

Supreme Court Finds NLRB Recess Appointments were Invalid

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On January 4, 2012, when Congress was out of session for a three-day period, President Obama appointed three members to the National Labor Relations Board pursuant to the Recess Appointments Clause of the Constitution. Thereafter, the NLRB, including the newly appointed members, issued a ruling finding that Pepsi-Cola distributor, Noel Canning, unlawfully refused to execute a collective-bargaining agreement with a labor union. Noel Canning challenged the ruling on the grounds that the three members appointed by President Obama were invalidly appointed and that the NLRB did not have authority to act when it issued its order.

The Supreme Court agreed with Noel Canning and held that the three-day recess period was not long enough to trigger the President's recess-appointment power. In the case, *National Labor Relations Board v. Noel Canning*, No. 12-1281 (S. Ct. June 26, 2014), the Court relied heavily on the history of recess appointments and also found that a recess of more than three (3) days but less than ten (10) days is presumptively too short to fall within the Recess Appointment Clause. As such, the Court found that the appointment of the members was not within the President's authority under the Constitution.

As a result of this ruling, hundreds of NLRB cases decided by the improper appointees are now invalid. This decision could also have effects on appointments beyond the NLRB. Accordingly, employers should evaluate whether any decision issued during this time period pertained to them directly or affects any of their current practices, and should contact their legal counsel to further discuss the potential implications of this far-reaching decision.

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