

June 24, 2011

## NLRB Proposed Rules Amendments Designed to Facilitate Union Organizing

This week, the National Labor Relations Board (NLRB) announced proposed rules amendments to speed up the union election process. If these amendments are adopted, workers will have less time to learn the facts before they decide whether or not to join a union.

A majority of the NLRB claims that these amendments are needed to reduce unnecessary delay and litigation. But Brian Hayes, the NLRB's only Republican member and sole dissenter in the 3-1 vote, finds no reason for the Board to conduct representation elections more rapidly than it does now. "In truth," he wrote, "the 'problem' which my colleagues seek to address through these rules revisions is not that the representation election process generally takes too long. It is that unions are not winning more elections."

### Expedited Election Process

Most union elections currently take place within 45 days after a union decides to file a petition. The Board did not expressly dictate a timeline for the conduct of an election; however, Hayes indicates in his dissent that the expedited election process would result in elections taking place **between 10 and 21 days** after the filing of that petition.

Many companies use this time to explain their side of the story to their employees. If the election takes place in a matter of days, workers will lose the chance to hear more than the union's promises.

"Why the need to rush?" asks Wyoming Senator Mike Enzi, ranking Republican on the Senate Health, Education, Labor and Pensions Committee. "If employees want to unionize they should be allowed to do so, but **to ram elections through before important questions are asked or answered does a disservice to everyone involved.**" And as Hayes notes, the shorter election process will "stifle full debate on matters that demand it."

### Other Notable Changes

Under the NLRB's proposed election rules, the Board would also:

- permit the electronic filing of election petitions and other documents;
- require the employer provide the union not only its employees' names and addresses for the union's use, but also their telephone numbers and email addresses when available;
- require the employer to promptly identify any issues regarding the composition of the proposed bargaining unit and other election-related matters or lose the ability to later litigate them;
- defer litigation of eligibility issues involving less than 20% of the bargaining unit until after the election is conducted;
- eliminate pre-election requests for review of the Regional Director's pre-election rulings;
- consolidate all election-related litigation or appeals into a single post-election appeals process; and

- make Board review of both pre- and post-election decisions discretionary rather than mandatory, leaving final decisions about many disputed issues to Regional Directors.

“Make no mistake, the principal purpose for this radical manipulation of our election process is to minimize or, rather, to effectively eviscerate an employer’s legitimate opportunity to express its views about collective bargaining,” Hayes writes in his dissent.

### **Make Your Opposition Known**

Contrary to its usual practice, the Board proposed these revised rules without seeking prior input from the Board’s own standing Rules Revisions Committee or the Practice and Procedure Committee of the American Bar Association’s Labor and Employment Law Section. It also put forth proposals on its own initiative – rather than in response to any complaint. The Board will allow a 60-day comment period before making a final decision on whether the rule should become final. Comments must be identified by the code 3142-AA08. They may be submitted electronically through the federal eRulemaking portal at <http://www.regulations.gov> or sent by mail to: **Lester A. Heltzer, Executive Secretary, National Labor Relations Board, 1099 14th Street N.W., Washington, D.C. 20570**. You can also make your opposition to these amendments known by contacting your local representative.

*To learn more about how to heighten union avoidance efforts, please contact any one of the partners in our Labor & Employment group:*



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