

President Obama Makes Recess Appointments What Could this Mean for Employers?

By tradition the five-member National Labor Relations Board ("NLRB" or "the Board") consists of three members from the President's party and two members from the opposition party. Until this weekend the Board was down to one Democrat, Chairman Wilma Liebman, and one Republican, Member Peter Schaumber, whose term expires in August. On Saturday, President Obama made recess appointments of his two Democratic nominees to the Board, Craig Becker and Mark Pearce, effectively bypassing the "advice and consent" role of the United States Senate for the time being. President Obama did not make a recess appointment of his announced Republican nominee, Brian Hayes.

While ink cartridges at various trade associations have run dry documenting the aggressively pro-labor theories posed by Becker in his academic capacity and Becker's role as an attorney for the SEIU, not much attention has been focused on Pearce. Nonetheless, it is no secret that Pearce has an extensive background as a trial attorney for the NLRB and has had an illustrious career as a practicing union-side labor lawyer. When these two gentlemen join Chairman Wilma Liebman, a former attorney for the Teamsters and the Bricklayers, the threesome will be able to form an effective majority on any case or rulemaking issue before the Board. Unsurprisingly, many commentators are expecting "labor friendly" changes to NLRB precedent and procedure to begin almost immediately.

Now more than ever, an employer interested in remaining union free needs to develop and articulate a coherent, meaningful position applicable to its industry and individual situation. This process takes a substantial amount of planning, effort, and buy-in from senior management and involves a review of: (1) benefits and wages, including perceptions of management compensation; (2) reporting structure/span of control issues; (3) workplace safety concerns; (4) handbooks and policies affecting employees; (5) training and advancement opportunities for employees; (6) orientation/on-boarding opportunities; and (7) lawful ways to incorporate employee feedback into the management process. Likewise, an employer interested in remaining union free needs to train its front-line supervisors to understand the employer's position and to react properly to warning signs of union organizing. To the extent that your organization needs any assistance with developing and/or implementing these strategies, the attorneys from Miller & Martin's Labor & Employment Department are ready to devote their decades of experience to your efforts and long-term success.

If you have questions regarding this alert or any other Labor & Employment law issue, please contact [Joseph McCoin](#) or any other member of the [Labor & Employment Practice Group](#) of Miller & Martin PLLC.

The opinions expressed in this bulletin are intended for general guidance only. They are not intended as recommendations for specific situations. As always, readers should consult a qualified attorney for specific legal guidance. Should you need assistance from a Miller & Martin attorney, please call 1-800-275-7303.

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