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**ALLEGHENY COUNTY LABOR COUNCIL
REPORT OF LEGAL COUNSEL
September 5, 2013**

Although the Board has five appointed members who were recently confirmed by the Senate, the issues surrounding decisions of the Board continue to hang like a dark cloud. As many of you know, President Obama made recess appointments to the Board in January 2012. In January of this year, the U.S. Court of Appeals for the District of Columbia, in a case known as *Noel Canning*, struck down these “recess appointments” as invalid under the Constitution. Furthermore, they put on hold all pending NLRB cases. That case has been appealed to the Supreme Court and that decision may have far reaching impact on decisions not only of the NLRB, but in the filling of vacancies throughout the federal government. In fact, since 1981, both Democratic and Republican presidents have made 329 recess appointments, all of which could very well be invalid under the *Noel Canning* decision if the Supreme Court affirms the D.C. Circuit.

Employers continue to raise a defense in any unfair labor practice and representation cases which remain in the pipeline prior to the most recent appointments. In fact, the issues involving 263 unfair labor practice cases and 36 representation cases remain in doubt pending the decision in *Noel Canning*. Many cases also claim that any appointments made by the Board with regard to the ten regional directors appointed by the Board prior to the most recent Senate confirmations are invalid.

The more significant challenges being made are to the substantive law upon which the Board issued decisions in cases such as *D.R. Horton* in which the Board determined that an employer’s insistence that employees must waive their right to file class action claims as a condition of employment violates the Act. Similarly, the significant case of *Bethlehem Steel* which held that the dues checkoff survives the contract expiration, may be in jeopardy. Essentially, we must wait and see what the Supreme Court decides. To say that these constant judicial attacks have paralyzed the NLRB would be an understatement. Although the NLRB appears to now be moving and functioning without the impediment of further attacks on the appointment process, any of the decisions which were issued subsequent to January 2012 and prior to the August 2013 appointment, remain in doubt.

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A month or so ago our office had a meeting with Jack Shea with regards to what can be done to bolster the labor movement. We all know that labor is constantly under attack and we must broaden out horizons on who we can represent and what we can do to help. Jack and I discussed an idea in which the Labor Council would admit “associate” members, that is, members who may belong to independent unions or are sympathetic to the union movement. These “associate” members would pay a small fee, have no voting rights but would be entitled to attend meetings and receive various correspondence from the Labor Council. We also discussed the idea of providing some benefit to not only the regular members, but “associate” members. Such benefits might be a limited amount of free legal services, as well as a life insurance program which we might be able to obtain relatively inexpensively. Other ideas were kicked around, and we urge the Council to give serious consideration on further development in this area. As always, we are willing to volunteer our services to assist in formulating a plan in which we can attract more people into the labor movement.

**RESPECTFULLY SUBMITTED,
JOSEPH J. PASS, ESQUIRE**