Over the past several weeks there have been conflicting reports concerning what The New York Times described as “a proposal” by Peter Robb, who was sworn in as the National Labor Relations Board’s (“NLRB” or the “Board”) General Counsel on November 17, 2017, to “demote” the Board’s Regional Directors and career “senior civil servants who resolve most labor cases,” and transfer their decision making authority to “a small cadre of officials installed above them in the National Labor Relations Board’s hierarchy,” apparently answerable to the General Counsel.

Under the Board’s long standing organizational structure, the Regional Directors, who oversee the NLRB’s 26 Regional Offices, oversee the investigation of unfair labor practice charges, including making the determination, after investigation by attorneys and field examiners assigned to the Regional Offices, whether charges are supported by probable cause and should be prosecuted before an Administrative Law
Judge or be dismissed. They also oversee the processing of representation petitions and the conduct of elections in which employees vote on union representation.

The Regional Directors’ Letter

According to a letter, in a conference call on January 11, 2018, Mr. Robb outlined a series of steps he was considering to restructure the Board’s field offices and the Regional Directors’ role. Highlights of the proposal described in the letter included:

- Eliminating the Board’s Regional Offices and replacing them with “large Districts;”
- Downgrading or demoting the current Regional Directors from SES positions to lower graded GS-15 status; and
- Transferring the Regional Directors’ substantive decision making responsibilities to a new layer of managers under the General Counsel’s direction.

Currently Regional Directors generally have broad authority to review unfair labor practices cases and determine whether those cases move forward. The General Counsel’s reported proposal would have the effect of removing much of the NLRB’s prosecutorial powers and discretion from these career employees and instead placing these responsibilities with persons appointed by the General Counsel.

In the letter the Regional Directors expressed their concerns to Robb, saying that his proposal would have a “severe and negative impact on our agency and our stakeholders” and “will cause senior Directors and managers, whose institutional knowledge is a valuable asset to the Agency, to retire sooner than they otherwise intended.”

The Regional Directors’ letter states that while the Regional Directors had initially understood that any consideration of restructuring the Regional Offices and the existing structure would be “in response to budgetary concerns,” Mr. Robb told them during the call that “the restructuring would take place regardless of budgetary considerations.”

The General Counsel Has Denied The Reports

At this point, the General Counsel has not made public a plan to reorganize or restructure the Board’s offices and structure. Speaking before a January 19, 2018 meeting of the American Bar Association’s Committee on Practice and Procedure Before the National Labor Relations Board, Mr. Robb denied having told the Regional Directors that he had formulated such a plan, and reportedly stated that such a plan would require the approval of the Board itself, the five Presidential appointees who are subject to Senate confirmation. Board Chairman Marvin Kaplan has also reportedly stated that under the structure whereby the Board delegates certain authority to the General Counsel, such a restructuring would require Board approval.

The reported proposal follows a series of aggressive changes in posture at the NLRB since last fall, when Republicans gained a majority on the five-member Board. Mr.
Robb’s proposal likely needs the Board’s approval to go into effect. Since Member Phillip Miscimarra’s departure on December 16, 2017, however, the Board has been split between 2 Democrats and 2 Republicans. Republicans will regain control of the Board if the Senate confirms John Ring for the currently open seat.

However, there can be no question that given recent budgets and those likely in the future, the NLRB will be required to get by with fewer resources, which probably means fewer employees since the vast majority of its budget is devoted to salary and benefits costs. Notably, the NLRB has also been faced with declining budgets and appropriations over the past several years. Last year, the Board’s budget was slashed by $16 Million, from $274 Million to $258 Million, the lowest level since 2009.

In fact, data published on the Board’s website reflects a steady decline in the number of charges filed over the past decade, from 22,497 charges in fiscal 2008 to 19,280 in fiscal 2017. Similarly, the number of election petitions filed by unions over that period declined from 2,418 to 1,854.

The Board and General Counsel’s Office Are Looking at Changes

Notably, on January 31, 2018, an email concerning “Case Processing Suggestions,” along with a 4 page memo described as a “draft summary of suggestions” for improving Board processes and procedures, and presumably helping to address the pressures resulting from the Board’s reduced budget, was made public. The email, dated January 29, 2018, describes various suggestions developed from “all levels of the organization” in both the field and headquarters. Feedback is sought from within the Board’s Regional Offices by February 9, 2018.

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