

in the news

Labor and Employment



February 2014

It's Back... Are "Quickie" Elections on the Horizon Again?

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On February 5, 2013, the National Labor Relations Board (NLRB) announced that it was again issuing amendments to its rules and regulations for the conduct of representation elections. The new rules are virtually the same as those initially proposed by the NLRB in June 2011, which the United States District Court for the District of Columbia enjoined from being implemented because the Board did not have a quorum when the rules were voted upon.

According to NLRB Chairman Mark Gaston Pearce, the amendments would modernize the representation case process. He further stated his belief that the amendments as proposed in June 2011 continue to "best frame the issues," though noting that no final decision had been made pending public comment. The NLRB touts that its proposed amendments would:

- allow for electronic filing and transmission of election petitions and other documents;
- ensure that employees, employers and unions receive and exchange timely information they need to understand and participate in the representation case process;
- streamline pre- and post-election procedures to facilitate agreement and eliminate unnecessary litigation;



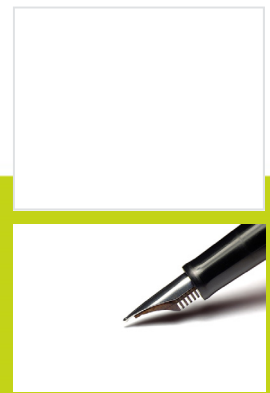
- include telephone numbers and email addresses in voter lists to enable parties to the election to be able to communicate with voters using modern technology; and
- consolidate all election-related appeals to the Board into a single post-election appeals process.

Among the specific and noteworthy changes called for by amendments are the following:

1. Limiting issues that could be raised during a pre-election hearing. Issues relating to a unit's scope, and eligibility issues (*e.g.*, supervisory, confidential, casual) would be litigated, if at all, only after an election.
2. Vesting the hearing officer with authority to decide whether to permit the filing of post-hearing briefs, whereas traditionally either party had the absolute right to file a post-hearing brief.
3. Doing away with pre-election review, and consolidating any pre- and post-election issues in a single, post-election request for review.
4. Dispensing with the discretionary NLRB option to postpone elections to deal with pre-election requests for review.
5. Proscribing special appeals at the hearing stage.
6. Affording the NLRB discretion on whether to hear an appeal (*i.e.*, not absolute right to appeal on election issues).
7. Requiring that pre-election hearings begin seven (7) days after service of a notice of hearing (absent special circumstances).
8. Requiring the parties to state their positions at the start of the hearing.

9. Directing the employer to produce a preliminary voter list, including names, work location, shift, and classification, by the opening of the pre-election hearing.
10. Adding to the final voter list, which is made available to all parties, phone numbers and email addresses (when available).
11. Requiring that the final voter list be produced in electronic form when possible and the deadline would be shortened to two work days (down from the current seven (7) after the direction of election.

It now appears that the NLRB may adopt amendments that would accelerate the election process and restrict post-election challenges. This would in turn make it more difficult for employers to adequately litigate representation election cases and inform employees about the issues they face in deciding whether to vote for or against union representation. ■





For More Information

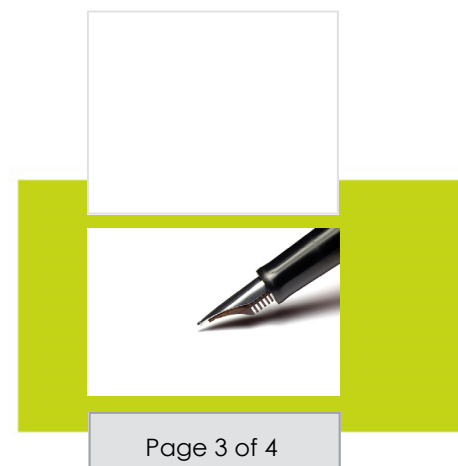


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