



NLRB Temporarily Enjoins Notice Requirements In Response to Conflicting Decisions

April 19, 2012

Chamber of Commerce of the United States v. NLRB, Case No. 2:11-CV-02516-DCN (D.S.C. April 13, 2012)

It seems that Friday the 13th was definitely an unlucky day for the National Labor and Relations Board (“NLRB”); a Federal District Court for South Carolina held that the NLRB exceeded its authority by issuing a rule requiring employers to post notices that inform employees of their rights under the National Labor Relations Act. In *Chamber of Commerce of the United States v. NLRB*, Case No. 2:11-CV-02516-DCN (D.S.C. April 13, 2012), District Court Judge Norton considered the limits on the rights of federal agencies to impose obligations that are different from those Congress has imposed by law. After examining the rule under a *Chevron* analysis the Court ruled that the NLRB lacked the legal authority to issue the notice because creating such a rule did not fall within either of NLRB’s two roles: (1) conducting union representation elections; or (2) deciding unfair labor practice charges. More specifically, Judge Norton wrote,

[b]ased on the statutory scheme, legislative history, history of evolving congressional regulation in the area, and a consideration of other federal labor statutes, the court finds that Congress did not intend to impose a notice-posting obligation on employers, nor did it explicitly or implicitly delegate authority to the Board to regulate employers in this manner.

This decision is in direct conflict with the decision issued last month by a federal court located in the District of Columbia, which we previously blogged about here. Due to this conflict, on April 17, 2012, the D.C. Circuit decided to once again weigh in on the situation and granted an emergency motion to enjoin employers from having to post the NLRB’s notice in *National Association of Manufacturers, et al. v. National Labor Relations Board, et al.*, 1:11-CV-01629 (U.S.D.C. March 2, 2012).³ According to the Order,

We note that the Board postponed the operation of the rule during the pendency of the district court proceedings in order to give the district court an opportunity to consider the legal merits before the rule took effect. That postponement is in some tension with the Board’s current argument that the rule should take effect during the pendency of this court’s proceedings before this court has an opportunity to similarly consider the legal merits.... The uncertainty about enforcement counsels further in favor of temporarily preserving the status quo while this court resolves all of the issues on the merits.

In response to these conflicting decisions at the district court level, the NLRB has temporarily enjoined the posting rule completely, which had been scheduled to take effect on April 30, 2012. According to their news release, also made on April 17, 2012,

In view of the DC Circuit's order, and in light of the strong interest in the uniform implementation and administration of agency rules, regional offices will not implement the rule pending the resolution of the issues before the court.

What does this mean for employers? You no longer have to worry about posting the NLRB's notice for now. Check back soon as we continue to follow the district court decisions and any news releases issued by the NLRB.

A special thanks to Sean Gajewski for helping with this post. Sean is a third-year law student at Hofstra University School of Law. You can reach him by email at sean@sgajewski.com. Bio: www.sgajewski.com.