

December 10, 1993

TO: John Podesta, Assistant to the President.
and Staff Secretary

FROM: Daniel Silverman
Acting General Counsel
National Labor Relations Board

In response to the request for information on the number of representation (election) cases which are being held up as a result of the lack of a quorum, I have been informed that the Board presently has 60 such cases pending and receives an additional 10 to 15 per week. Also pending are 25 unfair labor practice cases in which a party has requested summary judgment. It should be noted in this regard that a summary judgment motion is about to be filed in a particularly volatile case involving Emory World Wide in Wisconsin and that we were advised that, in response to the union's concerns, substantial Congressional inquiry about the lack of a Board quorum will be made in a few days.

If additional information would be helpful, please let me know.

Dan. E. Silverman
Daniel Silverman

cc: Richard Socarides
Congressional Liaison

SENT BY: OFFICE OF SECRETARY

: 12-10-93 : 5:30PM :

DOL-

9-4562215;# 2 / 2

December 9, 1993

✓
TO : JOHN PODESTA AND JAN PIERCY
FROM : TOMMY ROGERS *TR*
SUBJECT : NATIONAL LABOR RELATIONS BOARD -- RECESS APPOINTMENT

93 DEC 10 AM 11:41

This is a follow up to the memorandum of November 29 (see attached) in response to Bruce's request that I conduct a search for a recess appointment to chair the National Labor Relations Board (NLRB). Because this is a highly sensitive matter, and one in which numerous players seem to be deeply involved, I have done two things since the November 29 memo: (1) attempted to coordinate with the others whose involvement pre-dated mine, and (2) identify discreetly potential candidates for the recess appointment. (Please note that no one has been contacted in this matter in order to preserve maximum flexibility. But, as a result, the ball has not been advanced terribly far. For example, in some cases I have no resumes to go along with the names.)

Using the criteria delineated in the November 29 memo, I have focussed attention on a couple of sources.

Council Neutrals and Secretaries

The source I found likeliest to yield good results is the Council, or elected governing body, of the Labor and Employment Law Section of the American Bar Association. The Section has a 17,000-membership that covers the spectrum of labor and employment lawyers, including those representing labor, management and neutrals.

Two positions within the Council seem particularly promising (from a neutrality perspective) as a source of candidates: (1) Council Secretary, and (2) Neutrals on the Council. One important task of the Secretary is to give the Supreme Court review and for that reason must have the confidence of both the labor and management lawyers.

1. Pat Hardin, Council Secretary
2. Roger Hartley, Council Secretary
3. Janice Vellaci (sp.), Council Secretary
4. Ann Miller, Council Neutral (should be discussed before proceeding. Also, I believe that she is married to Ed Miller, a past Chair of the NLRB.)

5. Helen Witt, Council Neutral (probably a great choice if she would consider a recess appointment).

For the most part, the Council Neutrals and Secretaries are professors, and therefore violate one of my own guidelines set out in the November 29 memo. However, I believe that the scrutiny they've undergone to get their positions on the Council suggests that they are probably okay. My contacts on the Council and in positions of leadership in the Section are extremely reliable should we decide to use the to flesh out the possibilities.

Other Possibilities

I have also spent some small amount of time looking for the "good government" type. These are just two of the many possibilities in that category.

1. Barbara Franklin, a candidate for General Counsel at the NLRB. (Resume attached) Franklin appears to be the "good government" type. She currently is a member of the Senior Executive Service and is Chief Counsel to Member Talkin, Federal Labor Relations Authority. Several attractive things about Franklin are: (1) she spent seven years as a supervisory attorney at NLRB and knows the NLRB very well; (2) she has training in alternative dispute resolution; (3) her career and extracurricular activities focus on labor law issues; (4) her organizational memberships are great, and (5) even though she was "Hatched" during the election, she states that she made substantial contribution to the Clinton for President campaign. She supported the Democratic party in other ways, including contributing to Emily's List and neighborhood canvassing. (Note that the person she is currently working for, Member Talkin, testified for Clarence Thomas. However, I don't think we can draw any conclusions about Franklin from that. In fact, there may be some interesting history there).

2. George Squillacote, a former director of the NLRB Milwaukee office (for 21 years). (Resume attached) Mr. S., an Independent, made a bid for an NLRB seat three years ago and was supported by Sen. Kasten (R-Wis.) and Sen. Kohl (D-Wis.). His career has also reflected bipartisanism. At times, Mr. S. has criticized by union and at other times by management; at times he has received the support of one or the other or both. (Mr. S. worked on the campaign.)

