

President Obama Announces Controversial Recess Appointments to NLRB and EEOC

March 29, 2010

On March 27, 2010, President Obama directly appointed individuals to the National Labor Relations Board and Equal Employment Opportunity Commission without awaiting Senate approval, as part of a group of “recess appointments.” Most notable among these recess appointments, which are valid until the end of 2011, is the appointment of Craig Becker, to the NLRB, which has been functioning with only two members since the end of 2007.

Mr. Becker is a former associate general counsel for the Service Employees International Union and the AFL-CIO. There has been strong Republican and business opposition to his appointment since it was first announced in April of 2009 due to what many consider “controversial and confrontational views” Mr. Becker has expressed in his writings. One of the most cited examples involves a 1993 law review article in which he wrote that employers should not be a party in any NLRB proceeding relating to union elections -- eliminating their role in establishing appropriate bargaining units, determining eligible voters, and raising objections to union conduct during elections.

Although initially approved in committee, Mr. Becker’s nomination to the NLRB was blocked by Senate Republicans and two Democrats in February 2010. Indeed, all 41 Senate Republicans recently sent the President a letter urging him not to appoint Mr. Becker during the recess. The Republicans argued that Mr. Becker’s writings “indicate that he would use his position on the NLRB to institute far-reaching changes in labor law far exceeding the Board’s authority and bypassing the role of Congress.”

The President also appointed Mark Pearce to the NLRB, a union-side labor lawyer, but much less controversial choice. He did not, however, appoint a fifth member in what would traditionally be a Republican-designated spot. The president had nominated Brian Hayes, currently chief Republican Labor Counsel for the Senate HELP Committee but unlike Messrs. Becker and Pearce, Mr. Hayes was not given a recess appointment. Now that the NLRB will have four members, it will be able to chip away at the backlog of over 210 cases that has developed over the last two years, while the NLRB only had two members. In particular, organized labor and other interest groups have identified some 40 decisions issued by previous Board's which they wish to have a new Board reconsider and perhaps reverse.

The President also appointed four individuals to various roles in the EEOC. The President appointed Democrat Jacqueline Berrien as Chair. He also appointed Democrat Chai Feldblum and Republican Vicki Lipnic as Commissioners and David Lopez as General Counsel. Berrien most recently served as Associate Director-Counsel of the NAACP Legal Defense and Educational Fund. Feldblum has been a Professor at the Georgetown University Law Center since 1991. Lipnic served as U.S. Assistant Secretary for Labor and Employment Standards from 2002 until 2009. Lopez worked as a Supervisory Trial Attorney at the EEOC's District Office in Phoenix. With a full quorum of Commissioners, the EEOC will now be able to complete its regulatory process with respect to the Genetic Information Nondiscrimination Act, the ADA Amendments Act and the recently issued proposed rules for the Age Discrimination in Employment Act.

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