

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

HENDRICKSON TRUCKING COMPANY

and

Cases 07–CA–086624
07–CA–095591

LOCAL 164, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS (IBT)

ORDER REMANDING¹

On May 16, 2014, Administrative Law Judge Donna N. Dawson issued a decision in this proceeding. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief to the Respondent's exceptions.

In its exceptions and supporting brief, the Respondent argues, inter alia, that Donna N. Dawson, the administrative law judge who presided over the hearing below and issued the May 16, 2014 decision, was appointed at a time when the Board lacked a quorum, that her appointment is therefore not valid, and that she had no lawful authority to act in this proceeding.² The Respondent is correct that under the court's decision in *NLRB v. Noel Canning*, 134 S.Ct. 2550 (2014), the Board lacked a valid quorum at the time it originally approved Judge Dawson's appointment in April 2013. However, on July 18, 2014, the Board ratified all administrative and personnel decisions made from January 4, 2012, to August 5, 2013, and expressly authorized Judge Dawson's appointment. As the Board stated in its Minute of Board Action ([full text](#)

¹ The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

² The Respondent also argues that Regional Director Terry Morgan, who issued the complaint, lacked authority to prosecute this matter because she was appointed at a time when the Board lacked a quorum. We reject this argument. Terry Morgan was appointed as Regional Director for Region 7 on December 28, 2011, a time when the Board had a lawful quorum.

[available here](#)), it took this action in an effort to resolve any continuing uncertainty regarding various actions taken during the time the Board lacked a quorum.³

In our view, this ratification resolves any uncertainty regarding Judge Dawson's appointment as an administrative law judge. Nevertheless, we note that other Agency officials whose appointments were ratified on July 18, 2014, have taken the additional step of independently ratifying the actions they took between the date of their initial appointment and the Board's ratification. See, e.g. *Pallet Companies, Inc.*, 361 NLRB No. 33, slip op. at 1-2 (2014), enfd. mem. No. 14-1182, 2015 WL 9309133 (D.C. Cir. Dec. 18, 2015) (per curiam). In the instant matter, however, Judge Dawson issued her decision and this case was transferred to the Board prior to the Board's ratification of her appointment, thereby divesting Judge Dawson of jurisdiction. Thus, Judge Dawson did not have the opportunity to consider whether or not to ratify her prior actions.

This is a complex case involving numerous alleged violations of Sections 8(a)(1), (3) and (5) of the Act, including alleged unilateral changes to terms and conditions of employment in the absence of a lawful bargaining impasse, alleged provocation of an unfair labor practice strike and subsequent refusal to reinstate the strikers after they unconditionally offered to return to work, alleged refusal to provide relevant and necessary information requested by the Charging Union, and alleged bad-faith bargaining. The hearing lasted 2 days and the judge's decision spans 41 pages. The Respondent filed 60 exceptions, many of which involve the judge's credibility determinations or other rulings, and the Respondent has made it clear that it intends to continue to litigate the question of the judge's authority.

³ See Order Contingently Delegating Authority to the Chairman, the General Counsel, and the Chief Administrative Law Judge, 76 Fed. Reg. 73719 (Nov. 29, 2011).

Under all the circumstances of this case, and without concluding or suggesting that the judge lacked the authority to issue the May 16, 2014 decision, in an effort to remove any lingering questions, we have decided to remand this matter to Judge Dawson so that she can consider anew the issues presented now that her appointment has been ratified by a fully confirmed five-member Board. On remand, Judge Dawson will have full authority over this matter and may decide whether or not to ratify her prior actions herein, to adopt or modify her prior decision, or to issue an entirely new decision. Absent a specific order by Judge Dawson, this remand does not give the parties the opportunity to relitigate any matter previously presented for decision, nor does it give any party the right to expand the scope of the issues previously presented.⁴

Having duly considered the matter,

IT IS ORDERED this case is hereby remanded to Judge Dawson for further proceedings consistent with this order.

Dated, Washington, D.C., April 6, 2016

Mark Gaston Pearce, Chairman

Philip A. Miscimarra, Member

Kent Y. Hirozawa, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

⁴ In its brief in support of its exceptions, the Respondent argues without elaboration that the Acting General Counsel lacked authority to prosecute this case. This argument originally was grounded in the Board's lack of a quorum, but the Respondent now cites *NLRB v. Kitsap*, 2013 U.S. Dist. Lexis 114320 (2013). We do not find it necessary to reach this issue. On remand, the current General Counsel presumably will choose either to continue prosecution of this matter, to seek settlement of the outstanding issues, or to withdraw the complaint. Thus, any question regarding the authority of the Acting General Counsel likely will be moot.