I have made no calls regarding these people and therefore am in no position to make any concrete recommendations. I am reluctant to go further in the absence of clear direction to do so. If you want me to do anything else on the NLRB, just let me know.

DETERMINED TO BE AN ADMINISTRATIVE

MARKING INITIALS: M DATE: 7/11/94

2019-0846-5

~~CONFIDENTIAL~~

TO : Bruce Lindsey
FROM : Tommy Rogers
SUBJ : NLRB -- RECESS APPOINTMENT
DATE : Monday, November 29, 1993

This responds to your request that we look at possibilities for a recess appointment to the National Labor Relations Board (NLRB). As reported in the Washington Post today, the NLRB currently lacks a quorum to conduct business that requires the approval of the five-member Board. (The field offices can continue to file charges as long as there is an Acting General Counsel to replace the outgoing General Counsel whose term expired last Saturday.)

Before going too far down the road of searching for a recess appointee, I wanted to let you know the criteria and the process I will be using to identify such an appointee. If you concur in the proposed approach, I think we can come up with some good options by the end of the week.

THE CRITERIA

TEMPORARY. Unless I am mistaken, I am viewing the recess appointee to be a **temporary** appointment. Such an appointee should be told from the outset that his\her tenure is intended to be short-lived, to continue only until William Gould is confirmed. In fact, that should be the message we broadcast to all interested parties. Any communication to the contrary would be viewed as a backing away from Gould, an impression that could have very bad consequences. The temporary nature of the appointment can be underscored both by the message that we send in identifying candidates, and by the qualifications we choose.

STRONG MANAGER TYPE. Rather than attempting to find a candidate who has all the labor law credentials we would demand of a permanent chair, I believe we would be better served in selecting a **strong management type (SMT)** -- someone who can take

charge of the day-to-day operation of the Board. An appointment of an SMT could be beneficial on several different fronts: (1) It would underscore the fact that the recess appointment is a stopgap measure, (2) it would put the Clinton Administration in control of Board business, (3) it would serve to contain expectations that the appointment would become permanent, and (4) it would minimize any tendency to grandstand on policy issues that can have long term ramifications.

MINIMAL LABOR MANAGEMENT EXPERTISE. Someone possessing minimal labor management expertise (MLME) may actually be a plus in this situation, for the reasons discussed above. In addition, a MLME would allow us to sidestep some of the tricky labor sensitivities that have cropped up in the wake of the NAFTA vote. And most importantly, we would be more likely to find someone willing to do this deed.

What occurs to me at first blush is that we will have a terrible time finding someone who has a strong labor management background who would be willing to abide by the ethics restrictions on Clinton Administration appointees. (Attached is a memo addressed to Counsel's office requesting an opinion on this matter.)

POSSIBLE RECESS APPOINTEE POOLS

Senior Managers within the government or private sector who have some labor background and who are widely recognized for the ability in organizational management. (An example of such a person is Eileen Hoffman, General Counsel, Federal Mediation and Conciliation Service. She is a career manager and has an outstanding reputation.) Senior corporate manager types who have good records in resolving labor-management disputes would certainly be worth considering.

Judges, both Federal and State, as well as outstanding Administrative Law Judges. They avoid the ethics issues as well as the political issues.

Cluster group members for the Labor agencies. This pool may prove to be the most fertile in that these individuals would most likely **not** be looking for permanent positions. (Labor Secretary Reich headed up that cluster and maintains the list of members. We have requested and should get that list by c.o.b. Tuesday.)

High priority candidates who fit the bill. There are a number of such candidates who have not yet been placed. The one caveat in reaching into this pool is that we must be prepared to offer a permanent position in conjunction with the recess appointment.

It is likely that we will not consider candidates from the following disciplines:

Retired labor lawyers. While they would avoid the conflict of interest issues, they would not avoid the political issues surrounding labor-management debate.

Professors. While they too would avoid the conflict of interest issues, their main liability is the publication trap.

THE APPROACH

Based on conversations with Department of Labor staff this evening, it appears that they have undertaken the same assignment. I propose that we coordinate with DOL on this effort and that we ensure that the political objectives are met, to the satisfaction of the WH, in this appointment process.

Of course, we will also coordinate with those who have spearheaded the NLRB appointment process heretofore (Jan and Cynthia), as well as other WH offices on an as needed basis.



