

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

COUPLED PRODUCTS, LLC, )  
 )  
 ) Case No. 25-CA-062263  
 and ) 25-CA-031883  
 )  
INTERNATIONAL UNION, UNITED AUTOMOBILE, )  
AEROSPACE AND AGRICULTURAL IMPLEMENT )  
WORKERS OF AMERICA, UAW, )

**RESPONDENT' MOTION TO DISQUALIFY  
MEMBERS BLOCK AND GRIFFIN  
FROM RULING ON THIS CASE**

This case is pending before the Board on exceptions filed by Counsel for the Acting General Counsel of the National Labor Relations Board, as well as exceptions filed by the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW. Respondent hereby moves for the disqualification of Members Sharon Block and Richard Griffin from hearing this case or issuing any rulings in this case, because their “recess” appointments to the Board by President Obama were unconstitutional. The Board lacks a quorum as defined in *New Process Steel, L.P. v. NLRB*, 130 S.Ct. 2635 (2010). As such, the Board lacks authority and power to issue a decision on the pending exceptions.

**MEMBERS BLOCK AND GRIFFIN OF THE NLRB HAVE NOT BEEN  
VALIDLY APPOINTED, AND THE BOARD THEREFORE LACKS THE QUORUM  
NECESSARY TO ACT IN THIS CASE.**

On January 3, 2012, the term of National Labor Relations Board Member Craig Becker expired, leaving the NLRB with only two members. The Board now lacks the requisite number (3) members to review the pending exceptions. The Supreme Court held that the Board lacks

authority to act when it consists of only two members. *New Process Steel, L.P. v. NLRB*, 130 S.Ct. 2635 (2010).

On January 4, 2012, President Obama announced “recess” appointments of three new members to the NLRB (Members Block, Griffin, and Flynn). However, the United States Senate was in session at the time of the President’s purported appointments of the new Board members. The President did not obtain the advice and consent of the Senate required by Article II, Section 2, Clause 2 of the U.S. Constitution. Therefore the President’s appointments were not validly made and the appointments of Members Block and Griffin violate Articles I and II of the U.S. Constitution.

The 1921 opinion of Attorney General Daugherty set forth the long followed rule that recess appointments can be made only if the recess was of sufficient duration that the Senate could “not receive communications from the President or participate as a body in making appointments.” 33 Op. Att’y Gen. 20, 24 (1921). There existed no such circumstances when the appointments in question here were made by the President. The Senate was in session during the period when the appointments were made. The Senate was able to receive communications and participate in the appointment process if called upon to do so.

### **CONCLUSION**

Charging Parties hereby move for the disqualification of Members Block and Griffin from hearing this case or issuing any rulings in this case, including but not limited to the pending exceptions, as their “recess” appointments to the Board by the President were unconstitutional. Without a quorum the Board can issue no decision in this case.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of August, 2012, I e-mailed a true and correct copy of the above and foregoing to:

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