

AFFIDAVIT

I, Bryan Burnett, hereby state as follows:

1) I am currently the Chief Information Officer (CIO) of the National Labor Relations Board. I began serving in this capacity on November 22, 2009.

2) As a consultant first, and later as a Federal employee, I was the principal architect of the Board's electronic collaboration and voting system, called the Judicial Case Management System (JCMS). I designed JCMS at the direction of the Board and in accordance with the Board's specifications. As the CIO, I am responsible for the system's operation and maintenance.

3) I have reviewed the information recorded in logs produced by JCMS relevant to the Board's final rule published on December 22, 2011, "Representation Case Procedure." This affidavit provides background information about the system, and a summary of the relevant events in the system from December 13th through the 22nd of 2011.

The Electronic Room

4) JCMS is built with a software product from EMC Corp. named eRoom. The JCMS system provides a virtual electronic environment enabling people to work as if they were in one room by providing a single, secure environment to collaborate and vote on decisional documents.

5) In JCMS, there is a single electronic room where draft documents are circulated and the votes of Board Members are cast in many different cases.

6) Users can go into the JCMS electronic room by logging in. Each user has a unique name and secure password that are required to log in.

7) JCMS tracks when each user comes into the room, and tracks certain actions that the user takes. This includes opening and viewing items in the electronic room.

8) In most offices, the Board Member selects one or more staff members to perform the ministerial function of logging in to the electronic room, monitoring events, and entering the Board Member's actions. These staff are given display names within the system that reflect their Board Member's names and the staff's initials, and they are authorized to view the Board Member's items and enter the Board Member's actions as directed by their Board Member. A review of the electronic room's logs shows that, during December 2011, all three sitting Board Members relied primarily upon their Chief Counsel and/or Deputy Chief Counsel for these purposes. Chief Counsel and Deputy Chief Counsel are the two highest positions on a Board Member's staff.

- A. Chairman Pearce, when directing action through his Chief Counsel Kent Hirozawa, appears in the room as "Pearce(KH), Mark"
- B. Chairman Pearce, when directing action through his Deputy Chief Counsel Kathleen Nixon, appears in the room as "Pearce(KN), Mark"
- C. Board Member Becker, when directing action through his Chief Counsel Peter Winkler, appears in the room as "Becker(PW), Craig"
- D. Board Member Becker, when directing action through his Deputy Chief Counsel Rachel Lennie, appears in the room as "Becker(RL), Craig"
- E. Board Member Hayes, when directing action through his Chief Counsel James R. Murphy, appears in the room as "Hayes(JRM), Brian"
- F. Board Member Hayes, when directing action through his Deputy Chief Counsel David Martin, appears in the room as "Hayes(DM), Brian"

9) Cases processed within JCMS are given a unique number. While these numbers are typically generated in the Agency's Regional Offices, certain Board actions do not originate in the Regional Offices and are assigned a unique number by a member of the CIO's Office.

10) There are three "stages" in JCMS. The first stage involves assignment to a panel, preliminary analysis, deliberations and an initial vote on the issues presented. In the second stage, the decision is drafted consistent with the initial vote. In the third stage, the system presents a voting construct through which the draft decision is circulated to the panel and votes are taken.

11) For each case, a system element marks which Board Members are participating in the deliberations. This system element is marked either "Yes", indicating that the Board Member is participating, or "No", if he is not participating. This system element is very important in the Board's functioning, as when a Board Member is not participating, he no longer receives tasks requesting him to vote. When a Board Member wishes to remove himself from participating in a case, by recusal or otherwise, he informs the Office of the Executive Secretary and the system element is changed from "Yes" to "No." This element is visible to all users in the system.

12) Similarly, when a Board Member resigns, dies, or leaves office, the system element which reflects a Board Member's name is changed to "Vacant" in all pending cases. When this system element is marked "Vacant", JCMS no longer expects any votes to be cast by that Board Member's office. This element is visible to all users in the system.

13) As noted above, once a case enters the third stage, the system presents a voting construct. Once a draft decision is ready to be circulated to the panel, it is uploaded into the voting construct and circulated to all Board Members who have not yet voted.

14) When this occurs, a task is created for each of these Board Members, which is a call to each participating Board Member to cast his vote on the circulated document. JCMS creates and sends an email notification to the Board Members and their staffs, providing a link directly to the task in the electronic room.

15) Any new or newly altered item in the electronic room is flagged for each user with a red arrow. This red arrow remains until the user views the item.

16) The room is designed with six types of votes which can be cast on circulated documents: "APPROVED", "APPROVED W/ EDITS", "APPROVED W/ MODS", "APPROVED IN PART", "NOTED", and "NOTED WITH MEMO."

