

## **Union Sneak-Attack Election Rule Void - For Now**

Remember the NLRB's new [sneak-attack union election rule](#)? The rule lets unions surprise complacent companies with fast-track union elections. A federal court in DC just [invalidated the rule](#). That's good news for employers. For now, at least...

The court nailed the rule on a technicality. The two Democratic members of the NLRB basically passed the rule over e-mail without any reply from the NLRB's lone Republican member. That wasn't a quorum, said the court.

Still, the court emphasized that its ruling "need not necessarily spell the end of the final rule for all time." The door is open for President Obama's newly-appointed NLRB to pass the rule again. The court put it this way:

[I]t may well be that, had a quorum participated in [the rule's] promulgation, the final rule would have been found perfectly lawful. As a result, nothing appears to prevent a properly constituted quorum of the Board from voting to adopt the rule if it has the desire to do so.

Expect the NLRB to take a second bite at the apple. I think it's just a matter of time. But what should employers do while we wait?

You might take steps now to resist a union organizing drive in short-order. Unions thrive on the element of surprise, even under the current union election rules. We've written about it [before](#). That puts advance preparedness at a premium. For example, you might:

- Identify employees who qualify as "supervisors" in the NLRB's eyes, so they can be trained how to spot and react to covert union activity.
- Ask you employees about their job satisfaction and address any concerns before a union does.



**Alan Bush**  
281.296.3883  
abush@bush-law.com

**Bush Law Firm**  
[bush-law.com](http://bush-law.com)

### **HR Risky Business**

For more insight into how solid HR practices impact your company's strategic operations, visit Alan's employment law blog at [hrriskybusiness.com](http://hrriskybusiness.com).

[National Labor Relations Act \(NLRA\)](#)

[National Labor Relations Board \(NLRB\)](#)

[Quickie union elections](#)

[Union avoidance](#)

- Task a rapid deployment team who is armed with an action plan to execute if you detect union activity.
- Check your employee handbook for provisions that could trigger an unfair labor practice charge, such as an overly broad social media policy.

I doubt we've heard the last from the NLRB.

