

HR Weekly Podcast  
August 26, 2014

Today is August 26, 2014, and welcome to the HR Weekly Podcast from the State Human Resources Division. This week's podcast deals with a recent United States Supreme Court ruling regarding three National Labor Relations Board, or NLRB, recess appointments as unconstitutional.

Information used to develop this podcast was gathered from the article "High Court Rules NLRB Appointments Unconstitutional" by Joanne Deschenaux. In January 2012, President Barack Obama appointed Sharon Block, Richard Griffin, and Terence Flynn while the Senate was on recess, invoking the United States Constitution's Recess Appointments Clause. These appointments were recently challenged in the case of National Labor Relations Board v. Noel Canning. Noel Canning, a Pepsi-Cola distributor, claimed that the board lacked a quorum because three of the five board members had been invalidly appointed. Canning argued that the three-day adjournment between sessions was not long enough to trigger the Recess Appointments Clause.

The United States Court of Appeals for the District of Columbia Circuit found the appointments unconstitutional and the United States Supreme Court agreed. The Supreme Court upheld the decision stating "three days is too short a time to bring a recess within the scope of the [United States Constitution's Recess Appointments] Clause." In light of the ruling, the cases that came before the NLRB since the original appointments in 2012 are now in question, creating uncertainty regarding the validity of the actions taken by the Board.

Since January 2012, more than 700 reported and unreported decisions were issued during this time period, many of which were precedent setting decisions. These decisions along with board appointments, delegations of authority, and all other actions taken may need to be reconsidered by the NLRB and subject to further litigation.

If you have questions about this topic, please contact your HR consultant at 803-896-5300. Thank you.