Non-Union Employers Should Act Now as Washington Addresses Quickie Election Rule

Labor & Employment Law Update

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Ever since the NLRB attempted to put into effect its ambush (aka "quickie") election rule on April 30, 2012, we have addressed its back and forth. As a reminder, this rule required employers to counter union organizing campaigns in 14-21 days versus the previous 42 day requirement. The first action to block this new rule occurred on May 14, 2012 when a U.S. District Court ruled the rule was invalid because improper procedure had been used to pass it. *U.S. Chamber of Commerce et. Al. v. NLRB* (D.C. Cir. 1:11-cv-02262). However, the court did not clarify if the rule itself was enforceable, only that the proper procedure wasn't followed. On February 5, 2014, the NLRB announced that it was re-proposing the quickie rule. In December 2014, it issued its final rule. The rule was adopted by a 3-2 vote and is set to take effect on April 14, 2015.

On February 9, 2015, republican lawmakers moved to halt the rule and issued a resolution stating "Congress disapproves the rule……and such rule shall have no force or effect." The resolution was discussed on February 11th before a Senate subcommittee and was placed on the full Senate calendar on February 23rd. It went before a congressional subcommittee on March 3, 2015 and a preliminary vote shows the resolution will pass. If a majority of each the House and Senate pass the resolution, the President can override it with a veto. However, such veto can then be overridden by Congress with 2/3 vote. The President hasn't yet publicly addressed whether he'd veto the resolution or not, but in April 2012 the White House stated it was "strongly" against any possible resolutions and the President's advisors have recently indicated a veto is imminent.

While the political machine is churning, numerous business groups, including the U.S. Chamber of Commerce, have rigorously been challenging the rule in the courts. On February 5th, a district court judge was asked to order the rule was illegal as a First Amendment violation and contrary to the NLRA. The court's decision is still pending and will likely be appealed well after the rule gets implemented.

As our various posts have explained, the quickie rule could be disastrous to employers and employees if implemented. Under the rule, after a union petition is filed employers will likely not have the time to fully inform their employees about their rights in the workplace. Absent such vital information, employees will not receive a full picture and will be unable to make a well-informed personal decision to vote the union in or not. It is imperative that employers start implementing preventative measures now in the event the rule challenges are unsuccessful.

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