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Labor & Employment Alert
May 14, 2012

NLRB Rule on Speedy Elections Struck Down By Federal District Court In D.C. For Lack of a Quorum

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In December, 2011, the National Labor Relations Board published a Rule that amended the procedures for determining whether a majority of employees wish to be represented by a labor organization for purposes of collective bargaining. Among other things, the Rule eliminated pre-election appeals as well as the Board's former recommendation that elections not be set sooner than 25 days after ordering an election. The Rule, which became effective April 30, 2012, thus effectively shortened the time between the filing of a petition and the holding of the election. Other parts of the rule defined the scope of pre-elections hearings, limited post-hearing briefs, and established standards for interlocutory appeals and post-election procedures.

Last month, a federal district court judge in South Carolina ruled that the NLRB exceeded its regulatory authority in requiring a workplace posting of employees' union rights.¹ In yet another blow to the Board, today a federal district court judge in the District of Columbia overturned the Board's action on the ground that no quorum existed. The judge's decision was strictly on procedural grounds; he did not address the substantive challenges to the law.

It is anticipated that a motion to stop the NLRB from enforcing its Rule will be filed. We will keep you apprised of further developments.

¹ See MHTL Labor & Employment Alerts of April 17, and April 18, 2012 for more on this issue.

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Below is a quote from the case:

“According to Woody Allen, eighty 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 – even when the quorum is constituted electronically. In this case, because no quorum ever existed for the pivotal vote in questions, the Court must hold that the challenged rule is invalid.”

If you have any questions or concerns with regard to this alert, please contact Arthur. Murphy or Geoffrey Wermuth, partners in the law firm of Murphy, Hesse, Toomey & Lehane, LLP, or the attorney assigned to your account.

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