National Labor Relations Board -- General Counsel

Barbara Franklin



PRELIMINARY NOMINATION FORM

to submit a name for consideration
by the Justice Task Force

Name Barbara B. Franklin

Address 3730 Oliver Street, N.W., Washington, D.C. 20015

Phone (202) 362-8038

Fax _____

Current Professional Position Chief Counsel to Member, Federal Labor Relations Authority

Previous Position(s) Supervisory Attorney, Office of General Counsel, NLRB

Appointment(s) recommended (please include department or agency)

National Labor Relations Board - General Counsel

~~Statement in favor of nomination~~
Barbara Franklin is a very able lawyer who is thoroughly grounded in complex issues of labor law. She has consistently received performance awards and promotions for her work at NLRB and FLRA. She has also had substantial supervisory experience since 1982. She also has extensive volunteer experience in her community.

Contacted nominee? yes no

C. V. attached? x yes no

Racial/Ethnic Information:

 African American Hispanic
 Asian/Pacific Islander Native American
x Caucasian Other

Political party affiliation Democrat

Submitted by: Zona Hostetler for
Nat'l Women's Law Center

Name _____

Phone (202) 775-1550

Fax (202) 775-0008



 C. V. circulated to Task Force

 Nominated by Task Force

 Ratified by Coalition

 Appointed by President

12/2/92 Date nomination received

12/2/92 Date C. V. received

BARBARA FRANKLIN

For General Counsel, NLRB

Barbara Franklin is an extremely able lawyer who is thoroughly well grounded in complex issues of labor law. She has several years of supervisory experience in the Office of the General counsel and is also well trained in alternative dispute resolution techniques. She worked in the Office of the General Counsel for the National Labor Relations Board from 1977 to 1990 and since 1990 has worked as Chief Counsel for a Federal Labor Relations Authority member. Barbara Franklin has consistently received exceptional ratings and performance awards throughout her civil service career. She is currently a member of the Senior Executive Service.

Barbara B. Franklin
3730 Oliver Street, N.W.
Washington, D.C. 20015
(202) 362-8038

PROFESSIONAL EXPERIENCE

Chief Counsel to Member Pamela Talkin
Federal Labor Relations Authority

Jan. 1991 -

Acting Chief Counsel

Sept. 1990 - Jan. 1991

Legal advisor to one of three Presidentially-appointed members of FLRA. Represent Member Talkin within and outside the Agency. Supervise and direct staff in drafting decisions regulating labor-management relations in the Federal sector under the Federal Service Labor-Management Relations Statute, involving negotiability disputes, unfair labor practices, arbitration review and representation issues. Assist in formulation of FLRA policy, both substantive and procedural. Develop and implement personnel policies.

Executive Assistant to Member Talkin

Sept. 1990 - Jan. 1991

Legal advisor to Member Talkin during first year of her tenure. Reviewed decisions drafted by all three staffs and assisted Member Talkin in developing positions on legal and procedural issues in cases before her. Represented Member Talkin in Agency meetings on administrative and legal matters.

Supervisory Attorney
Division of Advice, Office of the General Counsel
National Labor Relations Board

May 1982 - Dec. 1989

Supervised attorneys in researching and formulating legal memoranda establishing prosecutorial policy of General Counsel concerning novel and complex issues of substantive law and procedure arising under the National Labor Relations Act. Supervisory functions included training, document editing and revisions, and evaluation and counseling of staff. Other duties included presenting cases to General Counsel; analyzing legal issues with other staffs, including regional offices; conducting meetings with outside counsel and other parties to litigation; hiring staff; and assessing quality of regional office legal work.

Staff Attorney
Division of Advice, Office of the General Counsel
National Labor Relations Board

Oct. 1977 - May 1982

Researched, analyzed and drafted memoranda concerning novel and complex issues of labor law and procedure. Drafted Guideline Memoranda as General Counsel's public positions on specific legal issues. Assisted in presenting cases to General Counsel and staff, as well as discussing pending cases with outside counsel, union and management representatives. Drafted briefs and motions on merits and injunction issues, and argued cases as counsel for the General Counsel before the NLRB and in various U.S. Courts of Appeals. Three month detail to Appellate Court Branch, 1980.

Student Assistant
Office of Appeals
National Labor Relations Board

Summer 1975

Reviewed cases on appeal from dismissal of unfair labor practice charges by Regional Directors. Drafted memoranda and letters on disposition of cases.

