

Peter N. Kirsanow Returns To Benesch After Serving Term On National Labor Relations Board

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CLEVELAND, OHIO - January 7, 2008 - Benesch, Friedlander, Coplan & Aronoff LLP partner, Peter N. Kirsanow, returned to the firm this week where he will resume his practice in the Labor & Employment Practice Group. Mr. Kirsanow has been in Washington, DC for the past two years serving on the five-member, President-appointed National Labor Relations Board.

While serving on the NLRB, he was involved with several significant decisions, including Oakwood Healthcare, Inc., Dana/Metaldyne and Oil Capitol Sheet Metal, Inc.

Mr. Kirsanow has also been reappointed by President Bush to the U.S. Commission on Civil Rights, where he will serve his second six-year term. This is a part-time position.

Mr. Kirsanow will focus his law practice on representing management in employment-related litigation, as well as in contract negotiations, NLRB proceedings, EEO matters and arbitration. He will continue to testify before and advise members of the U.S. Congress on various employment laws and issues.

He formerly served as senior labor counsel of Leaseway Transportation Corp. and labor counsel for the city of Cleveland. He has extensive experience in public sector employment matters as well as in industries such as health care, trucking, heavy manufacturing, radio and television and employee leasing.

Mr. Kirsanow observes that, presently, the five member National Labor Relations Board has three vacancies. The Board now consists of two members who frequently have different views on cutting edge issues. Therefore, look for the Board to apply existing law to cases decided over the next year. It is unlikely that any new standards or interpretations of the National Labor Relations Act will issue before the next President nominates new candidates to fill the vacancies.

Should one or more vacancies be filled, Mr. Kirsanow expects:

- The Board to consider whether an employer violates Sections 8(a)(1) and/or (5) of the Act by refusing to recognize and bargain with a members-only minority bargaining unit. The Board's general counsel considers this a closed issue, unsupported by legislative history, Board or court decisions, but many unions maintain that members-only minority bargaining is permissible under Section 7 of the Act and was historically commonplace and required under the National Industrial Recovery Act. (Several unions have filed petitions with the NLRB requesting that it clarify the legitimacy of members-only minority unions).
- An increase in litigation following upon the Board's recent decision in BE&K Construction Co., 351 NLRB No. 29 (2007) that held that the filing and maintenance of a reasonably based lawsuit doesn't

violate the Act even if brought with a retaliatory or punitive motive. The litigation will center upon what constitutes "reasonably based."

- Litigation to define the contours of the Board's recent decision in Toering Electric Co., 351 NLRB No. 18 (2007) that held that any job applicants that are genuinely interested in seeking an employment relationship with the employer are entitled to statutory protection against hiring discrimination. The litigation will concern the type of evidence necessary and/or sufficient to establish an applicant's genuine interest in a position.
- The Board to consider what "extraordinary" relief should be sought in initial bargaining cases where employers use bargaining agents without adequate bargaining authority, refuse to provide information critical for negotiations, discharge union supporters or inject extraneous issues to prolong bargaining. Among possible remedies are a minimum six month extension of the certification year, periodic reports to the Board regarding bargaining status, reimbursement of bargaining costs and prescribed bargaining schedules.

In addition, Mr. Kirsanow expects:

- Union corporate campaigns to employ shareholder resolutions to expand employee healthcare benefits. The NLRB may eventually weigh in on whether such actions are prohibited under Section 7 of the Act.
- A push to organize independent truckers on the West and Gulf coasts. A long term aim of the drive is to organize employees at big box stores (Wal-Mart, etc.) to which the drivers deliver.
- Innovative agreements between unions and employers regarding posting of notices regarding voluntary recognition.

Mr. Kirsanow is past chair of the board of directors of the Center for New Black Leadership, has been an adjunct professor at the Cleveland Marshall College of Law, and testified before the Senate Judiciary Committee on the nominations of John Roberts and Samuel Alito to the Supreme Court.

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