Employers Should Be Mindful of Appointments of Pro-Union Members to the NLRB

On March 27, 2010, President Obama announced a number of recess appointments, including four appointments to the Equal Employment Opportunity Commission and two to the National Labor Relations Board. As to the latter, President Obama appointed SEIU and AFL-CIO lawyer Craig Becker and union attorney Mark Pearce to vacant seats on the NLRB. As recess appointees, the terms of Becker and Pearce will run until the end of the next session of Congress (the end of 2011).

President Obama chose not to recess appoint the third NLRB nominee awaiting confirmation, Republican attorney Brian Hayes. As a result, unless Hayes is confirmed in the next months, the NLRB will be composed solely of three (3) Democrats when the term of Peter Schaumber expires on August 27. The Board has not been composed of all members of one party for more than sixty years. Traditionally, the five member Board has had three members from the sitting president's party and two members from the opposition party.

President Obama appointed Becker despite strong opposition from a diverse array of business groups and opposition by members of the Senate, including two Democrats. The opposition to Becker is based on his controversial writings which advocate for, among other things, reduced roles for employers in representation elections and greater rights for unions to communicate with employees in the workplace.

The appointments of Becker and Pearce to join current Chair Wilma Liebman and Schaumber provide the NLRB a three-member Democratic majority of former union-side lawyers. Commentators expect a number of pro-union decisions to issue as the new Board considers pending and new cases. It is also considered likely that labor unions will pressure the Board to engage in rulemaking to revise current representation election procedures to make it easier for unions to organize.

The recess appointments of Becker and Pearce reflect President Obama's commitment to labor unions. With these appointments, employers can now expect efforts at improving union representational rights to come both from the NLRB and Congress which is likely to consider enactment of the Employee Free Choice Act in the near future.

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