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NEWS & ANALYSIS

New regulations address “anti-*Beck*” posting. – As Constangy **recently reported**, the Obama Administration has issued regulations implementing the Executive Order 13496, which requires federal contractors to post notices that inform employees of their rights under the National Labor Relations Act to join unions and provide related information. Employers with the requisite size contracts in place after June 21, 2010, must post the notices at facilities where work under the contract is performed.

Clients are beginning to receive questions from employees regarding the meaning of this notice. We encourage clients to contact their Constangy attorney and to develop a communication and education program for their employees and supervisors. Supervisors should be trained in providing employees with legal and accurate answers to any employee questions, especially those dealing with the NLRA posting.

Senate confirms nominations of Hayes and Pearce. – On June 22, the Senate confirmed the nominations of Republican Brian Hayes and Democrat Mark Pearce to the National Labor Relations Board but took no action on the controversial pending nomination of former union attorney Craig Becker. Hayes was confirmed through December 2012 and Pearce through December 2013. Becker will continue serving a recess appointment that expires at the end of 2011. For the first time in years the NLRB now has all five members, but Member Schaumber’s term will expire in August of this year.

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Supreme Court rules two-member NLRB lacked authority. – As Constangy has **recently reported**, the Supreme Court ruled 5-4 in *New Process Steel, L.P. v. NLRB* that the two-member NLRB did not have the authority to issue decisions in unfair labor practice and representation cases. Writing for the majority, Justice John Paul Stevens found that Section 3(b) of the National Labor Relations Act requires that when the Board delegates its authority to a three-member group, the group must maintain a membership of at least three in order to continue exercising the delegated authority. Thus, nearly 600 rulings issued by Board Chair Wilma Liebman and Member Peter Schaumber between early January 2008 and late March 2010 have been invalidated. The new **five-member Board** will decide the appropriate means for further consideration and resolving those cases.

Most Board observers believe that few of the parties to the 600 cases will challenge those decisions. Because Liebman, a Democrat, and Schaumber, a Republican, agreed on the outcomes, the odds are good that a new three-member panel would simply affirm.

Predictable? Becker refuses to recuse. – As expected, newly appointed NLRB member Craig Becker, the former associate general counsel to the Service Employees International Union and staff counsel for the AFL-CIO, has rejected recusal motions in 12 cases in which the parties include local unions affiliated with the SEIU. Becker explained that he pledged to recuse himself for two years from all cases in which the SEIU *International* is a party, but not from all cases in which SEIU *locals* are parties. According to the National Right to Work Foundation, which sought Becker's recusal, Becker is ignoring the financial dependence of the SEIU International on its local affiliates and has refused to adopt the more stringent standard used by current NLRB Chair Wilma Liebman in cases involving affiliates of the Teamsters Union, her former employer. "By announcing his weak recusal standards, Craig Becker has made a mockery of the much touted Obama ethics pledge," said Mark Mix, president of the right to work group.

EFCA is dead for now, but there are other ways to skin a cat. – Sen. Tom Harkin (D-Ia.), Chairman of the Senate Committee on Health, Education, Labor and Pensions, has admitted that he does not have the votes to pass the Employee Free Choice Act in the Senate. The bill, which would do away with union elections if a majority of employees signed authorization cards, has been blocked by Republican lawmakers who believe it would violate the democratic right to hold an election. According to Harkin, the Senate was within one vote of the 60 needed to break a filibuster until Scott Brown was elected in Massachusetts. Apparently, the AFL-CIO got the message. They have recently removed the giant "support EFCA" banner hanging on one side of its headquarters in Washington.

However, the Administration and the newly constituted NLRB are making other changes that favor unions and disfavor employers. The NLRB has asked for *amicus* briefs related to penalties assessed against employers and whether those penalties should be subject to compound interest. In addition, the Office of Labor-Management Standards has recently held public meetings to discuss possible changes to attorney and consultant reporting requirements on "labor relations advice or services" under Section 203(b) of the Labor-Management Reporting and Disclosure Act. Finally, as **discussed above**, the Administration has issued regulations implementing Executive Order 13496, which requires federal contractors to post notices informing employees about their right to join unions (among other requirements).

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THE GOOD, THE BAD AND THE UGLY

\$10 million fails to “flush” anti-EFCA senator. – After Sen. Blanche Lincoln (D-Ark.) opposed big labor legislative priorities, including the EFCA and the public health care option, and voted against the nomination of Craig Becker to the Board, the AFL-CIO and SEIU poured millions into the runoff election campaign of her opponent, Lt. Gov. Bill Halter. Lincoln narrowly won anyway, and unions had to defend spending \$10 million to beat up on a Democrat. Union leaders insisted that forcing Lincoln into a runoff and almost unseating her had achieved their goal of getting wayward Democrats to think twice before opposing their agenda. Meanwhile, White House Press Secretary Robert Gibbs attempted to distance President Obama from an anonymous White House official who reportedly said that organized labor had flushed \$10 million of their members' money down the toilet.

