



## **TRUCK RENTING AND LEASING ASSOCIATION**

March 19, 2013

The Honorable John Kline  
Chairman  
Committee on Education and the Workforce  
2181 Rayburn House Office Building  
United States House of Representatives  
Washington, DC 20515

The Honorable George Miller  
Ranking Member  
Committee on Education and the Workforce  
2181 Rayburn House Office Building  
United States House of Representatives  
Washington, DC 20515

Dear Chairman Kline and Ranking Member Miller:

The Truck Renting and Leasing Association (TRALA) would like to publicly support H.R. 1120, *The Preventing Greater Uncertainty in Labor-Management Relations Act*. H.R. 1120 would prohibit the National Labor Relations Board (NLRB) from enforcing any action taken since January 4, 2012 for which a quorum would be required, until substantive issues dealing with the current NLRB quorum that are pending in the courts are resolved.

TRALA is a national trade association whose goal is to serve as a unified and focused voice for the truck renting and leasing industry. TRALA's mission is to foster a positive legislative and regulatory climate within which companies engaged in leasing and renting vehicles and trailers, as well as related businesses, can compete without discrimination in the North American marketplace. TRALA's regular membership includes more than 500 companies representing the vast majority of truck renting and leasing operations in the United States. Together, the industry purchases about 35-40 percent of all new Commercial Motor Vehicles in classes 3-8 placed into commercial service in the United States and Canada.

As you know, the NLRB is comprised of five presidentially appointed members, who interpret the National Labor Relations Act (NLRA) by reviewing decisions of administrative law judges (ALJs) and by issuing regulations. The Board also has a presidentially appointed General Counsel, who investigates and prosecutes possible violations of the NLRA by bringing cases before ALJs and, if appealed, before the Board.

According to Supreme Court precedent, the Board needs a quorum of three members to issue decisions and promulgate rules. By law, the NLRB may continue with most of its day-to-day operations without a quorum, such as conducting representation elections and to prosecute cases, but it cannot conduct public policy without a quorum.

In January 2012, the term of recess appointee Board Member Craig Becker (D) expired, leaving the NLRB with only two members, Chair Mark Pearce (D) and Member Brian Hayes (R). Thus, the Board was without a quorum. At this time, President Obama ignored the constitutionally established

separation of powers and the rules of the US Senate by appointing three individuals, Sharon Block (D), Richard Griffin (D) and Terence Flynn (R), to the NLRB during the Senate's pro forma session, arguing erroneously that the Senate was in fact not in session at that time. The Administration has claimed that the recess appointments would last through the end of this session of Congress, likely in December, 2013 or January, 2014.

Last year, TRALA supported the Coalition for a Democratic Workplace's lawsuit challenging these unlawful recess appointments to the NLRB. The case, *Noel Canning v. NLRB*, was heard by the US Court of Appeals for the DC Circuit and their decision validated our concerns about the constitutionality of those appointments when the court ruled that, "In short, we hold that 'the recess' is limited to intersession recesses." The court also ruled that the vacancies and the appointments to fill those vacancies did not arise during an intersession recess and that recess appointments must be done in the same intersession recess in which the vacancy arose.

What this means in a practical matter is that the Supreme Court will likely need to weigh in on this matter and until they do, all public policy actions of the NLRB should be halted in order for this process to play itself out. It is very likely in TRALA's opinion that the Supreme Court will confirm the US Court of Appeals for the DC Circuit and all the proposed rulemakings since January 2012 will have to be reintroduced after a proper and legal quorum is reached within the NLRB.

H.R. 1120 does not stop this Administration from nominating anyone they so choose to the NLRB but those appointments and confirmations by the US Senate must be done legally and until that happens, TRALA strongly urges Congress to halt recent NLRB activities by adopting H.R. 1120 into law so as to eliminate any further instability for both labor and management in the marketplace.

I am happy to discuss TRALA's position in more detail or answer any questions you may have on this issue. Thank you for your consideration.

Sincerely,



Jake Jacoby  
Vice President of Government Relations