

NLRB Drops Its Pursuit of Notice-Posting Rule

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The National Labor Relations Board recently announced that it would not seek U.S. Supreme Court review of two U.S. Court of Appeals decisions that struck down its proposed union poster rule. The rule, originally announced by the NLRB in August 2011, would have required employers to post notices informing employees of their rights under the National Labor Relations Act.

As discussed in a previous alert, on May 7, 2013, the U.S. Court of Appeals for the District of Columbia held that the NLRB's notice-posting rule violates Section 8(c) of the Act, which gives employers a right to speech as long as the speech contains no threats of reprisal or promise of benefit. By making it an unfair labor practice for employers to refuse to post the required notice, the court stated, the rule unlawfully curtailed employers' right to remain silent regarding employees' rights under the NLRA.

On June 14, 2013, another appellate court, the Fourth Circuit, also rejected the notice-posting rule when it affirmed a South Carolina federal court's decision that the NLRB was not legally empowered to enact it. The district court reasoned that under the NLRA, the NLRB's proper role is to be reactive in addressing unfair labor practice charges and conducting representation elections upon request. In affirming the district court's decision, the Fourth Circuit concluded that the NLRB exceeded its authority by enacting a mandate for employers to post the union notice.

The NLRB's only recourse in both cases was to seek U.S. Supreme Court review. Because the NLRB allowed the January 2, 2014 deadline for filing petitions in the Supreme Court to pass, the notice-posting rule will not take effect. However, the NLRB notes on its website that employers may voluntarily post the notice of employees' rights.

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