

National Labor Relations Board Decisions Deemed Invalid

Based upon a recent decision of the United States Supreme Court, all decision of the National Labor Relations Board (“NLRB”) that occurred between January 4, 2012, and August 5, 2013, are invalid. On June 26, 2014, the Supreme Court determined that President Obama’s January 4, 2012 appointments of three members of the NLRB violated the Recess Appointments Clause of the United States Constitution. As a result, over 700 decisions handed down by the NLRB during the timeframe when those members sat on the Board are void.

The Recess Appointments Clause contains an exception to the general rule that the President must obtain the advice and consent of the Senate prior to appointing someone to an Office of the United States. Under that exception, the President may fill all vacancies that happen during the recess of the Senate. Therefore, the question analyzed by the court was what constitutes a “recess” of the Senate.

The Supreme Court determined that a “recess” includes a break between formal Senate sessions (inter-session recess) as well as a break during formal Senate sessions (intra-session recess). However, in order for an intra-session break to be considered a “recess” for the purposes of the Recess Appointments Clause, the break must be “of substantial length.”

Here, the President issued his appointments during a three-day intra-session Senate break. The Court determined that this break was not sufficient to be considered a “recess” because the break was not a significant enough interruption of the Senate’s business. Instead, a break must generally be at least ten days long to be considered a “recess” under the Recess Appointments Clause.

In addition to rendering over 700 NLRB decisions invalid, the Supreme Court’s decision also invalidates the appointment of Regional Directors that occurred while the NLRB was improperly constituted. As a result, any decision made by such Regional Directors may also be invalid.