AWARDS

1991-1992: Exceptional Rating, Senior Executive Service

1983-1987: Superior Performance Awards (1986 - sole Outstanding award in Division)

1977-1982: General Counsel Certificates of Commendation; yearly quality within-grade awards

Barbara B. Franklin**EDUCATIONAL BACKGROUND**

J.D. 1977 Columbus School of Law, Catholic University
Law Review, 1975-77; Associate Editor, 1976-77
AmJur Awards, Constitutional Law, Conflicts of Law
Class Rank: 8/162

B.A. 1959 Northwestern University

Additional training in alternative dispute resolution:

Center for Community Justice, Mediation Techniques, 1984
Harvard Law School Negotiations Course, 1987
American Arbitration Association, Arbitration Procedures, 1983

MEMBERSHIPS

District of Columbia Bar Association; Society of Professionals in Dispute Resolution; Society of Federal Labor Relations Professionals; Women's Legal Defense Fund; American Civil Liberties Union; Emily's List; Ward 3 Coalition for the Homeless

COMMUNITY ACTIVITIES

1990- : Member of Board, Temple Sinai Assisted Housing Foundation
1986- : Member of Board, Harriet B. Burg Foundation; Vice-President, 1990-
1984-1989: Volunteer mediator, Citizens Complaint Center, D.C. Superior Court
1969-1975: Various activities for D.C. public schools; member and officer, Home and School Associations, Lafayette Elementary School, Alice Deal Junior High School
1965-1967: Volunteer Lawyer Coordinator, American Civil Liberties Union

EMPLOYMENT/VOLUNTEER EXPERIENCE

Name Barbara B. Franklin Phone (202) 362-8038
Address 3730 Oliver Street, N.W. FAX _____
Washington, D.C. 20015

Interested in positions with (agency/agencies): NLRB (particularly General Counsel)

1. Describe your administrative/managerial experience.

See attached sheet for all responses.
2. Describe your technical expertise in the area of labor, civil rights, and general workplace issues.
3. Describe your experience in enhancing career opportunities for women, and securing equitable treatment of women, people of color, and other minorities in the workplace and in the community. Be sure to also describe your position on reproductive choice.
4. Describe your affiliation with various labor, civil rights, and women's organizations. Be sure to include dates and positions served.
5. Describe your paid and volunteer experiences in the political arena. Be sure to include party affiliation.

SUPPLEMENTAL COVER SHEET

Barbara B. Franklin

1. My career includes 10 1/2 years of first- and second-level supervisory experience at the NLRB and FLRA. I currently provide overall supervision and administration of 8 attorneys and labor relations specialists, 1 paralegal and 1 secretary. As staff director, I formulate program goals, establish and administer personnel policies, set budgetary and training priorities, and serve as the liaison with other Agency staffs.

2. My entire career has been in the field of labor law, where I have dealt with the full range of matters ranging from discipline in the workplace to novel, "cutting-edge" issues of law. I now serve as a senior manager in the agency that regulates collective-bargaining issues among Federal employees, including unfair labor practices, determinations of negotiability and review on appeal of binding arbitration decisions.

3. As a supervisor and manager in two Federal agencies, I have hired, mentored, promoted and assisted a number of women and minorities. At the NLRB, a larger office with more hiring opportunities, I served on hiring committees that routinely sought minority applicants by contacting such law schools as Howard and N. Carolina State. My experience as a working mother of three children has led me to administer leave and other personnel policies flexibly so that both women and men can successfully pursue their career and family goals. My position favoring reproductive choice is unequivocal; I am a long-time supporter of organizations, candidates, demonstrations and causes devoted to choice.

4. I have been a member of the ACLU since the early 60's; in the mid-60's, while at home with children, I served as the coordinator for volunteer attorneys in the D.C. chapter. I am also a long-time member and contributor to the Women's Legal Defense Fund. For the past six years I have been a Board member of the Burg Foundation, which has raised funds to support projects involving legal assistance to women, the elderly and the disabled. Currently, we are raising \$200,000 to endow a legal fellowship in disability rights law through the Women's Law and Public Policy Fellowship Program. Since 1990 I have worked with a small group to create, and am now a Board member of, the Temple Sinai Assisted Housing Foundation, which hopes soon to establish transitional housing for four homeless families in D.C., focusing on provision of social services, job training, parenting skills and child advocacy.

