

May 2009

# NomineeAlert



## this issue:

M. Patricia Smith, Nominee for  
Solicitor of Labor;  
Lorelei Boylan, Nominee for  
Administrator of the Wage and  
Hour Division, U.S. Department  
of Labor

## Smith's Background

Commissioner, N.Y. State  
Department of Labor

Bureau Chief, Labor Bureau, N.Y.  
State Attorney General's Office

### EDUCATION

Trinity College  
N.Y. University School of Law

## Boylan's Background

Director of Strategic Enforcement,  
N.Y. State Department of Labor,  
Labor Standards Division.

Bureau of Immigrant Workers'  
Rights, N.Y. State Department of  
Labor

Assistant Attorney General, N.Y.  
State Attorney General's Office

### EDUCATION

Hunter College  
Benjamin N. Cardozo Law School

## Who are M. Patricia Smith and Lorelei Boylan?

President Obama's payoff to Big Labor for their valuable campaign support started immediately after he was sworn in. First Obama signed several union friendly executive orders that among other things deprived union members of previously mandated information about their rights. Next his Labor Department began work to gut financial and conflicts of interest disclosures required from unions and their officers. Now the controversial enforcement practices in the current work of two of his nominees to run the Department raise serious questions as to whether they should be confirmed to their respective positions.

These two nominees are M. Patricia Smith and Lorelei Boylan. Smith has been nominated to be Solicitor of Labor, the third highest official and the person with the final word on all legal advice in the Department. Boylan has been nominated to be the Administrator of the Department's Wage and Hour Division, the division responsible for enforcing minimum wage and overtime laws among others.

Both Smith and Boylan are currently officials in the New York State Department of Labor. Smith Serves as Commissioner and Boylan as Director of Strategic Enforcement in the Labor Standards Division.

Smith's nomination is troubling for among other reasons because of an initiative she devised in her current position, the "Wage Watch." Fn.2. It's an initiative run by Boylan's division. This initiative could very likely be a model used by Smith and Boyland on a national level if both are confirmed. If so, it could turn tens of thousands of "community organizers" into raving vigilantes nationwide.

The enforcement initiative essentially deputizes private entities, such as ACORN, to do enforcement work through "formal partnerships" with the state. Groups participating in this initiative are given a specific geographic zone to patrol, are provided with training and literature, and are assigned a designated contact person to which they provide "referrals"

when they find what they decide are violations of wage and hour laws.

The press release announcing the initiative made the case that the state needed help stating, "We are enforcing the law as creatively and aggressively as we can, but the government cannot do it alone." In short, the Obama Administration may soon be sending out the order to "round up the posse"—and sick it on unsuspecting business owners.

**“ The image painted by the Department in its January 26 release is of a posse of activists, duly deputized by the weighty imprimatur of the Department, demanding access to any employer in the state whom they have chosen either at random, by will, or by prejudice. ”**  
Fn.1.

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# What you really need to know about M. Patricia Smith and Lorelei Boylan

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The vast majority of the groups participating in this initiative are either labor unions or labor union affiliated entities. The notion of labor bosses patrolling a beat instead of Labor Department officials has caused New York business groups to take note and express serious concern. A group of business associations made their concerns known stating, "To give quasi-enforcement capabilities to certain, seemingly hand-selected constituencies sets a troubling precedent that could spread among the spectrum of state agencies. We wonder how such an effort can create an atmosphere of anything other than vigilantism where every honest employer will have a legitimate concern for the preservation of his or her rights as a taxpaying business owner in the state of New York. The image painted by the Department in its January 26 release is of a posse of activists, duly deputized by the weighty imprimatur of the Department, demanding access to any employer in the state whom they have chosen either at random, by will, or by prejudice." See *Fn. 1*.

What these business groups fear are hardball union organizing tactics such as "corporate campaigns" that often occur when a union knows that it can't convince the employees to join the union, so it engages in a strong-arm public relations and legal campaign against the employer. The campaign continues until the employer caves in and agrees to help corral its employees into union membership.

