

The NLRB Paves the Way to Make Elections Easier for Labor Unions

Last week, the National Labor Relations Board (“NLRB” or “Board”) reintroduced proposed regulations that would expedite union elections. If finalized, the regulations, which were published in the Federal Register last Thursday for public comment, would make union organization a much easier, quicker and simpler process.

This is the Board’s second attempt to introduce these proposed regulations, which would not only shorten the amount of time between the filing of a petition with the Board requesting an election and the holding of the election, but also would delay certain legal challenges until after the election. In December of 2011, similar regulations were adopted by the Board, but these were overturned by a D.C. federal district court in May of 2012, after the judge determined that one of the Board members did not participate in the official vote to approve the new rules. This meant that a quorum of the Board did not exist at the time the prior regulations were adopted. The NLRB initially appealed the D.C. federal district court’s decision, but then decided to voluntarily withdraw the adopted rules -- until reintroducing them last week.

Currently, there can be considerable delay between the filing of an election petition with the Board and the election, if the employer demands that a hearing be held to resolve all issues relating to defining the proposed bargaining unit (e.g., the group of employees which can vote for or against the union) prior to the election. Employers have been known to manufacture unit definition and other issues simply to delay the election and give themselves more time to wage an anti-union campaign. The new rules would preclude such strategies, by making these issues reviewable after the election has been conducted, if resolution is still necessary based on the outcome of the election.

If there is a legitimate question concerning representation necessitating a pre-election hearing, the new rules require this to be scheduled within seven days of the petition filing. In addition, the new rules would require an employer to provide a voter eligibility list to the NLRB containing employee names, work location, shift, and job classification prior to any pre-election hearing, and a final voting list to the union containing not only employee names and addresses, but also telephone numbers and e-mail addresses, within two days of the direction that an election be held, instead of the current seven days. All of this also would be accomplished electronically instead of via mail.

The U.S. Chamber of Commerce and the Coalition for a Democratic Workplace filed suit in 2011 to challenge the new rules on several grounds. Similar challenges are anticipated this go around. Unions are in favor of adopting the new proposed regulations, as they believe the changes will prevent employers from unnecessarily delaying the election process by filing both substantive and procedural challenges before the election is held. Employers, meanwhile, are staunchly opposed to this move by the Board, arguing that the new regulations will put them at a severe disadvantage in a union election campaign.

Regardless of whether the new regulations are adopted by the Board again, employers should be pro-active now by providing annual training to their supervisors and managers as to how to detect the early signs of union-organizing activity, and having a rapid-response plan in place to deal with such activity when it occurs. If the first idea an employer has that a union is at the door is an election petition, it may be difficult, if not impossible, to reverse the pro-union momentum within its workforce, particularly in light of the quickie election procedures which have now been proposed.

Comments to the new proposed rules may be submitted until April 7, 2014, either electronically via www.regulations.gov, or via mail to the Board’s Washington D.C. headquarters, c/o Gary Shinnars, Executive Secretary, National Labor Relations

Board, 1099 14th Street NW, Washington, DC 20570.

If you would like assistance preparing a comment to the new proposed rules or conducting supervisor and management training and developing other proactive measures to help your company recognize and counter the early signs of union activity at your non-union facilities, please contact [Bill Trumpeter](#), [Scott Simmons](#) or any other member of our [Labor & Employment Law Practice Group](#).

The opinions expressed in this bulletin are intended for general guidance only. They are not intended as recommendations for specific situations. As always, readers should consult a qualified attorney for specific legal guidance. Should you need assistance from a Miller & Martin attorney, please call 1-800-275-7303.

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