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The following material is for informational purposes only and not for the purpose of providing legal advice

# Responding to NLRB Unfair Labor Practice Charges



**Industrial Relations  
Department**

**Director Vance Zimmerman**

# What is the NLRB?

- The National Labor Relations Board is the federal agency that enforces the National Labor Relations Act.
- The National Labor Relations Act is a federal law that covers union representation and collective bargaining. The Postal Service and the APWU are covered by the NLRA.
- The Board's five members are appointed by the President:



John R. Ring  
Chairman



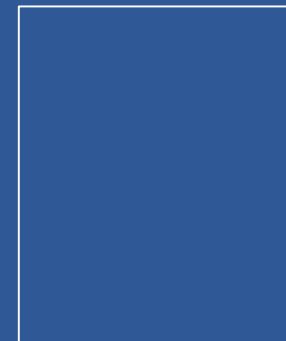
William J.  
Emanuel



Marvin E.  
Kaplan



Lauren  
McFerran



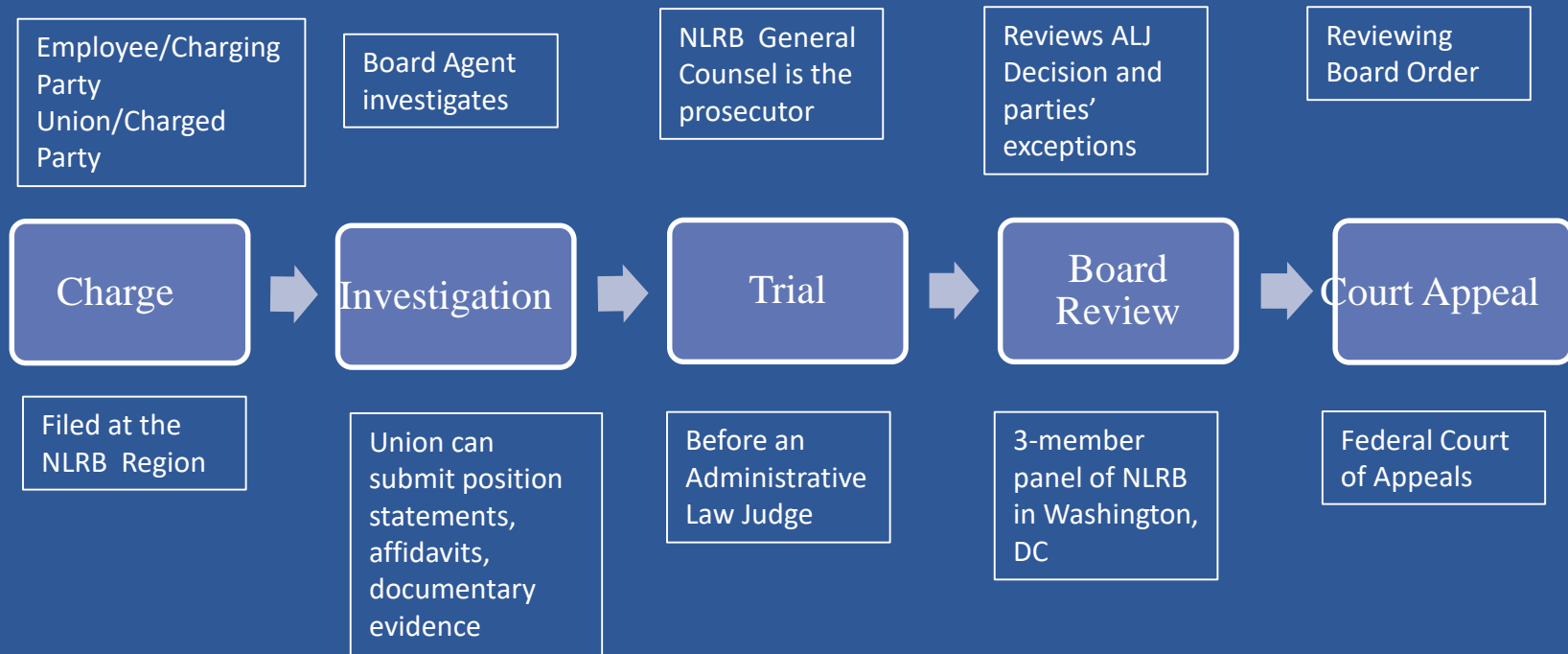
Vacant

# The NLRB General Counsel

- The General Counsel works separately from the Board and is appointed by the President.
- NLRB General Counsel Peter Robb former partner at Downs, Rachlin and Marin in Vermont; appointed by President Trump on November 17, 2017
- The General Counsel prosecutes violations of the NLRA.
- The General Counsel delegates authority to 26 NLRB Regions across the United States. Each Region has a Regional Director who directs the investigation and prosecution of violations of the NLRA and implements the procedures of the NLRA.



