

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

**DHSC, LLC, d/b/a AFFINITY
MEDICAL CENTER**

and

**NATIONAL NURSES
ORGANIZING COMMITTEE**

**Cases 08-CA-090083
08-CA-090193
08-CA-093035
08-CA-095833**

ORDER

The request of employees Susan Kelley and Cinda Keener (the Movants) for special permission to appeal Deputy Chief Administrative Law Judge Arthur Amchan's Order denying their motion to intervene is denied. We find that the Movants have failed to establish that the judge abused his discretion in denying the motion. To the extent the Movants argue that they are being denied due process because the Board has precluded them from pursuing their objections, we note that under Section 102.9 of the Board's Rules and Regulations they were free at any time during the applicable limitations period to file an unfair labor practice charge alleging that the conduct at issue

violated the Act.¹

Dated, Washington, D.C., April 30, 2013.

MARK GASTON PEARCE,	CHAIRMAN
RICHARD F. GRIFFIN, JR.,	MEMBER
SHARON BLOCK,	MEMBER

¹ The Movants contend, in part, 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 d/b/a Belgrove Post Acute Care Center*, 359 NLRB No. 77, slip op. 1, fn.1 (2013).