



Inside The Beltway

Keeping You Informed

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Critical developments in labor and employment law

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Legislative Branch/Senate

This morning, the U.S. Senate voted to confirm current NLRB Member and recess appointee Mark Pearce (D) and NLRB nominee and current Republican Labor Policy Director for the U.S. Senate Committee on Health, Education, Labor and Pensions, Brian Hayes (R). Member Pearce's term will expire August 27, 2013, and Member Hayes's term on December 16, 2012.

Notably, current NLRB Member and recess appointee Craig Becker's (D) nomination for confirmation was not offered for a Senate vote. Consequently, Becker's service will end with the adjournment of Congress in late 2011.

With the addition of Member Hayes, the NLRB is temporarily at full capacity. However, Member Schaumber's (R) term ends on August 27, 2010. In addition, current NLRB Chairman Liebman's term ends on August 27, 2011. Undoubtedly, the mid-term November 2010 elections will play an important role in subsequent NLRB confirmations.

With today's developments, the immediate question becomes who will be nominated to fill the impending Republican vacancy and whether that individual will receive a recess appointment rather than Senate confirmation. The result may be a package including a Republican nominee, a Democratic Member, recess appointee Becker, and a Democrat nominee for NLRB General Counsel to replace acting GC Lafe Solomon, appointed yesterday, June 21, 2010.

Despite these changes, with the U.S. Supreme Court's June 17, 2010, decision in *New Process Steel*, the NLRB will be busy reconsidering nearly 600 cases decided by a two-member NLRB during the period between January 1, 2008, and March 27, 2010. Nevertheless, the problems identified by Justice Stevens regarding "possible inferiority" in a mere two-member or, arguably, a one-party NLRB are now resolved.

The bottom line for employers is whether a reconstituted NLRB can process the remanded backlog of cases and still focus on Chairman Liebman's and Member Becker's much anticipated agenda of overturning case precedent and assisting organized labor's interests before their terms conclude next year.

Nixon Peabody's Labor and Employment Law practice will continue to monitor NLRB developments and report significant NLRB rulings and pronouncements.

For further information on the content of this alert, please contact your regular Nixon Peabody attorney or:

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