

Lederach Electric, Inc. and International Brotherhood of Electrical Workers, Local 380 Case 04-CA-037725

August 19, 2014

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS HIROZAWA
AND JOHNSON

On March 4, 2013, the Board issued a Supplemental Decision and Order in this proceeding, which is reported at 359 NLRB 575. Thereafter, the Respondent filed a petition for review in the United States Court of Appeals for the Third Circuit.

At the time of the Supplemental Decision and Order, the composition of the Board included two persons whose appointments to the Board had been challenged as constitutionally infirm. On June 26, 2014, the United States Supreme Court issued its decision in *NLRB v. Noel Canning*, 134 S.Ct. 2550 (2014), holding that the challenged appointments to the Board were not valid. Thereafter, the Board issued an order setting aside the Supplemental Decision and Order, and retained this case on its docket for further action as appropriate.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

In view of the decision of the Supreme Court in *NLRB v. Noel Canning*, supra, we have considered de novo the judge's supplemental decision and the record in light of the exceptions and briefs. We have also considered the now-vacated Supplemental Decision and Order, and we agree with the rationale set forth therein.¹ Accordingly, we affirm the judge's rulings, findings, and conclusions and adopt the judge's recommended Order to the extent and for the reasons stated in the Supplemental Decision and Order reported at 359 NLRB 575, which is incorporated herein by reference.²

¹ In finding that the discriminatees would have worked through the claimed backpay period, Member Johnson accords substantial weight to the fact that the signed 2011 salting agreement was entirely irrelevant because it was signed after the end of the claimed backpay period. He further finds that Breen's testimony that he never spoke to other employees about union-related subjects while employed by the Respondent weighs against finding that he was a salt.

² Consistent with our decision in *Don Chavas LLC d/b/a Tortillas Don Chavas*, 361 NLRB 102 (2014), we agree with the modification to the judge's recommended Order to require the Respondent to provide the Social Security Administration reporting remedy.