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LEGISLATIVE ACTION ALERT



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President Appoints Marvin E. Kaplan NLRB Acting Chairman

Washington, DC — President Donald J. Trump has named Board Member Marvin E. Kaplan Acting Chairman of the National Labor Relations Board.

“The President’s announcement is an honor and privilege, and I look forward to serving as Acting Chairman of the National Labor Relations Board.,” Kaplan said. “I remain committed to working with my colleagues to achieve the important goal of issuing timely decisions that apply the National Labor Relations Act in a way that protects the rights of employees, employers, and labor organizations throughout the country.”

Kaplan also recognized former Chairman Philip A. Miscimarra for his service on the Board. Miscimarra’s term expired on December 16, 2017. The Board currently includes Board Members Mark Gaston Pearce, whose term expires on August 27, 2018; Lauren McFerran, whose term expires on December 16, 2019; and William J. Emanuel, whose term expires on August 27, 2021. One Board Member seat is currently vacant.

Kaplan was sworn in as a Board Member on August 10, 2017 for a term ending on August 27, 2020. Mr. Kaplan was confirmed by the Senate on August 2, 2017.

Previous to his appointment to the NLRB, Acting Chairman Kaplan served as Chief Counsel to the Chairman of the Occupational Safety and Health Review Commission. Before his work with the Occupational Safety and Health Review Commission, he served as counsel for the House Committee on Oversight Government Reform and as policy counsel for the House Committee on Education and the Workforce. He also worked at the U.S. Department of Labor’s Office of Labor Management Standards and with the law firm McDowell, Rice, Smith & Buchanan. Mr. Kaplan received his J.D. from Washington University in St Louis, and his B.S. from Cornell University.

Established in 1935, the National Labor Relations Board is an independent federal agency that protects employers and employees from unfair labor practices, and protects the right of private sector employees to join together, with or without a union, to improve wages, benefits and working conditions. The NLRB conducts hundreds of workplace elections and investigates thousands of unfair labor practice charges each year.

The Trump administration has shown a willingness to revisit Obama-era regulations and could potentially alter the current labor and employment landscape significantly if it chooses to repeal those regulations. Some of the key areas where a majority-Republican NLRB could have a significant impact include misclassification of independent contractors, joint employment, and the overtime rules under the Fair Labor Standards Act. More than likely those chosen to fill the vacancies will share the current administration’s willingness to review Obama-era regulations and curtail them, or at the very least, rewrite them to what is a more employer-friendly approach.

As Media Focuses on Russia Collusion, Trump Is Quietly Stacking the Labor Board with Union Busters

BY [MICHAEL ARRIA](#) WORKING IN THESE TIMES©

[HTTP://INTHESETIMES.COM/WORKING/ENTRY/20329/NLRB-DONALD-TRUMP-UNION-BUSTERS-APPOINTEES-LABOR](http://inthesetimes.com/working/entry/20329/nlrb-donald-trump-union-busters-appointees-labor)

It might not get as much press coverage as other Donald Trump administration calamities, but the U.S. president is set to appoint a known union buster to the National Labor Relations Board (NLRB), push the body to a Republican majority and reverse Obama-era protections that rankle Big Business. On July 13, the Senate Health, Education, Labor and Pensions (HELP) Committee held hearings on Trump's two NLRB selections and his deputy labor secretary pick. All three of these men are expected to be confirmed. William Emanuel, one of Trump's NLRB appointees, is a management-side attorney and a [member](#) of the conservative Federalist Society. He is also a shareholder of Littler Mendelson, an infamous [union busting firm](#) that was most recently brought in by Long Island beer distributor Clare Rose to negotiate a [contract full of pay cuts](#).

