

Recess Appointments to NLRB, EEOC

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On Saturday, March 27, President Obama used his constitutional authority to make 15 "recess appointments" in various federal agencies, including the National Labor Relations Board (NLRB) and the Equal Employment Opportunity Commission (EEOC). With these appointments, both agencies will likely become much more active.

Recess appointments are allowed when the Senate is not in session. Such appointments have historically been used by presidents to install federal government officials whose nominations have been blocked in the Senate.

The most controversial appointment is that of Craig Becker to the NLRB. Becker is a union attorney who has been employed by the Service Employees International Union. Two Democrats joined Senate Republicans to block Becker's nomination in February, based on concerns that he has taken strong pro-union positions in published articles.

The President also appointed Democrat Mark Pierce to the NLRB. He is also a union attorney, but his nomination had not been blocked by Republicans. The President had previously also nominated Brian Hayes, a Republican Senate analyst, but the President did not use his recess appointment authority to appoint Hayes to the NLRB.

The NLRB has been operating with only two members, since the beginning of 2008. A pending Supreme Court case will decide whether NLRB decisions issued by two members are valid, or whether the NLRB needs to have at least three members to issue decisions. The Saturday appointments will bring membership on the NLRB to four members, one short of the five called for by law.

The Saturday appointments create a Democratic majority on the NLRB and are likely to result in more pro-union decisions by the Board, including possible reversals of some decisions issued by the Republican-majority "Bush Board" on such topics as union solicitations using employer e-mail, and the legal definition of "supervisors" under the National Labor Relations Act.

The President also appointed three EEOC members. The EEOC has been operating without a quorum. With these three appointments, the EEOC is likely to finalize proposed regulations on the Americans With Disabilities Act and the Genetic Information Nondiscrimination Act, and to address other pending issues which have been delayed due to the lack of a quorum.

The recess appointments allow the appointees to serve through the end of 2011.



If you have questions about recess appointments, please contact your WNJ Labor and Employment attorney.