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Former NLRB Chairman Pearce Withdraws From Consideration for Open Board Seat (US)

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Former National Labor Relations Board (“NLRB” or “Board”) two-term Chairman and Member Mark Gaston Pearce announced on February 6, 2019 that he would not seek renomination to the Board. Mr. Pearce – a former union-side lawyer who was appointed by President Obama – served until the end of his second term on August 27, 2018. To the surprise of many, given his active role in deciding many union- and employee-friendly decisions, including the now infamous *Browning Ferris* decision expanding joint employer liability (the history of which we have blogged about [here](#) and [here](#)), the day after his term expired, President Trump nominated Mr. Pearce to an open Board seat. At the time of his term expiration and renomination – and at present – four of the five seats are filled, three by Republicans John F. Ring (Chairman), William J. Emanuel, and Marvin E. Kaplan, and one by Democrat Lauren McFerran.

Although the Board traditionally is composed of three members from the sitting President’s party and two members from the opposing party, many Republicans and members of the business community had recommended that President Trump leave the fifth seat open, citing that the Obama administration delayed nominations of Republican Board members when the Democrat-controlled Board had vacant seats. Amidst this debate, Mr. Pearce’s nomination sat idle in the Senate until it expired at the end of 2018.

Mr. Pearce’s withdrawal from consideration of another NLRB term comes as much of a surprise as his renomination itself. Mr. Pearce explained that he felt it best to “remove myself from the center of a political tug of war that has spanned five months,” although he still hopes the Board returns to a full five members. Sole Democrat Member McFerran’s seat will expire in December 2019. President Trump may delay filling one or both of these seats; no new nominations have been made as of this time.

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