

Ripples Of Noel Canning Continue

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Following the U.S. Supreme Court's invalidation of the appointments of three NLRB members last year in *NLRB v. Noel Canning*, 134 S.Ct. 2550 (2014), the NLRB has had to address the ramifications of that decision on the agency's actions taken during the time the NLRB had no quorum due to the invalid appointments. The NLRB [has acknowledged](#) that Noel Canning requires it to re-hear and re-issue decisions on several still pending cases where one or more invalid Board members took part. But the impact on other actions taken by the agency during the period when the Board lacked a quorum is unclear. As we [previously reported](#), the Board has attempted to stave off any challenges to the agency's actions by ratifying all administrative actions taken during the time the Board lacked a quorum. Nevertheless, employers continue to make creative arguments to attempt to invalidate a variety of agency actions based on a lack of quorum theory. For example, in *Mission Produce*, [362 NLRB No. 15](#), decided earlier this month, the employer argued that it had no bargaining obligation with a union because the election occurred when the Board had no quorum and therefore the Regional Director lacked the authority to process the petition. The Board disagreed and found that Regional Directors retained the authority to act despite the lack of Board quorum. A similar argument was made this week [in oral argument](#) to the D.C. Circuit in *U.C. Health v. NLRB*, Case Nos. 14-1049 and 14-1193, arguing that the Regional Director did not have the authority to certify an election. It remains to be seen whether the D.C. Circuit will be willing to accept these arguments where the Board has refused. Meanwhile, the Board continues to move through the backlog of cases that were vacated following the *Noel Canning* decision, generally "rubber-stamping" its prior opinions, even when controversial. Given all of these moving parts, it may be months if not longer before the final impact of *Noel Canning* can be known.

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