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FEES & BURGESS, P.C.



****E-BLAST: March 31, 2010****

President Obama Announces Intent to Appoint Two New Members to National Labor Relations Board

Fees & Burgess, P.C., Emphasizes:

On March 27, 2010, President Obama announced his intent to appoint Craig Becker and Mark Pearce to the National Labor Relations Board (NLRB) during the congressional recess. With the addition of these two appointees, the NLRB will have four seated members of a possible five-member board. Mr. Pearce is a labor attorney with some bipartisan support. However, Mr. Becker, an SEIU/ AFL-CIO lawyer, was appointed despite the bipartisan objections of the Senate over his qualifications and abilities to serve effectively as an NLRB board member.

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President Obama previously nominated Mr. Becker to the NLRB and placed him in line for Senate confirmation on July 9, 2009. However, in February of this year, Senate Republicans successfully blocked his nomination. While presidents normally nominate NLRB board members for confirmation by the Senate, presidents also maintain the privilege to unilaterally appoint such members during congressional recesses (although with a limited term). This executive appointment will allow Mr. Becker to serve without Senate confirmation until the Senate adjourns at the end of 2011.

Critics of Mr. Becker argue that he cannot remain unbiased or impartial in reviewing and deciding labor cases. While pro-labor officials appreciate Mr. Becker's union representation experience and background, others worry about his established pro-labor views. His inflammatory comments during his nomination process angered many people, particularly when he stated that employers should not have a voice in union elections. Mr. Becker's writings also have created controversy since they imply that the NLRB has the power to implement some of the changes proposed in the Employee Free Choice Act without congressional action. Such an expanded role by the board would be an unprecedented expansion in its traditional role.

When the term of the only Republican board member expires in August, it will be the first time since the 1940's that all members of the board will be from the same party, and Democrats. With the addition of these two board members, the NLRB may begin to quickly review the existing landscape of labor laws and previous NLRB decisions. Employers should continue to monitor activity from the NLRB and Congress as the administration continues to implement its pro-labor agenda.

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