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Another Redo At The NLRB Because Of Conflicts Of Interest?

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Last month the National Labor Relations Board (NLRB) made headlines when it vacated a decision from December 2017– the *Hy-Brand* case – that overruled its infamous *Browning-Ferris* decision regarding joint-employment under the National Labor Relations Act (NLRA). That action reinstated the more lax standard under *Browning-Ferris* for finding joint-employment. The board ruled that current Member Emanuel should not have participated in *Hy-Brand* in light of the fact that his former law firm was involved in the *Browning-Ferris* case and the *Hy-Brand* decision impacted the pending appeal of *Browning-Ferris* in federal court. In other words, Emanuel potentially had a "conflict of interest."

Will similar conflict allegations rear their heads again and put NLRB actions in jeopardy? It appears that may be the case. *Bloomberg* is reporting that a union is requesting the board vacate its *Boeing* decision – also from December 2017 – that significantly altered the way the agency will be evaluating the legality of employer personnel policies under the NLRA. The union's request is premised on the fact that Emanuel's former law firm purportedly has represented Boeing in other matters, thus presenting a potentially similar conflict issue to the one that was found in the *Hy-Brand* case. We'll see if that argument gains any traction.

In addition, recent NLRB nominee John Ring faced intense questioning from Senators about his private practice and his potential ability to steer clear of conflict issues at the board. This is all very interesting given former President Obama NLRB-appointee Craig Becker notoriously refused to recuse himself in cases involving a union he previously represented. Nevertheless, in light of these developments, the conflicts of interest arguments being raised at the agency now remain an important issue to watch.

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