CLEARY, JOSEM & TRIGIANI LLP

215-735-9099 | 800-559-7676

July 2014

LABOR LAW ALERT: SUMMARY OF UNITED STATES SUPREME COURT LABOR DECISIONS FOR THE 2013-2014 TERM

Harris v. Quinn

On June 30, 2014, the United States Supreme Court issued its decision in *Harris v. Quinn*. In this case the Court evaluated an Illinois law which required all homecare workers represented by a union to pay their fair share of representation costs. The Court struck down that portion of the Illinois law on the basis that it violated the First Amendment of the Constitution. The *Harris* decision rested on the Court's determination that these particular homecare workers are not "full-fledged public employees," but rather are "partial-public employees" or "quasi-public employees" due to particular features of the statute. Thus, the Court created a new third category of employees (something between public and private employees) and then refused to extend the legitimacy of fair-share fee arrangements to that group.

This case was highly anticipated because it had the potential to overturn *Abood v. Detroit Board of Education*, a 1977 decision by the Supreme Court upholding fair share fee arrangements for union-represented public employees. The good news from the Harris decision is that it did not overturn *Abood* and so that case remains good law at this time. That having been said, two points in particular are important: First, the Court declined to extend *Abood* to the employees in question and explicitly limited *Abood* to fully public employees; and second, the Harris majority questioned the foundations of *Abood* and seemed to invite challenge to that case by public employees.

The full implications of the *Harris* decision remain to be seen and the parameters of this new third category of employee will likely be highly litigated in the coming years.

The opinion was authored by Justice Alito and joined by Justices Roberts, Scalia, Kennedy and Thomas. Justice Kagen filed a dissent which was joined by Justices Ginsburg, Breyer and Sotomayor.

NLRB v. Noel Canning

In a unanimous decision in *NLRB v. Noel Canning* on June 26, 2014, the United States Supreme Court struck down President Obama's 2012 recess appointments to the National Labor Relations Board.

The Court held that the Recess Appointments Clause of the Constitution authorizes the president to fill any existing vacancy during a recess so long as the recess is of sufficient length. During the time in question, the Senate had met in pro forma sessions every three business days. In *Noel Canning*, the Court explained that the Senate wields extensive control over its own schedule and here it had maintained the capacity to transact business during pro forma sessions. As such, the Court determined that the pro forma session was not a period of recess and was not long enough to trigger the Recess Appointments Clause and so these particular recess appointments were unconstitutional. The Court indicated that ten days of recess was the appropriate presumptive lower limit to trigger the president's recess appointment power. The Court also held that the Recess Appointments Clause may be triggered during any recess, whether inter- or intra-session.

At the moment, the impact of this decision is far less dire than it might have been given that there is currently a full complement of five Senate-confirmed members of the Board. The NLRB has issued a statement that it is analyzing the impact of the Court's decision and is committed to resolving any affected cases. Clients who had cases decided by the Board since January 2012 should call our office to discuss potential issues.

Sandifer v. U.S. Steel Corp.

In another unanimous decision, on January 27, 2014, the Supreme Court issued *Sandifer v. U.S. Steel Corp.* which concerned section 3(o) of the Fair Labor Standards Act. That provision excludes time spent "changing clothes … at the beginning or end of each workday" from

compensable time. In the case before the Court, the collective bargaining agreement at issue had stated that such time was non-compensable.

In *Sandifer*, the Supreme Court recognized a difference between clothes and protective gear. However, that recognition was somewhat limited. The Court did acknowledge that time spent donning and doffing protective gear that is not commonly regarded as an article of dress (such as a respirator, safety glasses, or a pair of earplugs) must be included in the calculation of compensable time. However, the Court included in the non-compensable time calculation time spent changing into and out of ordinary articles of dress even if those articles served a protective function (such as a flame-retardant jacket, hoods, work gloves, hard hats, and steel-toed boots).

That recognition having been made, the Court then went on to hold that: "The question for courts is whether the period at issue can, on the whole, be fairly characterized as 'time spent in changing clothes or washing.' If an employee devotes the vast majority of the time in question to putting on and off equipment or other non-clothes items (perhaps a diver's suit and tank) the entire period would not qualify as 'time spent in changing clothes' under [Section 3(o)], even if some clothes items were donned and doffed as well. But if the vast majority of the time is spent in donning and doffing 'clothes' as we have defined that term, the entire period qualifies, and the time spent putting on and off other items need not be subtracted."

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325 Chestnut St, Ste 200 | Philadelphia, PA 19106