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NomineeAlert



this issue:

Craig Becker, Nominee to be
Member of the National Labor
Relations Board

Becker's Background

Associate General Counsel,
Service Employees International
Union

Associate General Counsel,
AFL-CIO

Professor of Law, University of
California, Los Angeles

Professor, University of Chicago

Adjunct Professor, Georgetown
University Law School

Attorney, Kirschner Weinberg &
Dempsey

Law Clerk, U.S. Court of Appeals
for the 8th Circuit

EDUCATION

B.A. Yale College

J.D. Yale Law School

Who is Craig Becker? No right to not have a union...

On July 9, 2009, President Obama nominated Craig Becker to be a member of the National Labor Relations Board (NLRB).

Becker is a longtime union activist and counsel who has spent considerable time advocating for reduced rights of workers and greater rights for unions.

"The right to strike has been gutted by the federal courts and the National Labor Relations Board (NLRB). Due to restrictions on its scope and content, the strike guarantee now appears illusory." Becker argues for higher protection for striking workers including

expansion of the definition of the term strike to include activities beyond the "naked act of stopping work." He would include activities such as intermittent work stoppages, sit-ins, etc. Fn.2.

Becker complains about how difficult is it to bring

class action lawsuits under the Fair Labor Standards Act. He complains about the requirements to opt-in to these lawsuits stating that

"Just as U.S. citizens cannot opt against having a congressman, workers should not be able to choose against having a union as their monopoly-bargaining agent."
Fn.1.

"Becker's likening of unions to government is dangerous. Obama should withdraw Becker's nomination and appoint someone who will look out for workers instead of unions."

*-Bill Wilson, President,
Americans for Limited Government*

individual prospective plaintiffs are hard to locate and that even when potential plaintiffs are located that they do not always want to get involved in these lawsuits. On this point he states as follows: "If Congress wishes to truly adopt a Class Action Fairness Act, will amend section 16(b) to remove the opt-in requirement and thereby harmonize the law of collective actions under the FLSA with the rules applied to virtually all other causes of action brought on behalf of a class in the federal and state courts."

Fn.3.

Becker in a law review article advocates the complete removal of employers from any standing or say in the process of unionizing workplaces.

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What you really need to know about Becker

Sources for further reading:

Fn.1. See Fn.6., *infra*.

Fn.2. Craig Becker, "Better Than a Strike": Protecting New Forms of Collective Work Stoppages under the National Labor Relations Act, 61 U. CHI. L. REV. 351, Spring 1994.

Fn.3. Craig Becker and Paul Strauss, *Representing Low-Wage Workers in the Absence of a Class: The Peculiar Case of Section 16 of the Fair Labor Standards Act and the Underenforcement of Minimum Labor Standards*, 92 MINN. L. REV. 1317, May 2008.

Fn.4. Craig Becker, *Democracy in the Workplace: Union Representation Elections and Federal Labor Law*, 77 MINN. L. REV. 495, February 1993.

Fn.5. Craig Becker, *New Labor Forum*, Fall/Winter 1998.

Fn.6. *National Right to Work Newsletter*, May 2009. Available online at <http://www.nrtwc.org/blog/wp-content/uploads/2009/05/bho-personnel-alert-becker1.pdf>. (Accessed August 5, 2009.)

Fn.7. See Fn.4.

See also: U.S. Chamber of Commerce's July 24, 2009 letter on Becker. See: http://www.uschamber.com/NR/rdonlyres/et-txevxhnek3wkr3cgek7c6frknxbzziu52m3jmw74itsnltljywtuk4qflaqvzhz2ij4l2mh3fsozqka3xz44dzc/090724_becker.pdf. (Accessed August 5, 2009.)

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On this point he states, "employers should be stripped of any legally cognizable interest in their employees' election of representatives." Fn.4. The article approaches union representation elections from the viewpoint that every workplace should be unionized that that without union representation workers are essentially disenfranchised as concerns the terms and conditions of their employment, thus analogizing that non-union workers are similar to "non-voting member[s] of a society." *Id.*

Another element of this view is that the Constitution in Article IV, section 4 guarantees "a republican form of government" to the states and that "the preservation of industrial democracy [is] essential to the preservation of the republican form of government." *Id.* Becker believes that workers do not have the right to choose to not be represented by unions. "At first blush it might seem fair to give workers the choice to remain unrepresented. But, in providing workers this US labor law grants employers a powerful incentive." Fn.5. He compares the workplace to the country as a whole and states, "Just as U.S. citizens cannot opt against having a congressman, workers should not be able to choose against having a union as their monopoly-bargaining agent." Fn.6.

Ironically Becker acknowledges that elections are the safest way to ensure workplace democracy. In a section of this article while discussing the NLRB's decision in the 1930s to only certify unions where an election had occurred he stated as follows: "In the face of bitter antagonism to its incipient efforts to impose a system of representation on industry, the Board shifted course and resorted exclusively to the most unimpeachable democratic instrument -- the election." Fn.7.

In discussing the relationship between employers and their employees' union representatives Becker points out that "Employers have no standing to assert their employees' right to fair representation." *Id.* He tries to dovetail this to the question of representation in the first place stating, "Similarly, employers should have no right to raise questions concerning voter eligibility or campaign conduct." *Id.*

Becker further states on the issue of union representation, "On the questions of unit determination, voter eligibility, and campaign conduct, only the employee constituency and their potential union representatives should be heard." *Id.*

Becker advocated taking away the right of employers to petition the NLRB for a representation election when confronted with a union that claims to have the support of workers. This would be done by completely stripping employers of their status as parties. On this point Becker states, "This redefinition of the parties to labor representation proceedings would eliminate or, at least, greatly simplify long-standing controversies concerning election timing, constituency, and review of results. The question of timing would be answered decisively: Employees and unions alone could influence the Board's election scheduling, a result the law has intended all along." *Id.*

Becker believes that taking employers out of the process of determining union representation would among other things bring more equity. On this point he states, "Finally, denying employers standing to contest each ruling issued in representation cases would both streamline and bring equity to the review of election results." *Id.*

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9900 MAIN STREET
SUITE 303
FAIRFAX, VA 22031
703.383.0880
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