

Unlawful To Condition Bargaining On The Result In Noel Canning

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Can you condition bargaining with a Union on an agreement that the deal is off if the Supreme Court affirms the *Noel Canning* decision? An Administrative Law Judge (ALJ) for the NLRB this week said absolutely not.

In *Professional Transportation Inc.*, #12-CA-101034, Administrative Law Judge William Nelson Cates held that the company violated its duty under the NLRA to bargain in good faith when it insisted on conditional bargaining with the Teamsters.

The union filed a ULP after the company informed it that it would meet and bargain only if they could agree in advance on the effect of the decision in *Noel Canning*. The company's position was that if a court of competent jurisdiction determined the Board lacked a proper quorum at the time of the union's certification, then any collective-bargaining agreement arrived at would be null and void and the company would withdraw recognition of the union.

Before the ALJ, the company argued that its position was justified because if the Supreme Court affirmed the *Noel Canning* decision, then the Board did not have a quorum when it certified the Teamsters as the bargaining representative of the company's drivers in June 2012.

[Judge Cates ruled](#) that the union was validly certified at that time, that there has been no final decision that the Board lacked a legal quorum, and that the company had not challenged the original certification in June 2012. Because the company started negotiations with the Teamsters, he found, they had voluntarily recognized the Teamsters as the bargaining representative of its drivers. He further ruled that the company's attempt to condition bargaining on the above-stated pre-condition constituted bargaining in bad faith.

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