5. I am a registered Democrat. For the past 15 years, I have been covered by the Hatch Act as a Federal Government employee. Prior to that, I did some neighborhood canvassing work for the Democratic party. My husband and I made a substantial contribution to the Clinton for President campaign. Through Emily's List, I contributed to four candidates, including Patty Murray and Leslie Byrne.

Received: 01/09/93

Se: GOV-A

MR. GEORGE SQUILLACOTE

7120 North Crossway Road
Fox Point, WI 53217

H (414) 352-1666

Campaign: Cmpgn-UNS
Brd & Com: Ntl/Lbr/R
Attachmnt: 1

Agency 1: B&C
Job 1:
Priority :

Agency 2:
Job 2:

Category:

Human Resources

Legal

Education:

JD Law, 47, U of Chicago
MA Labor Rel, U of Wisconsin
BA Law, U of Chicago

Work History:

(54 to 85, Regional Director, NLRB
52 to 64, Attorney, Region 13, NLRB

Skills:

NLRB
Government
Labor Arbitration
General Mgmt
Course of Study
Legal
Legal Research
Merit
History
FC
Collective Bargain
SEN Kohl, Herb

Labor Relations
Pension
Labor Law
Articles
Maintenance
Legal Assistance
Commerce
Promotions
Benefits
Intake
Speaker

Applications
Industrial
Labor
Court
Laws
Records
Exercise
Counsel
Training
Union
SEN-Senators

Tracking:

Comments:

01/11/93 phyllis verified
01/13/93 printed response letter cllet
01/13/93 emcmahon edited
01/16/93 mcarr Boards & Commissions Candidate
02/28/93 jburkeen edited
02/28/93 asquire edited
02/28/93 asquire edited

SUMMARY OF BACKGROUND AND QUALIFICATIONS
OF GEORGE SQUILLACOTE

December 12, 1992

George Squillacote was born in New Britain, Connecticut, on June 16, 1918, the ninth of twelve children. He is of Italian ancestry. His father was a mason and bricklayer. Squillacote obtained his primary and high school education in the public schools of New Britain. Squillacote is widowed and has three living children and five grandchildren.

After graduation from high school, he worked three years at Fafnir Bearing Company in New Britain. While there, he entered the University of Connecticut, which he attended for two years in evening classes while still employed full-time at Fafnir. He left New Britain to enter the University of Chicago Law School in 1942. After completion of the course of study for the first quarter at the Law School, the University of Chicago awarded him an honor scholarship for the balance of his schooling because of his outstanding scholastic achievement, which is particularly noteworthy in view of his maintenance of a full-time job at the time. (During his entire time at Law School, he worked 40-50 hours a week in various industrial plants.)

Squillacote was awarded a Bachelor of Arts in Law (B.A.) and a Doctor of Laws (J.D.) by the University of Chicago in 1947 and in May of that year, he was admitted to the Bar of the State of Illinois.

His first legal position was with the Chicago Legal Aid Bureau where he obtained a varied and general legal experience. However, his primary interest being primarily in the field of labor law, in the fall of 1948, he obtained a position with the National Labor Relations Board as a legal assistant to Board Member Murdock, a position he held until June 1952 when he transferred to the Board Region 13 in Chicago.

Kohl

As a legal assistant, Squillacote reviewed records of representation and complaint cases, engaged in legal research, rendered advice to the Board with respect to prospective decisions and prepared opinions on behalf of the Board. Squillacote achieved a reputation for impartiality and competence, a reputation which he has maintained and enhanced to the present. He became known as an innovator and for his refusal to accept outmoded Board precedents and practices and his initiative in seeking to modify and correct such policies and practices in order to make them conform to modern dynamic labor relations. A prime example of his accomplishments in this respect is the leading role he played in 1950 in the Board's establishment of finite jurisdictional standards in relations to what matters so affected commerce as to justify the Board's assertion of jurisdiction. This development alleviated the chaotic conditions then existing in Board decisions with respect to the exercise by the Board of its statutory jurisdiction.

