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NLRB Asks D.C. District Court To Reconsider Decision Invalidating "Ambush" Election Rules

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As we previously reported, a judge with the D.C. District Court invalidated the Board's controversial "ambush" election rules last month on essentially a technicality, finding that the three-member Board did not establish a quorum prior to voting on the rules because Member Brian Hayes did not participate in the voting. The Board responded to that ruling this week arguing that Member Hayes was in fact present at the voting (which occurred electronically) because of his interactions with the Board's internal electronic system on the day of the vote. The Board requested that the court reconsider its ruling in light of this fact and reinstate the rules until a final decision on their legality is issued.

The Board's motion is an interesting look inside the voting and opinion-writing process of the NLRB and presents difficult questions of what it means to be "present" when voting takes place electronically. But like the court's opinion, the Board's motion concentrates only on the voting technicality and not the broader issue of the legality of the actual rules. The rules remain suspended for now, but it remains to be seen whether the D.C. District Court will be willing to look beyond the voting technicality and directly address the legality of the ambush rules.

The Board's motion is available here.

See our previous coverage of this issue here.

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