

More NLRB Cases May Be In Jeopardy Based On DC Circuit's Ruling Invalidating Most Of Former GC's Tenure

August 11, 2015 | [National Labor Relations Board, Labor And Employment](#)



**David J.
Pryzbylski**
Partner

Last week, the DC Circuit Court of Appeals issued a ruling in a case that potentially calls into question many NLRB cases that were initiated by the board's former General Counsel (GC), Lafe Solomon. The court evaluated whether Solomon's service in the GC role violated the Federal Vacancies Reform Act (FVRA). Solomon initially was appointed to temporarily fill the role in June 2010; was formerly nominated by President Obama to fill the position in January 2011; and ultimately stayed on until November 2013. He was never confirmed by the Senate to act in the GC role. Based on the language of the FVRA, the court concluded that Solomon's tenure violated the Act from the date he was formally nominated in January 2011. That is, from January 2011 to November 2013, he had no authority to issue unfair labor practice complaints or otherwise fulfill the duties of the GC position. At issue in the case before the DC Circuit was an unfair labor practice complaint that Solomon had initiated in 2013, so the court ruled the complaint was invalid. The court noted, however, that its holding likely does not impact many cases, as any parties wishing to avail themselves of an argument under the FVRA likely had to start raising the issue very early on in proceedings. In short, the case potentially calls into question the validity of numerous cases initiated by Solomon, but many of those cases likely are concluded and/or the FVRA issue never was raised. We will monitor cases and update the blog in the event this issue proceeds to the U.S. Supreme Court or pops up in other proceedings. A copy of the decision can be found [here](#).

RELATED PRACTICE AREAS

Labor and Employment
Labor Relations
National Labor Relations Board (NLRB)

RELATED TOPICS

Federal Vacancies Reform Act