

HIGH DRAMA AT THE NATIONAL LABOR RELATIONS BOARD

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Are we ever going to elect any adults to Congress? While there has been much discussion over voter identification laws in many states, maybe it's time for a minimum intelligence standard for those people we send to Washington. Idiocy and incompetence seem to be the standard currency of the Capital. The continued inability of the federal government to function at the most basic levels has created a remarkable and remarkably confusing situation for employers facing potential union organizing efforts.

The National Labor Relations Board is a five-member board that is charged with establishing federal policy as it relates to union-management relations. The Board has been left with only two members since the beginning of 2011 when Congress and the President were unable to vote on any of the nominees put forth by President Obama. By law, the NLRB is unable to act with less than three members, so for over a year now the Board for the top policy-making and enforcement agency on federal labor law has been effectively shut down.

Obama, taking advantage of a President's power to make recess appointments, recently filled those openings. Republicans however convened pro forma sessions throughout the holidays to try to claim there was no "recess". Lawsuits are sure to follow as to whether there was a true recess and whether the recess appointments are valid. Don't any of these people understand we want them to get things done and not spend all their time grandstanding?

Ranting about politics aside, why is this important for business owners? The Board has previously adopted sweeping changes to the union election process that will fundamentally change the way unions can organize and be selected to represent your employees. Much shorter timelines for elections, fewer opportunities to challenge the process and a more coercive approach to bargaining will create a higher likelihood of workforces becoming unionized. What that means for your business could be substantial and you will need to be much more prepared for union activity than you may have been in the past.

Stay tuned to developments in this area. It could be the most significant business story of 2012.