

## NLRB Looks Back on FY 2012

November 1, 2012

On October 16, 2012, the National Labor Relations Board (NLRB or Board) issued a report on its decisions and activities during fiscal year (FY) 2012, which ended on September 20, 2012. In sum, the Board reported that it issued 341 decisions (including 277 unfair labor practice cases and 64 representation.....

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The Board indicated in the report that during FY 2012, it finalized a controversial rule to streamline the representation case process. This rule, commonly referred to as the “quickie election” rule is currently suspended, pending court challenges. In FY 2012, the Board also invited briefs from the public on several significant issues, including the employment status of certain university members and graduate teaching assistants.

In addition, the NLRB highlighted several FY 2012 Board decisions in the report:

**Mandatory Arbitration:** In the report, the Board highlighted one decision wherein it ruled that it was a violation of federal labor law to require employees to sign arbitration agreements that prohibited them from joining together in any forum to bring legal claims against the employer.

**Lawsuits as Unfair Labor Practices:** The Board emphasized a number of decisions wherein it ruled that lawsuits filed by employers or unions may be unfair labor practices in certain circumstances.

**Symphony Musicians:** In the report, the Board pointed out three cases wherein it ruled that symphony musicians were employees, not independent contractors, and were therefore eligible to join a union.

**Facebook Firings:** The Board discussed one case where it ruled that particular Facebook postings that led to an employee discharge were not protected activity. However, the Board stressed that similar “Facebook” decisions are yet to come.

**Immigration Status and Backpay:** In another NLRB decision, the Board found that employers must have good reason to raise the immigration status of employees during procedures to determine backpay awards and cannot raise the question as a “fishing expedition” to avoid payment.

**Successor Employer Obligations:** The Board found that a company unlawfully refused to hire former unionized employees in order to avoid union obligations at a coal mine. The Board also found that company to be a single employer with its subsidiary.

The Board also indicated in the report that during FY 2012 the composition of the Board changed on several occasions. The recess appointment of Member Craig Becker expired on January 3, 2012. President Barack Obama then appointed three new NLRB Members, including Richard Griffin, Jr., Sharon Block, and Terence Flynn, who all took office in early January 2012. Following Member Flynn’s July resignation, the Board currently stands at four members, with Chairman Mark Pearce and Member Brian Hayes, in addition to Members Griffin and Block. Prior to his appointment, Member Griffin served on the board of directors for the AFL-CIO Lawyers Coordinating Committee for over 17 years. Prior to her appointment, Member Block worked for Senator Edward M. Kennedy and served at the NLRB as senior attorney to Chairman Robert Battista.

**Takeaway for Employers:** The NLRB demonstrated in FY 2012 that it is active and relevant. Although the composition of this Board could change following the upcoming presidential election, all employers, regardless of whether they are unionized, should remain cautious and be mindful that trailblazing policies may open the door to employee and union challenges. At least for now, conservative employment policies are the best employment policies.

## TOPICS

[Traditional Labor Relations](#)