UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

BEACON SALES ACQUISITION d/b/a
BEACON SALES COMPANY
Employer

and Case 01-RC-098033

TEAMSTERS LOCAL 25 a/w
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS
Petitioner

ORDER

The Employer's Request for Review of the Regional Director's Decision and Direction of Election is denied as it raises no substantial issues warranting review.[1] The Employer's request to stay proceedings is also denied.

MARK GASTON PEARCE, CHAIRMAN

RICHARD F. GRIFFIN, JR., MEMBER

SHARON BLOCK, MEMBER

Dated, Washington, D.C., April 8, 2013.

[1] The Employer contends that the Board lacks a quorum because the President's recess appointments are constitutionally invalid. We reject this argument. We recognize that the United States Court of Appeals for the District of Columbia Circuit has concluded that the President's recess appointments were not valid. See *Noel Canning v. NLRB*, 705 F.3d 490 (D.C. Cir. 2013). However, as the court itself acknowledged, its decision conflicts with rulings of at least three other courts of appeals. See *Evans v. Stephens*, 387 F.3d 1220 (11th Cir. 2004), cert. denied, 544 U.S. 942 (2005); *U.S. v. Woodley*, 751 F.2d 1008 (9th Cir. 1985); *U.S. v. Allocco*, 305 F.2d 704 (2d Cir. 1962). This question remains in litigation, and pending a definitive resolution, the Board is charged to fulfill its responsibilities under the Act. See *Sub-Acute Rehabilitation center at Kearny*, 359 NLRB No. 77, slip op. 1, fn.1 (2013).

In denying review, we agree with the Regional Director's statement that *WLVI, Inc.*, 349 NLRB 683 (2007), is inapposite. *WLVI* dealt with a unit clarification petition involving the placement of a new classification in a unit defined by the work performed, and it was therefore necessary to analyze the employees the union sought to add to the unit under the framework set forth in *The Sun*, 329 NLRB 854 (1999). Neither *WLVI* nor *The Sun* applies to cases, such as this, where the parties only dispute whether an employee performs sufficient unit work to be eligible to vote as a dual-function employee.