In 1952, Squillacote, at his own request, transferred to Region 13 of the Board in Chicago, Illinois. He remained in Chicago until 1964, and during that time, received successive merit promotions to positions of increasing responsibility, i.e., Field Attorney, Supervising Attorney, Assistant Regional Attorney and finally Associate Regional Attorney. His duties and functions in the Regional Office included all aspects of the handling of unfair labor practice cases from the investigation of the charges through the trial of the case and to the post-trial procedures including oral argument before the National Labor Relations Board. In addition, he represented the General Counsel in seeking injunctions before the U.S. District Court. Besides injunctions under Section 10(j) of the Act, he obtained two of the earliest 10(j) discretionary injunctions obtained against employers, including one against Montgomery Ward & Co.

In representation proceedings, he acted as Hearing Officer, conducted elections and participated in both pre- and post-election procedures.

In connection with his trial experience, Squillacote is most noted for his participation as counsel for the Government in the well-known Kohler case, one of the longest and most important cases in the history of the Board in which, among other remedies, 4-1/2 million dollars in backpay benefits was awarded a host of discriminatees. The record in that case exceeded 20,000 transcript pages and several thousand pages of exhibits. He received a special award of commendation from the Government for his work on this case.

Squillacote also conducted the trial training program for lawyers in the 13th Region, and as Assistant Regional Attorney and Associate Regional Attorney, supervised lawyers and investigators, participated in Regional policy making, and had full charge of all trials.

In 1964, Squillacote was appointed to the position of Regional Director of the newly-established Regional Office in Milwaukee, Wisconsin, Region 30, a position he held until he retired from Government February 1, 1985. The jurisdiction of Region 30 encompasses most of the State of Wisconsin, except for the northeast portion and also extends to the Upper Peninsula of Michigan. The complement of employees of Region 30 has fluctuated over the years. He started with 17 professionals and 13 clericals. (Professionals are attorney and field examiners, the latter being non-attorney investigators.) At times, the professional staff was as high as 25. Now there are 20 professionals and 10 clericals. Similarly, the case intake has fluctuated. It started in 1964 with a case intake of about 500 cases annually, at times was up to 1,200 cases a year and now shows a volume of about 600 cases annually.

The NLRB has two basic functions: first, to conduct elections among employees to determine whether or not the employees want a union to represent

them for purposes of collective bargaining; second, the investigation of charges of unfair labor practices filed against either employers or unions and the prosecution of such charges if the investigation indicates they have probable merit. Squillacote was responsible for all decisions in representation matters, including issuing of Regional Director Decisions which are final and binding on the parties subject only to a very limited review by the Board. He also made determinations as to merit in unfair labor practice charges, issuing complaint on behalf of the General Counsel in appropriate cases. He was, of course, in charge of all the personnel matters involving the staff, staff labor relations matters, and all the other administrative details that are involved in the management of an office. He also was in charge of informational and public relations activities for the Region.

For some years, Squillacote served as Chairman of the Board's Regional Directors Committee in which capacity he acted a spokesman for the Directors on matters of their mutual concern, and has been participant on both the national and local levels in collective bargaining with the representatives of the staff. Squillacote has been a frequently-requested speaker before diverse private and public groups, schools and universities, management and labor organizations, Bar Associations, and other community groups. For some years after his retirement from Government, he was an Adjunct Professor at the University of Wisconsin at Milwaukee, engaged to teach Labor Law to their Masters in Industrial and Labor Relations program. He also is a Labor Arbitrator and Mediator.

Squillacote is an active member of the Wisconsin Bar, the American Bar and the Federal Bar Associations. He is a former president of the Labor Law Section of the Wisconsin Bar Association. He was a founding member of the Chicago Chapter of the Industrial Relations Research Association.

In addition to this legal and administrative background, Squillacote has had extensive experience as an industrial employee. Before and during his attendance at law school, he held a variety of jobs including 10 years of full-time work in factories as well as summer work in a variety of occupations. He has been a member of various unions and has had occasion to participate actively in collective bargaining negotiations. For 2 years, he was President of the legal branch of the independent National Labor Relations Board Employees Association in Washington.

Over the years, Squillacote has been active in various civic and community activities. Some of the groups he has been involved in, and only some, include:

1. Catholic Council on Working Life
2. The City Club
3. Catholic Interracial Council
4. Southwest Civic Council
5. Christian Family Movement
6. Longwood Gardens Civic Association
7. Home Opportunities Made Equal
8. Milwaukee Citizens for Equal Opportunity
9. Mayor's Committee on Quality of Life and Recreation

Some of Squillacote's principal recreational activities are camping, picnics, volleyball, tennis and, in the less strenuous area, bridge. He continues to be an active tournament tennis player, being unduly vain about his former ranking of number 4 in the State of Wisconsin in his age grouping. Also, give him half a chance and he will usually get into the conversation that a few years ago, he and his partner were Wisconsin State Doubles champions in their age category.

