

Supreme Court sides with employers in NLRB case

WASHINGTON, D.C. — In a 5-4 decision June 17, the U.S. Supreme Court ruled that the National Labor Relations Board (NLRB) cannot decide cases when it consists of just two board members.

For more than two years the NLRB operated as a two-person board with three seats unfilled. The two-member board — made up of one Democrat and one Republican — issued nearly 600 decisions. Before this ruling, five federal appeals courts ruled that cases decided by the two-member board were valid.

In March, President Obama used recess appointments to fill two seats after Republican senators blocked his nominees for months.

Several employers objected to the two-person decisions, and the Supreme Court agreed to review the issue in a case brought by New Process Steel.

“As has become the norm, workers are once again penalized by corporate stall tactics,” said AFL-CIO General Counsel Lynn Rhinehart. “By the barest of majorities, five justices rewarded New Process Steel and other corporations who challenged the two-member NLRB decisions as a delay method to avoid respecting workers’ rights.”

Rhinehart said workers in these cases now face further delay as the NLRB is forced to sort out and deal with the impact of the high court’s decision.

“The AFL-CIO supported the NLRB’s position in this case and believes the NLRB had the far better argument,” she said. “We regret that as a result of the court’s decision, workers in these cases will have to wait longer still for justice.”

According to the Bureau of National Affairs Daily Labor Report, in March

2003, the Justice Department’s Office of Legal Counsel issued a memorandum finding that “if the Board delegated all of its powers to a group of three members, that group could continue to issue decisions and orders as long as a quorum of two members remained.”

In December 2007, when the NLRB had four sitting members and the terms of two of them were set to expire, it delegated its authority to a group of three or more members.

As the AFL-CIO brief supporting the NLRB points out: “The long and the short of the matter is that Congress has provided that once the full Board has delegated Board decision making powers to a designated groups of three or more members [which the Board did in December of 2007], two members of that groups may exercise the delegated powers ...”

In his dissenting opinion, Justice Anthony Kennedy wrote: “The objectives of the statute, which must be to ensure orderly operations when the Board is not at full strength as well as efficient operations when it is, are better respected by a statutory interpretation that dictates a result opposite to the one reached by the Court.”

Kimberly Freeman Brown, executive director of American Rights at Work, said the ruling, “after fierce corporate pressure,” adds insult to injury for thousands of workers across America ... decisions in cases already decided by the NLRB will have to be re-opened, needlessly delaying finality for workers who were led to believe they already had it.”

Justice John Paul Stevens wrote the court’s opinion, and was joined by Chief Justice John Roberts and Justices Antonin Scalia, Clarence Thomas and Samuel Alito. Justices Ruth Bader Ginsburg, Stephen Breyer and Sonia Sotomayor joined with Kennedy’s dissent.

Senate confirms two to NLRB posts

The U.S. Senate on June 22 confirmed Democratic union lawyer Mark Pearce and Republican Senate aide Brian Hayes to full terms on the National Labor Relations Board.

Not confirmed with them was Craig Becker. President Obama nominated all three men last year, but Republicans have united in opposing Becker because he has worked as an attorney for the AFL-CIO and the Service Employees International Union.

In April, Obama made Becker and Pearce recess appointments, a practice used by presidents when the Senate doesn’t act on nominations. Becker can only serve through the end of the next Senate session, at the end of 2011.

With the confirmation of Pearce, he will serve a five-year term.

It is the first time since December 2007 that all five seats have been filled. However, last month NLRB General Counsel Ron Meisburg announced his resignation, effective June 20.

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