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FEDERAL APPEALS COURT STRIKES NLRB'S NOTICE POSTING RULE

The D.C. Circuit Court of Appeals has vacated the National Labor Relations Board's rule requiring employers to post a Notice of Employee Rights under the National Labor Relations Act. *National Ass'n of Manufacturers v. NLRB*, 2013 U.S. App. LEXIS 9231 (D.C. Cir. May 7, 2013). The court's opinion focused on the rule's enforcement provisions, which state that an employer's failure to post the Notice is an unfair labor practice and may be considered evidence of unlawful motive in an unfair labor practice case. The court held that these provisions violate § 8(c) of the Act because by allowing noncoercive employer speech, § 8(c) also allows employers to remain silent. "Although § 8(c) precludes the Board from finding noncoercive employer speech to be an unfair labor practice, or evidence of an unfair labor practice, the Board's rule does both."

The court also held that the provision of the rule tolling the statute of limitations in an unfair labor practice case if an employer failed to post the Notice violates § 10(b) of the Act, which requires unfair labor practice charges to be filed within six months of the unfair practice. The court found no evidence that Congress intended to allow § 10(b)'s statute of limitations to be modified in this manner. The court then determined that the Board would not have published the rule depending on voluntary compliance because it rejected that option in the preamble to its final rule. Accordingly, the court held that the entire rule must fall since its enforcement provisions are invalid. The court did not rule on whether the Board had the authority to issue the rule; however, the concurring opinion stated that the Board exceeded its authority under § 6 of the Act when it issued the rule.

~ Amy Littrell, FordHarrison LLP

SECTION CALENDAR

JUNE 4, 2013

Audio Webcast

- E-Discovery (1575R)

JUNE 27, 2013

The Florida Bar Annual Convention

Boca Raton Resort & Club, 501 East Camino Real, Boca Raton, FL 33432, www.bocaresort.com

- Executive Council Meeting
5:00 p.m. to 6:00 p.m.
- Reception
6:00 p.m. to 8:00 p.m.

To register for any of the CLE programs, please register online at www.floridabar.org/CLE or fax your registration to 850/561-9413.