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SPECIAL BULLETIN

The NLRB Votes to Change Union Election Procedures

On November 30, 2011, the National Labor Relations Board (NLRB) approved a resolution that will (after the NLRB prepares, approves, and publishes in the Federal Register a final rule adopting the resolution) both dramatically speed up the union election process as well as prevent employers from challenging certain aspects of union elections until after the election has taken place.[1]

The NLRB has long adhered to an internal policy that has resulted in the holding of a representation election approximately five or six weeks after a union formally petitions for one. The new resolution, once finally approved, will likely shorten that process, and sharply reduce the time between the date of the petition and the election. Unfortunately, the resolution will inevitably hamper an employer's ability to express its views regarding the election decision, and will limit the amount of information made available to employees before they cast their ballots.

Specifically, the resolution, among other things, (1) eliminates the present 25-day waiting period to conduct elections in cases where a party has filed a pre-election request for review of the NLRB Regional Director's decision regarding voting unit or other election issues, thereby placing a great deal of discretion in the hands of each Regional Director to conduct very speedy elections; (2) revises the law to state that a pre-election hearing may be held only to determine if a question concerning representation exists, which will result in fewer pre-election hearings; (3) eliminates the right for parties to seek pre-election reviews by the NLRB, meaning that almost all appeals (including appeals related to election conduct) will be permitted only after the election is conducted; and (4) even permits the NLRB wider discretion to reject post-election appeals that it determines do not "present a serious issue for review."

The NLRB's resolution, however, does not include several provisions that were in its original proposal. Specifically, this resolution drops, among other provisions: (1) a requirement that any pre-election hearing be held within seven days after service of the notice of hearing; (2) a requirement that voter lists supplied by the employer to the union include employee email addresses and telephone numbers; (3) a requirement that the employer supply the voter list within two days after the direction of election (presently seven days); and (4) permission for unions to file representation petitions and related documents electronically. These provisions were included in the NLRB's June 22, 2011, Notice of Proposed Rulemaking, but were dropped after a massive public response that included over 65,000 sets of written comments regarding the proposed changes. The discarded changes are not necessarily dead forever, but are instead subject to further consideration by the NLRB. The fact that those changes were not included in the present resolution, however, is certainly a positive development.

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[1] The full text of the resolution is available for review at the NLRB's website: http://www.nlrb.gov.

In sum, this resolution is not employer-friendly and is clearly designed to assist unions in their organizational campaigns. The Kullman Firm will continue to monitor this resolution as it works its way through the NLRB's administrative process. If and when the new rule is finalized, employers may well wish to consider placing much greater emphasis on the training of managers and supervisors on how to lawfully maintain a union-free workplace, and perhaps even articulating their views on the subject to nonsupervisory employees as well.

The Kullman Firm regularly counsels employers regarding labor and employment issues such as the challenges posed by this NLRB resolution. If you have any questions regarding this or any other labor and employment issue, please contact the Kullman attorney with whom you customarily work.

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