

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

C.R. ENGLAND INC. Employer and TEAMSTERS, LOCAL 705 Petitioner	Case 13-RC-095967 Stipulated
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**PETITIONER TEAMSTERS LOCAL 705’S BRIEF IN OPPOSITION TO
EMPLOYER EXCEPTIONS TO REGIONAL DIRECTOR PETER OHR’S
REPORT ON OBJECTIONS**

Pursuant to *New Process Steel*, 130 S. Ct. 2365 (2010) and *Noel Canning v. NLRB*, No. 12-1115 (D.C. Circuit January 25, 2013), the Employer disputes the validity of the Regional Director’s appointment on December 13, 2011. It further asserts that the Regional Director lacked the authority to conduct and supervise a valid election, and subsequently certify the results thereof. Based on its position, the Employer requests that this proceeding be held in abeyance. This exception should be denied and the proceeding should progress.

As the Board recently observed, the D.C. Circuit “itself acknowledged [that] its decision is in conflict with a least three other courts of appeals.” Fresh Direct, LLC, Nos. 29-CA-088077, et al., Order p. 1, n. 1 (Feb. 26, 2013). 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).

Accordingly, the Board has stated that it “intends to file a petition for certiorari with the United States Supreme Court for review of that decision.” NLRB to Seek Supreme Court Review in *Noel Canning v. NLRB*, NLRB Press Release (March 12, 2013). Recognizing the question of the validity of the 2012 NLRB appointments and their subsequent course of action “remains in litigation,” the Board has declared that, “until such time as it is ultimately resolved, the Board is charged to fulfill its responsibilities under the Act.” *Fresh Direct, LLC*, Nos. 29-CA-088077, et al., Order p. 1, n. 1. Among those responsibilities is appointing Regional Directors, conducting representation elections, and subsequently certifying the election results thereof, under Section 9.

Moreover, even if the *Noel Canning* decision is ultimately sustained by the Supreme Court, the present lack of a Board quorum would not undermine the Regional Director’s authority to conduct the election in this case. NLRA § 3(b) 2 authorizes the Board “to delegate to its Regional Directors its powers under section 9” to conduct representation elections. 29 U.S.C. § 153(b). The Board has long ago delegated that authority to its regional directors. In addition, the Supreme Court recently gave strong indication that the absence of a Board quorum does not suspend that delegation. See *New Process Steel v. NLRB*, 130 S.Ct. 2635, 2642-43 n. 4 (2010) (refusing to adopt the D.C. Circuit’s view that delegated powers are suspended during periods when the Board lacks a quorum).

The Union agrees with the Region that there is a strong public interest in addressing representation disputes as soon as possible that are of concern to employees and employers alike. In this case, the Union prevailed in the election with 43 votes in favor of Union’s representation,

and 23 against. Holding this proceeding in abeyance would lead to a great deal of uncertainty in the lives of the employees, as well as to the Employer's business.

In sum, the D.C. Circuit's Noel Canning decision does not in any way effect the Region's authority to direct an election and certify the results thereof in this case.

Respectfully submitted,



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