Union win rate is up, number of elections is down. – Unions won more than 68 percent of NLRB elections held in 2009, up from 67 percent in 2008 and the highest win rate since the research division of the Bureau of National Affairs began analyzing NLRB data in 1984. At the same time, the number of representation elections in 2009 dropped to the lowest level since 1984. For the third year in a row the Teamsters organized the most workers, followed by the SEIU and the International Association of Machinists and Aerospace Workers. Unions had the most success with either very small or very large bargaining units, winning 70 percent of elections in units of fewer than 50 employees and 71 percent of elections in units of 500 workers or more.

Unions must go global, take advantage of new media, Teamsters official says. – Down from 25 percent in 1950, the private sector remains only 7 percent organized. According to a Teamsters official, in order to survive, unions must go global and also target young professionals who can now be reached through social networks such as Facebook, Twitter, and blogs. As an example of using global organizing tactics, the Union points to its partnership with unions representing a school bus company in the United Kingdom. The Teamsters used the partnership in a nationwide campaign to get the same contract provisions for U.S. school bus workers.

Rats exterminated. – Remember that **giant inflatable rat** that appeared at non-union construction sites in and around New York City? It appears that Local 2870 of the Carpenters Union has deflated all their rats and tucked them away in storage. One of the union's organizers has now admitted that the rat was a turnoff to the general public. “As soon as they saw the rat, they'd throw their hands up. They don't want to know what the problem is.”

But the Carpenters' newest tactic may cause New Yorkers to miss the rats. Now the union representatives show up at job sites and blow whistles for two hours straight. According to the union, the tactic is already showing success by turning 23 jobs union in a short time. When the Carpenters' organizer was asked whether he had any concerns about his workers' hearing, he replied, “We give earplugs to all our members. Carpenters are very safety-conscious.”

The Carpenters' organizer said that other unions – including the steamfitters, concrete workers and electricians – are starting to second guess their use of rats and are changing over to whistle blowing. More earplugs! Better yet, bring back the rats!

Employees at four Texas hospitals go union. – During the last weeks of May, two health care unions successfully organized more than 3,000 workers at four Texas hospitals owned by HCA, Inc. The National Nurses Organizing Committee-Texas has targeted the registered nurses, and the SEIU organizing among the remaining hospital workers. Both unions participated in elections in McAllen, El Paso and Corpus Christi. The nurses' union won elections at four hospitals, while the SEIU won in three of the four, with 13 challenged ballots determina-

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tive of the outcome in the fourth. The nurses' union expects these victories in Texas to create an organizing "tidal wave" among nurses in other states. A spokesperson for the SEIU lauded these victories in Texas as a "gigantic step forward" in the union's effort to build a national organization for workers employed at HCA hospitals.

Hot, hot, hot! – Unions are turning up the heat this summer by striking over contract demands.

On May 11, UAW Local 148 began a strike at the Boeing Company plant in Long Beach, California, after voting to reject the company's "best and final" offer, which included a reduction in the pension multiplier and an increase in health care premium contributions in the fourth year of the contract. The union called the 48-month contract offer "insulting" and "unacceptable," and rejected a \$4,000 ratification bonus in lieu of a general wage increase in the first year.

Meanwhile, in Chicago, approximately 400 hotel workers at the Hyatt Regency walked off the job for three hours on May 26. UNITE HERE Local 1 claimed the walkout was led by housekeepers who have become increasingly frustrated with their workload and the lack of progress toward a new contract. There was also a three-day strike this month at the San Francisco Hyatt. The San Francisco strike was to protest the nearly 10 months that the city's hotel workers have gone without a contract. UNITE HERE Local 2 is also calling for a customer boycott of the Hyatt, making it the eighth hotel in San Francisco to be the target of such a campaign.

On June 10, almost 12,000 registered nurses represented by the Minnesota Nurses Association began a one-day strike against 14 hospitals in the Minneapolis-St. Paul area. The union is in negotiations with six of the hospitals, where the issues are nurse-patient staffing ratios and a proposed one-third reduction in pension benefits.

Members of the California Nurses Association had also planned to engage in a one-day strike on June 10 against the University of California medical centers. However, a California judge issued a temporary restraining order barring the 10,000 registered nurses from participating. Nonetheless, many nurses rallied and picketed at university medical centers around the state.

About Constangy, Brooks & Smith, LLP

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