

# The Bennett Law Firm

## Client Update



*Labor Relations • Employment Law • Business Litigation*  
*Trusted Advisor to Management Since 1962*

### **RECESS APPOINTMENTS TO NLRB EXPECTED TO DRAMATICALLY SHAKE UP LABOR RELATIONS IN AMERICA**

Last Saturday, President Obama announced the recess appointment of two union lawyers to the National Labor Relations Board. President Obama appointed the controversial Service Employees International Union and AFL-CIO lawyer Craig Becker as well as union lawyer Mark Pearce. With these appointments, the Democrats will have a three to one majority on the NLRB. The lone Republican's term on the Board will expire in August. With the expiration of Republican Peter Schaumber's term, the Board will be an all Democrat Board unless the two vacant Republican slots on the Board are filled. Not since the 1930's have the NLRB members been all from one party.

#### ***THE CONTROVERSIAL APPOINTMENT OF CRAIG BECKER***

The President's appointment of Becker is controversial because of Becker's writings on union issues. Becker has written that:

- Employers should have no role in union representation elections or unfair labor practice cases.
- Employers should not be able to challenge the composition of a bargaining unit.
- Employees should be allowed to strike over grievances even when there is a contract in place.
- The definition of supervisor should be changed to expand the number of employees eligible to join unions.

## ***BOARD EXPECTED TO CONSIDER UNION FRIENDLY REGULATIONS***

As reported in the New York Times, many expect that the Democratic dominated Board will revamp NLRB rules to make it much easier for unions to organize workplaces. Although Congressional Democrats have failed in their efforts to pass the misnamed Employee Free Choice Act, the business community is concerned that the Board will accomplish through regulation what Congressional Democrats were not able to legislate.

### ***ACTIONS EMPLOYERS SHOULD TAKE NOW***

Employers should implement a comprehensive union free program that includes:

- Labor Relations Vulnerability Assessment to identify and correct weaknesses in the organization;
- Assessment of the status of employees designated as a supervisor or working foreman;
- Supervisor training on the card check legislation and on legally compliant best practices union avoidance strategies; and
- Strategic implementation of lawful persuader activity with employees to educate employees why remaining union free is in their best interest as well.

Finally, part of a positive, proactive, written communication program with employees should include a clear union free message as well as the use of up to date effective employment policies. Outdated policies provide unions with fodder to use in their organizing efforts. Additionally, we can recommend additional policies that can help neutralize some of the key messages that unions often use when marketing unionization to employees.

### ***ADDITIONAL INFORMATION***

Should you have any questions about these issues, please contact us at 207.773.4775 or via e-mail at [pbennett@thebennettlawfirm.com](mailto:pbennett@thebennettlawfirm.com) or [rfinberg@thebennettlawfirm.com](mailto:rfinberg@thebennettlawfirm.com).

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