New NLRB Member is Confirmed: More Employer-Friendly Decisions Are Eagerly Awaited

by Paul J. Zech - Wednesday, April 11, 2018

Attorney John Ring has now been confirmed by the United States Senate to take his place as the fifth member of the National Labor Relations Board (NLRB). The NLRB is now at its full complement of five members, three of whom have been appointed by President Trump.

While there still will be decisions finding employers responsible for unlawful behavior, the NLRB's new 3-2 majority on the Republican side means we can anticipate that they will roll back a number of positions that had taken under President Obama.

What Can We Expect?

Many of the policies and decisions of the past 8 years on matters such as social media activity by employees, employer handbooks and policies, and mandatory arbitration agreements are ripe for reversal or, at the least, paring back. These changes probably will not happen overnight; many will need to come as cases on appeal make their way to the NLRB for review. Still, the NLRB will certainly act as quickly as the cases present themselves.

One area to watch would be the NLRB's rules for "fast-track" union elections, an issue on which they have already been taking public comment for months. No doubt, the NLRB Chair has been waiting to have a solid majority before closing the comment period and moving either

to rescind the rules altogether or at least modify them in an employer-friendly way.

Another change might come in the continuing saga surrounding joint employment. In 2015, the NLRB's Browning Ferris decision relaxed the standard for finding multiple entities (e.g. a fast food franchise and its franchisor) jointly responsible for obligations under a collective bargaining agreement. In December, 2017, the NLRB reversed that ruling in their Hy-Brand decision and reestablished the long-held principle that the second entity must be shown to have a high degree of actual control over the workers before being considered a joint employer of them. However, just two months later the *Hy-Brand* decision was vacated, after the NLRB's Inspector General indicated that one Board member had a conflict of interest when he ruled on the case. Therefore, the *Browning Ferris* standard remains in place.

With a new majority in place, there is a strong possibility that the NLRB will address this issue again either through a recently revived appeal of the *Browning Ferris* decision or in a new case posing the same questions.

Bottom Line

Stay tuned, as the next six months will likely see a number of important developments for employers in a great number of different industries.

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