17) A vote of "APPROVED" means that the Board Member agrees with the circulated document. If the approving Board Member has suggestions, anything in excess of non-substantive edits is indicated by voting "APPROVED W/ MODS." The suggestions are attached to the vote itself, in the form of a revision of the decision, and circulated to the panel for approval.

18) If a Board Member does not agree with a circulated document and wishes to dissent from the majority opinion, the Board Member votes "NOTED WITH MEMO" and attaches his dissent. A vote of simply "NOTED" means that the Board Member does not desire to take any further action – now or in the future – with regard to the document. This is used in many contexts: for example, a Board Member may vote "NOTED" on a superseded version of a document, or on a new version of a majority document that the Board Member has already satisfactorily dissented from in another vote.

19) The electronic room is designed to close the voting automatically once all Board Members vote on all documents circulated in a case. When this occurs, the third stage is closed and there is no further opportunity to vote or circulate drafts in this case in the electronic room. However, if a Board Member chooses not to cast a vote on each circulated document, the case stays in the third stage of processing and the Board Member can choose to cast his vote and circulate documents later.

December 2011 in the Electronic Room

20) On December 13, the Chief Counsel and/or Deputy Chief Counsel of all three Board Members were active in the electronic voting room. Votes for all three Board Members

were cast. Board Member Hayes's Chief and Deputy were active throughout the day. (See Supporting Data, attached.)

21) On December 13, at 12:53:58 p.m., at the instruction of Chairman Pearce, I created a voting construct in JCMS for this rulemaking. This involved generating a unique number and placing this rulemaking in the third stage of processing to indicate that it was ready for voting. I set the "Participating" system element to "Yes" for Chairman Pearce, Board Member Becker, and Board Member Hayes for this rulemaking. All three Board Members remained participating on this rulemaking throughout December 2011.

22) On December 13, at 12:57:25 p.m., acting through his Deputy Chief Counsel, Chairman Pearce placed the final rule in the electronic room and circulated it to all participating Board Members. Chairman Pearce's vote was cast as "APPROVED" and the remaining participating Board Members were sent a task, with email notification, calling for their vote.

23) On December 14, the Chief Counsel and/or Deputy Chief Counsel of all three Board Members were active in the electronic voting room. Votes for Chairman Pearce and Board Member Hayes were cast. Board Member Hayes's Chief and Deputy were active throughout the day.

24) On December 15, the Chief Counsel and/or Deputy Chief Counsel of all three Board Members were active in the electronic voting room. Votes for all three Board Members were cast. Board Member Hayes's Chief was active throughout the day.

25) On December 15, at 4:31:16 p.m., acting through his Deputy Chief Counsel, Board Member Becker voted "APPROVED W/ MODS" and attached modifications to the Chairman's final rule that had been circulated on the 13th.

December 16th

26) On December 16, the Chief Counsel and/or Deputy Chief Counsel of all three Board Members were active throughout the day in the electronic voting room. Votes for all three Board Members were cast.

27) On December 16, Board Member Hayes cast 18 votes. An analysis of the voting data shows that this is more votes than he cast on any other day from the 13th through the 22nd, and more than any other Board Member cast on the 16th.

28) On December 16, at 11:54:42 a.m., acting through his Chief Counsel, Chairman Pearce voted "APPROVED W/ MODS" and attached further modifications to the final rule.

29) On December 16, at 12:05:32 p.m., acting through his Chief Counsel, Board Member Becker voted "APPROVED."

30) On December 16, at 12:24:02 p.m., acting through his Deputy Chief Counsel, Chairman Pearce circulated the modified version uploaded at 11:54:42 a.m. This generated a task for all Board Members who had not yet voted, which in this case was only Board Member Hayes.

31) On December 16, at 12:37:21 p.m., Board Member Hayes' Deputy Chief Counsel opened this task.

32) On the subsequent days, December 17-22, this rulemaking case remained in stage three, the voting stage. Board Member Hayes remained active, casting a total of 46 additional votes in the electronic room during this time.

I have read this statement consisting of 9 pages, including this page and the following supporting data, I fully understand its contents, and I certify under penalty of perjury that this document is true and correct to the best of my knowledge and belief.

Executed on June 11, 2012

A handwritten signature in black ink, appearing to read "Bryan Burnett", written over a horizontal line.

