

Former NLRB Chair Miscimarra Returns To Morgan Lewis

By **Hannah Meisel**

Law360 (February 20, 2018, 8:02 PM EST) -- Morgan Lewis & Bockius LLP announced Tuesday that labor attorney Philip Miscimarra has returned to the firm after serving more than four years as a member of the National Labor Relations Board and nearly all of 2017 as the NLRB chairman.

Miscimarra returns as partner and will work out of both the firm's Washington, D.C., and Chicago offices, he told Law360 on Tuesday. Before his time with the NLRB, Miscimarra spent eight years at Morgan Lewis, and many more years at other firms in Chicago and his hometown of Pittsburgh. Miscimarra said returning to the firm appealed to him because of the "tremendous amount of talent" Morgan Lewis boasts.



Philip Miscimarra

"I've seen firsthand the type of expertise and resources that the firm can bring to bear when assisting clients with a variety of legal issues and I'm very excited to be back in a position where I can be part of efforts to provide that type of assistance," he said.

Miscimarra was welcomed back to Morgan Lewis with high praise from firm Chair Jami McKeon.

"His thoughtful and collaborative approach to determining matters of labor law was recognized by two presidents of very different philosophies and will certainly serve our clients well as he returns to private practice," she said in a statement Tuesday.

Miscimarra returns to the firm with years of experience deciding cases from around the country in dozens of industries, zooming out to view the case at the macro level, in the context of labor law writ large.

"At the board, we handled cases that ranged from literally rocket scientists to construction workers to a variety of service organizations to hospitals and just about every other type of work that you can think of," he said.

During his tenure with the board, Miscimarra became known in the labor law world for writing long dissents on certain key cases. But he stressed to Law360 Tuesday that he and his fellow board members voted unanimously on 60 to 70 percent of cases.

“It’s true that every NLRB case has a winner and a loser and I’m well aware of the fact that many people tend to focus on who are the winners or who are the losers in particular cases,” he said. “In my own tenure, I attempted to resolve cases in a way that was even-handed. I decided many cases against employers and in favor of unions. I decided many cases against unions and in favor of employers.”

Now that he’s back at Morgan Lewis, Miscimarra will concentrate his efforts on advising employers on labor and employment issues, focusing on traditional labor matters and employment litigation, in addition to helping major business groups address important employment policy issues. He will also lead the firm’s NLRB special appeals practice, which assists clients with appeals to the board.

Miscimarra’s tenure with the NLRB coincided with a shift in the labor market, most notably with the emergence of the so-called gig economy, including the rise of ridesharing apps like Uber and Lyft along with other online marketplaces where workers can pick up “side hustles.”

But Miscimarra said that the rhetoric may miss the actual facts of history, and that what’s old may be new again. Miscimarra has written that the NLRB should not get in Congress’ lane. He said it’s the NLRB’s responsibility to figure out how to handle cases while staying true to the National Labor Relations Act.

“The ... challenge the board will have is just attempting to differentiate between what is truly new versus what are simply variations on concepts and practices that are very similar to what has existed in some instances for many decades,” he said. “One of the questions that the board has addressed in a variety of ways is to define who constitutes an employee and who constitutes an employer. Those issues are often regarded as very new ones but at the same time, we have many very important board and court cases, including Supreme Court cases, that have addressed those issues going all the way back 50 or 60 years.”

In addition to taking on his role at Morgan Lewis again, Miscimarra will also be stepping back into a long-held fellowship at the University of Pennsylvania’s Wharton School of Business, where he researches and has written several books on labor issues. Miscimarra holds both an MBA and a law degree from UPenn.

In his free time, Miscimarra said he stays current with sports — though a Pittsburgh native, he told Law360 he was very happy to see the Chicago Cubs end its World Series drought in 2016 — and is an avid runner. But Miscimarra will always return to his lifelong love of music, having paid his way through college as a musical director and vocal coach arranger and piano accompanist. He was even a member of the Local 6471 chapter of the American Federation of Musicians for 25 years.

“My piano technique is nothing close to where it was 30 or 40 years ago, but I still play the piano,” he said.

--Editing by Jack Karp.