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Client Bulletin #439

NLRB Proposes “Quickie” Union Elections

By Bob Lemert
Atlanta Office

On Tuesday, the National Labor Relations Board proposed **new rules** that would significantly shorten the time between the filing of a petition for a union election and the election date. Under current rules, 95 percent of all initial elections are conducted within 56 days of the filing of the petition. In fact, in 2010, initial elections were conducted in a median time of 38 days from the filing of the petition. Acting General Counsel Lafe Solomon has recently described this achievement as “outstanding.” Yet, the Democrat majority of the Board, by administrative fiat, seeks to impose organized labor’s much-sought-after “quickie election” option. Under the proposed rules, most disputes concerning the eligibility or inclusion of voters that might affect the results of the election would be deferred until after the election. The result would be that a union election could be held as early as 10 to 21 days after an election petition has been filed.

With the shortened time between petition and election, employers would have less time to express their views about unions and collective bargaining. Thus, employees would not be able to make an informed decision on union representation based upon information from both the employer and the union.

The new rules would also give unions immediate access to employees’ names and addresses. Within two days after approval of an election agreement or issuance of a direction of election, the employer would be required to provide the NLRB a list of names, home addresses, available telephone numbers and email addresses, work locations, shifts and job classifications of all eligible voters. When possible, the list would have to be filed electronically with the Regional Director and the union(s) named in the petition.

The concept of “quickie” union elections was suggested as an alternative to the card-check provision of the failed Employee Free Choice Act, but Congress never considered “quickie” elections. Now that there is virtually no chance that the EFCA will be passed, the NLRB has given organized labor a viable substitute for card-check representation through the rulemaking process.

According to Board Chair Wilma Liebman, and Members Craig Becker and Mark Pearce, all Democrats, the new regulations “would allow the Board to move promptly to determine if there is a question concerning representation and, if so, to resolve it by conducting a secret ballot election.” However, Member Brian Hayes, the only

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June 22, 2011

Republican on the Board, said there has been no showing that the Board needs to conduct elections more rapidly than it does now. According to Hayes, “the ‘problem’ which my colleagues seek to address through these rule revisions is not that the representation election process generally takes too long, it is that unions are not winning more elections.”

According to Cliff Nelson, co-chair of Constangy’s Traditional Labor Practice Group, “To me, it is clear that the Labor Board is attempting to administratively achieve changes that the Obama Administration could not obtain legislatively. Hopefully, there will be a sufficient hue and cry raised over such duplicity so as to prevent these unnecessary and damaging changes to the industrial electoral process from ever taking effect.”

Public comments on the proposed rules must be submitted within 60 days, with public hearings on the proposed changes scheduled for July 18 and 19.

Please stay tuned for information on an upcoming webinar on this topic.

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