

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

NATIONAL ASSOCIATION OF	)	Case No. 1:11-cv-01629-ABJ
MANUFACTURERS, <i>et al.</i> ,	)	
	)	Judge Amy Berman Jackson
Plaintiffs,	)	
	)	
v.	)	
	)	
NATIONAL LABOR RELATIONS	)	
BOARD, <i>et al.</i> ,	)	
	)	
Defendants.	)	
	)	

**MOTION OF CERTAIN CO-PLAINTIFFS FOR LEAVE TO  
SUPPLEMENT THEIR COMPLAINTS AND  
OBJECTION TO SUBSTITUTION OF DEFENDANTS**

In response to recent events, and pursuant to F.R.Civ.P. 15, Co-Plaintiffs Coalition for a Democratic Workplace (“CDW”), National Right to Work Legal Defense and Education Foundation, Inc. (“NRTW”), National Federation of Independent Business (“NFIB”), Southeast Sealing, Inc. and Racquetball Centers, Inc. move for leave to supplement and/or further amend their Complaints (Docket #11 in the currently consolidated case and Docket #1 in Case No. 11-cv-1683 filed prior to consolidation).<sup>1</sup>

The grounds for the Motion are that very significant events have transpired since the filing of the Complaints in this case, particularly within the last ten days, that create a new and substantial ground for enjoining the Defendants’ challenged Rule, as set forth in the attached Supplemental Complaints.

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<sup>1</sup> Counsel for Defendants has been consulted prior to the filing of this Motion pursuant to Local Rule 7 and has stated that Defendants will be objecting to the Motion. Co-Plaintiff National Association of Manufacturers does not oppose this Motion.

More specifically, the Defendant National Labor Relations Board has lost its authority to implement and enforce the challenged Rule due to the expiration of Member Becker's term and the President's failure to appoint new Board members with the advice and consent of the U.S. Senate, as required by Article II of the Constitution. The three new purported appointees to the Board, who are identified in the Defendants' supplemental brief as "successors" to the vacant seats on the Board, do not in fact hold valid appointments to the agency. The President's purported appointment of them on January 4, 2012 was unconstitutional, null and void. As a result, there are at present only two validly serving members of the Board, Chairman Pearce and Member Hayes. The Supreme Court having declared that the Board lacks authority to act with only two members, *New Process Steel, L.P. v. NLRB*, 130 S. Ct. 2635 (2010), Co-Plaintiffs are entitled to an order from the Court declaring that the Board no longer has authority to implement or enforce the Notice Rule on its scheduled effective date of April 30, 2012. Reference is made to the attached Memorandum in support of the Motion and the proposed Supplemental Complaints of the moving Co-Plaintiffs.

Respectfully submitted,

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