

CLIENT ALERT: Supreme Court Holds Two-Member NLRB Lacked Authority to Issue Rulings

In a 5-4 ruling issued on June 17, 2010, the Supreme Court held that a two-member National Labor Relations Board lacked authority to issue rulings.

Between January 1, 2008 and March 27, 2010, Members Leibman and Schaumber became the only sitting members of the Board. During this period, the two members decided almost 600 cases based on a delegation of authority issued on December 27, 2007, when the Board consisted of four members. (Two recess appointments expired on December 31, 2007.)

Writing for the Court majority, Justice Stevens interpreted the quorum requirements of Section 3(b) of the National Labor Relations Act as mandating three participating members "at all times" in order for the Board to act. Thus, the Board could not delegate authority to decide cases with only two Board members.

It is not clear what the Court's ruling means as far as the nearly 600 rulings issued by the two-member Board. Except for approximately 74 cases which are still pending appeal, the parties have complied with the rulings of the two-member Board.

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This alert was prepared on June 17, 2010.

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