

Federal Contractors Must Continue to Post Notice of Labor Rights, Court Holds

By Philip B. Rosen

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A federal district court in Washington, D.C. has rejected a constitutional challenge by the National Association of Manufacturers and Virginia Manufacturers Association to President Barack Obama's 2010 Executive Order requiring certain federal contractors to post a "Notification of Employee Rights under Federal Labor Laws" on the basis that it violates the First Amendment right of federal contractors to "refrain from speaking." *Nat'l Ass'n of Mfrs. v. Perez*, No. 1:13-cv-01998 (D.D.C. May 7, 2015). The Poster notifies contractor employees of their right to organize and other provisions of the National Labor Relations Act (NLRA).

Under the controversial Executive Order 13496 (see the Department of Labor's fact sheet), federal contractors are faced with the unacceptable alternatives of posting a notice which promotes unionization, and often may be contrary to a federal contractor's views, or subjecting themselves to sanctions and possible loss of federal contracts. Because of this Hobson's choice, the Associations argue, the posting requirement compels federal contractors to convey speech they do not support.

The District Court found no First Amendment violation, however. The court reasoned that despite the posting requirement, federal contractors remain free to express their views contrary to those expressed in the Poster, and lawfully discourage unionization, without losing their federal contracts.

In addition, the District Court rejected arguments that President Obama lacked authority to issue the Executive Order, that the posting requirement is arbitrary and capricious, and that the Rule is preempted by the NLRA. The Associations have not indicated whether they will appeal the decision.

Federal contractors with prime contracts in excess of \$100,000 or subcontracts in excess of \$10,000 must continue to display the Poster "so that it is prominent and readily seen by employees."

Please contact the Jackson Lewis attorney with whom you regularly work if you have any questions about obligations under the Executive Order.

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