

U.S. Supreme Court Rules NLRB Appointments Were Invalid

Labor & Employment Law Update

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The U.S. Supreme Court ruled on Thursday that President Obama's three appointments to the NLRB in January 2012, made without the "advice and consent" (*i.e.*, approval) of the Senate, were invalid appointments. The case is *NLRB v. Noel Canning*, and affirms a prior decision of the court of appeals for the D.C. circuit.

As a result, hundreds of cases decided by the NLRB from January 2012 through July 2013 have been rendered void – as if they never happened – because the NLRB did not have a quorum and could not lawfully act. The NLRB may have to reconsider those cases anew. That could take a great deal of time, which may take away from the NLRB's ability to implement its pro-labor agenda while also handling its already increased workload.

NLRB Chairman Mark Gaston Pearce has issued a statement that reads, in part, "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."