

Client Alert



A report for clients and
friends of the Firm

May 2009

NLRB Will Continue to Decide Cases With Only Two Members

On May 1, 2009, we reported that the Court of Appeals for the District of Columbia Circuit had just ruled that the National Labor Relations Board, which has functioned with only two of its five members since January 1, 2008, had lost its quorum and, as a result, had no statutory authority to issue any of the nearly 400 decisions that were released during the preceding 16-month period. *Laurel Baye Healthcare of Lake Lanier, Inc.*, 2009 U.S. App. LEXIS 9419 (D.C. Cir. 2009).

On May 18, the NLRB issued a press release announcing that, notwithstanding the D.C. Circuit's decision in *Laurel Baye Healthcare*, Chairman Liebman and Member Schaumber would continue to issue decisions in unfair labor practice and representation cases. The Agency emphasized that two other Courts of Appeal, the First and Seventh Circuits, had upheld the two-member Board's authority to decide cases, and that the issue currently is pending review in seven other circuit courts.

In their statement, Chairman Liebman and Member Schaumber noted that:

"the Board has an important public duty to keep functioning, and to avoid an indefinite shutdown in its decision-making, where (as here) there is a reasonable legal basis for concluding that the Board can act. We remain convinced, as the First Circuit and Seventh Circuit have held, that such a basis for action exists under our statute. And we believe that by continuing to act on cases, we will be able to finally resolve a substantial number of those disputes. The parties in many cases that have been decided by the Board have accepted the Board's decisions. In other cases, while the merits of the Board's decision have been challenged, the authority of the Board, as now constituted, to act has not been attacked."

The NLRB intends by the end of this month to petition for rehearing in *Laurel Baye Healthcare* before the full D.C. Circuit.

We will continue to keep you advised of developments in this important matter.

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