

# SUPREME COURT OF THE UNITED STATES

## Nat'l Labor Relations Bd. v. SW Gen., Inc.

137 S. Ct. 929 (2017) · No. 15-1251 · Decided March 21, 2017

### SUMMARY

The Supreme Court held that the Federal Vacancies Reform Act's prohibition on certain nominees serving as acting officers applies to all acting officers serving under the statute, not only first assistants. Lafe Solomon therefore became ineligible to continue serving as acting general counsel of the National Labor Relations Board after the President nominated him for the permanent position. The Court affirmed the D.C. Circuit's judgment vacating the NLRB's order against SW General, Inc.

### CASE DETAILS

|                       |                                                                                                                                                                                                  |
|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of the United States                                                                                                                                                               |
| WRITING FOR THE COURT | Chief Justice Roberts; Justice Kennedy; Justice Thomas; Justice Breyer; Justice Alito; Justice Kagan; Justice Sotomayor; Justice Ginsburg                                                        |
| JURISDICTION          | Federal                                                                                                                                                                                          |
| DECIDED               | March 21, 2017                                                                                                                                                                                   |
| DOCKET                | 15-1251                                                                                                                                                                                          |
| DISPOSITION           | affirmed                                                                                                                                                                                         |
| PROCEDURAL POSTURE    | SW General petitioned for review of a National Labor Relations Board order finding unfair labor practices. The D.C. Circuit vacated the Board's order, and the Supreme Court granted certiorari. |
| STANDARD OF REVIEW    | De novo review of the interpretation and application of the Federal Vacancies Reform Act.                                                                                                        |
| PRECEDENTIAL VALUE    | binding                                                                                                                                                                                          |
| PARTIES               | National Labor Relations Board v. SW General, Inc., dba Southwest Ambulance                                                                                                                      |

### TOPICS

statutory interpretation

administrative law

federal labor relations

federal employment law

separation of powers

## PRACTICE AREAS

administrative law

statutory interpretation

constitutional law

federal employment law

federal labor relations

## QUESTIONS PRESENTED

1. Whether 5 U.S.C. § 3345(b)(1) prohibits a person nominated to fill a vacant presidentially appointed, Senate-confirmed office from continuing to serve as acting officer when the person serves under § 3345(a)(2) or (a)(3), rather than automatically as a first assistant under § 3345(a)(1).
2. Whether Solomon's continued service as acting NLRB general counsel after his nomination violated the Federal Vacancies Reform Act.

## HOLDINGS

1. Section 3345(b)(1) prohibits a person nominated to fill a vacant presidentially appointed, Senate-confirmed office from performing the duties of that office in an acting capacity under the FVRA, regardless of whether the person serves under § 3345(a)(1), (a)(2), or (a)(3).
2. Once the President nominated Lafe Solomon to become the NLRB's general counsel, § 3345(b)(1) prohibited him from continuing to serve as acting general counsel under § 3345(a)(3).

## KEY QUOTATIONS

*"We conclude that the prohibition in subsection (b)(1) applies to anyone performing acting service under the FVRA."* (8)

*"The text of subsection (b)(1) is clear: Subject to one narrow exception, it prohibits anyone who has been nominated to fill a vacant PAS office from performing the duties of that office in an acting capacity, regardless of whether the acting officer was appointed under subsection (a)(1), (a)(2), or (a)(3)."* (14)

*"Once the President submitted his nomination to fill that position in a permanent capacity, subsection (b)(1) prohibited him from continuing his acting service."* (18)

## FACTUAL BACKGROUND

The NLRB's Senate-confirmed general counsel resigned in June 2010, and the President designated Lafe Solomon, a senior NLRB employee, to serve as acting general counsel under 5 U.S.C. § 3345(a)(3). The President nominated Solomon for the permanent general counsel position in January 2011, but the Senate did not act on the nomination, and Solomon continued serving as acting general counsel. In January 2013, an NLRB Regional Director acting on Solomon's authority issued an unfair-labor-practices complaint against SW General, which was later sustained by an ALJ and the NLRB.

## PROCEDURAL HISTORY

An NLRB Administrative Law Judge found that SW General committed unfair labor practices, and the NLRB affirmed. The D.C. Circuit granted SW General's petition for review and vacated the Board's order, holding that

the Federal Vacancies Reform Act barred Lafe Solomon from serving as acting general counsel after the President nominated him for the permanent position. The Supreme Court affirmed.

## DISPOSITION

affirmed

## CASES CITED

- United States v. Detroit Timber & Lumber Co., 200 U.S. 321, 337 (1906)
- Edmond v. United States, 520 U.S. 651, 659 (1997)
- Pfizer Inc. v. Government of India, 434 U.S. 308, 312 (1978)
- Koons Buick Pontiac GMC, Inc. v. Nigh, 543 U.S. 50, 60–61 (2004)
- Knight v. Commissioner, 552 U.S. 181, 188 (2008)
- Chevron U.S.A. Inc. v. Echazabal, 536 U.S. 73, 80–81 (2002)
- United States v. Vonn, 535 U.S. 55, 65 (2002)
- Marx v. General Revenue Corp., 568 U.S. 371 (2013)
- Williams v. Taylor, 529 U.S. 362, 404 (2000)
- RadLAX Gateway Hotel, LLC v. Amalgamated Bank, 566 U.S. 639, 645 (2012)
- State Farm Fire & Casualty Co. v. United States ex rel. Rigsby, 580 U.S. 26 (2016)
- Ragsdale v. Wolverine World Wide, Inc., 535 U.S. 81, 93–94 (2002)
- Oncale v. Sundowner Offshore Services, Inc., 523 U.S. 75, 79 (1998)
- Milner v. Department of Navy, 562 U.S. 562, 572 (2011)
- NLRB v. Noel Canning, 573 U.S. 513 (2014)
- Zuber v. Allen, 396 U.S. 168, 185 n.21 (1969)
- Alexander v. Sandoval, 532 U.S. 275, 292 (2001)
- United States v. Germaine, 99 U.S. 508, 509–511 (1879)
- Buckley v. Valeo, 424 U.S. 1, 126, 132 (1976)
- Morrison v. Olson, 487 U.S. 654, 671–672 (1988)
- Free Enterprise Fund v. Public Co. Accounting Oversight Bd., 561 U.S. 477, 497, 539–540 (2010)
- INS v. Chadha, 462 U.S. 919, 959 (1983)
- Bowsher v. Synar, 478 U.S. 714, 736 (1986)
- Freytag v. Commissioner, 501 U.S. 868, 880 (1991)