Imagine the pressure that a small employer would feel when confronted with a skilled union organizer who walks in, flashes a copy of his government-granted "formal partnership," and then proceeds to casually mention that he need not take a look at the employer's books if he gets help convincing employees to join the union. Meanwhile a recalcitrant employer next door is paying immigrant workers less than the minimum wage and because the employer is not an organizing target they go unnoticed. Or worse, the union knows that this employer next door is engaging in illegal activity, the employer buys peace by funding a union affiliated group, and no Labor Department referral occurs.

The New York Post recently editorialized against the Wage Watch initiative, pointing out the very real potential for union corruption stating, "One needn't have lived in New York very long to understand where *that* presently will lead: kangaroo-court proceedings against companies that refuse to buckle under to activist pressure." *Fn. 3*.

The Post added, "No reasonable person objects to state efforts to fairly, fully enforce the law. But empowering interest groups between the state and the citizen can quickly distort the law's purpose. After all, the organizations the Labor Department has teamed up with are *hardly* disinterested parties." Well said.

If this is how Obama's nominees run operations at the state level, there can be little doubt that this practice of deputizing activist organizations will also likely occur at the federal level. After all, this President cut his teeth on Saul Alinsky-style "community organizing."

During the past eight years, the U.S. Department of Labor obtained over 900 criminal convictions against corrupt union officials, mostly for crimes such as embezzlement. *Fn. 4*. Placing union officials into a position where they are engaged in quasi-law enforcement activities virtually begs irresponsibility at best, and malfeasance at worst.

Little wonder there is a widespread feeling the Obama Administration should not allow enforcement actions to be leveraged for the collateral purpose of union organizing. Enforcement actions should be handled by Department officials alone, not by union organizers and community activists who have a conflict of interest in seeing a particular employer penalized.

So now, it's up to concerned senators to use the confirmation process to question Smith and Boylan about their enforcement plans and whether they would use the Wage Watch model on a national level. If these nominees do not disavow the use of community activists such as union officials to enforce federal laws then one is left to question whether they will give fidelity to the rule of law if confirmed. One is also left to question what is becoming of the U.S. Department of Labor and whether a more accurate description would now be "U.S. Department of Labor *Unions*."

## Sources for further reading:

**Fn.1.** Business coalition letter to M. Patricia Smith, Commissioner, New York Department of Labor, February 9, 2009. Available online at: <http://www.nyacs.org/documents/09wagewatch.pdf>. (Accessed May 14, 2009.)

**Fn.2.** *LABOR DEPARTMENT INITIATIVE EMPOWERS ORDINARY PEOPLE TO JOIN THE FIGHT AGAINST WAGE THEFT: New York Wage Watch, the Only One of its Kind in the Nation, to Roll Out in New York City and Long Island*, New York State Department of Labor press release, January 26, 2009. Available online at: [http://www.labor.state.ny.us/pressreleases/2009/Jan26\\_2009.htm](http://www.labor.state.ny.us/pressreleases/2009/Jan26_2009.htm). (Accessed May 14, 2009.)

**Fn.3.** *Vigilante Labor "Justice,"* NEW YORK POST, February 2, 2009, at 22. Available online at: [http://www.nypost.com/seven/02022009/postopinon/editorials/vigilante\\_labor\\_justice\\_153134.htm](http://www.nypost.com/seven/02022009/postopinon/editorials/vigilante_labor_justice_153134.htm). (Accessed April 22, 2009.)

**Fn.4.** *2008 Annual Report*, Office of Labor-Management Standards, U.S. Department of Labor, at 2. Available online at: [http://www.dol.gov/esa/olms/regs/compliance/highlights\\_08.pdf](http://www.dol.gov/esa/olms/regs/compliance/highlights_08.pdf). (Accessed May 14, 2009.)

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