

NLRB Employee-Rights Posting Rule Takes Effect April 30

Friday, March 9, 2012

WASHINGTON, March 9 (LID) – Most U.S. private-sector employers, beginning April 30, will be required by federal regulation to prominently display posters informing workers of their rights to form a union and engage in collective bargaining.

The controversial National Labor Relations Board (NLRB) rule calls for “conspicuous” placement of an 11-by-17-inch notice explaining worker protections afforded in the National Labor Relations Act (NLRA), the principle body of law governing collective bargaining.

The National Association of Manufacturers (NAM) and National Federation of Independent Business (NFIB) challenged the NLRB’s authority to promulgate the 194-page posting rule, which will apply to union and non-union workplaces alike.

NAM and NFIB filed a complaint for administrative agency review Sept. 8 in U.S. District Court for the District of Columbia. In addition to procedural claims, the groups argued in court papers that the notice-posting requirement would violate employers’ First Amendment rights by forcing them to promote worker unionization.

U.S. District Court Judge Amy Berman Jackson, in a March 2 ruling, rejected the argument and upheld the rule’s Subpart A posting requirement for employers.

“This is not the first court to reach the conclusion that regulations requiring employers to post legal notices do not violate the First Amendment,” Jackson wrote. “The D.C. Circuit, *in dicta*, noted that ‘an employer’s right to silence is sharply constrained in the labor context, and leaves it subject to a variety of burdens to post notices of rights and risks,’” she continued, citing the case of *UAW-Labor Emp’t & Training Corp. v. Chao*, 325 F.3d 360, 365 (D.C. Cir. 2003).

Jackson’s ruling didn’t leave the rule untouched. The judge struck down two provisions of Subpart B, which plaintiffs challenged in their complaint.

The first provision would have made violations of the rule an unfair labor practice. The other would have allowed the NLRB to toll the six-month statute of limitations for any unfair labor practice charge against an employer not in compliance with the posting rule.

In her ruling, Jackson wrote that the NLRB may sanction employers for not posting the union-rights notice only if the company’s failure “interferes with, restrains or coerces employees” in their exercise of guaranteed rights.

She denied plaintiffs’ motion for an emergency injunction to block rule enforcement pending appeal to the U.S. Court of Appeals for the D.C. Circuit.

“Manufacturers will appeal this decision on the numerous grounds available in order to reverse this unfair rule. The Board has grossly overstepped its authority, and the NAM will enter every arena necessary, including the courts, to protect manufacturers and rein in this rogue agency,” NAM President Jay Timmons said in a statement.

The NLRB rule provides exemptions for the United States or any wholly-owned government corporation, the Federal Reserve System, U.S. Postal Service and workers subject to the Railway Labor Act (45 U.S.C. 151 et seq.).

Also exempt from the rule are agricultural and airline employers, stock brokerage firms, professional sports teams and commercial enterprises with a “substantial effect” on national defense or receive “large amounts” of federal funds.

The five-member NLRB is an independent federal agency authorized in statute to serve as the arbiter of unfair-practice disputes between labor unions and employers.

Following a public-comment period that brought forth 7,034 comments, the final NLRB posting rule was published Aug. 30, 2011, in the *Federal Register* (76 Fed. Reg. 4006). The rule is codified in the Code of Federal Regulations, at 29 C.F.R. Part 104.

The case is *National Association of Manufacturers v. National Labor Relations Board et al.*, No. 11-1629 (ABJ), District of Columbia (Washington).

A copy of the NLRB rule is available at

<http://www.federalregister.gov/articles/2011/08/30/2011-21724/notification-of-em>.

A copy of the NLRB Employee Rights Posting is at

<http://www.nlr.gov/sites/default/files/documents/1562/employeerightsposter-8-5x11.pdf>.