

LACK OF STATUTORY QUORUM KEEPS UNION REPRESENTATION RULE IN ABEYANCE



Opponents of the National Labor relations Board's rule, to curtail the process needed to hold a union representation election, ended victorious, when a court annulled the rule on May 14. However, the final outcome of the rule is not yet clear. The U.S. District Court for the District of Columbia invalidated the rule, citing that the NLRB didn't have a quorum when it approved the rule, which went into effect on April 30. The NLRB, a five member body, was reduced to just 3 members when the rule was put to vote on December 21, 2011. The terms for the other two had expired and no replacements for them had been finalized. To make matters more desperate, the term of another of the three members was to expire at the end of the year, making it imperative to vote on the matter, before he retired, otherwise the Board would not have been to cobble together the quorum necessary, to legally pass the bill. A Republican member opposed the rule, abstained from participating in the December 21 meeting or casting a vote against the rule. Consequently, U.S. District Judge James Boasberg ruled that Hayes' lack of participation meant the NLRB lacked a quorum in approving the rule even though it had three sitting members. "According to Woody Allen, eighty percent of life is just showing up," Boasberg wrote in the court's opinion. "When it comes to satisfying a quorum requirement, though, showing up is even more important than that. Indeed, it is the only thing that matters — even when the quorum is constituted electronically. In this case, because no quorum ever existed for the pivotal vote in question, the Court must hold that the challenged rule is invalid." The judge further wrote: "Member Hayes cannot be counted toward the quorum merely because he held office, and his participation in earlier decisions relating to the drafting of the rule does not suffice. He need not necessarily have voted, but he had to at least show up. At the end of the day, while the Court's decision may seem unduly technical, the quorum requirement, as the Supreme Court has made clear, is no trifle." In filing the suit, the U.S. Chamber of Commerce and the Coalition for a Democratic Workplace had raised many other issues. However, the district court annulled the ruling on the basis of lack of statutorily required quorum and refrained from saying anything beyond that. "Regardless of whether the final rule otherwise complies with the Constitution and the governing statute — let alone whether the amendments it contains are desirable from a policy perspective — the Board lacked the authority to issue it, and, therefore, it cannot stand," the judge wrote. The term of a member Craig Becker expired at the end of 2011. President Barack Obama used recess appointments and appointed three new members, who were sworn in on January 9, 2012. Since the NLRB now has all its five members, the rule can be voted again and in such an eventuality, in all likelihood, the election rule would pass. But the legitimacy of the three recess appointments made by President Obama has been challenged, raising fears the new vote would meet the same fate as the earlier vote. The court's ruling is drawing applause and commendation from the foes of the election rule change. The National Right to Work Legal Defense Foundation issued a statement hailing the judge's decision. President Mark Mix of the National Right to Work Legal Defense Foundation said, "Today's decision prevents implementation of a rule that deprives employees of hearing both sides of the story about unionization and is a victory for workers. However, despite this decision, a secret ballot election can't prevent the fundamental violation of individual rights that occurs under union boss monopoly bargaining."