# NLRB looks at all employee problems

## *Few really understand powerful agency's role*

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Few people on either side of the National Labor Relations Board fully understand the impact of the agency or its role.

Frank B. "Skip" Wolfe III, a labor and employment lawyer with the Hall Estill Law Firm, said issues brought before the National Labor Relations Board often tilt toward unions and the fight is on at the appellate court level.

It is a powerful group that impacts business and labor alike. It is steeped in the political system.

"Those of us who fight on behalf of management love cases that are appealed to the U.S. Supreme Court," he said. "That is the situation in the National Labor Relations Board vs Noel Canning et al when it was found that President Barrack Obama's nominees were unconstitutional."

The President's original nominees were unacceptable to the U.S. Senate and he has since backed down and named three others who were confirmed, Wolfe said. Some of the earlier nominees withdrew their names when it became apparent they would not be confirmed.

The five-member board seldom meets as a unit to rule on a case, Wolfe said. It takes three members to make a decision and ideally the chairman serves only as a tie-breaking vote.

Section 7, the heart of the National Labor Relations Act, provides that two people acting together may engage in negotiations with an employer, Wolfe explained. That means if these people, as employees, complained to their supervisor the air conditioning wasn't working when it is 110 degrees Fahrenheit, they are protected from any adverse reactions or retaliations.

They also are protected from threats, of interrogation and from being spied on by the employer.

Different rules apply to unions because they are permitted interrogate people and find out their perspectives for supporting a union. They can spy on employees and even threaten when the employer cannot do so.

There is a reason, Wolfe said. The question is who has the power?

That answer is simple. It is the employer because the employer has the economic power through the payroll as well as the ability to fire a person.

Unions by contrast, can only represent people. They do not have any power to hire or fire anyone. The union can say they will get someone a dollar an hour pay increase, but they cannot put that into effect. It has to go to management.

NLRB board members hold powerful positions in the government, he said. They are considered officers and their decisions can be subject to review by an appellate court.

However, the board, because of resignations, had two members and could not act without a quorum of three. The ideal situation is to have the two members, each arguing their side of a case in an effort to sway the other's vote. The chair serves only as a referee or votes to break a tie. The design was to give both the employer and union an opportunity for a favorable decision.

Labor attorneys practicing during the 1960s and days when Lyndon B. Johnson was President knew they didn't have a chance before the board and always prepared for an appellate fight, Wolfe said. That is not a good situation and appeals are tremendously time consuming and expensive.

The recent Supreme Court ruling voiding President Obama's three nominees meant that all the cases that had been decides were void, he said. It meant they had to be presented again to an Administrative Law Judge who might not make the same decision.

At this time, with confirmed Senate appointments, the NLRB is reviewing the decisions trying to salvage as much as possible, Wolfe said. It is a time that a labor attorney needs to be ready to argue their case again.

Currently the National Labor Relations Board is focusing on applying the protection of the National Labor Relations Act to non-union employees of non-union employers in cases involving wages, benefits, work hours and working conditions, Wolfe said. It is important that non-union employers understand that the Act applies to them just as it does to union employers. «