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Mixed Review: D.C. Circuit Nixes Some Trump-Era NLRB Election Changes, Saves Others

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On January 17, the U.S. Court of Appeals for the District of Columbia Circuit struck down certain Trump-era changes to the rules by which the National Labor Relations Board (NLRB) administers union elections.

As background, the changes, issued in December 2019, implemented more than a dozen revisions to the NLRB's election rules, easing several election deadlines and requiring that certain disputes be resolved prior to voting, rather than after. The rule changes largely rescind the NLRB's Obama-era policies that had shortened the election timeline and instead returned the NLRB to its prior framework. At the time of the rule changes, then-NLRB Chairman John Ring championed them as "common sense" modifications to an accelerated process that undermined the rights of workers and employers alike. Unions, on the other hand, criticized the rule changes, arguing that the then-Republican-led NLRB tilted the scales in favor of employers by allowing them more time to engage in information campaigns and delay elections.

Consequently, in a March 2020 lawsuit filed in Washington, D.C.'s federal trial court, the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) alleged that the rule changes unlawfully altered rights guaranteed to workers by the National Labor Relations Act (NLRA) and that the NLRB violated the Administrative Procedure Act when it adopted the rule changes without soliciting public feedback. Then-U.S. District Judge Ketanji Brown Jackson agreed with the AFL-CIO and blocked five of the rule changes from going into effect. An appeal to the D.C. Circuit followed, culminating in Tuesday's decision.

In its 2-1 ruling, the D.C. Circuit affirmed Jackson's decision to block three of the five rule changes, those being the changes that: (1) ease the deadline for employers to turn over workers' contact information; (2) delay certification of election results when employers challenge officials' decisions to hold elections; and (3) limit whom unions may designate as their election watchdog. According to the court's majority, these three changes are substantive ones which require the NLRB to solicit public feedback before issuing them.

The court, however, overturned Jackson's blockage of the rule changes that: (1) delay elections in which employers raise voter eligibility and other challenges; and (2) lengthen the timeline for holding elections. The court reasoned that these were procedural changes that did not require public feedback.

Despite Tuesday's ruling, the decision may not have an immediate impact on how the NLRB conducts union elections, as "[t]he board is analyzing the D.C. Circuit's decision to determine the appropriate next steps," said NLRB Chairwoman Lauren McFerran in a statement.

For more information on this ruling, contact a member of Bensch's Labor & Employment Practice Group.

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