

Another Loss For The NLRB On Notice Posting Rule

June 17, 2013 | [National Labor Relations Board, Labor And Employment](#)



**John T.L.
Koenig**
Partner

Gavel

The Fourth Circuit has now joined the D.C. Circuit in striking down the NLRB's proposed notice posting rules. The Board sought to have all employers post notices in their workplace informing employees of their right to form and join unions, among other things. Our previous coverage of this controversial initiative can be [found here](#).

On May 7, 2013, the D.C. Circuit struck down the same rule in a separate case, but did so on employer free speech grounds. The Court did not decide if the NLRB had the authority to promulgate the rule. The Fourth Circuit's decision on Friday went further and concluded the NLRB exceeded its largely "reactive" authority to respond to election petitions and unfair labor practice charges.

The Court held, "We agree with the district court that the rulemaking function provided for in the NLRA, by its express terms, only empowers the board to carry out its statutorily defined reactive roles in addressing unfair labor practice charges and conducting representation elections upon request." The Fourth Circuit's opinion went further and noted, "Indeed, there is no function or responsibility of the board not predicated upon the filing of an unfair labor practice charge or a representation petition."

The Courts' opinions can be found [here](#) and [here](#).

RELATED PRACTICE AREAS

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

RELATED TOPICS

Notice Posting Rule