...U.S. Supreme Court rulings impact labor unions

(From Page 1)

sense only to Illinois. But in what she called "an overabundance of caution," Local 503 notified the State of Oregon on July 14 to stop withholding agency fees from non-members. Conroy didn't disclose how many are in fair-share status, but said "well over a majority" of represented workers are members. Dues are 1.7 percent of wages.

"We're resolved that no court decision or right-wing attack is going to stop us from continuing to advocate for home care workers," Conroy said.

Allen said AFSCME organizers, anticipating the decision, have managed to add 200 members in recent months, raising membership from about 50 to about 70 percent of those represented. Dues for the group are $35 a month.

"A lot of providers we never had one-on-one contact with, many of them in rural areas," Allen said. "We're out visiting those people who we haven't had an opportunity to meet, to explain the value of union membership."

Conroy said the *Harris v. Quinn* case is part of a right-wing strategy in the courts to attack public sector unions — "which is really in many ways where the strength of the labor movement is now, or at least where the numbers are."

"I think it's incumbent on all of us in the labor movement to not let these attacks dissuade us from what we're here to do, and that's to fight for economic justice for all workers," Conroy said.

Compared to *Harris v. Quinn,* the Supreme Court's decision in *National Labor Relations Board v. Noel Canning* will be a hassle, but not be the calamity for labor that it was once feared to be.

Starting in 2009, President Obama, as federal law spells out, made nominations to fill vacancies on the five-member National Labor Relations Board, but Republicans used the U.S. Senate's undemocratic filibuster rule to block confirmation of all the appointments in an open attempt to obstruct the functioning of the Board, which adjudicates questions about the application of labor law. When the Senate fails to confirm nominees, presidents sometimes wait until they're in recess, and then make what are known as "recess appointments." But in January 2012, Senate Republicans tried to prevent that from happening by refusing to consent to have the Senate gaveled into recess. Instead they remained in a sham session, holding proceedings every three days at which no actual business was conducted. Obama made the appointments anyway, and justified it arguing that Senate was in fact in recess.

Enter Noel Canning, a Pepsi bottler in Yakima, Washington, which lost an unfair labor practice case filed by Teamsters Local 760. Noel Canning argued to the U.S. Court of Appeals that the Board's decision in its case was invalid — because the board members themselves were invalid, since they hadn't been legitimately appointed. The D.C. Circuit Court of Appeals agreed (which is remarkable, considering that two of the three federal justices were themselves Obama recess appointments). For a time, union leaders feared the case could result in the total end of the NLRB as a functioning Board, if all its decisions were held to be invalid. But in November, the Senate Democratic leadership invoked the so-called "nuclear option," using a simple majority vote to change the Senate's filibuster rule, for presidential appointments. Now it takes 51 votes, not 41, to block a nomination. The Senate proceeded to confirm Obama's NLRB appointments earlier this year, and the Board is now at full strength.

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On June 26, the Supreme Court upheld the Circuit Court's Noel Canning decision in a 9-0 ruling. Basically, the Supreme Court ruled that when the U.S. Senate says it's in session, it's in session, even if that's transparently a ruse to prevent the president from making "recess appointments."

In a way, the decision is moot, because the Senate solved the underlying problem. But for the NLRB, it will be a bureaucratic headache. It will have to sift through all decisions that took place when the three invalid recess appointees were on the Board, and re-adjudicate them.

In a statement reacting to the decision, NLRB Chairman Mark Gaston Pearce said the agency is committed to resolving any cases affected by the decision as expeditiously as possible.

One other Supreme Court decision, *McCullen v. Coakley*, could bolster union protest rights.

In *McCullen v. Coakley*, the Court struck down a Massachusetts law barring individuals from standing on a public right of way or sidewalk within 35 feet of an abortion clinic. The law was intended to prevent clashes between anti-abortion protesters and clinic patients and staff, but it was found to be an unconstitutional restriction on freedom of speech. Mechanic said the court decision could be cited by labor attorneys in cases where union supporters face restrictions to their protest rights. Courts have sometimes interpreted union pickets as "commercial" speech, and haven't accorded them the robust First Amendment protections that are accorded to political speech. Thus, courts have upheld many restrictions on union pickets at construction sites and hospitals, ranging from which gate may be picketed to how many picketers may take part, to what the sign may say. Depending on the circumstances, *McCullen v. Coakley* could be another supporting citation to promote First Amendment rights, Mechanic said.