

Federal Judge Strikes Down NLRB “Speedy Election” Rule on Technicality

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A federal district court in Washington D.C. has struck down the recently enacted National Labor Relations Board rule that expedited union representation elections. The rule, which had been in effect since April 30, sped up union elections from an average of 38 days after a petition is filed to as few as 10 days. In a May 14 decision in the case of *Chamber of Commerce v. National Labor Relations Board*, however, District Court Judge James Boasberg found that the Board was acting without a quorum when two of its members enacted the rule in December 2011. As a result, Judge Boasberg determined, the so-called “speedy election” rule is invalid.

Judge Boasberg’s decision is particularly noteworthy in that it does not actually relate to the substance of the rule. Rather, his decision is based on a technicality: only two of the three members currently sitting on what is supposed to be a five-member Board actually voted to approve the rule. “According to Woody Allen, 80 percent of life is just showing up. When it comes to satisfying a quorum requirement, though, showing up is even more important than that. Indeed, it is the only thing that matters,” the Judge wrote. “Two members of the Board participated in the decision to adopt the final rule,” he stated, “and two is simply not enough.” Because his decision did not invalidate the substance of the rule, however, the Judge suggested that the Board could quickly reinstate it: “[N]othing appears to prevent a properly constituted quorum of the Board from voting to adopt the rule if it has the desire to do so. In the meantime, though, representation elections will have to continue under the old procedures.”

Following the judge’s decision, the NLRB issued a press release affirming that it has “temporarily suspended the implementation of changes to its representation case process.” Further, the NLRB stated, parties involved in the approximately 150 cases that were processed under the rule between April 30 and May 14 will be “contacted and given the opportunity to continue processing the case from its current posture rather than re-initiating the case under the prior procedure.”

Thus, for the time being at least, unions will not be able to engage in type of the “ambush” elections that are made possible by the Board’s new rule. Hinshaw & Culbertson will keep tabs on this situation, and will update this blog with any important developments.

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Topics

National Labor Relations Act (NLRA), National Labor Relations Board (NLRB)