

D.C. District Court Throws Out Ambush Election Rules, Finds Board Lacked Quorum

May 14, 2012 | [National Labor Relations Board, Labor Relations](#)

District Court Judge James E. Boasberg of the U.S. District Court for the District of Columbia issued an opinion this afternoon finding the NLRB's "ambush" election rules invalid because the Board did not have three members who cast a vote on whether to implement the rules when they were adopted in December. Although the Board had three members at the time, Judge Boasberg found that Member Brian Hayes objected to the rules and did not cast a vote when the final rule was adopted. Because Member Hayes effectively did not participate in adoption of the final rule, Judge Boasberg found that the Board lacked a quorum and that the adoption of the final rules was invalid under the U.S. Supreme Court's decision in *New Process Steel*. Judge Boasberg's entire opinion is [available here](#). Judge Boasberg's opinion did not reach the question of whether the final rule was otherwise lawful, had it been adopted when the Board had a quorum. Instead, Judge Boasberg concluded that "representation elections will have to continue under the old procedures" unless a properly constituted quorum of the Board votes to adopt the rule. There is no word yet from the Board responding to today's opinion and it remains to be seen whether the Board will hold another vote to adopt the rules. Stay tuned. See our prior coverage of the Board's "ambush" election rules [here](#).

RELATED PRACTICE AREAS

Labor and Employment
Labor Relations
National Labor Relations Board (NLRB)

RELATED TOPICS

Election Rules
NLRB