

April 9, 2014

The NLRB Re-Issues Its Controversial Proposed Rules on “Quickie Elections”

A divided National Labor Relations Board (the “Board”) recently voted to re-issue proposed regulations governing union elections (the so-called “quickie election rules”). If adopted, these controversial regulations could have implications for every private-sector employer in the United States, and drastically curtail employers’ rights to participate in the union election process and to communicate with employees on the issue of union representation.

The Board previously adopted a portion of the quickie election rules in 2011 after limited public hearings, but a federal district court invalidated them because the Board lacked a valid quorum at the time of adoption. The Board is now properly constituted and has revived the 2011 proposal, arguing that the proposed changes are still needed to reduce litigation and minimize delay in the union election process.

The proposed rules would expedite union elections by

- allowing parties to file election petitions and related documents electronically;
- holding the pre-election hearing just seven days after the filing of an election petition;
- requiring employers to promptly give the union a preliminary list of voting employees’ names, work locations, shifts, and job classifications;
- requiring employers to give the union a final voter list (the so-called Excelsior list), including the employees’ telephone numbers and email addresses, within two days of an election being scheduled;

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- delaying resolution of eligibility disputes until after the representation election; and

- limiting employers' ability to obtain Board review of contested issues (such as the appropriateness of bargaining units, voter eligibility, and election misconduct) by making such review discretionary, rather than mandatory.

The proposed rules also would give employers a very short deadline within which to challenge the election proceeding. Within seven days of receiving the union's petition for election, an employer would be required to furnish a detailed statement explaining its position on each of the following matters:

- the appropriateness of the petitioned-for unit;
- any proposed exclusions from the petitioned-for unit;
- the existence of any bar to the election;
- the type, dates, times, and location of the election; and
- any other issues that a party intends to raise at hearing.

Because the proposed rules prohibit employers from offering evidence or cross-examining witnesses as to any issue not raised in their own position statements, or from responding to contentions raised in the position statements of other parties, employers would effectively have to raise and exhaustively address all issues in their own position statement or forfeit their right to raise them later.

The Board's decision to issue the controversial proposal reflects the ongoing political division within the agency. The two current Republican members of the Board voted against the regulations. In 2011, the sole Republican member of the Board, Brian E. Hayes, also voted against the regulations and in a lengthy dissent summarized his (and perhaps many employers') primary concern with the Board majority's proposed action:

[B]y administrative fiat in lieu of Congressional action, the Board will impose organized labor's much sought-after 'quickie election' option Make no mistake, the principal purpose for this radical manipulation of our election process is to [] effectively eviscerate an employer's legitimate opportunity to express its views about collective bargaining.

Live Streaming of Public Hearings

The Board will conduct meetings at its Washington, DC headquarters on April 10 and 11 for members of the public to share their views about the Board's proposed rules. The public hearings will be streamed live through the NLRB's website, at the following web address: <http://www.nlr.gov/openmeeting>

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