

EXHIBIT

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The following are examples of the most controversial decisions issued between January 4, 2012 and July 31, 2013 by the NLRB recess appointee board consisting of Chairman Mark Pearce and recess appointees and former Board Members Sharon Block and Richard Griffin.

- *WKYC-TV*, 359 NLRB No. 30 (Dec. 12, 2012) - In this case, the Board overturned 50 years of precedent and held that an employer's obligation regarding the checkoff of dues, if contained in a collective bargaining agreement, continues after contract expiration absent a specific contractual right to terminate such checkoff requirement.
- *Alan Ritchey, Inc.*, 359 NLRB No. 40 (Dec. 14, 2012) - The Board held that employers must give notice to a union and offer to bargain before initiating discretionary discipline policies regarding union represented employees, including in situations where a union was just certified and there is no collective bargaining agreement in place.
- *Application of the Board's New Specialty Healthcare "Overwhelming Community of Interest Test"—"Micro" Bargaining Unit and Fragmented Unit Cases* - There are a number of NLRB decisions wherein the quorumless Board supported the establishment of micro and fragmented bargaining units thereby permitting unions to carve out, on an extent of organization basis, very small or fragmented groupings of employees for bargaining unit configuration. One case to watch in this area is a voting unit case currently pending before the Board involving an employer appeal of an NLRB Regional Director ruling that women's shoe department employees at a Bergdorf Goodman Store in New York City constituted an appropriate voting unit pursuant to the *Specialty Healthcare* test.
- *Banner Estrella Medical Center*, 358 NLRB No. 93 (July 30, 2012) - The Board restricted the ability of employers in internal investigation matters from requiring confidentiality commitments from employees, including commitments for an interviewed employee not to reveal the scope and content of the interview and investigation. This approach has a potential to considerably interfere with an employer's ability to engage in internal investigations to comply with federal laws requiring employers to investigate allegations of workplace misconduct.
- *Iron Tiger Logistics*, 359 NLRB No. 13 (Oct. 23, 2012) - The Board reversed precedent and held that an employer is required to respond to a union's request for information even when such information may be irrelevant.
- *Costco Warehouse Corp.*, 358 NLRB No. 106 (Aug. 27, 2012) and *Knauz BMW*, 359 NLRB No. 164 (Sept. 28, 2012) - The Board, in these cases and other social media and employer work rule cases, held that employer policies requiring employees to be courteous in the workplace, keep information confidential, refrain from making statements critical of employers and refrain from using profanity are unlawful under the NLRA, as such policies have the potential to "chill" employee free speech and to interfere with employee organizing rights under Section 7 of the Act.
- *Piedmont Gardens*, 359 NLRB No. 46 (Dec. 15, 2012) and *Hawaii Tribune-Herald*, 359 NLRB No. 39 (Dec. 14, 2012) - The Board, in these cases, reversed substantial precedent

and decided that an employer cannot withhold confidentially obtained witness statements from a union that were obtained by the employer in an internal investigation including interviews with union represented employees.

- *Finley Hospital*, 359 NLRB No. 9 (Sept. 28, 2012) - The Board held that pursuant to the "dynamic status quo" doctrine an employer that negotiates a wage increase with its union must continue to offer such wage increase post contract expiration and during renewal contract negotiations, notwithstanding the fact that the previous wage increase was only for the duration of the expired collective bargaining agreement. An appeal in this case is presently pending in the D.C. Circuit Court of Appeals.
- *D.R. Horton*, 357 NLRB No. 184 (Jan. 3, 2012) - The Board held that employers could not require employees, as a condition of employment, to sign an arbitration agreement prohibiting the filing of joint, class or collective claims. The United States Court of Appeals for the Fifth Circuit, in a 2-1 decision, refused to enforce the Board's order and the case is presently pending in the Circuit Court pursuant to the Board's request to permit it to file a request for a rehearing.