

Recent Senate Confirmations Cement Democrat Control of NLRB

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The Senate confirmed two union lawyers – David Prouty and Gwynne Wilcox – to seats on the National Labor Relations Board (NLRB) on July 28, 2021, ensuring a Democratic majority for the first time in almost four years.

This follows the Senate's confirmation of Jennifer A. Abruzzo, President Joe Biden's nominee for General Counsel of the NLRB.

With these key nominees in place, expect the Board to continue its shift to a pro-union view.

The Senate voted 52-47 to confirm Wilcox's nomination. Prior to her appointment to the Board, Wilcox was a partner at Levy Ratner P.C., a union-side law firm in New York, and served as associate general counsel for 1199SEIU United Healthcare Workers East, the largest health care union in the United States. She fills the seat that has been vacant since former Chair Mark Pearce's term expired in 2018.

Prouty was confirmed by a slightly higher 53-46 margin. Like Wilcox, Prouty has a long background serving unions – he most recently was General Counsel of SEIU 32BJ, the largest union of property service workers in the United States.

Both Prouty and Wilcox will serve five-year terms, though Prouty will not be seated until Republican member William Emanuel's term expires on August 27, 2021. Once Prouty is seated, the Board will have a 3-2 Democratic majority.

In a statement released on July 29, the [AFSCME](#) praised Wilcox as a "preeminent labor rights

attorney” and noted she “will be instrumental in guiding the development of federal labor law and upholding workers’ freedom to form unions.” SEIU 32BJ’s [statement](#) noted it was “excited to see how [Prouty’s] righteous advocacy for workers will help build back up the NLRB as a robust defender of the rights of workers in our country,”

These confirmations come only a week after the Senate’s razor-thin 51-50 confirmation of Abruzzo to the General Counsel position. Abruzzo will serve a four-year term overseeing the investigation and prosecution of unfair labor practice cases and supervising NLRB field offices in their processing of cases. As General Counsel, Abruzzo will have the power to shape the interpretation and application of the National Labor Relations Act (NLRA) by determining which cases to bring to trial and which legal theories to present. It is expected this will pose challenges for employers, given her public statements that she believes “vigorous enforcement of the [NLRA] will help level the playing field for workers and their freely chosen representatives.”

Abruzzo worked for the NLRB for over two decades in various capacities, including as Deputy General Counsel and Acting General Counsel under President Barack Obama. Abruzzo also served as Special Counsel for Strategic Initiatives for the Communications Workers of America (CWA). Abruzzo is likely to push for pro-union policies and interpretations of the NLRA, aligning with President Biden, who has been on record stating he will be “the most pro-union president you’ve ever seen.”

Following her confirmation as General Counsel, Abruzzo appointed Peter Sung Ohr to serve as Deputy General Counsel. Ohr previously served as Acting General Counsel under President Biden following the early firing of former General Counsel Peter Robb (by President Biden), who had nearly 10 months left in his four-year term. Due to legal challenges to his authority arising from Ohr’s sudden appointment as Acting General Counsel (following Robb’s arguably premature dismissal), Abruzzo is expected to ratify the General Counsel actions taken by Ohr to resolve any open questions on his authority.

This pro-union shift will present challenges to employers that just began embracing Division of Advice opinions, General Counsel memoranda, and Board case law decisions under the President Donald Trump administration. Under President Biden, along with a General Counsel that previously worked for the CWA (and the NLRB) and a Democratic majority on the Board, employers can expect to see pro-union and pro-employee opinions, memoranda, and decisions that will further promote employee Section 7 rights, the rights for employees attempting to organize in the workplace, and more.

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