

Statement of
Philip A. Miscimarra
Nominee for Member, National Labor Relations Board
before the
Committee on Health, Education, Labor and Pensions
United States Senate
May 16, 2013

Chairman Harkin, Ranking Member Alexander, and other Committee Members, thank you for the opportunity to testify today.

My wife, Mary Lynn, and my three sons – Andrew, Joseph and Eric – are seated behind me. I am grateful to have their support, and if I am confirmed, they will be making their own sacrifices in the interest of public service.

I also appreciate President Obama's nomination. For a labor lawyer, there is no higher honor than being considered for the National Labor Relations Board (NLRB). The Board deals with rights that are important to nearly everyone: affecting whether and how people can work, support their families, or run successful businesses, with a big impact on communities and state and local governments.

For me, these have never been abstract concepts. I grew up in Pittsburgh, Pennsylvania. My father was the son of Italian immigrants, and he worked for the City of Pittsburgh. My brother, Tony, spent a summer working in a steel mill. I began work at age 14 as a caddy, I worked at a movie theater, then I got a job at the local Carnegie Library. For many years, I worked as a musician – a pianist, arranger, and musical director – represented by Local 60-471 of the American Federation of Musicians.

In my family, I learned first-hand about keeping an open mind regarding labor-management issues.

At one point, my mother was a member of the Pittsburgh Public School Board; my older sister, Pat – while living at home – was a Pittsburgh Public School teacher who participated in a 57-day strike that kept 62,000 students from going to school; and the affected students included my younger sister, Julie, whose high school graduation was jeopardized by the dispute.

The teachers picketed every day, and some teachers – my older sister's friends – regularly came to our house, they put their picket signs outside (facing the street), and everybody came inside where my mother made them breakfast or served them coffee in the kitchen. Everyone was treated with respect. And nobody was forced to abandon their very different, strongly held opinions.

I have applied these same principles while representing employers – and dealing with unions and employees – for 30 years. I have advanced clients' interests by focusing on substantive issues and working to foster constructive relationships with opposing counsel and unions.

I have lived in the Chicago area for most of my career – since 2005, as a partner with Morgan Lewis & Bockius LLP.

I have also been affiliated, over three decades, with the Center for Human Resources at the University of Pennsylvania's Wharton Business School in Philadelphia. My Wharton work has included research and writing, including three books about the NLRB. Rather than choosing sides, my books are directed to practitioners on *all* sides by summarizing – and hopefully making it easier to understand – the sometimes complicated legal principles developed by the Board and the courts.

If I am confirmed, three things would guide my service on the Board.

First, I have great respect for the years of work done by Congress – and by this Committee – which produced the National Labor Relations Act (NLRA) including the Act's amendments. If confirmed, I will remember that labor law policy originates with Congress, not with members of the NLRB.

Second, Board members come and go, but – if confirmed – I will do everything I can to recognize the Board's many career professionals and staff members who do much of the Board's hard work and contribute so much in their public service.

Finally, labor lawyers operate in a world where it can be difficult to find common ground. I embrace the reality that parties – and, often, Board members – can have sharp disagreements and strongly held views. Former Chairman John Fanning served on the Board under Democrats and Republicans, and he stated: "As someone who . . . participated in some 25,000 decisions of the Board, I can assure you that the one factor every [NLRB] case has in common . . . is the presence of at least two people who see things completely different." John Fanning, "The National Labor Relations Act: Its Past and Its Future," in William Dolson and Kent Lollis, eds., *First Annual Labor and Employment Law Institute* 59, 63 (1984), *quoted in* Matthew M. Bodah, *Congress and the National Labor Relations Board: A Review of the Recent Past*, 22 J. LAB. RES. 699, 713 (Fall 2001).

I respect everyone who has served or is willing to serve on the Board. Regarding some policy issues, my fellow nominees and I may not always agree. If confirmed, I will approach every decision with an open mind, and I will share my opinions in a constructive way. I will try to forge agreements with fellow Board members, and I will be open to differing views. Above all, I will do my best to discharge the "difficult and delicate responsibility" placed on every NLRB member (*NLRB v. Ins. Agents' Int'l Union*, 361 U.S. 477, 499 (1960), *quoting* *NLRB v. Truck Drivers Local 449*, 353 U.S. 87, 96 (1957)), which is to apply the law as written, consistent with what Congress intended.

I recognize that the Senate and this Committee must carefully evaluate every nominee, including myself. It is a privilege to be here, and I look forward to the Committee's questions. I ask to have an extended version of my opening placed in the record. Thank you.

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