UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

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February 25, 2013

Gary Shinners, Acting Executive Secretary
National Labor Relations Board
10991 14th Street, NW
Washington, D.C. 20570-0001

Re: Silgan Plastics Corporation
Case 25-CA-031870 et. al.

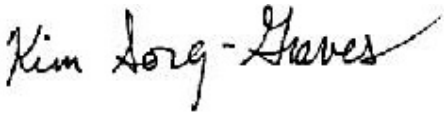
Dear Acting Executive Secretary Shinners:

This letter is in response to Respondent Silgan Plastics Corporation's February 8, 2013 letter contending that the Board lacks a quorum to issue decisions citing the United States Court of Appeals for the District of Columbia decision in *Noel Canning Div. of Noel Corp. v. NLRB*, No. 12-1115, 2013 WL 276024 (D.C. Cir. Jan. 25, 2013).

Contrary to Respondent's contention, it is not appropriate for the Board to suspend its activities in response to a claim that Presidential appointments to the Board are not valid. Although the Employer correctly points out that on January 25, 2013, the D.C. Circuit held that the President's appointments to the Board were not valid, the Board has publicly stated that it disagrees with that decision. In addition, we note that in *Noel Canning*, the D.C. Circuit Court itself noted that its conclusions concerning the Presidential appointments had been rejected by the other circuit courts to address the issues. Compare *Noel Canning v. NLRB*, Nos. 12-1115, 12-1153, 2013 WL 276024, at *14-15, 19 (D.C. Cir. Jan. 25, 2013) with *Evans v. Stephens*, 387 F.3d 1220, 1226 (11th Cir. 2004) (en banc); *United States v. Woodley*, 751 F.2d 1008, 1012-13 (9th Cir. 1985) (en banc); *United States v. Allocco*, 305 F.2d 704, 709-15 (2d Cir. 1962). Moreover, even in the absence of a circuit conflict, it has been the Board's longstanding practice not to acquiesce in adverse decisions by individual courts of appeals in subsequent proceedings involving different parties. See Letter of Acting Solicitor, National Labor Relations Board, *Industrial Turnaround Corp. v. NLRB*, 118 F.3d 248 (4th Cir. 1997) (Nos. 96-1783 & 96-1926)

(explaining that "the Board, for more than 50 years, has taken the position that it is not obliged to follow decisions of a particular court of appeals in subsequent proceedings not involving the same parties," and discussing the grounds for that position).

Very truly yours,



Kimberly Sorg-Graves
Counsel for Acting General Counsel

CERTIFICATE OF SERVICE

I hereby certify that a copy of Counsel for the Acting General Counsel Kimberly Sorg-Graves' letter to Acting Executive Secretary Shinners regarding Silgan Plastics Corporation Case 25-CA-031870 dated February 25, 2013 was served by electronic filing on the 25th day of February 2013 on the following parties:

Gary Shinners, Acting Executive Secretary
National Labor Relations Board
10991 1th Street, NW
Washington, D.C. 20570-0001

I hereby certify that a copy of Counsel for the Acting General Counsel Kimberly Sorg-Graves' letter to Acting Executive Secretary Shinners regarding Silgan Plastics Corporation Case 25-CA-031870 dated February 25, 2013 was served by electronic mail on the 25th day of February 2013 on the following parties:

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