Squillacote believes that all of the foregoing experience, activities and academic background give him a knowledge not only of the substantive law of labor relations and an understanding of the practices and procedures of labor and management in relations to each other, but also an empathy for the problems

of the person in the work place. In addition, his membership and activities as an employee in several unions over the years has enhanced his understanding of the problems as well as both the rights and obligations of unions. On the other hand, his experience as a government manager, with all the problems of budget, personnel, determination of priorities, dealing with an internal union, while at the same time striving to achieve the mission of the Agency, has given him a deeper understanding of the needs and concerns of management in the private sector. In summary, Squillacote believes that his experience has amply provided him with both the expertise and philosophy essential to a proper analysis of labor-management problems and disputes.

DEPUTY SECRETARY OF LABOR
WASHINGTON, D.C.
20210

93 DEC 29 P3:44

December 23, 1993

To: John Podesta
From: Thomas P. Glynn
Re: Attached

FYI

cc: Richard Socarides



AFL-CIO, CLC
15 UNION SQUARE • NEW YORK, N.Y. 10003-3377
TEL (212) 242-0700 FAX (212) 255-7230

December 16, 1993

The Honorable Robert Reich
Secretary of Labor
U.S. Department of Labor
200 Constitution Ave., N.W.
Rm. S2018
Washington, D.C. 20210

Dear Bob:

Thanks for returning my call. As always it was good to chat.

As I mentioned to you Peter Robb is a Republican on Senator Kassenbaum's list for the NLRB -- is not an ideologue, is quite capable and would make a first class Board member. His resume is attached. May be now, we will get the matter resolved.

I look forward to seeing you again soon. All the best, and thanks once again for coming to my Board meeting.

Sincerely,


Jack Sheinkman
President

JS:rs
Attachment

JACK SHEINKMAN
President

ARTHUR LOEVY
Secretary-Treasurer

BRUCE RAYNOR
Executive Vice-President

930034561
To: John P. Robb
From: JR
Re: Michael
KFI
cc: Rick

RECEIVED
DEC 20 12 54 PM '93
EX-101
DEPARTMENT OF LABOR
WASHINGTON, D.C. 20210

VICE PRESIDENTS

JOHN ALLERUZZO
NOEL BEASLEY
CLAYOLA BROWN
ED CLARK
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JEAN-MARC COUTURE
OLGA DIAZ
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JOHN FOX
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ANDREW MATTEY

FRANK NICHOLAS, JR.
CARMEN PAPALE
AMANDA STEVENS
JOAN SUAREZ
JIM WALRAVEN

PETER BARR ROBB

Proskauer Rose Goetz & Mendelsohn
1233 Twentieth Street, N.W.
Suite 800
Washington, D.C. 20036
(202) 416-6854

306 Danmark Court
Millersville, MD 21108
(301) 987-2404

PROFESSIONAL EXPERIENCE:

PROSKAUER ROSE GOETZ & MENDELSON
Labor and Employment Law - 1985 to Present - Representation of Management

NATIONAL LABOR RELATIONS BOARD
Deputy Chief Counsel to Robert P. Hunter - 4/82 to 11/83
Chief Counsel to Robert P. Hunter - 11/83 to 8/85
Field Attorney Region 5 - 10/77 to 7/79

FEDERAL LABOR RELATIONS AUTHORITY, REGION 3
Field Attorney, 7/79 to 1/80
Supervisory Attorney - 1/80 to 4/82

MARYLAND OFFICE ON AGING
Legal Services Specialist - 10/76 to 10/77

EDUCATIONAL BACKGROUND:

UNIVERSITY OF MARYLAND SCHOOL OF LAW
Baltimore, Maryland
J.D. with honors, 1976
Maryland Law Forum: Managing Editor, 1975-76
Associate Editor, 1974-75

GEORGETOWN UNIVERSITY
Washington, D.C.
A.B., Economics Major, 1970
Honors, Economics Oral Comprehensive Examination

BAR ADMISSIONS:

Maryland
District of Columbia
U.S. District Court for the District of Columbia

PUBLICATIONS:

