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NLRB

NAM Urges Sen. Harkin to Oppose Nomination of Becker to Serve on NLRB

The National Association of Manufacturers Jan. 25 urged the chairman of the Senate Health, Education, Labor, and Pensions Committee to oppose the nomination of union attorney Craig Becker to serve as a member of the National Labor Relations Board.

In a letter to Sen. Tom Harkin (D-Iowa), NAM Executive Vice President Jay Timmons said the industrial trade association continues to have "strong concerns that Mr. Becker's views and interpretations of our labor law system would radically change the nature of the NLRB."

Becker has been an associate general counsel for the Service Employees International Union since 1990 and also a staff counsel for the AFL-CIO since 2004. He has practiced and taught labor law for 28 years.

The HELP Committee last fall approved Becker's first nomination by a 15-8 vote, with two Republicans voting for him (23 LRW 1663, 10/22/09). Sen. John McCain (R-Ariz.) then placed a hold on the nomination. The Senate sent Becker's nomination back to the White House at the end of the 2009 session, indicating that at least one senator objected to including him on a list of pending nominations that were held over under a unanimous consent agreement (23 LRW 2039, 12/31/09). President Obama Jan. 20 then renominated Becker.

Becker's second nomination would have to be approved by the HELP Committee again to get to a floor vote. If McCain or another senator again places a hold, Becker's supporters could use cloture procedures to limit debate and proceed with a floor vote.

The committee last fall also approved the nominations of union-side attorney Mark G. Pearce and Republican staffer Brian E. Hayes to serve as NLRB members, and their nominations remain pending. Harkin has indicated that Democratic leaders will only allow a vote on all three nominees as a package. If confirmed by the Senate, they would join the two current board members and create a Democratic majority on the board for the first time since December 2001.

Becker's Views in Academic Articles Criticized

"We are particularly concerned with [Becker's] opinions offered in academic journals that the NLRB should limit the ability of employers to communicate with their employees during union organizing campaigns," Timmons said. He asserted that NAM "firmly believes employees should have access to information from both employers and union officials and the ability to carefully review that information in order to better make important decisions that impact their jobs and families."

Becker's "views indicate that he believes the NLRB has the authority to make certain

decisions that are pending in proposed legislation," such as "redefining" supervisory status, Timmons said. He expressed concern that Becker also "has written extensively and positively about how the NLRB could rewrite current union election rules in favor of union organizers, a decision that should be left to Congress."

Timmons also expressed concern that if confirmed, Becker "would seek to advance aspects of the jobs-killing Employee Free Choice Act through actions of the NLRB." EFCA (H.R. 1409, S. 560) would amend the National Labor Relations Act to make it easier for employees to gain union representation by signing union authorization cards.

NLRB board members "are charged with administering our nation's labor laws in an unbiased manner" and "should express a commitment to principles of fairness and balance that are the foundation of our labor laws," Timmons said. He added that Becker's "radical interpretation" of labor law makes him inappropriate to serve as an NLRB member.

Business Groups Opposed Becker Last Fall

Twenty-three trade associations and management groups, including NAM, the U.S. Chamber of Commerce, the HR Policy Association, the National Federation of Independent Business, and the Society of Human Resource Management, joined in an Oct. 20, 2009, letter urging HELP Committee members to oppose Becker's nomination. The National Right to Work Committee and the *Wall Street Journal* editorial board also oppose the nomination.

Two days after Becker's second nomination, the chamber once again Jan. 22 called for a formal confirmation hearing on the nominee. The "radical policies espoused by" Becker "would severely restrict employers' rights in the workplace and even hinder reporting of illegal conduct during union certification campaigns," the chamber said.

The HELP Committee seldom holds confirmation hearings for NLRB nominees. Harkin said before the committee vote last fall that in the past 25 years the committee approved 28 NLRB members and only held one hearing—on former NLRB Chairman William B. Gould in 1994.

Harkin spokeswoman Bergen Kenny told BNA Jan. 26 that the committee chairman "is in discussions with" Sen. Michael B. Enzi (R-Wyo.), the committee's ranking Republican member, "on how to proceed." She emphasized that prior to the committee vote on Becker's first nomination, he "answered more than 280 written questions submitted by Republican senators on the committee" and also "made himself available to meet with any senator who expressed interest."

Becker Supported by Labor Law Professors, Unions

A group of 66 labor law professors sent a Jan. 21 letter to Senate leaders expressing their "strong support" for Becker's confirmation. They said he "possesses unparalleled qualifications" to be an NLRB member and, if confirmed, "will prove to be one of the most respected Board Members in the history of the NLRB."

AFL-CIO spokesman Eddie Vale told BNA Jan. 26 that the labor coalition "continues to support [Becker's] nomination and urges the Senate to confirm this eminently qualified nominee."

Change to Win Chair Anna Burger expressed support for Becker in a letter to HELP Committee leaders last fall, calling him "highly qualified."

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