

EMPLOYMENT SERVICES ALERT

6/26/14

Supreme Court Rules That President Obama's NLRB Recess Appointments Were Invalid

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The United States Supreme Court unanimously ruled on June 26, 2014 that President Obama's three recess appointments to the National Labor Relations Board (NLRB) were unconstitutional and therefore, invalid. The Court's ruling likely means that hundreds of cases the NLRB decided in 2012 and 2013, while the recess appointees were seated, are now invalid. Many of the affected cases proved controversial, including a decision protecting workers from discipline for criticizing their employer on social media sites and a decision affording unions greater rights in cases of employee discipline.

The controversy began in January 2012 when President Obama named three new members to the NLRB, which at that time was lacking a quorum because of Senate opposition to the President's appointees in the Senate. President Obama invoked his presidential power to make recess appointments to the NLRB while the Senate was away on holiday break pursuant to a provision of the Constitution which allows presidents to fill agency and other vacancies during a recess without Senate confirmation. Presidents have historically used this power to bypass the Senate confirmation process and to install their appointees during periods when the Senate was not in session.

Noel Canning, a soft drink bottler based in Washington, subsequently appealed an adverse NLRB decision on the grounds that President Obama unlawfully appointed the NLRB members while the Senate was still in session. Although the Senate had been on holiday break when President Obama made the appointments, it was still holding "pro forma" sessions, during which it briefly gaveled in and out every three days without conducting any business. The D.C. Circuit Court of Appeals agreed with Noel Canning and held that President Obama lacked the authority to make the appointments. The D.C. Circuit went further and narrowly defined a "congressional recess" to include only the period between the year-long formal sessions of Congress, rather than a short break in proceedings.

On further appeal, the Supreme Court agreed that President Obama's appointments were unconstitutional, but rejected the D.C. Circuit Court's narrow definition of a "congressional recess." The majority opinion held that presidents may only exercise their appointment powers during congressional recesses of ten days or more.

The Court's decision will now force the NLRB to revisit the rulings made by the invalidly appointed Board members. Given the Board's current pro-union majority, however, it is unclear whether such revisiting will make much of a difference. In response to the Supreme Court's decision, NLRB Chairman Mark Gaston Pearce commented: "We are analyzing the impact that the Court's decision has on Board cases in which the January 2012 recess appointees participated. Today, the National Labor Relations Board has a full contingent of five Senate-confirmed members who are prepared to fulfill our responsibility to enforce the National Labor Relations Act. The Agency is committed to resolving any cases affected by today's decision as expeditiously as possible."

Roetzel & Andress will continue to monitor the fallout from the Court's decision and its impact on both union and non-union employers. For additional guidance on this case and its effect on your business, please contact one of the attorneys below.

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