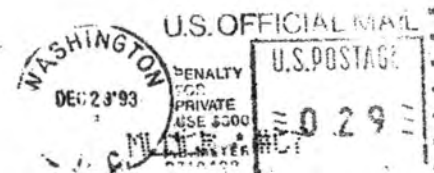
Treatise on Health Care Law - Employment and Labor Issues - Matthew Bender
New York Employment Law - Federal Regulation of Labor Relations -
Matthew Bender

U.S. DEPARTMENT OF LABOR

DEPUTY SECRETARY OF LABOR
WASHINGTON, D.C. 20210

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Mr. Jon Podesta
Staff Secretary
White House
Washington, DC 20500



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UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, D.C. 20570

94 JAN 13 P3:19

January 13, 1994

TO: John Podesta, Assistant to the President
and Staff Secretary

FROM: Daniel Silverman 273-3700
Acting General Counsel
National Labor Relations Board

SUBJECT: Lack of Quorum at NLRB

This is in response to your request for an update on the circumstances existing at the Board as a result of the absence of a quorum. At present there are 307 unfair labor practices, 93 election cases awaiting Board action. In addition, there are 125 cases in which elections have been held, but no results announced because the ballots have been impounded. This procedure is utilized to avoid delaying the vote while the Board considers the appropriateness of a Regional Director's decision to direct the election. The resolution of the question of the status of the union as the bargaining representative is, of course, delayed.

A sample of some of the matters awaiting Board decision follows:

In Chaulke Services, an ambulance company in New England, the unit numbers approximately 550 employees. The ballots were impounded pursuant to Board instruction, and the matter remains pending review.

In Bouchard Transportation Company, a New York tug boat employer, the absence of a Board quorum is delaying approval of a \$4.7 million dollar settlement. The Region is attempting to arrange for the parties to agree to waive Board approval.

The formal Settlement in Sheridan Manor, a Buffalo case, which includes provisions for the distribution of \$150,000 in backpay upon Board approval, remains pending. Board delay in handling this case was one of the issues raised during public demonstrations last June.

John Podesta, Assistant to the President and
Staff Secretary
Page Two
January 13, 1994

The Brooklyn office has several post election cases pending before the Board. One is Acme Bus/Baumann Bus Company, the Region's October 8, 1993 report on objections recommends the overturning of an election involving a unit of over 1000 employees. Another involves the lead election in the Williamsburg Trade Association a series of petitions being handled by the Region. This is one of approximately 30 petitions in which processing was deferred for several years while the Board considered the R case issues.

There are 3 cases before the Board in which courts of appeals have remanded bargaining order cases for additional consideration which the Board is unable to do.

A significant representation case involves Klein Tools Corp. out of the Minneapolis regional office. The Board conducted an election on January 7. There were some 52 voters. The request for review was filed over the Regional Director's inclusion of an inventory control clerk in the unit. Prior to the election, the Employer notified the Board that it would agree to count all other ballots. At the count, the Employer reneged and, therefore, the Region was required to impound the ballots. This has generated complaints from the Teamsters (petitioning union), employees, and Senator Harkin's Des Moines Office.

A significant unfair labor practice case is pending out of the Atlanta office involving Nu-Skin International. The complaint alleges violations due to the closing of a plant. The ALJ, on July 20, 1993, dismissed most of the major allegations but found certain minor ones. Both the General Counsel and Respondent have filed exceptions. There are 300 potential discriminatees.

Objections to an election are pending Board action regarding Lundy Packing Co. in Tampa in a unit of 1400 employees. Board approval is required to proceed to an election, in face of certain unfair labor practices. Regional request to proceed are being held in abeyance by the Board.

The Oakland office reports that it has received Congressional complaints about Regional delay in handling

John Podesta, Assistant to the President and
Staff Secretary
Page Three
January 13, 1994

several election cases. Oakland intends to issue its decisions this week and next. If the Board is precluded from acting on appeals to those decisions, it is anticipated that these complaints will focus on the absence of a quorum.

This is, of course, just a sample of the types of matters pending. Regions have reported complaints by the parties and in some cases like the New York situation referred to above, are attempting to seek ways to avoid the hardships that absence of a quorum is imposing on parties and individuals.

Of course, the increase in backlog before the Board will make it more difficult for the Board to become current once the new members are confirmed. Please permit me to suggest that if a recess appointment can be made, it be done as soon as possible.

Very truly yours,

Daniel Silverman

Daniel Silverman
Acting General Counsel

cc: Richard Socarides
White House Liaison