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CLIENT NEWSLETTER

SPECIAL BULLETIN

NLRB Publishes Notice of Proposed Rulemaking Dramatically Altering Union Election Procedures

On June 22, 2011, the National Labor Relations Board (NLRB) published a Notice of Proposed Rulemaking (NPRM) in the Federal Register proposing amendments to the NLRB regulations and recommending substantial reform to the rules and procedures that govern the filing and processing of representation cases and elections. The NPRM provides that the purpose of the amendments is “to revise the rules and regulations to better ensure that employees’ votes may be recorded accurately, efficiently, and speedily and to further the Act’s policy of expeditiously resolving questions covering representation.”¹ The effect of the changes on employers will be to dramatically curtail their time and opportunity to conduct a pre-election campaign.

If these proposed rules are adopted after the public notice and comment period, the proposed amendments would:

- o Permit electronic filing of election petitions, election notices, and voter lists.
- o Require the Regional Director to set a pre-election hearing to begin seven days after a hearing notice is served and a post-election hearing fourteen days after the tally of ballots.
- o Require parties to state their position no later than the start of the hearing to ensure resolution of genuine issues.
- o Defer litigation involving eligibility issues raised by parties involving less than 20 percent of the bargaining unit until after the election.
- o Require the non-petitioning party to produce a preliminary voter list, including the names, work location, shift, and classification, by the start of the pre-election hearing.
- o Eliminate the pre-election request for review by the Board of Regional Directors’ rulings.
- o Make post-election review discretionary and permit Regional Directors to make prompt and final decision in most cases.
- o Require all parties to provide phone numbers and email addresses (when available) in the final voter list.

¹See NLRB Fact Sheet, available at <http://www.nlr.gov/node/575>.

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- o Require parties to produce the final voter list in electronic form (when possible) and shorten the submission deadline to two working days.

These proposed regulatory changes, if finalized, will reverse long-established Board procedure, and make it much easier for unions to organize, by effectively limiting an employer's ability to adequately communicate with its employees about the issue of unionization. As Member Brian E. Hayes stated in his dissent to the NPRM, these proposed amendments that expedite the rulemaking process are "neither appropriate nor necessary and . . . share a common purpose: to stifle full debate on matters that demand it in furtherance of a belief that [the] employer should have little or no involvement in the resolution of questions concerning representation." Hayes further observed that "the whole of the proposed reform is much, much more than the sum of parts and out of all proportion to specific problems with [the] Board's current representation case handling procedures."

The Board has invited public comments regarding the proposed rule making, and comments must be submitted to the NLRB on or before August 22, 2011, either electronically to www.regulations.gov, or by mail or by hand-delivery to Lester Heltzer, Executive Secretary, NLRB, 1099 14th Street NW, Washington D.C. 20570. The Board intends to issue a notice of public hearing to be held in Washington, D.C. on July 18-19. Interested parties will be invited to share their views on the proposed amendments and make any other proposal regarding the Board's representation case procedures.

To obtain additional information, please contact the Kullman Firm attorney with whom you customarily work.



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