

# NLRB Gains a New General Counsel With Senate Confirmation of Peter B. Robb

**Labor Relations Update Blog** on **November 8, 2017**

By a [vote of 49 to 46](#), the U.S. Senate confirmed Peter B. Robb as the General Counsel of the NLRB. Mr. Robb, who replaces former General Counsel Richard Griffin, is the [33rd person](#) to hold the position since the NLRA was passed in 1935. We have previously discussed how the [newly constituted Board](#) is likely to change much of the major case law decided in the last several years, but the General Counsel also wields great influence in the administration of the NLRA. For starters, the General Counsel has “prosecutorial discretion” to decide which cases to advance, or not. For example, we recently pointed out how the Board was divided over the [proof needed to establish a threshold case of a violation of Act](#) with the more pro-management Chairman arguing the standard is more exacting in that there should be a connection between the protected activity and the adverse action. The General Counsel can decide not to issue complaint if he believes this standard of proof has not been met.

Actions we could see from the new General Counsel:

- The types of cases submitted to the Division of Advice will be a good indication of the agenda of the new General Counsel will pursue. By directing that certain types of cases filed with a Region be submitted to Advice, the the General Counsel usually is seeking guidance on a potential change to the law. The most recent such directive of mandatory submissions to Advice is here: [GC Memo – Mandatory Submissions to the Division of Advice \(March 22, 2016\)](#).
- More careful investigation of charges. In the last few years, the tendency of the Regions has been to share little factual information about an allegation contained in a charge, and asking the the Charged Party to submit a response. Indeed, the letters sent to Respondents soliciting a position simply restate the charge allegation with no other information. Not providing details of what someone claims you did wrong that allegedly violates the law obviously makes it difficult (some would argue impossible) to defend. It may have even resulted in some charged parties not participating in an investigation at all. The General Counsel could go back to a more thorough investigation where evidence is solicited from the Charging Party

and many of the details are shared with the Charged Party.

- Use of injunctive relief. With the change in administration comes a change in priorities. The cases the outgoing General Counsel thought warranted Section 10(j) relief (such as in “nip in the bud” organizing cases) may not get the same attention.

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- **Mark Theodore**

Partner