CLIENT ALERT: NLRB Signals Shift Towards a More Pro-Union Agenda

Since President Obama's 2010 appointments of three new members to the National Labor Relations Board ("NLRB"), the Board has signaled a shift in its agenda towards a more pro-union stance. Recent NLRB decisions as well as speeches by Board Members indicate that the Board may be taking steps to change the legal landscape surrounding the National Labor Relations Act ("NLRA") in a manner which would be favorable towards unions.

On October 25, 2010 the NLRB reversed a regional director's dismissal of a union's petition which sought a vote on union representation for graduate teaching and research assistants. *See New York University*, 356 NLRB 7 (2010). Through this recent decision, the NLRB stopped short of overruling its 2004 decision in *Brown University*, 342 NLRB 483 (2004), which held that graduate assistants were not employees under the NLRA. However, the Board did state that there are "compelling reasons" to reconsider the *Brown University* decision. This decision signals a potential change in the Board's position on who are considered to be "employees" covered by the NLRA.

While the full effect of this decision is not yet entirely clear, it does indicate that the Board may be inclined to broaden the context of who is considered an "employee" under the NLRA. With this decision, the NLRB laid the foundation for the potential reversal of the *Brown University* decision by remanding the case to develop a full evidentiary record. Once the Board has this full record, it may then have the necessary support to fully reverse the prior precedent and to thereby expand the current scope of NLRA covered employees.

In addition, recently appointed Board Member Mark Pearce gave a speech at Suffolk University Law School in October 2010 during which he foreshadowed some other potential changes through the NLRB's rulemaking which could benefit unions. One issue which Pearce discussed was the possible shortening of the time period between the filing of an election petition and an election. While this change has not yet been made, Pearce's comments on it demonstrate that the Board is interested in making changes to the legal landscape through its rulemaking process as well as its decisions.

Employers should be alert to this shift by the NLRB towards a more pro-union agenda. In particular, with the proposed Employee Free Choice Act ("EFCA") seemingly remaining stagnant in Congress, there may be cause for concern that the NLRB could attempt to endorse significant portions of the EFCA through its rulemaking process instead of through the legislature. While the Board has yet to issue any such decisions or rules, its shifting stance reasons that they may be coming.

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