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NLRB Proposes Significant Representation Election Changes That, If Finalized, Likely Will Aid Unionization Efforts

The National Labor Relations Board (“NLRB” or “Board”) has proposed a number of amendments to the representation election process that could significantly impact the potential unionization of companies throughout the United States. Specifically, on June 22, 2011, the NLRB published a Notice of Proposed Rulemaking in the Federal Register, proposing numerous and far-sweeping amendments to the existing rules and regulations governing representation elections. According to the Board, the amendments are intended to expedite representation-case procedures and “eliminate unnecessary litigation” concerning election-related issues. If finalized, the proposed rules likely would significantly alter the manner in which representation cases are administratively handled, as well as how an employer can respond to unionization efforts following the filing of an election petition.

As set forth in a [fact sheet released by the Board](#), as well as the June 22, 2011 [Federal Register](#) (76 Fed. Reg. 36,812), the proposed amendments would:

- Allow election petitions and notices, as well as voter lists to be transmitted electronically;

- Require Regional Directors to schedule a pre-election hearing to begin only seven days after a notice of hearing is served and a post-election hearing (if necessary) within only 14 days after the election tally;
- Require parties to state their election-related issues on a “Statement of Position” form no later than the start of the pre-election hearing, or be precluded from litigating such issues. [However, parties would be permitted to raise individual voter eligibility issues during the election, even if not raised at the hearing.];
- Require that litigation of disputes involving less than 20% of the bargaining unit be deferred until after the election;
- Direct employers to provide a preliminary voter list no later than the pre-election hearing, including workers’ names, work location, shift, and classification;
- Require employers to provide a final voter list in electronic form within two days after an election is scheduled that includes voters’ names and home addresses, as well as voters’ telephone numbers and e-mail addresses;
- Eliminate pre-election requests for review of Regional Director rulings, and consolidate all such requests into a post-election process. Additionally, Board review of pre-election and post-election rulings would be granted on a discretionary basis.

If adopted, these far-reaching proposed amendments could profoundly impair an employer’s ability to discuss the impacts of unionization and collective bargaining with workers, and to address employee concerns, prior to an election.

In fact, Board Member Brian Hayes, in a rare dissent, roundly criticized the proposed amendments, maintaining that the Board has sought a “quickie election” option “under which elections will be held in 10 to 21 days from the filing of the petition.” According to Member Hayes, the principal purpose underlying the

amendments “is to minimize, or rather, to effectively eviscerate an employer’s legitimate opportunity to express its views about collective bargaining.”

Following a 60-day public comment period and a 14-day reply period ending on September 6, 2011, the NLRB will determine whether the proposed amendments should become final. We will, of course, provide updates as developments occur.

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