

## **Recess Appointments Made at the NLRB**

On January 4, 2012, President Barack Obama recess-appointed two Democrats and one Republican to the National Labor Relations Board. These appointments created a quorum and allow the NLRB to function in 2012, at least until the challenges hit the court house door. President Obama named staunch pro-union advocate Democratic lawyer Richard Griffin (General Counsel to the IUOE), Democratic Labor Department official and union activist Sharon Block, and Republican lawyer Terence Flynn to the Board.

At the end of December 2011, the agency lost Member Craig Becker (former SEIU advocate) and was thus down to just two members. Unfortunately for the NLRB and fortunately for many businesses, a two member Board was insufficient to establish a quorum. This lack of quorum potentially rendered the NLRB impotent. The United States Supreme Court had previously ruled in *New Process Steel v. NLRB* (June 17, 2010), that a two member Board was insufficient to establish quorum and effectuate rulings. With any potential appointments being blocked by Washington gridlock, it appeared that the NLRB was at a stand still, that is until January 4, 2012.

Typically, Board Members are appointed by the President to five-year terms, with Senate consent, the term of one Member expiring each year. The President's recess appointments allow the Board to function with a full 5-member quorum (three Democrats and two Republicans), with Mark Gaston Pearce-D (Chairman) and Brian E. Hayes-R will continue to serve on the Board. The Recess appointments are already raising a storm of controversy and threats of judicial challenges by business organizations.

The new year should prove interesting to watch and if the decisions from 2011 (from the controversial complaint filed against the Boeing Company to new rules pertaining to union elections, and a string of board issued decisions and rules that were viewed as decisively pro labor) portend any omens for 2012, there will be a very active Board that will likely continue to adopt more stringent rules and regulations for businesses. Now is the time to prepare both management and supervisors for additional labor issues before even more develop. Stay tuned for updates in the ongoing labor saga, as the NLRB turns...

If you have any questions about this article, or would like a additional information regarding the NLRB's 2011 rules and decisions please contact Attorney Julie A. Proscia, Esq. Julie Proscia is a partner at SmithAmundsen LLC in the labor and employment practice group. Julie exclusively represents management in employment issues and may be contacted at (630) 587-7911 or at [jproscia@salawus.com](mailto:jproscia@salawus.com).