



Legal Alert: Update: Senate Fails to Confirm Becker as NLRB Member, Could a Recess Appointment Be Lurking?

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On February 9, 2010 the Senate failed to invoke cloture on Craig Becker's nomination to the National Labor Relations Board (NLRB) by a vote of 52-33. There is a possibility that President Obama could make a recess appointment for Becker when the Senate goes into recess on President's Day. If that were to happen, Becker's appointment to the Board would last until the end of 2011.

As discussed in our prior Legal Alert, Becker's nomination has generated unprecedented opposition from business groups. They fear that Becker will not enforce the National Labor Relations Act evenhandedly, but will instead radically slant the playing field in favor of unions, particularly the organizing process. Becker has been the Associate General Counsel for the SEIU since 1990 and a staff counsel for the AFL-CIO since 2004. Past and current members of the NLRB have worked for unions and have been confirmed with little opposition. Becker's employment history is not what has business groups and some Senators questioning his impartiality. The concern stems primarily from some of Becker's past writings, particularly a 1993 Minnesota Law Review article entitled *Democracy in the Workplace: Union Representation Elections and Federal Labor Law*, 77 Minn. L. Rev. 495. For more information about this article and Becker's position on crucial labor law issues, please see our February 5, 2010 Alert, *EFCA by Fiat? What a Becker Confirmation Could Mean for Employers*, located on our web site at <http://www.fordharrison.com/shownews.aspx?show=5829>.

We will continue to keep you updated on this issue. If you have any questions regarding this Alert or other labor or employment related issues, please contact the Ford & Harrison attorney with whom you usually work or the author of this Alert, Don Lee, dlee@fordharrison.com.