# The Unfair Labor Practice Charge Process - A Charge Against a Union



# Region's Investigation of a Charge

- Region assigns an agent to investigate the ULP charge.
- The agent collects evidence from all parties about the allegations and other potential violations that arise in the investigation.
- The agent may ask for witness affidavits which are interview statements given under oath. You are not required to give an affidavit.
  - Witnesses can have a lawyer present, but typically no one else.
  - Witnesses can review and correct affidavit before signing.
- The agent presents investigatory findings to the Regional Director to decide whether to issue a complaint against the union.

# If You Receive a Charge -

- DO NOT IGNORE LETTERS, EMAILS, PHONE CALLS FROM THE NLRB
- RESPOND PROMPTLY TO THE BOARD AGENT INVESTIGATING THE CHARGE AND COOPERATE AS MUCH AS IS REASONABLE IN THE INVESTIGATION
- DO NOT DO ANYTHING THAT CAN BE CONSTRUED AS RETALIATORY BY THE PERSON WHO FILED THE CHARGE

***FAILING TO RESPOND WHEN YOU RECEIVE A CHARGE MAY RESULT IN A COMPLAINT BEING ISSUED AGAINST THE UNION***

# Charge Determination – No Merit

If the Regional Director finds there is NO merit to a charge:

- Charging Party can withdraw the charge
- Region can dismiss the charge

# Charge Determination - Merit

If the Regional Director finds there IS merit to a charge, he/she:

- Can dismiss the charge on condition that no other violations occur in the next six months (Merit Dismissal)
- Can negotiate a settlement agreement with the Charged Party/Union
- Can issue a complaint and litigate the case against the Charged Party/Union before an Administrative Law Judge



# Types of NLRB Settlements

1. *Non-Board Settlement:* A settlement agreement between the charging party and the union. The Region will dismiss the charge but may reinstate it if the settlement is violated.
2. *Informal Settlement:* A settlement between the NLRB and the union. If settlement is violated, Region will issue a complaint and go to trial.
3. *Formal Settlement:* A settlement between the NLRB and the union. If the settlement is violated, Region can enforce settlement without proving the merits of the underlying charge at a trial.

# NLRB Administrative Law Judge Trials

- Region issues a **complaint** against the union; union must submit a written **answer** to the complaint.
- Trial is before an **Administrative Law Judge**; setting is informal, but the proceeding is similar to court with pre-hearing meetings, settlement conferences, motions, testimony, exhibits subject to federal rules of evidence, and post-hearing briefs.
- **Counsel for the General Counsel** is the prosecutor, Charged Party is the defendant. Charged Party can be represented by a lawyer.
- ALJ Decision goes to the Board:
  - Parties can file **exceptions** to raise specific issues for the Board to address
  - Board reviews ALJ decision and adopts, modifies or rejects it.
  - Board decision is the final agency decision of the NLRB.

# The Duty of Fair Representation and the NLRA

- The *Duty of Fair Representation* is a union's legal obligation to represent all bargaining unit employees fairly, in good faith, and without discrimination.
- It is an unfair labor practice under the NLRA for a union to violate the *Duty of Fair Representation*.
- DFR charges are usually filed by individual bargaining unit employees and prosecuted by the NLRB General Counsel through the NLRB Regions.
- DFR charges are the most common kind of NLRB charges filed *against* unions.

# DFR Unfair Labor Practice Charges – Common Allegations

Common DFR claims by bargaining unit employees are that their union

- did not file a grievance;
- missed a grievance procedure deadline;
- refused to answer questions about a grievance; or
- settled a grievance in a way the grievant did not like

because of animus towards the employee or the union's gross negligence

# NLRB General Counsel – New DFR Prosecution Policy

New NLRB General Counsel policy is to prosecute unions for technical violations regardless of reason or intent for:

- Not having a grievance tracking system
- Not responding to any inquiry from a bargaining unit employee
- Not responding to employee requesting information from the union

GC Memo 19-01 (<https://www.nlr.gov/how-we-work/research-and-functional-guidance/general-counsel-memos>)

# New DFR Prosecutorial Policy – What the NLRB is Looking For

Now, the NLRB is looking for unions to show they:

- Have a process/policy to track grievances
- Have a process or practice to communicate grievance/case status to grievants
- Documented phone calls—who called, date, time, and general summary of call
- Documented discussions with employees you represent about their grievances—especially any conversation where it is explained that a grievance is not being filed