

LABOR & EMPLOYMENT

EMPLOYERS RELIEVED FROM POSTING NLRB'S NOTICE

by James B. Perry

Earlier this month, private sector employers covered by the National Labor Relations Act (NLRA) were relieved, at least temporarily, of the obligation to post a Notice informing employees of their rights to unionize. This resulted from two Federal Court Decisions that ruled against the National Labor Relations Board (NLRB) and in favor of various employer associations and Chambers of Commerce.

The most important Decision was issued by the DC Circuit Court of Appeals, which enjoined enforcement of DC District Court Judge Jackson's Decision upholding the NLRB's Notice Posting Rule. The DC Circuit Court of Appeals held that employers should not be required to post the Notices while the appeal of the National Association of Manufacturers and other employer associations is pending. The DC Circuit Court of Appeals issued a Scheduling Order which called for oral argument in September, which means the Court's Decision should not be expected until late Fall. The Court of Appeals decided that while the appeal is pending, the status quo should be preserved, so employers will not have to post the Notices by the original deadline, set by the NLRB, of April 30, 2012.

In the other case, South Carolina District Court Judge David Norton, a 1990 appointee of President George H.W. Bush, invalidated the NLRB's entire Rule requiring the posting of the Notice. Significantly, neither District Court Judge allowed the NLRB to consider a failure to post the Notice to be an Unfair Labor Practice, or to toll the NLRA's 6 month Statute of Limitations.

The NLRB has threatened to appeal Judge Norton's Decision to the Fourth Circuit Court of Appeals. If the DC Circuit affirms Judge Jackson's decision affirming the Notice posting requirement, and the Fourth Circuit affirms Judge Norton's Decision invalidating it, there would be a split in the Circuits which could result in the case being decided by the Supreme Court.

Appeals of each case to different Circuits would delay a final decision until long after the November 2012 Election. The result of that Election will determine whether the NLRB persists in its effort to require private sector employers who are not Federal contractors to post a Notice advising employees of their rights to unionize. If President Obama is re-elected, it is likely that the NLRB will continue its unprecedented efforts to assist labor unions to organize non-union workers.

In other news, Senate and House Republicans have introduced bills in each chamber to prevent the NLRB from implementing its new rules limiting the opportunities for Pre-Election Hearings and expediting Elections. A lawsuit was also filed in the U.S. District Court for the District of Columbia by the U.S. Chamber of Commerce. The Chamber's Motion for a Stay of the effective date of these new Rules was denied over the weekend by District Court Judge James E. Boasberg who promised to rule on the merits of the case by May 15, 2012. Judge Boasberg was appointed by President Obama in 2011. These Rules are scheduled by the NLRB to become effective on April 30, 2012, for Election Petitions filed after that date.

We will monitor developments to determine whether the NLRB's administrative initiatives will continue to be nullified by the judicial and legislative branches.

FOR MORE INFORMATION CONTACT:



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