

## CLIENT ALERT

### Preparing For May Day, And Beyond, At The NLRB

April 16, 2012

This is a big month at the NLRB, with three important new initiatives in the works.

*First*, April 30 is the effective date for the Board's changes to its representation election procedures. Our summary of these rules - the "quickie election rules" - [can be found here](#).

April 30 is also the tentative effective date for the Board's new rule requiring almost all private sector employers to post a notice advising employees of their rights under the National Labor Relations Act ("Act").

"Tentative" is still the operative word with respect to this initiative, as Friday the 13th was a bad day for the Board in a federal district court in Charleston, South Carolina. Judge Norton granted summary judgment to a group of plaintiffs, led by the U.S. Chamber of Commerce, that had sued the Board under the Administrative Procedure Act, claiming that the Board lacks authority under Section 6 of the Act to require notice posting. The Board is expected to appeal Judge Norton's decision, but no public announcement has been made as of this morning. This leaves employers in the unenviable position of being uncertain as to their obligations. This uncertainty is complicated by a pending appeal in the D.C. Circuit of a case brought by the National Association of Manufacturers, in which a district court concluded that the Board lacked statutory authority to impose unfair labor practice liability on employers that did not comply with the notice posting requirement. Further developments on this issue yet this week are likely; we will continue to keep our readers informed.

The third initiative is the Board's plan to launch a website designed to inform non-union employees of their rights under the Act. The Board has indicated its intent to launch this initiative by the end of the month. The new website is intended to be an outreach tool to educate non-union employees about their right to engage in protected concerted activity under the Act. It also plans to distribute educational brochures, in both English and Spanish, containing examples of issues that have arisen in past and current cases before the NLRB.

These initiatives, combined with the more aggressive enforcement posture taken by both the Board and its General Counsel, are likely to draw more public attention to the Board. Some commentators expect a significant increase in organizing activity this year, in tandem with the upcoming presidential election.

May Day has important historical connotations for organized labor. Only time will tell whether these initiatives will have a significant impact on union density in the private sector.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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