After being selected, Emanuel [disclosed](#) 49 former clients and declared he would recuse himself for up to a year if any of the companies found themselves in front of the NLRB. The list included multiple businesses that have clashed with the labor board, including JPMorgan Chase Bank, MasTec Inc, Nissan and Uber. Uber's ongoing skirmishes with the NLRB have, perhaps, been the most publicized. At the end of 2016, the ride-share company battled with the NLRB after the agency sent out [subpoenas](#) aimed at gleaning information about whether Uber drivers were statutory employees. In 2016, Emanuel authored an amicus brief that [defended](#) class-action waivers in employment contracts. Workers often depend on class actions to fight sexual and racial discrimination, and their existence is an important part of upholding wage laws. The NLRB ruled that such waivers were illegal under Obama. Emanuel was asked about Littler Mendelson's anti-union work by Massachusetts Senator Elizabeth Warren. "You have spent your career at one of the country's most ruthless, union-busting law firms in the country," she said. "How can Americans trust you will protect workers' rights when you've spent 40 years fighting against them?"

In response, Emanuel claimed that he would be objective whenever making decisions for the agency. Emanuel is not the only appointee raising concern among workers' rights advocates. Marvin Kaplan, another Trump nominee to the NLRB, is a public-sector attorney and current counsel to the commissioner for the Occupational Safety and Health Review Commission. The Kaplan pick excites business executives and their advocates, who envisioned him helping overturn Obama-era labor regulations. At the time of the announcement, Kristen Swearingen, chair of the anti-union group Coalition for a Democratic Workplace, declared that "Marvin Kaplan will begin to restore balance to an agency whose recent and radical decisions and disregard for long standing precedent have injected uncertainty into labor relations to the detriment of employees, employers and the economy."

The excitement is well-founded. Kaplan served as counsel for Republicans on the House Committee on Education and the Workforce. The *New York Times* [reports](#), "The committee held hearings during his tenure scrutinizing prominent NLRB actions in which the witnesses skewed toward business representatives and other skeptics." Kaplan also helped develop the [The Workforce Democracy and Fairness Act](#), legislation that would kill a labor board rule that shortened the amount of time between when the board authorizes a workplace unionization vote and when the vote actually takes place. Since 2014, the number has been set at 11 days. But this act would increase it to at least 35, thus allowing more time for union efforts to be squashed. The legislation hasn't passed in congress yet.

Concerns do not stop at the NLRB. Trump's Labor Department nominee is Patrick Pizzella, a Federal Labor Relations Authority Member who was grilled by Minnesota Senator Al Franken on his ties to the infamous lobbyist Jack Abramoff. Pizzella [worked](#) with Abramoff during the 1990s to [exempt](#) the Northern Mariana Islands from federal labor regulations.

The Senate has only been in session for 10 days since the Pizzella and Kaplan nominations, and only four days since Emanuel's. A group of civil rights and labor organizations sent the committee a [letter](#) asking for the hearings to be postponed. During her opening remarks, Sen. Patty Murray called Trump's attempt to jam through the nominees without proper oversight "unprecedented." Roughly 10 workers representing the pro-labor [organization](#) Good Jobs Nation stood up during Thursday's hearing, put blue tape over their mouths and walked out of the room in silent protest. Groups like Good Jobs Nation are concerned about a pro-business majority in the agency amidst Trump's [proposed cuts](#) to the Labor Department.

Trump is putting the NLRB in the position to undo a number of important Obama-era labor decisions. His NLRB could potentially reverse rulings that made it [easier](#) for small groups of workers to unionize, [established](#) grad students as employees, put charter school [employees](#) under NLRB jurisdiction, and held parent companies [jointly liable](#) for with franchise operators who break labor laws. Writing about the imminent anti-union crackdown on this website in May, Shaun Richman [wrote](#), "Unions and their allies should be convening research teams to plot out a campaign of regulatory and judicial activism. That work should begin now." Early in the hearing, Washington Senator Patty Murray asked Emanuel if he had ever represented a union or a worker. Emanuel explained that he worked exclusively for management for his entire career. "You just don't do both," he told her. "It's not feasible."

