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Federal District Court Rules NLRB Too “Quick” In Voting On Election Rule Changes Allowing For Quickie Elections

On Monday, May 14, 2012, the United States District Court for the District of Columbia held that the National Labor Relations Board’s rule changes that went into effect on April 30, 2012, and that provided for “quickie” union elections are invalid and unenforceable because the Board failed to have a three-member quorum for its final vote.

On December 22, 2011, the Board issued a final rule effectively expediting the union election process and limiting an employer’s opportunity to communicate with workers about union representation. However, Member Brian E. Hayes (R) did not vote or take any other action when the final vote to approve the rule was taken. The Court reasoned that Hayes’ non-participation meant that the required three-person quorum did not exist when the final vote was taken.

In response to the Court’s ruling, the Board suspended implementation of the election rule changes and announced that it is considering what further action to take. Acting General Counsel Lafe Solomon withdrew his recently issued guidance to the Regional Offices and advised Regional Directors to revert to their previous practices for election petitions starting today.

Approximately 150 election petitions were filed under the new election rules. The Board will contact all parties involved in these cases to determine whether the parties will agree to continue processing the case from its current posture, or whether the cases will instead be re-initiated under the prior procedures.

One distinct possibility is that the current five-member Board will simply adopt the same rule amendments at this time. However, if this occurs, the new rules would remain legally suspect due to pending lawsuits challenging the validity of President Obama’s three recent recess appointments to the Board. If those appointments were later deemed improper, the rule changes would again be deemed invalid.

Thompson Coburn will continue to keep you advised of any developments. If you have questions regarding the above-referenced rule, or other labor or employment issues, feel free to contact your Thompson Coburn attorney or any member of our Labor and Employment Group.

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