Bryan Burnett, CIO, NLRB

Supporting Data

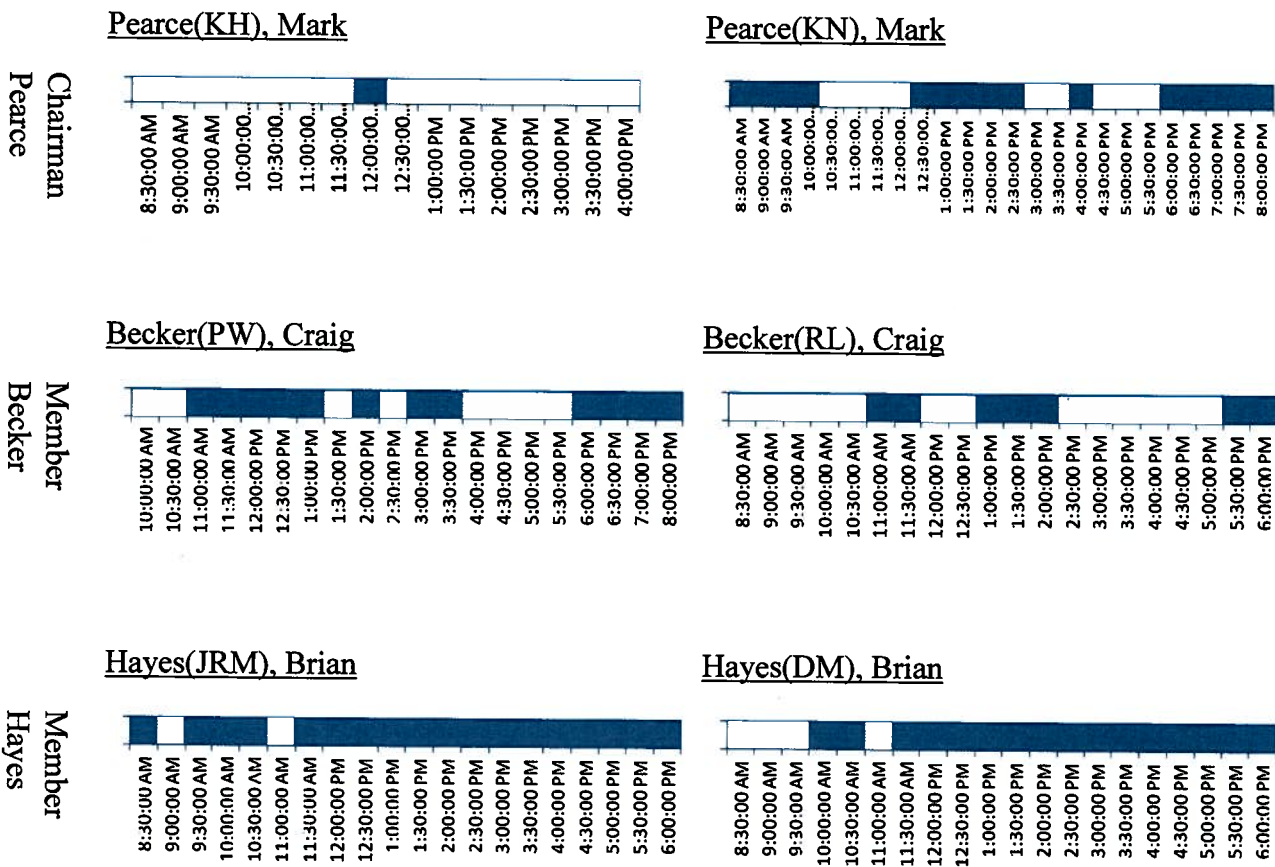
SD_1) The chart below illustrates which users entered the electronic room on each day from December 13, 2011, to December 22, 2011.

| Did the user enter the room? | Dec 13 | Dec 14 | Dec 15 | Dec 16 | Dec 17 | Dec 18 | Dec 19 | Dec 20 | Dec 21 | Dec 22 |
|-------------------------------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|
| Pearce(KH), Mark | Yes | No | Yes | Yes | No | No | No | Yes | Yes | Yes |
| Pearce(KN), Mark | Yes | Yes | Yes | Yes | No | No | Yes | Yes | Yes | Yes |
| Becker(PW), Craig | Yes | Yes | Yes | Yes | No | No | Yes | Yes | Yes | Yes |
| Becker(RL), Craig | Yes | Yes | Yes | Yes | Yes | No | Yes | Yes | Yes | Yes |
| Hayes(JRM), Brian | Yes | Yes | Yes | Yes | Yes | No | Yes | Yes | Yes | Yes |
| Hayes(DM), Brian | Yes | Yes | No | Yes | No | No | Yes | No | No | Yes |

SD_2) The chart below illustrates the number of votes cast by each Board Member in the electronic room from December 13, 2011, to December 22, 2011.

