



COALITION FOR A **DEMOCRATIC WORKPLACE**

October 1, 2018

Dear Senator,

The Coalition for a Democratic Workplace (CDW) strongly opposes the nomination of Mark Pearce to the National Labor Relations Board (NLRB). In his eight years already on the NLRB as both Chairman and member, Pearce has repeatedly pursued policy changes drastically altering decades of labor law precedent and violating employees' and employers' rights for the sake of promoting his own ideological goals. CDW strongly urges the Senate to reject this nominee.

CDW is a broad-based coalition of hundreds of organizations representing hundreds of thousands of employers and millions of employees in various industries across the country concerned with the disruption caused by the NLRB's eight-year campaign to re-write labor law. CDW was originally formed in 2005 in opposition to the so-called Employee Free Choice Act (EFCA) but has since turned its focus to regulatory overreach by the NLRB, which has tried to enact the goals of EFCA through decisions and regulations.

During his tenure, Pearce has pursued drastic policy changes to provide an advantage to unions in organizing campaigns and reverse decades of falling participation and interest in union representation among workers, regardless of the impact these policies would have on employees' and employers' rights. Several of his more egregious policies are listed below.

Tipping the Scales of Representation Elections Against Employees and Employers

Ambush Elections Rulemaking: Under Pearce's term as Chairman, the NLRB issued a rulemaking shortening the timeframe for union representation elections from the previous median of thirty-eight days to as few as fourteen. This "ambush elections" rule effectively limits legal communication between employers and employees prior to a representation election and encourages "back door" union organizing. The rule trampled on employee privacy rights by requiring employers hand over to union organizers employee contact information without approval from employees or employees choosing which information is provided, exposing them to intimidation and harassment.

Lamons Gasket: In 2011, Pearce participated in the *Lamons Gasket* decision prohibiting workers from holding a decertification election for up to a year after a union is installed in a workplace through card check. Under card check, employees do not vote secretly for or against unionization but instead are required to sign union authorization cards in front of coworkers and union organizers, exposing them to intimidation and harassment if they do not support unionization. *Lamons Gasket* forces workers to wait at least a year before they can vote secretly on union representation, regardless of how many workers disapprove of the union.

Obstructing the American Dream

Joint Employer Standard: Under Pearce's chairmanship, the NLRB altered the joint employer standard used to determine when two or more employers are responsible for the essential terms and conditions of employment for the same group of employees. The NLRB expanded the



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standard to include indirect or even potential control over those terms and conditions, exposing every business relationship to new liabilities and destabilizing American business models. Pearce's standard has bipartisan opposition in Congress, and the Save Local Business Act reestablishing the previous standard has already passed the House with support from both parties.

Limiting Employees' Opportunities

Micro-Unions & Specialty Healthcare: In 2011, then-Chairman Pearce issued a decision in *Specialty Healthcare* making it more difficult for employers to prove additional employees should be included in a union's petitioned-for bargaining unit and creating so-called micro-unions. The decision essentially allowed unions to cherry pick which employees they want to organize and exclude and disenfranchise any employees opposing unionization. Employees in micro-unions are unable to cross-train or be exposed to new opportunities, as they would be prohibited from doing the work of another unit, limiting their workplace growth and hindering potential promotions.

Preventing Common Sense Workplace Policies

Purple Communications: In 2014, the NLRB under Pearce's direction issued its *Purple Communications* decision allowing employees to use employers' email systems for union organizing and other collective bargaining activity during nonwork time. The ruling overturned precedent that determined such systems were employer property, and employers therefore had the right to ban non-business communications. In the decision the NLRB made clear that it would be very difficult for an employer to prove "special circumstances" required broad restrictions on such use of email systems.

Handbook Policies: The NLRB under Pearce consistently issued decisions invalidating common sense policies for workplace behavior, including rules prohibiting offensive language (*Plaza Auto Center*, 2014), requiring employees represent the employer and/or business in a positive and professional manner (*Hills & Dale General Hospital*, 2014), compelling workers to "work harmoniously" with other employees (*2 Sisters Food Group*, 2011), and prohibiting disrespectful conduct (*Casino San Pablo*, 2014). All of these rules are logical requirements for workplace behavior, but Pearce wanted to give unions every opportunity to force employers to the bargaining table and nonconforming workers into submission.

Mark Pearce has already demonstrated his inability and unwillingness to resolve issues with an even and impartial hand. He continuously does the bidding of unions, and as a consequence, he infringes upon the rights of employees and employers and the laws he is supposed to uphold. CDW strongly urges Congress to reject this nominee.

Sincerely,

American Foundry Society
American Hotel & Lodging Association
American Pipeline Contractors Association
American Rental Association



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Associated Builders and Contractors
Associated Builders and Contractors Carolinas Chapter
Associated Builders and Contractors Empire Chapter
Associated Builders and Contractors Florida East Coast Chapter
Associated Builders and Contractors Greater Michigan Chapter
Associated Builders and Contractors Greater Tennessee Chapter
Associated Builders and Contractors New Mexico Chapter
Associated Builders and Contractors Northern Ohio Chapter
Associated Builders and Contractors Oklahoma Chapter
Associated Builders and Contractors South Texas Chapter
Associated Builders and Contractors West Virginia Chapter
Associated Builders and Contractors Western Pennsylvania Chapter
Associated General Contractors
Building Service Contractors Association International
California Hotel & Lodging Association
CAWA – Representing the Automotive Parts Industry
Center for the Defense of Free Enterprise
Coalition of Franchisee Associations
Franchise Business Services
HR Policy Association
Independent Electrical Contractors
Independent Office Products & Furniture Dealers Alliance
International Foodservice Distributors Association
International Franchise Association
Kentucky-Indiana Automotive Wholesalers
Littler’s Workplace Policy Institute
National Association of Wholesaler-Distributors
National Club Association
National Council of Chain Restaurants
National Federation of Independent Business
National Franchise Association
National Lumber & Building Material Dealers Association
National Office Products Alliance
National Pest Management Association
National Restaurant Association
National Retail Federation
National Association of Home Builders
Nevada Manufacturers Association
Office Furniture Dealers Alliance
Ohio Equipment Distributors Association



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Precious Metals Association of North America
Retail Industry Leaders Association
The American Society of Employers
United Equipment Dealers Association
United Motorcoach Association
Western Carolina Industries
World Millwork Alliance