

## “QUICKIE ELECTION RULE” - NLRB LOSES ROUND 2

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The NLRB has lost another round in the battle over its so-called “*Quickie Election Rule*.” The federal court that on May 14, 2012 put a halt to the NLRB’s rule that would have speeded up union elections in the private sector (see our [Employment Law News Article](#)) rebuffed the NLRB’s request to reconsider its earlier ruling.

### LACK OF A QUORUM - RULE IS INVALID

In the court’s earlier decision (as we reported in this [Blog](#)), the court traced the history of the NLRB’s rule making process and how in December 2011 there were only three actual members of the NLRB, due to the fact that there were two vacant seats on the normally constituted five-member Board. Congress had set the quorum limit for the NLRB as three members “participating” in final action. In December 2011, the rule went through numerous internal revisions following input from a series of public meetings held in November 2011. Ultimately, on December 16, two of the Board members, Becker and Pearce (both Democrats), voted to issue the rule. But, Member Hayes (a Republican) was not ever actually asked to cast a vote on the final version of the Rule, but the two other Members nevertheless went ahead and issued the Rule without Member Hayes’ participation or vote. It is this lack of quorum that led the U.S. Chamber of Commerce and the Coalition for a Democratic Workplace to challenge the Rule in this lawsuit. The court agreed that there was no quorum and the rule was held to be invalid.

### NLRB ASKS FOR RECONSIDERATION - BUT “TOO LITTLE, TOO LATE”

After the court’s ruling, the NLRB asked the court to reconsider its decision in light of “new evidence” that suggested that Member Hayes really was present for the voting on the rule. The court said, maybe so, but the NLRB’s “new evidence” was not really new because it could have presented that evidence at the time of the original argument – but chose not to. In so ruling, the court said the NLRB’s evidence was “*too little and too late*,” and even if the evidence had been presented it wouldn’t have made a difference.

### NEXT ROUND - APPEALS COURT

The NLRB is sure to appeal this ruling. But for now the “*Quickie Election Rule*” is sidelined, and union elections will continue to be held in the private sector as they have always been held – under the existing rules – which ensure fair hearings and fair timing for all parties involved.

If you have any questions please contact Steve Lyman at [slyman@hallrender.com](mailto:slyman@hallrender.com) or your regular Hall Render attorney.