

Judge Rules NLRB's Fast-Track Election Rule Invalid

May 15, 2012

On May 14, 2012, U.S. District Judge James Boasberg, a 2011 Obama appointee to the Washington, D.C. District Court, **found invalid the National Labor Relations Board's recent rule** that would speed up union elections, because the NLRB enacted it without the requisite three-member quorum. Judge Boasberg found that NLRB Board Member Brian Hayes did not participate in the electronic vote approving the rule and was therefore not legally "present" for purposes of satisfying the three-member quorum required by the Supreme Court's 2010 decision in *New Process Steel v. NLRB*.

Although a victory for employers, most of whom oppose the NLRB's efforts to fast-track union elections, it may be short-lived. Judge Boasberg did not address the multiple other grounds on which the plaintiffs challenged this rule, so in order to reinstate the rule, the NLRB likely needs only to hold another vote at a meeting with at least three board members present. However, in light of the pending challenge to the "recess" appointment of three current Board members, such a vote would itself be subject to challenge. For the time being, however, the rule is invalid, and union representation elections will continue under procedures previously in place.