| Votes cast in the electronic room | Dec 13 | Dec 14 | Dec 15 | Dec 16 | Dec 17 | Dec 18 | Dec 19 | Dec 20 | Dec 21 | Dec 22 |
|--|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|
| Chairman Pearce | 6 | 7 | 12 | 4 | 0 | 0 | 1 | 21 | 12 | 15 |
| Board Member Becker | 3 | 0 | 6 | 9 | 0 | 0 | 22 | 9 | 7 | 15 |
| Board Member Hayes | 4 | 11 | 11 | 18 | 0 | 0 | 9 | 14 | 15 | 8 |

SD_3) The charts below illustrate the activity in the electronic room on December 16, 2011, on behalf of each Board Member, in ½ hour blocks of time. Periods of activity in the electronic room are shown in blue. Periods of inactivity are blank, or shown in white.

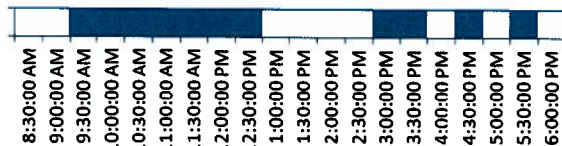
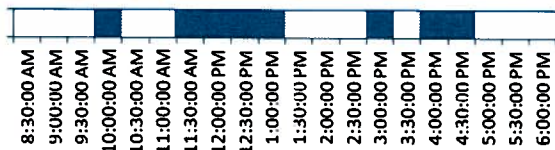


SD_4) The charts below illustrate the activity in the electronic room on behalf of Board Member Hayes, in ½ hour blocks of time, from December 13, 2011, to December 22, 2011. Periods of activity in the electronic room are shown in blue. Periods of inactivity are blank, or shown in white.

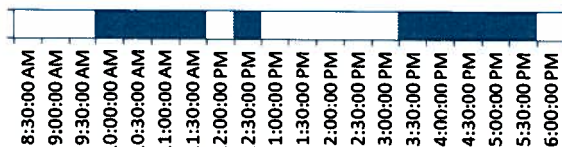
Hayes(JRM), Brian

Hayes(DM), Brian

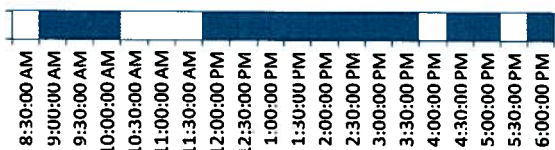
Dec 13



Dec 14

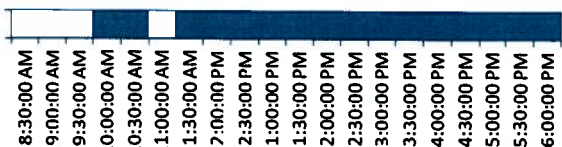
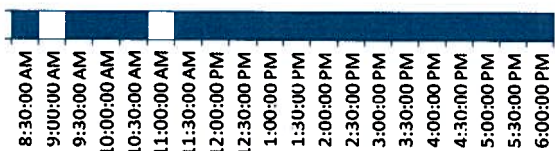


Dec 15

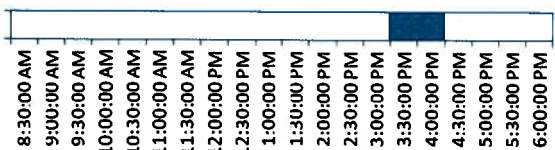


No activity

Dec 16



Dec 17



No activity

Hayes(JRM), Brian

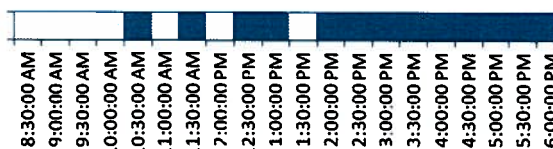
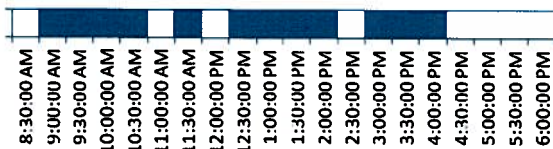
Hayes(DM), Brian

Dec 18

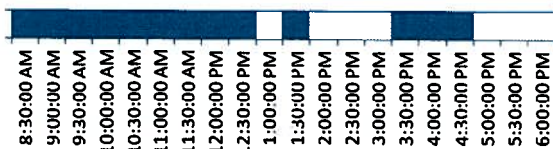
No activity

No activity

Dec 19



Dec 20



No activity

Dec 21



No activity

Dec 22

