

## NLRB Weekly Summary of Decision, December 7 – 11, 2015

Article By:

Labor and Employment Law Department

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***Sub-Acute Rehabilitation Center at Kearny, LLC d/b/a Belgrove Post Acute Care Center***  
([22-CA-093626](#); [363 NLRB No. 61](#)) Kearny, NJ, December 9, 2015.

On December 21, 2012, the Acting General Counsel filed a Motion for Summary Judgment in this proceeding. On December 26, 2012, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response. On March 13, 2013, the Board issued a Decision and Order, reported at 359 NLRB No. 77. Thereafter, the General Counsel filed an application for enforcement in the US Court of Appeals for the Third Circuit. At the time of the Decision and Order, the composition of the Board included two persons whose appointments to the Board had been challenged as constitutionally infirm. On June 26, 2014, the United States Supreme Court issued its decision in *NLRB v. Noel Canning*, 134 S.Ct. 2550 (2014), holding that the challenged appointments to the Board were not valid. Thereafter, the court of appeals remanded this case for further proceedings consistent with the Supreme Court's decision.

On November 25, 2014, the Board issued a Decision, Certification of Representative, and Notice to Show Cause why the General Counsel's motion should not be granted, providing leave to the General Counsel to amend the complaint to conform with the current state of the evidence, including whether the Respondent had agreed to recognize and bargain with the Union after the November 25, 2014 certification of representative issued. (361 NLRB No. 118.) Thereafter, on January 8, 2015, the Respondent filed its response to the Notice to Show Cause and its opposition to the motion for summary judgment. Noting that the General Counsel had not filed an amended complaint, the Respondent argued that summary judgment could not be granted because the prior certification was "invalid," that the Board could not rely upon an invalid certification to find a refusal to bargain, and that there was no evidence that the Union had requested bargaining after the Board's November 25, 2014 Decision, Certification of Representative, and Notice to Show Cause. The Respondent also reiterated certain representation and procedural arguments that the Board had considered and rejected in its November 25, 2014 Decision.

To read more, visit the NLRB's [website](#).

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