

## The New NLRB

### *Issues That Could Be Considered by the New Board*

The new Board, with a current 3-2 Democrat majority, consists of Chairman Wilma Liebman and members Craig Becker, Brian Hayes, Mark Pearce and Peter Schaumber. The current Acting General Counsel is Lafe Solomon.

It is expected that the new Board will revisit rulings from the Bush Administration Board that are opposed by organized labor.

These are a sample of issues that could be addressed by the new Board:

#### **Who can be organized**

- *Oakwood Healthcare*---ruling that deals with how supervisors are defined for the purposes of organizing.
  - Currently, supervisors cannot be part of a collective bargaining unit.
- *Brown University*---dealing with whether teachers' assistants can be organized.

#### **Union Decertification**

- *Dana-Metaldyne*---ruling that employees could decertify a union within 45 days of successful card-check campaign.
  - Previously there had been a 1 year bar on decertification following union recognition.

#### **Organizing Via Email**

- *Register-Guard*---ruling stated that employees have no right to use employer's email system for organizing purposes.
  - However, employers may not allow other outside groups to use company email, yet prohibit union organizing via email.

#### **Potential Rulemaking by the Board**

Along with issuing rulings in cases brought before the Board, the NLRB also has the authority to regulate the organizing process.

These are a sample of some of the possible rulemakings from the new Board:

- Shortened time for elections---average time to conduct an organizing election is 38 days.
  - 95% of elections are conducted within 56 days
  - Labor would like this timeframe reduced to a week or less.
  - Board could probably shorten time without rulemaking.
- NLRA Rights---require employers to post notice of the right to organize under the NLRA.
  - Similar to recent regulations requiring federal contractors to post notice.
  - Petition to do this has been pending before Board for many years
- E-Balloting---Board has put out a request for information to assess the feasibility of allowing employees to vote electronically, from a remote location.
  - Concerns about this include ballot integrity and a history of lower turn out in mail ballot elections
- Union use of employer email---allowing union organizers, or employees who support the union, to use company email for organizing purposes without regard to discrimination rules.

## **National Labor Relations Board**

### **What is the National Labor Relations Act (NLRA)?**

- 1935 federal statute (amended substantially in 1947) that governs relations between unions, employees and employers in the private sector.
- The NLRA guarantees the right to be represented by a union and or otherwise engage in “concerted activities for mutual aid and protection” (whether or not represented by a union), as well the right to refrain from joining a union or engaging in concerted activities..

### **What are the Duties of the National Labor Relations Board (NLRB)?**

- To prevent and remedy unfair labor practices, whether committed by labor organizations or employers.
  - The NLRB can petition for court injunctions when it determines that unfair labor practices are being committed.
  - The NLRB only deals with charges of unfair labor practices and petitions for employee elections that are filed with the Board in one of its 51 regional, subregional, or resident offices.
- To establish whether or not certain groups of employees desire labor organization representation for collective-bargaining purposes, and if so, which union.
- The NLRB cannot initiate action on its own, but must wait for a charges or a petition to be filed.

### **How is the NLRB Structured?**

- Independent five-member Board, with each member appointed to a staggered 5-year term
- By tradition, 3 members are from the President’s party; 2 members from the other party.
- Board functions much like a court in deciding contested matters arising under the Act
- Independent General Counsel, who investigates alleged unfair labor practices and has unreviewable discretion to issue complaints in unfair labor practice cases
- Both Board members and General Counsel are appointed by President and confirmed by Senate

## Key Provisions of the National Labor Relations Act

**Sec. 1 . . .** It is ***declared to be the policy of the United States*** to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by ***encouraging the practice and procedure of collective bargaining*** and by protecting the exercise by workers of full ***freedom of association, self-organization, and designation*** of representatives of their own choosing, for the purpose of ***negotiating the terms and conditions of their employment or other mutual aid or protection***.

**Sec. 3(a)** The National Labor Relations Board . . . is . . . an agency of the United States . . . [and] shall consist of ***five . . . members***, appointed by the President by and with the advice and consent of the Senate . . . for ***terms of five years each***, excepting that any individual chosen to fill a vacancy shall be appointed ***only for the unexpired term*** of the member whom he shall succeed. The President shall designate one member to serve as ***Chairman of the Board***. Any member of the Board may be removed by the President, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause.

**Sec. 3(d)** There shall be a General Counsel of the Board who shall be appointed by the President, by and with the advice and consent of the Senate, for a term of four years. The General Counsel of the Board shall exercise general supervision over all attorneys employed by the Board (other than administrative law judges and legal assistants to Board members) and over the officers and employees in the regional offices. He shall have ***final authority***, on behalf of the Board, in respect of the ***investigation of charges and issuance of complaints*** . . . and in respect of the ***prosecution of such complaints*** before the Board, and shall have such other duties as the Board may prescribe or as may be provided by law. . . .

**Sec. 7** Employees shall have the ***right to self-organization, to form, join, or assist labor organizations, to bargain collectively*** through representatives of their own choosing, and to ***engage in other concerted activities*** for the purpose of collective bargaining or other mutual aid or protection, and shall also have the ***right to refrain*** from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).