



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

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February 20, 2013

Jedd Mendelson, Esq.
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Re: **800 River Road Operating Company LLC**
d/b/a Woodcrest Operating Center
Case No. 22-RC-073078

Dear Mr. Mendelson:

I have received your Motion to Vacate Decision and Certification of Representative (“the Motion”), requesting that I vacate the Decision and the Certification of Representative in the case referenced above. You further request that the Region hold in abeyance any further processing of the unfair labor practice charge filed against the Employer in Case 22-CA-097938. Your request relies solely on the decision of the United States Court of Appeals for the D.C. Circuit in *Noel Canning v. NLRB*, No. 12-1115, slip op. (D.C. Cir. Jan. 25, 2013). In that case, the D.C. Circuit concluded that the President’s January 2012 recess appointments to the Board were invalid. For reasons set forth below, your Motion is denied.

As you know, by Decision and Certification of Representative, dated January 9, 2013, the Board (by Chairman Pearce and Members Griffin and Block) denied the Employer’s exceptions to the hearing officer’s Report, adopted the hearing officer’s findings and recommendations, and issued a Certification of Representative. *800 River Road Operating Company, LLC d/b/a Woodcrest Health Care Center*, 359 NLRB No. 48, at 2 (Jan. 9, 2013). Afterwards, the *Noel Canning* decision issued. Your Motion claims that in light of *Noel Canning*, “the (Board’s) Decision herein is void *ab initio*.”

In response to the *Noel Canning* decision, Chairman Mark Gaston Pearce issued the following statement:

The Board respectfully disagrees with today’s decision and believes that the President’s position in the matter will ultimately be upheld. It should be noted that this order applies to only one specific case, *Noel Canning*, and that similar questions have been raised in more than a dozen cases pending in other courts of appeals.

In the meantime, the Board has important work to do. The parties who come to us seek and expect careful consideration and resolution of their cases, and for that reason, we will continue to perform our statutory duties and issue decisions.

News Release, Statement by Chairman Pearce on Recess Appointment Ruling, <http://www.nlr.gov/news/statement-chairman-pearce-recess-appointment-ruling> (Jan. 25, 2013).

In accordance with Chairman Pearce’s statement, I strongly disagree with your argument that the Board acted without authority when it issued its Decision and Order, and Certification of Representative in this case. Furthermore, litigation concerning the validity of the President’s recess appointments to the Board continues to percolate, and I do not believe matters pending before the Agency should be delayed indefinitely while that

litigation runs its course. Finally, there is a strong public interest in addressing as soon as possible representation disputes that are of concern to employees and employers alike. Most representation disputes have long been resolved administratively without the necessity of court litigation. And even where, as here, there is a challenge to the authority of the Board to act, our experience in continuing to process cases during the analogous dispute leading to *New Process Steel, L.P. v. NLRB*, 130 S. Ct. 2635, 2638 (2010), was that most of the cases decided during that time helped finally resolve labor disputes because the parties either accepted the Board's decision or settled the dispute.

For these reasons, I will not vacate the Decision and Certification of Representative, nor hold in abeyance any further processing of the unfair labor practice charge filed against the Employer in Case 22-CA-097938. Accordingly, your Motion is denied.

Very truly yours,



Edward J. Peterson
Acting Regional Director

cc:

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