



For your information

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NLRB Appeals Ruling That Struck Down Representation Election Rule

On May 14, 2012, a federal district court overturned the NLRB's new rule governing union elections, finding that the NLRB lacked the statutorily required quorum for rulemaking. On July 27, the same court denied the NLRB's motion to reconsider that ruling. The NLRB has now appealed both decisions. While the appeal is pending, the NLRB's long-standing election rules and pre-election procedures that were in place prior to April 30, 2012 continue to govern representation elections.

Background

In December 2011, two of the National Labor Relations Board's (NLRB's or Board's) three sitting members approved a final rule largely designed to speed up the union representation election process. The third sitting member did not cast a vote. The new rule took effect on April 30, 2012.

On May 14, 2012, U.S. District Judge James Boasberg struck down the NLRB's new rule, holding that the lack of a three-member quorum for the pivotal vote rendered the rule invalid. The Board immediately suspended implementation of the new rule and reverted to its prior practices in processing election petitions. (See our May 21, 2012 [For Your Information](#).) The NLRB subsequently filed a motion asking Judge Boasberg to reconsider his May 14 ruling and reinstate the expedited election rule. On July 27, Judge Boasberg refused to do so. (See our August 3, 2012 [For Your Information](#).)

The NLRB Appeals

As Judge Boasberg was careful to note in both his May 14 and July 27 rulings, nothing would prevent a properly constituted quorum of the Board from voting on the rule again if it wished to do so. The Board, which currently has four sitting members, opted instead to appeal the rulings. On August 13, the NLRB appealed Judge Boasberg's decisions to the United States Court of Appeals for District of Columbia Circuit (Case No. 12-5250). While the appeal is pending, representation elections will continue under the NLRB's old procedures.

Conclusion

The expedited representation election rule, which was in effect from April 30 until May 14, no longer applies. For now, the Board's long-standing election rules and pre-election procedures that were in place prior to April 30, 2012 will continue to govern representation elections.

This FYI is intended to provide general information. It does not offer legal advice or purport to treat all the issues surrounding any one topic.
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