



## **NLRB Chairman Issues Proposed Resolution on Election Rules In Advance of Today's NLRB Meeting**

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**By Jennifer Dunn**

As we have previously noted, the National Labor Relations Board (NLRB) has proposed to amend its rules and regulations governing the union election process. On November 18, the NLRB announced that it would consider whether to adopt portions of the proposed amendments at a meeting scheduled for today. The NLRB explained that it was moving forward on portions of the proposed rule in light of the possibility that it will lose a quorum when Member Becker's recess appointment expires at the end of the current congressional session. These proceedings have given rise to a heated dispute among the NLRB, with both Member Hayes and Chairman Pearce publicly commenting about the draft rule and the rulemaking process.

In the midst of this dispute, yesterday Chairman Pearce issued a proposed resolution to be considered at today's meeting. The resolution contains the following six procedural amendments from the original rulemaking proposal:

- The first proposed amendment gives hearing officers in NLRB election cases the authority to limit hearings to matters relevant to the question of whether an election should be held.
- The second proposed amendment authorizes hearing officers in NLRB election cases to decide whether to permit the filing of written briefs following the hearing, depending on whether there are issues that would benefit from additional briefing.
- The third proposed amendment consolidates two separate appeals processes before the NLRB—those appeals that seek NLRB review of pre-election issues and those appeals concerning the conduct of the election itself.
- The fourth proposed amendment ends the practice of postponing the scheduling of elections to permit time for appeals of pre-election issues.
- The fifth proposed amendment limits the basis upon which a request for special permission to appeal to the NLRB in election cases will be granted—to those extraordinary circumstances when the issue addressed in the appeal would otherwise evade review
- The sixth proposed amendment further simplifies the NLRB appeal process by giving the NLRB discretion to hear and decide any appeals to the election process, whether they concern pre- or post-election issues.

The Chairman's resolution includes only these six procedural changes and left all of the remaining proposed amendments—including the electronic filing of election petitions, the requirement that hearings be set seven days after service of notice of hearing, and the inclusion of employee email addresses and phone numbers in voter lists—for continued consideration by the NLRB.

According to an [explanation posted by the NLRB](#), the Chairman is proposing this "scaled back final rule" because of the possibility that the NLRB will lose its quorum. Notably, the resolution only commits the NLRB to draft a final rule incorporating the six amendments noted above, and that rule would be finalized, circulated and then subject to approval by a majority vote of the NLRB.

Today's meeting of the NLRB is scheduled for 2:30 p.m. EST. We will continue to monitor and provide updates regarding the NLRB's actions on the resolution and the proposed rule.



### **More Information**

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