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LABOR & EMPLOYMENT UPDATE

THE "OBAMA BOARD" STARTS ITS WORK:

The National Labor Relations Board Issues the First of Several Expected Decisions That Will Impact Labor Relations

In the 2008 Presidential Election, Barack Obama enjoyed overwhelming support from organized labor. However, during the first two years of his presidential administration, Labor's primary legislative priority -- the Employee Free Choice Act, or "card check" legislation -- took a backseat to healthcare reform and economic stimulus. With the Republican victories in the mid-term elections, there is no chance that the Employee Free Choice Act will become law in the next two years.

Nonetheless, organized labor has reason to be optimistic about the legal landscape in which it will be operating. The National Labor Relations Board (NLRB), which interprets and applies the National Labor Relations Act (NLRA), now has a solid majority of members who strongly and vocally support organized labor. The NLRB has issued the first in a series of decisions that we expect will substantially bolster organized labor over the next year.

The first decision was released on December 6, 2010, in Dana Corp., 356 NLRB No. 49. In Dana Corp., which had been pending before the NLRB for more than five years, the issue involved the legality under the NLRA of an agreement between a Union and an employer entered into before the union could demonstrate that a majority of the workers supported the union. The NLRA generally requires that a union demonstrate majority support before it is recognized by an employer. To insure that unions serve the interests of employees, the law prohibits employers from "contributing financial or other support to a Union and prohibits a Union from accepting such support." The agreement at issue in Dana Corp. established a framework for assessing future recognition of the union and the outline of a potential future collective bargaining agreement before the union demonstrated majority support. The NLRB, in a 2-1 vote, held the agreement lawful.

The agreement upheld in Dana Corp. may allow a union to use leverage that it has at existing organized worksites to pressure an employer into concessions that make organizing at other worksites much easier. Had the NLRB found the agreement

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in Dana Corp. illegal, employers would have found it much easier to resist such demands -- they could simply respond by saying that such agreements are illegal. After the decision in Dana Corp. employers with multiple worksites will face significantly increased pressure to enter into agreements that make unionization at other worksites easier. While employers have no duty to agree to such proposals, it becomes much more difficult to oppose them at the table.

We expect that the NLRB will issue a significant number of decisions in the next twelve months that will alter the legal landscape for both unionized and non-unionized employers, and we will keep you updated on new developments.

If you have any questions on these issues, please contact Hugh F. Murray, III at 860.240.6077 / hmurray@murthalaw.com.

Join Us at a New Seminar

MARCH 9, 2011

"The Revival of the National Labor Relations Act:
What Employers - With or Without Unions - Need to Know About
Recent and Upcoming Decisions of the NLRB"

Who should attend:

- Labor Relations Managers
- Human Resources Professionals
- Business Owners and Managers

Stay tuned for further details on this timely topic.

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