

NLRB waves white flag on Notice of Employee Rights Posting Rule

AUTHOR: SANDBERG PHOENIX

The National Labor Relations Board (“NLRB”) started 2014 by capitulating on its efforts to force employers to post a notice at work which advised employees how they could form a union in order to collectively bargain. The NLRB announced this mandatory posting rule in August 2011, which would have required all private sector employers, whether unionized or not, to conspicuously post an 11x17 notice at work that outlined a number of employee rights under the National Labor Relations Act (“NLRA”). While the new posting obligation was originally scheduled to take effect in November 2011, a number of legal challenges were filed which delayed enforcement of this posting obligation.

In 2013, both the District of Columbia Circuit Court and the Fourth Circuit Court agreed with the legal challenges to the employee rights posting notice. *National Ass’n of Manufacturers v. NLRB*, 717 F.3d 947 (D.C. Cir. 213) and *U.S. Chamber of Commerce v. NLRB*, 721 F.3d 152 (4th Cir. 2013). In both instances, the Court of Appeals recognized that the NLRA also protected the rights of an employer to express truthfully its own opinion regarding labor unions and in turn concluded the NLRB could not compel an employer to communicate views to its workforce in the mandated employee rights poster which it did not agree. On January 6, 2014, the NLRB announced that it had decided against appealing both decisions to the United States Supreme Court.

While the challenges to the NLRB employee rights posting notice was successful, this ruling does not apply to the similar posting requirements established by the Department of Labor for federal contractors and their subcontractors. The DOL employee rights posting obligation was promulgated in May 2010 and remains in effect today. In light of the success challenging the NLRB rule, the National Association of Manufacturers has recently filed suit against the Labor Department’s rule. However, no decision on the merits has been reached and all federal contractors and/or subcontractors must continue to post the same 11x17 employee rights notice mandated by the Department of Labor. We will continue to monitor the efforts to challenge the DOL rule, so stay tuned for further developments.

By Thomas Berry