

# Law of the Workplace

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## CLIENT ALERT

### D.C. Circuit Says Two-Member Rump Board Has No Authority to Issue Rulings

The current two-member National Labor Relations Board (“Board”) does not have the requisite statutory authority to issue rulings, the D.C. Circuit said in *Laurel Baye Healthcare of Lake Lanier, Inc. v. NLRB*, a decision issued May 1, 2009. The National Labor Relations Act (“Act”) does not allow a two-member rump Board to issue decisions, the D.C. Circuit reasoned. Consequently, whether the approximately 400 decisions the two-member Board has issued since early 2008 are legally binding is now in question.

Interestingly, on the same day the D.C. Circuit issued its *Laurel Baye* decision, the Seventh Circuit issued *New Process Steel LP v. NLRB*, holding the exact opposite of *Laurel Baye*, i.e., the Act expressly affords a two-member Board the authority to issue decisions. The Seventh Circuit’s ruling is in accord with a March decision by the First Circuit finding a two-member Board may legally issue decisions.

The issue of whether the two-member Board may legally issue decisions will likely come before the Supreme Court, given the circuit courts’ split. Indeed, there are several pending cases in other circuits questioning the authority of the two-member rump Board. Until the Supreme Court speaks on the issue, the extent of the two-member Board’s authority will remain unsettled.

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This material is intended to provide you with information regarding a noteworthy legal development. It should not be regarded as a substitute for legal advice concerning specific situations in your operation. If you have any questions or would like additional information on this topic, please contact our Firm at (860) 727-8900 or [www.siegeloconnor.com](http://www.siegeloconnor.com).

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