

August 2009

NomineeAlert



this issue:

Mark G. Pearce, Nominee to be
Member of the National Labor
Relations Board

Pearce's Background

Founding Partner, Creighton,
Pearce, Johnsen & Giroux

Attorney, Lipsitz, Green,
Fahringer, Roll, Salisbury &
Cambria L.L.P.

Attorney and District Trial
Specialist, National Labor
Relations Board

Board of Directors of the Lawyers
Coordinating Committee of the
AFL-CIO

EDUCATION

B.A., Cornell University
J.D., State University of New York

Who is Pearce?

On July 9, 2009, President Obama nominated Mark G. Pearce to be a member of the National Labor Relations Board (NLRB).

Pearce spent most of his early career in the Buffalo office of the National Labor Relations Board and has practiced law in the private sector since leaving the Board in 1994. Pearce's representation of corrupt union leaders who embezzled union members' money and neglected the duty to represent members begs the question of whether he will be an advocate for unions or for union members if confirmed to the Board.

Given his taste in art, Pearce seems more suited to an appointment to the National Endowment for the Arts than the National Labor Relations Board. Fn.1. He describes himself as follows: "One could describe me as an artist immersed in the

Artist trapped in lawyer's body...

practice of law. That kind of sounds like I'm drowning and about to go under, doesn't it? A good friend described me as a lawyer with the soul

of an artist. I think that sounds better, although the former description might be more accurate. While I enjoy the law, I struggle at fulfilling my desire to help bring beauty to the world. Art is my best vehicle to do this (or life raft, if we want to continue the metaphor). I strive to make my often competing passions complement each other for the bread and for the roses. I'll let you know if I ever succeed. [sic]." *Id.*

"Pearce's representation of corrupt union leaders at the expense of workers makes him unsuitable for this position. The NLRB needs members who are committed to protecting workers and not the union thugs who steal from them."

*-Bill Wilson, President,
Americans for Limited Government*

Pearce served as counsel to Frank Ervolino and his unions, among them HERE Local 4. In 1995, dissidents within the union wanted to see the union's financial records and were rebuffed, with Pearce's assistance. Pearce pushed back against the 500 union members who asked to see the

Continued next page...

What you really need to know about Pearce

Continued from first page...

records stating as follows: "In its present form, this demand appears to be no more than a means of harassing the current administrations of the respective unions named therein, by engaging in a 'fishing expedition'." Fn.2. Ervolino himself stated, "[w]e have nothing to hide, but as I said before, our lawyer, Mark Pearce, is handling that." *Id.* He was right about one part, his lawyer Pearce did handle that. He lied about everything else; he did in fact have plenty to hide. Ervolino became the subject of an investigation by the U.S. Department of Labor's Office of Labor-Management Standards. Ervolino and his wife Anna May were indicted on March 16, 2000 on multiple counts of embezzlement and conspiracy. Ervolino died before he could be tried, but Anna May plead guilty on March 12, 2002 and made restitution of \$144,470.79 to the union's benefit plans. Fn.3.

The National Labor Relations Board exists to protect workers. Because Pearce has been nominated for a position on the Board it is fitting to take a look at how Ervolino's union treated workers. Here is a sample of the things said about this union by members and officials:

- "The old union reps considered the workers to be nuisances, just in the way."
- "All the reps were instructed never to tell the workers what went on at bargaining. That clearly disempowers them in terms of waging a struggle in the workplace."
- "The committee would negotiate a deal and then come out and say 'here, vote on it'." Fn.4.

Other Cases Pearce Handled

Dunbar v. Local Union No. 71, Sheet Metal Workers International Association, 1997 U.S. Dist. LEXIS 1512; 156 L.R.R.M. 2189 (W.D.N.Y.). Pearce's client was found to have committed an unfair labor practice by engaging in recognitional picketing. The court enjoined any further picketing.

DeCarlo v. Salamone, 977 F. Supp. 617 (W.D.N.Y. 1997).

A union member had complaints against the union's officers which he made widely known. The member attempted to bribe fellow members with \$20 each for their vote in a union officer election. Member was brought up on charges for slander and the attempted bribery pursuant to the union constitution and was suspended from membership for three years after the slander charges were dropped. The member appealed to the Carpenters International which upheld the suspension. Pearce represented the Carpenters. The member sued claiming a violation of the Bill of Rights found in the Labor-Management Reporting and Disclosure Act. The court held that a violation occurred on the part of the local stating as follows: "Thus, I find that the Local 85 defendants violated DeCarlo's free speech rights under Section 101 (a)(2) by charging and prosecuting him for slander and libel, despite the fact that the charges ultimately were dismissed."

Apparently the Carpenters with Pearce's counsel do not believe in free speech or the union member bill of rights.

Sources for further reading:

Fn.1. "Artwork" by Mark G. Pearce. Available online at: <http://mysite.verizon.net/vze2bntj/markgastonpearce/>. Accessed August 5, 2009.)

Fn.2. Michael Beebe, *Nurse Presses Complaint Against Ervolino; Leads Coalition Seeking Union President's Ouster in October Vote*, THE BUFFALO NEWS, June 19, 1995, at 1B.

Fn.3. *Criminal Actions, 2002*, Office of Labor-Management Standards, U.S. Department of Labor. Available online at: http://www.dol.gov/esa/olms/regs/compliance/criminal_enforce/criminal_actions_2002.htm. (Accessed August 5, 2009.)

Fn.4. Anna Geronimo Hausmann, *In Order to Form A More Perfect Union The Reform of the AFL-CIO Hospital and Nursing Home Council*, BUFFALO SPREE MAGAZINE, November/December 2000. Available online at: http://www.buffalospreemag.com/archives/2000_1112/111200union.html. (Accessed August 5, 2009.)

NomineeAlert

THIS ALERT IS A SERVICE OF
AMERICANS FOR LIMITED GOVERNMENT
9900 MAIN STREET
SUITE 303
FAIRFAX, VA 22031
703.383.0880
WWW.GETLIBERTY.ORG