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January 6, 2012

The Honorable Mark G. Pearce  
Chairman  
National Labor Relations Board  
1099 14<sup>th</sup> Street, N.W.  
Washington, D.C. 20570

Dear Chairman Pearce:

We respectfully request documents drafted in whole or in part by Sharon Block, Terence Flynn, and Richard Griffin during their time of employment at the National Labor Relations Board (NLRB). The complete departure from and total disregard for normal policies governing the appointments of these individuals to the Board raises serious questions about their qualifications, background, and the future of the NLRB. As members of the House Committee on Education and the Workforce who are charged with oversight of federal labor law, and in the absence of any public vetting process of the new Board members, we expect you will fully respond to this request without delay.

For nearly three years, despite objections from within the Board, Congress, and the public, the NLRB has steadfastly pursued an activist agenda on behalf of union special interests. First, the NLRB has been complicit, if not active, in corporate campaigns by picking winners and losers in a labor dispute. For example, on April 20, 2011, the NLRB issued a complaint against the Boeing Company (Boeing) and attempted to force this private employer to relocate work from South Carolina to Washington State. The NLRB's action threatened thousands of jobs in South Carolina and continues to have a chilling effect on employers today.

Second, the Board has aggressively rewritten labor law to the detriment of America's workers and employers. In one day, August 26, 2011, the NLRB: 1) limited an employee's right to a secret ballot;<sup>1</sup> 2) made it more difficult for workers to challenge union representation in so-called successorship situations;<sup>2</sup> and 3) overturned decades of case law to make it easier for union leaders to gerrymander workplaces.<sup>3</sup>

<sup>1</sup> *Lamons Gasket Company*, 357 NLRB No. 72 (August 26, 2011).

<sup>2</sup> *UGL-UNICCO Service Company*, 357 NLRB No. 76 (August 26, 2011)

<sup>3</sup> *Specialty Healthcare and Rehabilitation Center of Mobile*, 357 NLRB No. 83 (August 26, 2011).

Finally, the Board has finalized two significant rulemakings clearly intended to promote unionization. Exceeding its statutory authority, on August 30, 2011, the Board issued a final rule requiring virtually every private employer to post vague and union-biased employee “rights” in the workplace. On December 21, 2011, the NLRB issued a final rule amending its long-standing procedures in union representational elections. These new procedures will restrict employer free speech and limit employee free choice.

To ensure the continuation of this activist and job destroying agenda, on January 4, 2012, President Obama announced the recess appointments of Terence Flynn, Sharon Block, and Richard Griffin to the Board. While Mr. Flynn has been awaiting confirmation since January 2011, Ms. Block and Mr. Griffin were first nominated on December 15, 2011.

As noted by Senator Mike Enzi, senior Republican on the Senate Health, Education, Labor, and Pensions Committee, neither Ms. Block nor Mr. Griffin have filed the required committee application or gone through the normal vetting process, including a background check and disclosure of information relevant to whether they are qualified to serve on the Board.<sup>4</sup> Short-circuiting the constitutional appointment process in this manner denies the Senate and the American people an opportunity to judge independently the qualifications of those nominated to serve in these important positions.

Furthermore, this unilateral action by the president endangers the credibility and integrity of the NLRB. Every worker and employer deserves a Board that is committed to enforcing the law fairly and objectively. Due to the President’s actions, decisions issued by the new Board will be tainted and legally suspect. At a time when millions of workers are unemployed and job creators desperately need certainty, the President’s action is not an appropriate way to govern America’s workplaces.

To better understand the background and qualifications of these appointees and the future direction of the NLRB, provide the following no later than January 20, 2012:

1. All documents drafted in whole or in part by Sharon Block while serving as senior attorney to Chairman Battista and an attorney in the appellate court branch;
2. All documents drafted in whole or in part by Terence Flynn while serving as chief counsel to Member Hayes and Member Schaumber;
3. All documents drafted in whole or in part by Richard Griffin while serving as counsel to Board Members; and
4. All documents and communication relating to the appointment of Sharon Block, Terence Flynn, and Richard Griffin.

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<sup>4</sup> Enzi: President Abandons Constitution’s Advice and Consent Mandate, available at <http://help.senate.gov/newsroom/press/release/?id=170c9d76-0002-4a7d-b9b3-20185d847bbb&groups=Ranking> (last visited on January 6, 2012).

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If you have any questions regarding this request, please contact Marvin Kaplan, House Education and the Workforce Committee, at (202) 225-7101.

Sincerely,



JOHN KLINE  
Chairman  
Committee on Education and the Workforce



PHIL ROE, M.D.  
Chairman  
Subcommittee on Health, Employment, Labor  
and Pensions

cc: The Honorable George Miller, Senior Democratic Member, Education and the Workforce Committee

cc: The Honorable Robert Andrews, Senior Democratic Member, Subcommittee on Health, Employment, Labor, and Pensions